

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR HOME AFFAIRS

AMENDMENTS TO THE POPULATION MANAGEMENT LAW – RESIDENT PERMITS AND
CERTIFICATES

The States are asked to decide:-

Whether, after consideration of ‘Amendments to the Population Management Law – Resident Permits and Certificates’ dated 12 November 2018, they are of the opinion:-

1. That the Population Management (Guernsey) Law, 2016, be further amended:
 - a. to remove the concept of an Established Resident Permit;
 - b. to provide that a person who completes eight years’ continuous residence in the Local Market is entitled to an Established Resident Certificate;
 - c. subject to (b), to remove the restrictions on who may hold an Established Resident Certificate;
 - d. to remove the restrictions on the period for which a Family Member Resident Permit may be granted;
 - e. to provide that, in respect of the issue of an Open Market Resident Certificate to the occupier of a property inscribed on Part D of the Open Market Housing Register, the Administrator must be satisfied that the applicant is the owner of the whole dwelling he is occupying or proposing to occupy;
 - f. to provide that holders of Short Term Employment Permits and Open Market HMO Resident Permit (Part D) can occupy as a tenant a property inscribed in Part D of the Open Market Housing Register without the need to be accommodated by a householder; and
 - g. to make any necessary consequential amendments flowing from the above.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

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.

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

12 November, 2018

Dear Sir

1 Executive Summary

- 1.1 On 3rd April 2017 the Population Management (Guernsey) Law, 2016 (“the Law”) came into force to replace the Housing (Control of Occupation) (Guernsey) Law, 1994 (“the Housing Control Law”). Housing control legislation had existed in various forms since 1948.
- 1.2 The Law has now been in place for eighteen months, which means that employers, individuals and government all have experience of what works well and what may need adjustment in the short-term. The new Law was designed to be more flexible and responsive than the Housing Control Law.
- 1.3 Issues have been identified with residential permits for both customers and the administration of the regime. Having listened to the concerns raised, and considered the solutions proposed, the Committee recommends the States make the following amendments to the Law:
 - the current restrictions in the Law on who can hold an Established Resident Certificate should be replaced with a single condition that anyone who completes eight years’ continuous residence in the Local Market is entitled to an Established Resident Certificate,
 - the concept of an Established Resident Permit should be removed from the Law, and
 - the Law should be amended to remove the restriction on the period for which a Family Member Resident Permit may be issued.

- 1.4 Under the Law, a Certificate is a document issued to a person who is entitled to hold it – i.e. there is no discretion around whether or not to grant it. Holders can live in a property independently of others, and can accommodate family members as set out in the Law. A permit is a document issued to a person on a discretionary basis and may have conditions attached.
- 1.5 In addition, the opportunity is being taken in this policy letter also to:
- address a minor amendment related to the conditions for granting an Open Market Resident Certificate, and
 - following States' approval in November 2017 (Billet d'État XXIII 2017), provide the further detail required to implement the introduction of Employment Permits that will enable holders to work and live in Guernsey for a maximum period 9 months before taking a 3 month break off island. While working on this basis permit holders will be able to return to Guernsey indefinitely.

2 Background

- 2.1 Controls on the occupation of housing in Guernsey were first introduced in response to a shortage of suitable properties available for occupation by islanders returning after absences necessitated by the Second World War, either on active service or because they had been evacuated.
- 2.2 Between 1948 and 2017 the various versions of the housing control law were reviewed periodically as required by the legislation. These reviews enabled the housing control legislation to continue to meet the Island's changing needs. In latter years, the housing control legislation was used as a tool to manage the population in accordance with the strategic objectives set by the States, although it was something of a "blunt instrument" when used for this purpose.
- 2.3 Consequently, when the Housing Control Law was due for renewal (the Housing Control Law had a life-span of ten years, renewable by Ordinance) it was agreed that a fundamental review should be carried out.
- 2.4 Following extensive consultation with the public, businesses and interest groups in the first half of 2011, the States approved the principles of a new regime primarily based on population management in January 2012 (Billet d'État I). The main difference between the systems is their primary drivers. The Housing Control Law focused on the occupation of local market housing in Guernsey, whereas the new Law is focused on managing the size and make-up of the population in accordance with the strategic direction of the States. Housing is a secondary, but nevertheless important, consideration.

- 2.5 It was explained in the 2012 policy letter that *“the proposals.....are aimed at influencing the size of the Island’s population over the medium to long term and are designed to be effective whether the States strategic population policy at any point in the future is for the population to rise, fall or to remain static.”*
- 2.6 Given that the Law is in part simply a tool that responds to the strategic policy direction, it is helpful to understand what the policy direction is at present.
- 2.7 In December 2015 (Billet d’État XXIV, 2015) the States agreed that *“...instead of absolute population numbers or migration levels, States Policies should be focused on ensuring that the Island’s population is of a size and make-up consistent with achieving the States’ strategic economic, social and environmental objectives.”*
- 2.8 In support of this, they also agreed a new Population Objective in the following terms:
- “That, as far as practicable, Guernsey’s population should, in the long-term, be kept to the lowest level possible to achieve ‘The Statement of Aims’ in this plan.”*
- 2.9 The “plan” referred to above was the States’ Strategic Plan (SSP), which has since been superseded by the Policy & Resource Plan. Notwithstanding this, the Population Objective itself is clear and remains unchanged: long-term population growth should be modest and any long-term increase should be in support of achieving strategic outcomes.
- 2.10 The Law has now been in place for eighteen months, which means that employers, individuals and government all have experience of what works well and what may need adjustment in the short-term. The new Law was designed to be more flexible and responsive than its predecessor, the Housing Control Law.
- 2.11 Based on feedback from industry and the Administrator of Population Management, the Committee has already made change to existing policies, and the States’ Assembly have agreed changes to the Law to ensure it is meeting the needs of the community and the States of Guernsey.
- 2.12 Changes agreed to the Law by the States in November 2017 (Billet d’État XXIII) include:
- Open Market Employment Permits for Parts B (Hotels) and C (Care homes) to enable holders to remain indefinitely and to reside and work in different properties inscribed in Parts B or C

- Reintroduction of a permit that will enable holders to work in Guernsey for a period of nine months before taking a minimum break of three months away from the Island. Holders of this permit will be able to return to work in Guernsey indefinitely on this basis.

3 Established Resident Permits

- 3.1 The Population Management Law includes the concept of two “milestones” in terms of acquiring residential qualifications. The first occurs after eight consecutive years’ residence in Local Market accommodation. At this point, a person has the status of Established Resident. This means that he or she is able to remain in Local Market accommodation in Guernsey indefinitely without any conditions as to his/her employment. These rights will however be lost if an Established Resident ceases to be ordinarily resident in Guernsey before completing a total of fourteen consecutive years’ residence in Local Market dwelling(s) (i.e. a further six years from the point at which he or she became an Established Resident).
- 3.2 At fourteen years, an individual becomes a Permanent Resident, which means that he or she enjoys all the rights conferred by Established Resident status but they can no longer be lost by a break in residence. After any absence from the Island, a Permanent Resident has the right to return and occupy a Local Market dwelling. He/she can also accommodate immediate family members, as defined in the Law.
- 3.3 On reaching the eight-year milestone, two types of document can be issued: either an Established Resident Certificate or an Established Resident Permit. The former is issued to the principal/householder – for example, the holder of an Employment Permit. Other immediate family members – e.g. spouse or children – are issued with an Established Resident Permit. The two documents do not confer the same rights on the holders.
- 3.4 The Law provides that an Established Resident may be a householder only if he/she is the holder of an Established Resident Certificate or a Discretionary Resident Permit that permits him/her to be a householder. Holders of Established Resident Permits cannot be householders. This means that immediate family members of persons holding Established Resident Certificates generally have to continue to live in the household of that person. There is no discernible benefit to them of having reached the first “milestone” and holding an Established Resident Permit.
- 3.5 In addition, an Established Resident Certificate can only be granted to a person who immediately prior to becoming an Established Resident was either:

- the holder of a Long Term Employment Permit, or
- the holder of a housing licence issued under the Housing Control Law entitling the holder to be ordinarily resident, other than a short term housing licence or a licence that required them to be accommodated by a householder.

3.6 This means that only those who were previously entitled to be a householder in their own right can be issued an Established Resident Certificate. All other persons must continue to be accommodated until they qualify to become a Permanent Resident.

3.7 There is recognition, in the Population Management Office's published policies, that it may not be appropriate to apply this requirement to everyone. The policy in question says:

*If it becomes impossible for a person to live with the householder named on their Permit, and they **have already lived in Local Market housing in Guernsey for at least 8 consecutive years**, they can generally expect to be granted a Permit so that they can live in other Local Market housing. The types of change might include:*

- *a relationship breakdown;*
- *the householder leaving Guernsey;*
- *a young adult needing to move out of the family home*

3.8 There is no population justification for the prohibition on Established Resident Permit holders being householders, as the individuals in question have acquired a certain status under the Law and can, if they wish, remain in Guernsey indefinitely. The distinction between a Certificate holder and a Permit holder serves only to delay the point at which the latter might opt to occupy Local Market housing in his/her own right. Therefore, there are housing reasons for this stance but the availability of housing is now a secondary consideration under the Law, and there is in any case little evidence available to justify the stance on housing grounds.

3.9 Furthermore, when combined with the above policy, the effect is that most people who have completed eight years' residence in Local Market housing and want/need to move out and live independently of the householder can do so.

3.10 Fundamentally, once a person has gained Established Resident status there is no mechanism within the Law to revoke such a status. The only way it will be lost is if the person ceases to be ordinarily resident in Guernsey before they have gained Permanent Resident status. As such, it could be argued that it is an unreasonable restriction on a person's freedom to require them to continue

living in a certain way – for example, living in their parent’s home.

- 3.11 The distinction between an Established Resident Permit and an Established Resident Certificate is not easily understood by applicants. This leads to confusion in the application process, and takes up staff time in explaining the difference – an explanation that can be difficult because of the lack of evidence to justify the position.
- 3.12 As the Law provides that a Family Member Resident Permit (the document that would be held prior to application for an Established Resident Permit) cannot be issued for a longer period than eight years and one month, there is no option but to apply for an Established Resident Permit after this period. This is creating inconvenience for the Permit holder as well as work for the Population Management Office and the benefit of these processes has to be questioned.
- 3.13 The Committee is of the view that these issues could be addressed by removing the concept of the Established Resident Permit from the Law and agreeing that anyone who has lived lawfully in Local Market accommodation for eight consecutive years should be able to apply – if they wish – for an Established Resident Certificate, which would enable them to live independently of the “principal” and set up a new household.
- 3.14 The Committee also considers that there should be no need for immediate family members to apply for an Established Resident Certificate unless they want to become a householder. Many people will not have any need for such a document. For example, the spouse of an Employment Permit holder will not need one unless the relationship breaks down and he/she needs to live elsewhere. At present, he/she would need to apply for a Discretionary Resident Permit under policy DR6 but if an Established Resident Certificate could be issued instead the process would be simpler, particularly for the applicant who will not be required to disclose personal details, such as the fact that a relationship has broken down, to the Population Management Office. If there is no desire to move out of the home then immediate family members could continue to hold Family Member Resident Permits. Some people may prefer to hold a document in their own right, but this should be their choice, particularly in light of the £50 fee that will have to be paid.
- 3.15 In order to facilitate the above, it will be necessary to amend the Law to remove the reference to a maximum period for which a Family Member Resident Permit can be issued. This will allow greater flexibility in dealing with applications. In practice, a Family Member Resident Permit will not be issued for more than fourteen years because, at the end of that time, the holder will stand to become a Permanent Resident and the Population Management Office would want them, at that point, to make application for a Permanent Resident Certificate to assist with the compilation of data around the number of people

who have attained such status. Whilst it is highly unlikely that a Family Member Resident Permit would be issued for longer than fourteen years, it is recommended that the Law does not prohibit the issue of such a document for longer, simply because circumstances may arise where flexibility may be needed.

3.16 If these measures are implemented, the following benefits should be seen:

- A simpler Law that will be easier to understand for customers and staff
- More customer choice in that they can choose to apply for a document that incurs a fee but are not bound to do so
- Less need for customer contact with the Population Management Office, which will help to reduce operating costs

3.17 There will also be some risk in so far as it will become more difficult to control access to Local Market housing but there is no evidence that this will cause problems at this time and if any evidence is seen at a later date then the position can be revised. This would require a further amendment to the Law.

3.18 It is recommended that the Law should be amended to:

- remove the concept of an Established Resident Permit,
- provide that anyone who completes eight years' continuous residence in the Local Market should be entitled to an Established Resident Certificate,
- remove the restrictions on the period for which a Family Member Resident Permit may be issued, and on who may hold an Established Resident Certificate, and
- make any necessary consequential amendments flowing from the foregoing.

4 Conditions for issuing an Open Market Resident Certificate

4.1 The Committee also wishes to take this opportunity to make another minor amendment to the Law.

4.2 An error has been identified in section 17(1)(b)(ii) of the Law, dealing with the issue of Open Market Resident Certificates (OMRC), in the context of persons residing in properties inscribed on Part D of the Open Market Housing Register.

4.3 Section 17(1)(b)(ii) currently enables a person who is an owner or a tenant, of

the whole or part of, an Open Market dwelling¹ to hold an OMRC which entitles him/her to be the householder of that property. There can only be one householder per property. Being the householder of a property in the Open Market means a person can remain resident in Guernsey indefinitely and can accommodate either their extended family (Part A only) or their immediate family (Parts B, C or D).

- 4.4 It is considered that it was not the intention of the States for Part D tenants to be able to accommodate immediate family members or to be able to reside in Guernsey beyond the five year cap.
- 4.5 During the development of the new regime one of the significant concerns raised regarding the residence of Open Market Part A properties by unrelated adults *“was the number of people who were able to reside in Guernsey for long periods of time, potentially building up substantial connections and links with the Island, who are very unlikely to be able to support themselves in independent Open Market accommodation should the need, or desire, to do so arise later in their life”*.
- 4.6 In June 2013 (Billet d’État XI), to address the concerns raised the States resolved *“that tenants of a Part D House in Multiple Occupation will be able to benefit from the Open Market status of the property and will be free to live in the Island, and to work in any employment, for a **maximum period of 5 years’ continuous residence** in the Island”* [emphasis added].
- 4.7 Therefore it was never the intention of the States to enable tenants in Part D properties to be able to reside in such properties for longer than 5 continuous years² and therefore they should not be eligible to hold an OMRC.
- 4.8 As such it is recommended that the Law be amended to provide that the holder of an Open Market HMO Resident Permit (Part D) or a Short Term Employment Permit may occupy a Part D property as a tenant without the need to be accommodated by a householder.
- 4.9 Where the owner of a property inscribed on Part D of the Open Market Housing Register lives in that property, he or she would still be able to hold an OMRC and accommodate persons as set out in section 8(3) of the Law.
- 4.10 These changes would have no impact on the arrangements for properties

¹ "Dwelling" is defined (at section 78(1) of the Law) as meaning "any premises *or any part of any premises* or any vessel used or usable for the purposes of human habitation" [emphasis added].

² It is noted that this does not include those who were recognised in the transitional provisions of the regime as having grandfather rights to remain indefinitely in Part D of the Open Market on the basis of residence before the commencement of the Law (Billet d’État XIV, 2015).

inscribed on Parts A, B and C of the Open Market Housing Register.

5 Short-Term Employment Permits – 9/3 pattern

5.1 In November 2017, the States' Assembly approved the following Amendment to the Law (Billet d'État XXIII 2017):

“3. To approve that the Administrator of Population Management may, in addition to the terms on which she may currently grant a Short Term Employment Permit (STEP) under the Population Management Law, also grant a STEP for a period of up to 9 months on the basis that –

(a) The holder must take a break in residence of at least 3 months before re-applying for a STEP, and

(b) Subject to successful re-applications for a STEP, the holder may continue a 9 months on/3 months off residence pattern indefinitely/

4. To approve that a current STEP-holder who was resident under a 9 months short-term housing licence at any time in the period of six months before and including 3rd April, 2017 may, on notifying the Administrator, move to a 9 months on/3 months off residence pattern and (subject to successful re-applications for a STEP) continue that pattern of residence indefinitely.”

5.2 Consideration has now been given to the further detail required to implement the policy intent in both the Law and administrative practices. The Committee would like to take this opportunity to share this detail with the States' Assembly.

5.3 A 9/3 Permit will enable the holder to work in Guernsey for a maximum of 9 continuous months before they are required to take a minimum break of 3 months away from Guernsey before applying for another 9/3 Permit. There will be no time limit on a person working in Guernsey based on a continued pattern of 9 months on-island, 3 months off-island. (At present under the Law, the 9/3 pattern is permitted but residence would be capped once an aggregate of five years is reached.)

5.4 If a person moves to Guernsey for the first time they can move straight on to the 9/3 Permit cycle. However, a person who has previously held another type of Permit in Guernsey will need to complete a recognised break in residence before they can be granted a 9/3 Permit. A recognised break is defined in the Law as *“a period of time during which a person is not resident that is of a*

duration equal to, or not exceeding, that person's last period of residence". For example, someone who has been continuously resident in Part D of the Open Market for five years will need to take a break in residence of at least five years before a 9/3 Permit will be granted.

- 5.5 The only exception for people already resident in Guernsey is for current Short Term Employment Permit (STEPs) holders who were resident under a 9 month Short Term Housing Licence at any time in the period of 6 months before and including the 3rd April 2017. As approved by the States in November 2017, such a person can come straight on to a 9/3 permit, on notifying the Administrator, without the need to take a recognised break in residence.
- 5.6 It is considered important to make a clear distinction between STEP's and 9/3 Permits in the Law. As a general principle they should be considered as two separate routes to employment in Guernsey. The purpose of this distinction is to ensure that long-term residence cannot be built up by holding a combination of Permit types with short breaks in residence between them.
- 5.7 In an effort to assist industry in Guernsey, particularly the hospitality sector, policies have been published that enable Discretionary Resident Permits to be issued on this basis ahead of the changes to the Law.

6 Compliance with Rule 4

- 6.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 6.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 6.3 In accordance with Rule 4(3), the Committee confirms that there are no significant financial implications to the States arising from these proposals. The only potential financial impact would be the income to the Population Management Office from application fees. It is not considered that any change would be needed to the charging regime at this time, however, this would be kept under review.
- 6.4 It is noted that there will be resource implications for St James' Chamber if these proposals are successful due to the requirement for legislative drafting. Any drafting requirements will be considered and prioritised as part of the established process for prioritisation of legislative drafting.
- 6.5 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.

- 6.6 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee to advise the States on the population management regime.
- 6.7 Also in accordance with Rule 4(5), the Committee consulted with St James' Chambers on the drafting of the propositions and this supporting policy letter given the subsequent need for legislative drafting.

Yours faithfully

M M Lowe
President

R G Prow
Vice-President

R H Graham, LVO, MBE
M P Leadbeater
V S Oliver