

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

**COMMITTEE FOR ECONOMIC DEVELOPMENT**

**PROPOSALS FOR REVISIONS TO THE POPULATION MANAGEMENT LAW**

**Propositions**

The States are asked to decide whether, after consideration of the attached policy letter, dated 19<sup>th</sup> October 2017 they are of the opinion:

1. To direct the preparation of legislation to amend the Population Management (Guernsey) Law, 2016 ("the Law") to –
  - (a) remove the prohibition on reissuing a Short Term Employment Permit in circumstances which would result in the holder's aggregate residence (both before and after commencement of the Law) exceeding five years,
  - (b) remove the requirement that the Administrator of Population Management be satisfied, when granting an Open Market Employment Permit (Part B) or an Open Market Employment Permit (Part C) to a person who has previously been resident, that –
    - (i) the applicant 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,
    - (ii) the Permit will not permit the applicant to be resident for a continuous period (including residence before the grant of the Permit) exceeding five years, and
  - (c) amend the requirement that it be a condition of an Open Market Employment Permit (Part B) and an Open Market Employment Permit (Part C) that the holder is accommodated at a particular property inscribed in Part B or Part C (as the case may be) specified on the face of the Permit, to a requirement that the holder is accommodated in any property inscribed in Part B or Part C (as the case may be).

These 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.

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**COMMITTEE *FOR* ECONOMIC DEVELOPMENT**

**PROPOSALS FOR REVISIONS TO THE POPULATION MANAGEMENT LAW**

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

19<sup>th</sup> October, 2017

Dear Sir

**1. Executive Summary**

- 1.1 The Committee *for* Economic Development has been approached by a number of representatives acting on behalf of the hospitality sector expressing their concerns with certain aspects of the recently enacted Population Management (Guernsey) Law, 2016 and the Island's ability to attract and retain a suitably skilled workforce. The availability of labour for the hospitality sector is now directly affecting Guernsey's economic competitiveness forcing businesses to close on certain days of the week as a result of staff shortages. This is not good for those businesses, the economy and those residents and visitors for whom these businesses play a significant role in enhancing the Island experience.
- 1.2 The Propositions within this policy letter request States approval to amend the Population Management (Guernsey) Law, 2016. Firstly, it seeks the removal of the prohibition on reissuing a Short Term Employment Permit in circumstances which would result in the holder's aggregate residence exceeding five years. It also seeks to remove the need for Open Market Employment Permit holders (Parts B and C) to take a recognised break in residence after 5 years as well as enabling that permit holder to be resident in perpetuity and not for a maximum of 5 years. These changes will provide a more continuous and predictable supply of staff.
- 1.3 The policy letter also seeks the agreement of the States to remove the requirement for Open Market Employment Permit holders (Parts B and C) to be accommodated at a particular property that is currently inscribed on the face of the Permit. This will provide for more flexible and efficient use of staff accommodation across the Island and will remove the requirement to change accommodation when moving within the industry.

## 2. Introduction

- 2.1 The mandates of each of the six Principal Committees of the States include a 'purpose' which essentially sets out the reason for the Committee's existence. The purpose of the Committee *for Economic Development* is *"to secure prosperity through the generation of wealth and the creation of the greatest number and widest range of employment opportunities possible by promoting and developing business, commerce and industry in all sectors of the economy"*.
- 2.2 Furthermore the Committee's mandate requires it *"to advise the States...on matters relating to its purpose, including: the promotion and development of all sectors of business... [and] the labour skills necessary to sustain economic prosperity"*.
- 2.3 Enacting, amending and repealing *Projets de Loi* and *Ordinances* are ultimately matters not for any single committee or group of committees but for the legislature, the States of Deliberation. A Principal Committee has a duty to bring to the attention of the States any changes to legislation which it considers necessary in pursuit of its purpose and mandated responsibilities. The Committee *for Economic Development* has submitted this policy letter for the consideration of the States as it believes, following consultation with industry, that changes need to be made to certain aspects of the *Population Management (Guernsey) Law, 2016* which at present are unreasonably constraining multiple businesses from attracting and retaining a suitably-skilled workforce, which in turn is unnecessarily detrimental to Guernsey's economy.
- 2.4 In particular the Committee is persuaded of the merit of representations made to it on behalf of the hospitality sector (mainly hotels and restaurants). It is the Committee's view that the *Population Management (Guernsey) Law, 2016* is unable, in its present form, to allow for the recruitment and retention of the labour necessary to maintain a thriving hospitality sector. Ultimately this is having a negative effect on the diversity and competitiveness of Guernsey's economy. As a result of staff shortages a number of local restaurants and other businesses in the hospitality sector are unable to open on seven or even six days a week, which is harmful to those businesses, the wider economy and those residents and visitors for whom such businesses play a significant role in enhancing the Island experience. The Committee believes that certain aspects of the *Population Management (Guernsey) Law, 2016* are substantially responsible for this problem. The Committee further believes that this problem can be rectified through legislative amendments without seriously inhibiting the ability of the States to exercise proper long-term control over the size and make-up of the population.
- 2.5 The Committee respects that other Committees of the States may hold other or even contrary views, but is aware that the Committee would be failing in its responsibilities to the States if it did not set out its advice on this important subject in a way which enables the Assembly to take on its own view on the matters set out in the policy letter.

- 2.6 The Propositions put forward seek to bring about changes as a matter of urgency to the extant legislation and the policy framework adopted by the Committee for Home Affairs regarding two specific matters:
- 1) The ability to retain employees holding either a Short Term Employment Permit, an Open Market Employment Permit (Part B) or an Open Market Employment Permit (Part C) indefinitely.
  - 2) The ability for employees holding Open Market Employment Permits who are resident in Open Market Part B and Part C properties to live in any staff accommodation (regardless of where on the Island they are employed).
- 2.7 The Committee *for* Economic Development has approached the Committee *for* Home Affairs to discuss a joint approach to this matter. However, the Committee *for* Home Affairs was not available to meet within the timeframe available.

### **3. Background**

- 3.1 Following criticism of the previous legislation, the Population Management Law was enacted by the States on the 29<sup>th</sup> March 2017. At the time, the Committee *for* Economic Development signalled its concern for certain aspects of the new legislation and the processes that would be established to enforce it. The Committee's primary concern at that time, in accordance with its mandate, was that the legislation and associated processes would need to be designed and operated such that it would enable all parts of the Island's economy to function adequately through the ability to quickly and easily recruit and retain staff from off the Island.
- 3.2 Access to labour is an essential element for economic growth in Guernsey. While the same is true for other jurisdictions, in a small island economy with full employment, it is particularly important that any system which seeks to manage the flow of labour from off-island, is suitably flexible and responsive to employers' needs.
- 3.3 Through its population management regime, the States of Guernsey exerts control over the flow of both low and high-skilled labour, with short-term permits generally being allocated to the former and medium to long-term employment permits being allocated to the latter.

### **4. The impact of the legislation on hospitality sector staff**

- 4.1 The Medium Term Employment Permits (MTEP) and Long Term Employment Permits (LTEP) have been generally well received by employers looking to recruit the right talent to enable Guernsey's economy to prosper. However, in contrast to the focus on high-skilled workers, comparatively little attention has been paid to the challenges facing employers in terms of entrenched labour shortages for low-skilled roles. The Committee is concerned about the immediate economic harm caused to the hospitality industry by restrictions on the movement of labour for these lower-skilled

positions. It should be noted, however, that whilst the term 'low skilled' is used, this term does not adequately convey the importance of these roles for the ability of Guernsey's businesses to operate. Neither does it adequately reflect the difficulties reported by employers in appointing for these roles from within the Island's resident workforce.

- 4.2 The Committee is of the view that the restrictions in place that control the length of time low-skilled workers are able to reside on Island, together with the restrictions placed on the location of their accommodation, are having a direct negative impact on the performance of the hospitality sector.
- 4.3 It is clear that the position that the hospitality sector finds itself in is not economically sustainable and if maintained will almost certainly lead to business closures in the sector. This could have lasting negative effects on Guernsey's tourism and business sectors, as well as the resident population that benefits from hospitality establishments. In addition, a corresponding decline in tourist numbers as a result of a decline in the hospitality sectors will adversely affect the Island's strategic transport links and the viability of travel providers.
- 4.4 Evidence provided to the Committee of the comparison of Guernsey's recruitment situation with that of Jersey's indicates that, while both islands are to some extent experiencing the negative impacts of external influences, Jersey's population management system appears to be enabling the provision of a much better supply of migrant workers wishing to fill vacancies. This could be the result of no limit being applied to the length of time an employee (licenced or registered) can remain on the island while holding 'entitled' status alongside an assumption that there will be a net migration of 325 people per year (on average).
- 4.5 In essence, there is concern that the new system in Guernsey has given, and continues to send out a message to our main labour sources that Guernsey is closed for business, i.e. that working in the hospitality sector on a short term but sustained contract is very difficult. This creates significant disadvantages for Guernsey due to the perception that many other jurisdictions are willing to welcome such migrant workers.

## **5. Consultation and Engagement**

- 5.1 Consultation with representatives of 88 firms within the tourism and hospitality sector, including all the sectors major employers, has revealed the unanimous opinion that the industry is currently facing significant and unprecedented challenges with regard to the recruitment and retention of staff. This consultation, run by the Population Employment Advisory Panel (PEAP) advising the Committee *for* Home Affairs and annexed to this letter, has identified a situation which those firms consider will have a significant long term negative effect on the sector if left unchecked.

- 5.2 A total of 52 hospitality establishments have confirmed that they have been unable to run their business at full capacity over the summer due to an absence of staff and have therefore had to turn business away and/or close for longer periods than normal.
- 5.3 Consultation with the sector by the Population Employment Advisory Panel has also revealed that at the end of August 2017 the total number of staff vacancies experienced by 68 establishments amounted to 248, a number that appears to be unprecedented within the sector.
- 5.4 Those consulted also expressed concerns over the potential long-term damage to the reputation of the sector, as staff shortages will inevitably lead to a deterioration in the level of service standards.
- 5.5 Those businesses consulted generally acknowledge that Brexit and the currency exchange rates are contributing to this situation to some extent. However, they are of the view that the recently introduced system for short term employees is having a significant negative impact and that the need for consideration of some early changes is urgently required.

## **6. The Proposals**

- 6.1 The Committee is of the opinion that the Population Management Law should be amended with immediate effect, in two specific ways. Firstly, it should provide the ability to retain short term staff indefinitely. This should apply to both Short Term Employment Permit holders and Open Market Employment Permit holders. The Committee notes that a Short Term Employment Permit (STEP) enables a person to live in Local Market or Open Market accommodation for a maximum period of one year. The rules governing the reissue of STEPs are set out in section 25 of the Law and provide, inter alia, that a person can be reissued with a STEP only up to a maximum of an aggregate period of residence of 5 years (including time before the Law came into force). In this respect, the Committee proposes that the Law be amended to remove this restriction on reissuing a STEP so that a person may be reissued STEPs indefinitely.
- 6.2 Similarly, Open Market Employment Permits (Part B or Part C) are available for employees working and living in hotels and care homes. There is a requirement for the holder to be resident in the hotel/care home in which he or she is working, and they can be granted for a period of up to 5 years. It is noted that these Permits can only be reissued if a person takes a recognised break in residence or if the reissue would not result in the holder having a continuous period of residence (including residence before the grant of the Permit) exceeding 5 years. The Committee wishes to see the legislation revised to remove these restrictions on granting an Open Market Employment Permit (Part B or Part C).
- 6.3 The second revision proposed is to remove the requirement in the Law that the holder of an Open Market Employment Permit (Part B) or (Part C) must be accommodated at a particular property inscribed in Part B or Part C (as the case may be) specified on the

face of the permit, which in practice will be the hotel (or in the case of Part C, care home) at which the holder is working. The legal requirement for employees to move out from designated staff housing at one establishment when taking a job at another, regardless of whether or not they have legitimate employment within the hospitality sector, is stifling business and adding barriers to the recruitment and retention of staff in this sector. The Committee considers that an Open Market Employment Permit (Part B) holder, for example, should be able to live in staff accommodation at any hotel, not just staff accommodation at the hotel where he or she works.

- 6.4 The Committee is of the opinion that such revisions would enable migrant workers the opportunity to work in Guernsey for as long as they and their respective employer chooses, subject to their position remaining an “in permit” position, as recognised by the Population Employment Advisory Panel and adopted by the Committee *for* Home Affairs. This would enable employers to continue to employ staff on a one-year basis, but without those members of staff building up any rights under the Law to remain (though see paragraph [6.7] regarding human rights). The performance of the local economy will serve to control the length of stay for migrant workers. If there are jobs they will stay and work, if jobs diminish incumbents will move on to other jurisdictions seeking alternative employment. Through consultation with the sector there is no evidence to suggest that Guernsey’s population has grown over the past 20 years as a result of migrant workers remaining indefinitely, therefore there is no incompatibility issue with the States of Guernsey’s population policy. Such an approach will enable the tourism and hospitality sectors to retain exemplary staff and deliver continuity of service.
- 6.5 The Committee considers that the objectives set out within this policy letter would not lead to wider impacts on the operation and function of the legislation. Long Term Employment Permits and Medium Term Employment Permits will not be affected as a result of these proposals.
- 6.6 The revisions to legislation and policy would provide security to employees and employers who would know that there is no external pressures affecting the ability to renew the license. It would improve the overall standard of service in the industry and permit the continued use of purpose-built staff accommodation, which is not likely to be fit for any other use. Importantly, it would also reinstate confidence in Guernsey as a good place to work, thereby aiding staff recruitment.
- 6.7 The Committee is aware that such amendments may raise issues regarding Human Rights. However, notwithstanding this it considers that these changes should be made to the legislation. If an employee has been continually resident under an Open Market Employment Permit for a significant period of time it is accepted that it may be difficult to require them to leave the Island if their role is no longer recognised and to stop them moving from Open Market to Local Market if that’s the only way that they can stay resident. However, it is the Committee’s opinion that workers in the hospitality sector are generally transient and are not looking to remain resident in Guernsey in perpetuity, therefore the overall impact of such a change would be negligible. Notwithstanding this, however, the Committee accepts that the amended legislation

should be monitored and if the impacts are considered to be unacceptable, the legislation can be amended again to resolve any significant problems identified.

- 6.8 The current requirement for Open Market Part B ‘live-in’ staff to be accommodated within the hotel at which they are working, or within on-site staff accommodation, means that business have to accommodate staff in hotel rooms which could otherwise be let to visitors. This means that multiple rooms within hotels are used by staff, when they could be let to paying guests.

## **7. The Open Market**

- 7.1 The Committee is of the opinion that the proposed changes to the legislation would not have a significant impact on the Open Market, which will be largely unaffected. The Committee is aware that there are wider issues of concern impacting upon market confidence in the Open Market and that revisions are required to enable this important housing sector to work in an efficient and positive way for the good of the local economy, not forgetting those that have chosen to live in this sector. A system is required that will allow the more efficient operation and development of the Open Market in a manner that is consistent with the development of the economy and the attraction of high net worth individuals to the Island. However, the Committee is of the opinion that these issues are best dealt with by the forthcoming population management review in a coherent manner and are therefore not addressed in this policy letter.

## **8. Resource implications**

- 8.1 It is envisaged that the Propositions will most significantly impact St James Chambers, which will be required to amend the legislation. However, the amendment is relatively minor. There is likely to be little impact on the Committee *for* Home Affairs which will be responsible for overseeing the redrafting of the legislation.

## **9. Conclusions**

- 9.1 It is the view of the Committee *for* Economic Development that there is robust and extensive evidence to suggest that immediate action is required to amend the Population Management legislation in such a way as to enable hospitality sector to function without undue restriction. As the UK struggles to identify appropriate immigration processes following its withdrawal from the European Union, Guernsey can position itself favourably when competing for labour within a global market. There is evidence to indicate that the extent legislation is already having a negative impact on how Guernsey is seen as a place to work and potentially to establish businesses in this sector. Consequently, the current system should be revised immediately in order to indicate the States of Guernsey’s strong support for this important sector and allow these parts of the economy to ensure their recruitment for next summer. This revision



cannot wait for the main review of the legislation that the Committee *for* Home Affairs is now seeking to conduct but which is not likely to be reported until 2019.

## **10 Propositions**

The States are asked to decide whether, after consideration of the attached policy letter, dated 19<sup>th</sup> October 2017 they are of the opinion:

1. To direct the preparation of legislation to amend the Population Management (Guernsey) Law, 2016 ("the Law") to –
  - (a) remove the prohibition on reissuing a Short Term Employment Permit in circumstances which would result in the holder's aggregate residence (both before and after commencement of the Law) exceeding five years,
  - (b) remove the requirement that the Administrator of Population Management be satisfied, when granting an Open Market Employment Permit (Part B) or an Open Market Employment Permit (Part C) to a person who has previously been resident, that –
    - (i) the applicant 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,
    - (ii) the Permit will not permit the applicant to be resident for a continuous period (including residence before the grant of the Permit) exceeding five years, and
  - (c) amend the requirement that it be a condition of an Open Market Employment Permit (Part B) and an Open Market Employment Permit (Part C) that the holder is accommodated at a particular property inscribed in Part B or Part C (as the case may be) specified on the face of the Permit, to a requirement that the holder is accommodated in any property inscribed in Part B or Part C (as the case may be).

These 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.

## **11 Committee Support for Propositions**

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

Yours faithfully,

PTR Ferbrache  
President

J Kuttelwascher  
Vice President

A Dudley Owen  
J Merrett  
J Mooney

**Annex 1: Letter from the Population Employment Advisory Panel to the Committee  
for Home Affairs**



Population Employment Advisory Panel  
Population Management Office  
Sir Charles Frossard House  
+44 (0) 1481 715790  
population@gov.gg  
www.gov.gg/populationmanagement

Deputy Mary Lowe  
President  
The Committee for Home Affairs  
Sir Charles Frossard House  
La Charroterie  
St Peter Port  
GY1 1FH

29<sup>th</sup> September 2017

Dear Deputy Lowe

Although we are scheduled to meet on a six-monthly basis your committee kindly met with myself and Kenrick Brooks, the representative of the Hospitality Sector early in July. The reason for our request to meet with you and the Committee was to provide early notice of the growing difficulties the hospitality and service sectors were experiencing in recruiting off-Island staff at all levels, not the least those who fall into the STEP category of permit.

During the meeting you requested evidence of the difficulties to help inform any actions you may take.

Since that meeting, Kenrick has liaised extensively with the Industry which has resulting the enclosed signed on behalf of 88 hospitality businesses in Guernsey.

I will not repeat in this letter the contents of their letter, but the fact that 72% of the businesses are operating under capacity due to the staffing shortages is a very sobering statistic. I am sure you will appreciate that for reasons of business confidentiality the letter does not include specific details of the extent to which individual businesses are operating under capacity. For that reason, I suggest that Kenrick accompanies me to our next meeting so he can elaborate on some of the particular cases.

I appreciate that we are due to meet towards the end of October, but I thought it worth providing you with a copy of the letter at this stage to allow time should your Committee or staff wish to contact any of the businesses to discuss further their individual experiences.

Additionally, if the letter does raise questions please revert so that we may be able to address them in time for our October meeting.

Finally, at the request of some of the signatories, a copy will be provided to the Committee for Economic Development.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Peter L. Gillson", with a long, sweeping horizontal stroke extending to the right.

Peter L. Gillson  
Chairman, Population Employment Advisory Panel

 Cc President of the Committee for Economic Development.

**The 88 Hospitality Sector Businesses Operated by the Signatories (Letter to PEAP dated 25<sup>th</sup> September 2017)**

Albion Tavern	Auberge Restaurant	Auberge Du Val Country Inn
Barbados Nightclub	Beaucette Marina Restaurant	Beetons Chip Shop
Bella Luce Hotel	Captain's Hotel	Cabriz Restaurant
China Red Restaurant	Christies Restaurant	Cobo Bay Hotel
Coco Mini Brasserie	Crabby Jacques Restaurant	Crow's Nest Brasserie
Da Nello Restaurant	Deerhound Inn	Dix Neuf Brasserie
Doghouse	Dower Cottage	Duke of Normandie Hotel
Duke of Richmond Hotel	Fermain Tavern	Fermain Valley Hotel
Fleur Du Jardin Hotel	Foresters Arms	Golden Lion Craft Ale Pub
Guernsey Pearl	Hampshire Lodge	Harbour Lights
Hotel De Havelet	Hotel Jerbourg	Houmet Tavern
Imperial Hotel	Int'l Bartending School	Island Coachways
La Barbarie Hotel	La Fontain Inn	La Fregate Hotel
La Grande Mare Hotel	La Villette Hotel	Laska Cocktail Bar
Le Friquet Hotel	Le Gouffre Café & Restaurant	Le Nautique Restaurant
L'Eree Bay Hotel	Le Petit Bistro	Les Douvres Hotel
Mirror Bar	London House Pub	Longfrie Inn
Moores Hotel	Mora Restaurant & Grill	Octopus Restaurant & Bar
Old Government House Hotel	Pelican's Café @ Kings	Petit Bot Tearooms
Pier 17 Restaurant	Prince of Wales Pub	Queens Hotel
Red Restaurant	Red Onion Bar & Eaterie	Rockmount Restaurant & Bar
Rocquettes Hotel	Rosso Restaurant	Ship & Crown Pub
Slaney Restaurant	Slaughterhouse Bar & Eaterie	St Jacques Tavern
St Pierre Park Hotel	Suco Catering	Tinto Restaurant
The Boathouse Brasserie	The Farmhouse Hotel	The Jamaica Inn
The Last Post Pub	The Mariners Inn	The Pony Inn
The Red Lion Pub	The Swan Inn	Thomas De La Rue Pub
Urban Kitchen Eaterie & Lounge	Venture Inn	Villa Restaurant
Wayside Cheer Hotel	White D'Or Restaurant	White Hart Pub
Yacht Hotel		