

# ORDER IN COUNCIL

VI  
2016

ratifying a Projet de Loi

ENTITLED

## **The Population Management (Guernsey) Law, 2016**

(Registered on the Records of the Island of Guernsey  
on the 27th June, 2016.)



2016

## ORDER IN COUNCIL



### IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 27th day of June, 2016 before Sir Richard Collas, Bailiff; present:- Susan Mowbray, Barbara Jean Bartie, John Ferguson, Esquire, Constance Helyar-Wilkinson, Terry George Snell, Esquire, David Percy Langley Hodgetts, Esquire, L.V.O., Niall David McCathie, Esquire, Margaret Ann Spaargaren, Jonathan Grenfell Hooley, Steven John Morris, and David James Mortimer, Esquires, Jurats.

The Bailiff, having this day placed before the Court an Order of Her Majesty in Council dated 8th June, 2016 approving and ratifying a Projet de Loi of the States of Guernsey entitled “The Population Management (Guernsey) Law, 2016”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ORDERED that the said Order be registered on the records of this Island.

J. TORODE  
Her Majesty’s Greffier.



*At the Court at Buckingham Palace*

THE 8th DAY OF JUNE 2016

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY  
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

“In accordance with Your Majesty’s General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

“That, in pursuance of their Resolutions of 26th January 2012, 28th June 2013, 29th July 2014, 24th June 2015, 29th July 2015 and 10th December 2015, the States of Deliberation at a meeting on 2nd March 2016 approved a *Projet de Loi* entitled the Population Management (Guernsey) Law, 2016 and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction the Population Management (Guernsey) Law, 2016 and to order that it shall have force of law in the Island of Guernsey.

“The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it”.

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Island of Guernsey and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty’s Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty’s Order and to proceed accordingly.

*Richard Tilbrook*

# 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 26<sup>th</sup> January, 2012<sup>a</sup>, 28<sup>th</sup> June, 2013<sup>b</sup>, 29<sup>th</sup> July, 2014<sup>c</sup>, 24<sup>th</sup> June, 2015<sup>d</sup>, 29<sup>th</sup> July, 2015<sup>e</sup> and 10<sup>th</sup> December, 2015<sup>f</sup> 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**").

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<sup>a</sup> Billet d'État No. I of 2012.

<sup>b</sup> Article 1 of Billet d'État No. XI of 2013.

<sup>c</sup> Article VI of Billet d'État No. XVI of 2014.

<sup>d</sup> Article VI of Billet d'État No. XI of 2015.

<sup>e</sup> Articles VI and VII of Billet d'État No. XIV of 2015.

<sup>f</sup> 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<sup>g</sup> -

(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

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<sup>g</sup> 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<sup>h</sup>, 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

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<sup>h</sup> 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 (2), 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 31<sup>st</sup> August, 1946<sup>i</sup>.

(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

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<sup>i</sup> 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<sup>j</sup> 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

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<sup>j</sup> 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<sup>k</sup>,

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<sup>k</sup> 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, 2013<sup>I</sup>, 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).

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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 .

<sup>I</sup> 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<sup>m</sup> ("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

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<sup>m</sup> 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, 2007<sup>n</sup>.

(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

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<sup>n</sup> 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<sup>o</sup> 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

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<sup>o</sup> 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 19<sup>th</sup> 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 10<sup>th</sup> 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 10<sup>th</sup> 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 (2),

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<sup>P</sup>, 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

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<sup>P</sup> 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<sup>q</sup>,

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<sup>q</sup> 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<sup>r</sup>.

**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

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<sup>r</sup> 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<sup>s</sup>,
- (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<sup>t</sup>,

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<sup>s</sup> 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.

<sup>t</sup> 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<sup>u</sup>,

**"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

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<sup>u</sup> 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<sup>v</sup>,

"**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,

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<sup>v</sup> 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<sup>w</sup>,

"**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

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<sup>w</sup> 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<sup>x</sup>,

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

"**spouse**": see subsection (4),

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<sup>x</sup> 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<sup>y</sup>, 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

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<sup>y</sup> 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 1<sup>st</sup> June, 1940 and ending on the 31<sup>st</sup> 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 31<sup>st</sup> 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<sup>z</sup>, 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

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<sup>z</sup> 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<sup>aa</sup>, 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<sup>bb</sup>, 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

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<sup>aa</sup> 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.

<sup>bb</sup> 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<sup>cc</sup>  
The Housing (Control of Occupation) (Amendment) (Guernsey) Law, 2001<sup>dd</sup>  
The Housing (Control of Occupation) (Amendment) (Guernsey) Law, 2006<sup>ee</sup>  
The Housing (Control of Occupation) (Amendment) (Guernsey) Law, 2008<sup>ff</sup>

*Ordinances*

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

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- <sup>cc</sup> Ordres en Conseil Vol. XXXVIII, p. 193.  
<sup>dd</sup> Order in Council No. III of 2002.  
<sup>ee</sup> Order in Council No. VIII of 2007.  
<sup>ff</sup> Order in Council No. I of 2009.  
<sup>gg</sup> Recueil d'Ordonnances Tome XXII, p. 369; as amended by Ordres en Conseil Vol. XXXI, p. 278 and Tome XXIX, p. 406.  
<sup>hh</sup> Recueil d'Ordonnances Tome XXV, p. 148; as amended by Ordinance No. XXXIII of 2003.  
<sup>ii</sup> Recueil d'Ordonnances Tome XXV, p. 309.  
<sup>jj</sup> Recueil d'Ordonnances Tome XXVI, p. 64.



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

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

The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 2008<sup>xx</sup>

The Housing (Control of Occupation) (Guernsey) (Amendment) Ordinance, 2008<sup>yy</sup>.

The Housing (Control of Occupation) (Extension) Ordinance, 2009<sup>zz</sup>

The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 2010<sup>aaa</sup>

The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 2011<sup>bbb</sup>

The Housing (Control of Occupation) (Amendment of Housing Register) (No. 2) Ordinance, 2011<sup>ccc</sup>

The Housing (Control of Occupation) (Extension) Ordinance, 2011<sup>ddd</sup>

The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 2012<sup>eee</sup>

The Housing (Control of Occupation) (Amendment of Housing Register) (No. 2) Ordinance, 2012<sup>fff</sup>

The Housing (Control of Occupation) (Extension) Ordinance, 2013<sup>ggg</sup>

The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 2014<sup>hhh</sup>

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

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

*Guernsey Statutory Instruments*

The Right to Work (Employment Records) Regulations, 1990<sup>jjj</sup>

The Right to Work (Limitation and Proof) (Tent Dwellers' Declarations) Regulations, 2003<sup>kkk</sup>

The Housing (Control of Occupation) (Fees) (Guernsey) Regulations, 2014<sup>lll</sup>

*Repeal of parts of enactments*

Section 11 of the Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001<sup>mmm</sup>

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<sup>jjj</sup> G.S.I. No. 11 of 1990.

<sup>kkk</sup> G.S.I. No. 9 of 2003.

<sup>lll</sup> G.S.I. No. 80 of 2014.

<sup>mmm</sup> 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, 1971<sup>nnn</sup>, 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<sup>ooo</sup>, for the definition of

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<sup>nnn</sup> 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.

<sup>ooo</sup> 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<sup>PPP</sup>, 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<sup>qqq</sup>, 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<sup>rrr</sup>, 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 –

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<sup>PPP</sup>	Ordinance No. VII of 2010.
<sup>qqq</sup>	G.S.I. No. 9 of 2005.
<sup>rrr</sup>	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<sup>sss</sup>, 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".

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<sup>sss</sup> G.S.I. No. 56 of 2006.