

PROJET DE LOI

ENTITLED

The Open Market Housing Register (Guernsey) Law, 2016 *

[CONSOLIDATED TEXT]

NOTE

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* No. VII of 2016. See also the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010).

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

PART 1

THE OPEN MARKET HOUSING REGISTER

General

The Open Market Housing Register.

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

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

^a Billet d'État No. I of 2012.

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

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

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

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

The Part D cap.

2. (1) The States may by Ordinance prescribe the maximum number of properties that may be inscribed in Part D, provided that the number prescribed in such an Ordinance is more than the number of properties inscribed in Part D at the time the Ordinance is made.

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

NOTE

The following Ordinance has been made under section 2:

Open Market Housing Register (Part D Cap) Ordinance, 2017.

New inscriptions.

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

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

- (a) the inscription would be in accordance with States population policies, and
- (b) in the case of an inscription in Part D –
 - (i) the property is a house in multiple occupation,

and

- (ii) the number of properties inscribed in Part D at the time the inscription is made is less than the Part D cap.

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

NOTE

The following Regulations have been made under section 3:

Open Market Housing (Guernsey) Law, 2016 (New Inscriptions) Regulations, 2019.

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

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

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

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

Replacement dwellings.

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

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

Deletion from Register by Committee.

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

Deletion from Register at request of owner.

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

NOTE

The following Ordinance has been made under section 7:

Open Market Housing Register (Deletion of Inscriptions) Ordinance, 2019.

Dwellings which are combined.

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

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

Dwellings which are divided.

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

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

Dwellings which are otherwise altered.

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

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

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

- (a) the gain of accommodation in relation to the dwelling inscribed in the Register and the loss of accommodation

in relation to the dwelling which is not so inscribed resulting from the works would not be significant, and

- (b) the works are to be carried out solely for the purpose of the rationalisation by way of better arrangement of the accommodation comprised in the dwellings in question;

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

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

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

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

and extent of the proposed works.

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

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

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

Dwellings to which section 9 does not apply.

11. Notwithstanding the provisions of section 9, where a hotel inscribed in Part B is, whether by alteration or otherwise, used or made usable as two or more dwellings, such of the two or more dwellings as are used –

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

Transfers of inscription

Transfers from Part A to Part B.

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

Transfers from Part B.

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

(a) was –

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

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

the Committee shall inscribe it in Part A,

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

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

Transfers from Part A to Part C.

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

Transfers from Part C.

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

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

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

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

Transfers to and from Part D.

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

(2) The owner of a property inscribed in Part D may apply to the Committee for the inscription of that property to be transferred to Part A; and if the

Committee is satisfied that the property is being, and shall continue to be, used as a private family home it shall grant the application.

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

(a) if the dwelling –

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

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

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

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

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

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

(5) The Committee shall, before inscribing a dwelling in Part D

under subsection (4) or under section 15(c), serve on the owner thereof notice of its intention to do so; and the notice shall give the owner particulars of his right of appeal to the Ordinary Court under section 27.

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

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

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

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

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

Temporary maintenance of inscription of properties subject to deletion.

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

17. (1) Where –

- (a) a property is subject to deletion from the Register under this Law, and
- (b) the Committee is satisfied that the circumstances pertaining which have resulted in its being so subject are, or are likely to be, temporary,

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

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

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

(2) References in subsection (1) to a property being subject to deletion from the Register include references to a property being subject to deletion

from one Part of the Register and inscription in another Part.

Transfers subject to provisions as to deletion.

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

Miscellaneous

Declarations of registration.

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

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

Power to make regulations providing for the payment of charges.

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

NOTE

The following Regulations have been made under section 20:

Open Market Housing Register (Fees) Regulations, 2017.

Issue of declarations of registration.

21. (1) The Committee shall, upon receipt of an application under section 20, if satisfied that the dwelling concerned is validly and properly inscribed in

Part A, B, C or D, issue to the applicant a declaration of registration, signed by a person authorised in that behalf by the Committee and in such form as the Committee may determine, stating its decision that, on the date specified in the declaration, the dwelling was validly and properly so inscribed.

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

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

(4) Where a person is convicted of an offence under section 28 in connection with an application for a declaration of registration, any such declaration issued in consequence of that application shall thereupon be deemed to be void ab initio and shall not be evidence of any fact stated therein.

Additional premises to dwellings.

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

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

Certain dwellings may be retained on Register.

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

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

Provision for Register by Ordinance.

24. Subject to the succeeding provisions of this Law, the States may by Ordinance make such provision as they consider to be necessary or expedient for the maintenance by the Committee of the Register; and, without prejudice to the generality of the foregoing, they may in particular make provision for all or any of the following matters –

- (a) the form of the Register and the matters to be inscribed therein (including, for the avoidance of doubt, provision for the Register to be maintained solely in electronic

form),

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

NOTE

The following Ordinance has been made under section 24:

Open Market Housing Register Ordinance, 2017.

PART 2

LEGAL PROVISIONS AND OFFENCES

Compliance Notices.

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

(2) A compliance notice shall set out –

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

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

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

the inscription in the Register of the property in question.

- (4) For the avoidance of doubt –
 - (a) the Committee may not suspend or delete the inscription of the property in question until after the expiry of –
 - (i) the period referred to in section 27(3)(a), or
 - (ii) the period specified in subsection (2)(c), if that period is longer, and
 - (b) if an appeal under section 27 against the decision to serve the compliance notice is instituted, the Committee may not suspend or delete the inscription of the property in question until the appeal is finally determined, or withdrawn,

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

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

- (6) A suspension notice shall –
 - (a) specify the period of suspension of inscription of the property in question,

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

(7) If, after service of a suspension notice, the Committee is satisfied as to the matters and within the period specified and set out pursuant to subsections (6)(a) and (b), it shall restore the inscription of the property on the Register, and inform the property's owner of the same; and if it is not so satisfied it may delete the inscription of the property from the Register, in which case it shall serve a deletion notice on the property's owner.

(8) For the avoidance of doubt, the Committee's powers under this Part are without prejudice to –

- (a) the Committee's powers and duties in respect of the transfer and deletion of the inscription of dwellings on the Register under Part 1, and
- (b) the powers and duties of the States Committee for Home Affairs under sections 31 and 32 of the Population Management Law.

Warrant to enter premises.

26. (1) If the Bailiff is satisfied by information on oath supplied by a

person authorised by the Committee to apply for and execute warrants under this section, that there are reasonable grounds for suspecting that –

- (a) any two or more dwellings are used or usable in the manner described in section 8,
- (b) any single dwelling is used or usable in the manner described in section 9, or
- (c) any dwelling inscribed in the Register is being used wholly for purposes other than human habitation,

the Bailiff may grant a warrant.

(2) A warrant granted under subsection (1) authorises the person named therein at any time within one month of the date of the grant to enter the premises specified in the warrant for the purpose of ascertaining whether any of the circumstances described in subsection (1)(a) to (c) pertain, or have pertained, in respect of those premises.

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

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

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

- (a) the occupier has been informed of the decision to seek

entry to the premises and of the reasons for that decision,

- (b) the occupier has failed to allow entry to the premises on being requested to do so by an officer of the Committee, and
- (c) the occupier has been informed of the decision to apply for a warrant.

(6) The third condition is that –

- (a) the premises are unoccupied or the occupier is absent, and
- (b) notice of intention to apply for a warrant has been left in a conspicuous place on the premises.

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

- (a) it would defeat the object of entering the premises, or
- (b) entry is required as a matter of urgency.

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

(9) A person executing a warrant issued under this section may require, on production if so required of that warrant, the production of any record, document or other information relating to the matters set out in subsection (1)(a) to

(c).

(10) The power under subsection (9) to require the production of any record, document or other information includes the power –

- (a) if it is produced, to examine and take copies of it (in whichever form it is held),
- (b) if it is not produced, to require the person who was required to produce it to state, to the best of his knowledge and belief, where it is, and
- (c) to require the reproduction in legible form of any record or information maintained otherwise than in legible form.

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

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

Appeals against decisions.

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

^g Ordres en Conseil Vol. XLIII (2), p. 617; as amended by Order in Council No. XVI of 2009; No. XV of 2011; Recueil d'Ordonnances Tome XXIX, p. 406; Ordinance No. XXIX of 2011; and No. XX of 2015.

- (2) The grounds of an appeal under this section are that –
- (a) the decision was *ultra vires* or there was some other error of law,
 - (b) the decision was unreasonable,
 - (c) the decision was made in bad faith,
 - (d) there was a lack of proportionality, or
 - (e) there was a material error as to the facts or as to the procedure.
- (3) Subject to subsection (4), an appeal under this section shall be instituted –
- (a) within a period of 28 days immediately following the date of the notice of the Committee's decision, and
 - (b) by summons served on the President of the Committee stating the grounds and material facts on which the appellant relies.
- (4) An appeal against a decision stated in a declaration of registration issued under section 21(1) or stated in a notice served under section 21(2) shall be instituted within a period of two months immediately following the date of the declaration or, as the case may be, of the notice.
- (5) The Committee may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order

that the appeal shall be dismissed for want of prosecution; and on hearing the application the Court may –

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

The provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007^h.

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

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

- (a) set the decision of the Committee aside and, if the Court considers it appropriate to do so, remit the matter to the Committee with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

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

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

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

(10) In this section "**the Court**" means the Ordinary Court.

Offences

False, deceptive or misleading statements.

28. (1) A person commits an offence if –
- (a) for the purpose of or in connection with an application under this Law,
 - (b) in purported compliance with any requirement of a document issued under this Law,
 - (c) in purported compliance with a requirement imposed under, or otherwise for the purposes of this Law,
 - (d) otherwise than as mentioned in paragraphs (a) to (c) but in circumstances in which that person intends, or could reasonably be expected to know, that the statement, information or document provided would or might be used by any person for the purpose of exercising functions conferred under this Law,

that person does any of the following –

- (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

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

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

Obstruction, etc.

29. (1) A person who –

- (a) obstructs another person in the exercise of that other person's functions under this Law,
- (b) fails, without reasonable excuse, to give any person executing a warrant issued under section 26 such assistance as that person may reasonably require for the execution of the warrant,

commits an offence.

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

Offences by legal persons and unincorporated bodies.

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

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

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

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

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

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

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

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

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

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

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

(6) In this section, "**legal person**" includes any body corporate and any other body of persons on which legal personality is conferred by any enactment.

PART 3

GENERAL AND FINAL

Delegation of functions.

31. (1) The Committee may resolve that any of its functions under this Law may be performed in its name by –

- (a) a sub-committee comprising not less than two members of the Committee, or

(b) any individual member or officer of the Committee.

(2) A function performed in pursuance of a resolution under subsection (1) shall be considered for all purposes to have been performed by the Committee; and any decision taken or other thing done pursuant to the resolution shall have effect as if taken or done at a quorate meeting of the Committee.

(3) The Committee may by resolution vary or revoke a resolution under subsection (1), but without prejudice to anything previously done pursuant thereto.

(4) Nothing contained in this section or in a resolution under subsection (1) –

(a) prevents the carrying out of a function by the Committee, or

(b) affects the operation in relation to the Committee of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991ⁱ.

General provisions as to Ordinances.

32. (1) An Ordinance under this Law (including for the avoidance of doubt an Ordinance under section 33) –

(a) may be amended or repealed by a subsequent Ordinance hereunder,

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

- (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.

Power to amend Law by Ordinance for specific purpose.

33. The States may amend this Law by Ordinance, but only for the purpose of providing for a committee, authority, or like body of the States of Guernsey, however called, to perform one or more of the functions of the Committee under this Law.

General provisions as to regulations.

34. (1) Regulations under this Law –

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

(2) Any power conferred upon the Committee by this Law to make regulations may be exercised –

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

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes;
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

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

Service of documents.

35. (1) Any notice or document other than a summons to be served under or for the purposes of the provisions of this Law may be served on –

- (a) an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,
- (b) a legal person with a registered office in Guernsey, by being left at, or sent by post or transmitted to, that office,
- (c) a legal person without a registered office in Guernsey, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or, if there is no such place, its registered

office or principal or last known principal place of business elsewhere,

- (d) an unincorporated body –
 - (i) by being served on any partner, member of the Committee or other similar governing body, manager, director or other similar officer thereof in accordance with paragraph (a), or
 - (ii) by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere,
- (e) the Committee, by being left at, or sent by post or transmitted to, the Committee's offices,

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

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

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

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

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

(4) Subsections (1) to (3) are without prejudice to any other lawful method of service and to the provisions of section 36.

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

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

excluding in each case any non-business day.

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

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

(8) In this section and in section 36 –

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

"non-business day" means –

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

"served" includes given and submitted,

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

"transmitted" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication (in which

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

event the document shall be regarded as served when it is received).

NOTES

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 1, with effect from 4th January, 2010, the reference in this section to "parent" shall mean, in relation to a child and subject to the conditions in paragraph (a) and (b) of subsection (1) and the exceptions in paragraph (a) and (b) of subsection (2) of that section, a father or mother who has parental responsibility in respect of the child.

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 2, with effect from 4th January, 2010, and having regard to the references in this section to "guardian", a guardian or person referred to as such has parental responsibility in respect of a child if the conditions in paragraph (a) or paragraph (b) of that section of that section are satisfied.

Submission, etc., of documents in electronic form.

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

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

(3) This section is without prejudice to –

- (a) section 35(7), and
- (b) the Electronic Transactions (Guernsey) Law, 2000^k.

Interpretation.

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

"boarding permit" means a boarding permit granted under the Tourist Law, 1948^l,

"the Cadastre" means the Cadastre prepared and maintained under the provisions of the Cadastre Law, 1947^m,

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

"the Committee" means the States Committee for the Environment & Infrastructure,

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

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

^k Ordres en Conseil Vol. XL, p. 263; as amended by Recueil d'Ordonnances Tome XXIX, p. 406; and Ordinance No. XIV of 2014.

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

^m Ordres en Conseil Vol. XIII, p. 78; as amended by Vol. XIII, p. 381; Vol. XXVIII, p. 395; Vol. XXXI, p. 278; Vol. XXXII, p. 161; and Recueil d'Ordonnances Tome XXIX, p. 406.

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

"controlling interest" means, in relation to a body corporate, the power of a person –

- (a) to secure, by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or by virtue of any powers conferred by the Articles of Association or any other document regulating that or any other body corporate or otherwise, that the affairs of the first mentioned body corporate are conducted in accordance with his wishes,
- (b) who is a loan creditor of a body corporate and who, in the opinion of the Committee, is able to secure that the affairs thereof are conducted in accordance with his wishes,

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

"dwelling" has the meaning given by the Population Management Law,

"employed" has the meaning given by the Population Management Law,

"foundation official" has the meaning given by the Foundations (Guernsey) Law, 2012ⁿ,

"Guernsey" means the Island of Guernsey,

"house in multiple occupation" does not include a private family home, a hotel, or a residential home or a nursing home,

"hotel" means a dwelling, other than a self-catering unit, in respect of which there is in force a boarding permit and which, in the opinion of the Committee, is being used for the business of providing sleeping accommodation for reward to tourists in accordance with the provisions of that permit,

"the Law of 1982" means the Housing (Control of Occupation) (Guernsey) Law, 1982^o,

"member", in relation to the Committee, includes the President and Vice-President thereof,

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

"the Nursing Homes Law" means the Nursing Homes and Residential Homes (Guernsey) Law, 1976^p,

ⁿ Order in Council No. I of 2013.

^o Ordres en Conseil Vol. XXVII, p. 448; as amended by Vol. XXXI, p. 30; Vol. XXXII, p. 88; Recueil d'Ordonnances Tome XXII, pp. 369, 470 and 548; Tome XXIII, pp. 33, 255, 256 and 438; Tome XXIV, pp. 104 and 498; Tome XXV, pp. 30, 74 and 135; and Tome VI, p. 10 and 291.

^p Ordres en Conseil Vol. XXVI, p. 71; as amended by Vol. XXXI, p. 278; Order in Council No. VI of 2007; and Ordinance No. XXXIII of 2003.

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

"occupy" has the meaning given by the Population Management Law,

"the Part D cap": see section 2,

"the Population Management Law" means the Population Management (Guernsey) Law, 2016,

"the Register": see section 1,

"the Register of 1975" means the Housing Control Register established and maintained under the provisions of the Housing (Control of Occupation) (Guernsey) Law, 1975^q before the commencement of the Law of 1982,

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

"self-catering unit" means any premises in respect of which there is in force such a description of boarding permit as is granted in respect of self-catering units,

"States population policies" has the meaning given by the Population Management Law,

^q Ordres en Conseil Vol. XXV, p. 332; as amended by Vol. XXVII, pp. 176, 246 and 351; and Recueil d'Ordonnances Tome XX, p. 222.

"tourist" means a person who is present in Guernsey –

- (a) for the purposes of a holiday, or
- (b) for an aggregate of not more than 10 days in any 30 day period for the purposes of his employment,

but does not include a person who has been physically present in Guernsey for an aggregate of more than 90 days in any 12 month period, and

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

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

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

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

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

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

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

Proof of documents.

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

Citation.

39. This Law may be cited as the Open Market Housing Register (Guernsey) Law, 2016.

Extent.

40. This Law extends to Guernsey.

Commencement.

41. This Law shall come into force on the day appointed by Ordinance of the States; and such an Ordinance may appoint different days for different provisions and different purposes.

NOTE

The Law was brought into force on 3rd April, 2017 by the Open Market Housing Register (Guernsey) Law, 2016 (Commencement) Ordinance, 2017, section 1.
