



Managing Guernsey's Population

A Consultation Document

January 2011



STATES OF GUERNSEY

Population Policy Group

FOREWORD

FROM THE CHAIRMAN OF THE POPULATION POLICY GROUP

Managing the growing and often competing demands of the world's population is fast becoming the major challenge for Governments world-wide. Guernsey is not immune from this challenge and if it is to continue to succeed as an attractive place in which to live, work and do business then it is going to have to take pragmatic steps to manage the size and makeup of its population in future.

The current Housing Control regime which is often regarded by many as a population management tool was never designed for that purpose and in any event cannot fulfil the Island's population management requirements of the future. Furthermore, although the States has made considerable progress in its approach to future planning – through the continued development of the States Strategic Plan – there is one important piece of the jigsaw missing and that is a mechanism which will allow the Island to effectively manage the size and make-up of its population. It is against this background that the Policy Council decided to explore what that mechanism might be.

With this in mind, in July 2008 the Policy Council established the Population Policy Group (PPG) under my Chairmanship and appointed Deputy Mark Dorey, Deputy Dave Jones, Deputy Geoff Mahy and Deputy Carla McNulty Bauer as its members. The Group also includes senior advisors from the Policy Council and St. James' Chambers as well as the Housing, Social Security, Commerce and Employment and Home Departments. The PPG was directed to develop a mechanism which might enable the States to manage the size and make-up of the Island's population.

The PPG is the successor to a number of groups that have been tasked with reviewing the way in which Guernsey manages its population and, in particular, reviewing the operation of the current Housing Control regime.

It has to be said that developing such a mechanism is not an easy task. It is one which must take account of a vast range of factors affecting the Island, from our international relationships and obligations to the consequences of an ageing population and our aspirations about how we want life in Guernsey to be in the future. It is also one which will potentially impact on the lives, and life choices, of everybody who lives in the Island today and in the future.

This consultation document provides the opportunity for you to have an input into the work of the PPG and to have your say on how Guernsey should manage the size and make-up of its population in the future. It explains the limitations on what we can do and asks for your views on a number of key issues. The document will ask you to consider some difficult decisions, it will explain some key points that you may be

unaware of and it will possibly change your views on how you believe the situation in Guernsey to be today.

Your opinions and views are important to the development of the Island's strategy on population management and I hope that you will invest the time to consider the full contents of this consultation document and that you will play your part in helping to shape Guernsey's future by responding.

A handwritten signature in black ink, appearing to read 'Bernard Flouquet', written in a cursive style.

Deputy Bernard Flouquet
Chairman – Population Policy Group

This document is available to download from the States of Guernsey website at www.gov.gg/population. Copies are also available for collection from the reception at Sir Charles Frossard House.

Details of how to respond to this consultation are explained in Section 28.

This consultation process is open for 10 weeks until **31st March 2011**.

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SUMMARY OF PART 1

INTRODUCTION

Section 1 – MANAGING THE SIZE AND MAKE-UP OF THE POPULATION

A degree of inward migration of people, both for economic and other reasons, is inevitable and to some extent necessary to maintain the current quality of life enjoyed on the Island.

Section 2 – THE NEED FOR A NEW POPULATION MANAGEMENT REGIME

The current Housing Control regime is not capable of delivering States strategic objectives related to population management. A new regime is therefore required.

Section 3 – THIS CONSULTATION DOCUMENT

This consultation is not about whether the strategic policy objectives related to population are right. It is about a mechanism to deliver those objectives, whatever they may be, either now or in the future.

The main aim of the Population Policy Group’s communications strategy is to secure the widest possible engagement across all parts of the community on the proposals for a new Population Management Regime.

Section 4 – THE EFFECT OF THIS CONSULTATION

This consultation will lead to definitive proposals for new legislation which will be submitted to the States. They will include arrangements for transition between the current Housing Control regime and a new population management regime.

These proposals are not intended to remove, or reduce, any pre-existing rights which somebody has acquired under the existing or previous laws.

SUMMARY OF PART 2

KEY FACTORS TO BE TAKEN INTO ACCOUNT IN DEVELOPING A NEW POPULATION MANAGEMENT

Section 5 – STRATEGIC OBJECTIVES OF THE STATES

Population management is not an isolated issue, but must be integrated with a number of other strategic objectives of the States.

Section 6 – HUMAN RIGHTS

The European Convention on Human Rights does not prevent Guernsey from having a mechanism to manage the size and make-up of the population. However, Article 8 of the Convention restricts the circumstances in which such a mechanism can be applied and imposes a duty on the States to exercise its powers in a careful and sensitive manner in order to ensure that those powers are not abused.

Section 7 – IMMIGRATION CONTROLS

Immigration controls were not intended to be, and cannot be used as, a means to manage the size and make-up of the population. Any new population management regime will need to run in tandem with the Immigration regime, which will remain in place.

Section 8 – DEMOGRAPHIC MAKE-UP OF THE POPULATION

Demographic changes will mean that an increasing proportion of the population will have to be supported by a decreasing number of economically active people in the foreseeable future.

Section 9 – OTHER JURISDICTIONS

A review of population management measures in other jurisdictions does not reveal a complete solution that would immediately suit the needs of Guernsey. A bespoke Guernsey solution is therefore required, but it can draw on selected aspects of controls that are in place elsewhere.

SUMMARY OF PART 3
PROPOSALS AND OPTIONS FOR A NEW POPULATION
MANAGEMENT REGIME

Section 10 – OBJECTIVES OF A NEW REGIME

A new regime must have clear and transparent objectives. These are listed in the consultation document.

Section 11 – LEGISLATIVE AND POLICY FRAMEWORK

A new regime will need to be established in law, but it will be “driven” by policies set by the States. Those policies will be responsive to the Island’s needs as they change over time and the policies will be made public to ensure that the system is transparent.

Section 12 – POLITICAL AND ADMINISTRATIVE RESPONSIBILITY

Setting policy will be the political responsibility of the States. A new Statutory Official will administer the population management regime in accordance with policy directions from the States.

The Policy Council, through a new Sub-Committee, will co-ordinate policy proposals on population related matters that will be considered by the States. The Policy Council will also act as the link between the Statutory Official and the States.

Section 13 – SYSTEM OF PERMITS

The proposed new regime will be managed using a system of Employment Permits and Residence Permits.

SUMMARY OF PART 3

PROPOSALS AND OPTIONS FOR A NEW POPULATION
MANAGEMENT REGIME (Continued)

Section 14 – PERMITS FOR LONG TERM RESIDENCY

An individual who has lived continuously and lawfully in Guernsey for 7 years will have reached the *first milestone*. They will acquire the right to continue living in Guernsey permanently if they so choose and will be issued with a Permanent Residence Permit. (Open Market Residents are considered separately, in Section 18.)

An individual who has lived continuously and lawfully in Guernsey for 14 years will have reached the *second milestone*. They will be defined as a Qualified Resident and will be issued with a Qualified Resident Certificate. (Open Market Residents are considered separately, in Section 18.)

Once somebody has reached the *second milestone* and has become a Qualified Resident it is proposed that, if they then decide to move away from the Island, they will have the automatic right to return to live in Guernsey at a later point. This consultation seeks the public's views on whether or not that automatic right to return should be lost after a period of absence, if that period of absence is significant.

In certain circumstances, existing residents would have to obtain some form of Permit or Qualified Resident Certificate. Views on whether this requirement should extend to all existing residents are sought as part of this consultation.

In specific circumstances, certain periods of time spent off-Island will be considered in the same way as if the individual had been resident in the Island during that period, e.g. time spent in full time education.

SUMMARY OF PART 3

**PROPOSALS AND OPTIONS FOR A NEW POPULATION
MANAGEMENT REGIME (Continued)**

Section 15 – EMPLOYMENT PERMITS

Level 1 Employment Permits will be issued for a period of 7 years to address persistent and enduring skills shortages where it is unlikely that those skills will be easily sourced, either on Island or globally, in the foreseeable future. If the circumstances of the Permit holder do not change during that 7 year period, they will acquire the right to continue living in Guernsey permanently if they so choose and will be issued with a Permanent Residence Permit.

Level 2 Employment Permits will be issued for a period of up to 4 years either

- (i) Where a post requires specific skills which are not available in Guernsey, but where that skills shortage is likely to be able to be met in the foreseeable future; or
- (ii) Where the skills required are held by Qualified Residents or Residence Permit holders, but the number of people resident in Guernsey with those skills is insufficient to fill the total number of posts requiring a similar or identical skill set.

In both cases, it should be possible, if required, to source a replacement Employment Permit holder with relative ease, because the skills required are not in short supply globally. Ordinarily, the holder of a Level 2 Employment Permit would not acquire any residence rights.

Level 3 Employment Permits will be issued for a period of up to 1 year to fill posts where there is not a need for a high level of skill, but where there is a need for additional manpower over and above that which can be sourced from within the Island. Such a Permit could be issued up to 3 times for the same person without any breaks in residence. The holder would acquire no residence rights.

Section 16 – RESIDENCE PERMITS – FAMILY CONNECTIONS

Temporary Residence Permits would be issued to enable immediate family members to live with a Qualified Resident or the holder of a Permanent residence Permit or Employment Permit (other than a Level 3 Employment Permit).

SUMMARY OF PART 3

**PROPOSALS AND OPTIONS FOR A NEW POPULATION
MANAGEMENT REGIME (Continued)**

Section 17 – UNCONTROLLED PROPERTIES (STATES OWNED)

The occupants of States owned properties would be subject to the same requirements as any other Island resident.

Section 18 – UNCONTROLLED PROPERTIES (OPEN MARKET)

From a population management perspective, an individual's impact on the population is the same regardless of the type of property in which they live. It does not matter *where* a person lives in the Island, what matters is simply that they do live here.

There are a number of assumptions and perceptions about Open Market residents and what they bring to the Island. Many of those perceptions are not correct.

This section raises the question of whether there should be provision in the new regime to allow an individual to live in the Island for any reason other than being a Qualified Resident, filling a skill or manpower shortage or having a close family connection.

The question of how the new regime should apply to residents of Open Market properties forms part of this consultation, hence there are no options or proposals for change at this time.

Section 19 – UNFORESEEABLE CHANGES IN CIRCUMSTANCES

If the circumstances under which a person is permitted to live in the Island change, in certain situations the conditions under which the permission was originally granted may be changed to allow them to remain in the Island.

SUMMARY OF PART 3

**PROPOSALS AND OPTIONS FOR A NEW POPULATION
MANAGEMENT REGIME (Continued)**

Section 20 – RESTRICTING WHERE AN INDIVIDUAL CAN LIVE

Restrictions on the occupation of property will apply to Level 3 Employment Permit holders and may be applied to the holders of Level 1 and Level 2 Employment Permits at the discretion of the Statutory Official to protect specific parts of the housing market.

Section 21 – CRIMINAL CONVICTIONS

Criminal conviction checks will form part of the application process for all Permits to live in Guernsey.

Section 22 – OTHER CONDITIONS

There will be no restriction on the work that the holder of a Temporary Residence Permit can undertake and no conditions restricting access to public services.

There will be provision in the new Law to place a maximum age limit on applicants for Employment Permits which could be activated by the States in the future if there is a need to do so.

Section 23 – ESTABLISHING AN APPEALS REGIME

A person will be able to appeal against decisions of the Statutory Official at an Appeals Tribunal.

Section 24 – OFFENCES AND SANCTIONS

Whilst the details of offences and penalties have yet to be determined, in the latter case both civil and criminal sanctions will be considered.

SUMMARY OF PART 3

**PROPOSALS AND OPTIONS FOR A NEW POPULATION
MANAGEMENT REGIME (Continued)**

Section 25 – OTHER ISLANDS OF THE BAILIWICK

The proposals relate primarily to Guernsey, but they will have an effect on the other islands of the Bailiwick. How the other islands are integrated into the new regime is part of this consultation.

Section 26 – TRANSITIONAL ARRANGEMENTS

Arrangements for the transition from the current Housing Control regime to the proposed new regime will be defined at a later date taking account of the responses to this consultation. These will be debated by the States.

**Section 27 – WHAT HAPPENS NEXT – PROGRESSING THE DEVELOPMENT
OF A NEW REGIME**

Feedback from this consultation process will be used to develop firm proposals for a new population management regime. The PPG intends to publish those firm proposals in the Summer of 2011 with a view to progressing to a States debate later in the year.

1

MANAGING THE SIZE AND MAKE-UP OF THE POPULATION

- 1.1 There are a number of forces at play which affect the size and make-up of the Island's population and some of these are inevitable.

Limited Skills Pool

- 1.2 In keeping with many other small islands with limited natural resources, a reliance on predominantly service based industries for income and a wide range of public services – incoming workers have in the past, and still are, filling skills shortages in the Island. These individuals are nursing in our hospitals and teaching in our schools and colleges. They are also working in our wealth creating businesses. Guernsey cannot expect to find within its community, people with all of the specialist skills and experience necessary to provide all of those public services or to serve every aspect of the economy.

Manpower Shortages

- 1.3 As has been the case throughout Guernsey's history, and again in keeping with the experience of other islands elsewhere, there is likely to remain some need to access, on a temporary basis, workers to fulfil the need for additional manpower in areas such as hospitality, horticulture and construction.

Demographic Issues

- 1.4 The age distribution within the Island's community is changing. In order to maintain prosperity and a level of economic activity that generates job opportunities and other economic benefits, including contributing to the cost of the provision of public services, the Island's population needs to include a sufficient proportion of people generating economic benefits. This is particularly relevant to Guernsey at this time in its history with a demographic shift towards a population in the foreseeable future where an unprecedented number of elderly people beyond working age will be required to be supported, both physically and financially, by those who are economically active.

Ebb and Flow

- 1.5 There is a constant and unrestricted ebb and flow of Qualified Residents who, because they have the right to do so, may at any time choose to leave the Island, or choose to return here to live, for any number of unpredictable and personal reasons.

Summary of Section 1 – MANAGING THE SIZE AND MAKE-UP OF THE POPULATION

A degree of inward migration of people, both for economic and other reasons, is inevitable and to some extent necessary to maintain the current quality of life enjoyed on the Island.

2

THE NEED FOR A NEW POPULATION MANAGEMENT REGIME

- 2.1 In March 2009, Guernsey's population was 62,274. Although the States current population policy seeks to maintain Guernsey's population at approximately the same level as it was in March 2007 (61,175) – there is neither a comprehensive mechanism in place nor an integrated set of policies designed to deliver this objective.
- 2.2 Such mechanisms as are currently available in the form of the Housing Control and Immigration regimes were not designed for this purpose and in any event affect only a relatively small proportion of the population (i.e. housing licence holders and those receiving work permits under the Immigration regime).

The Housing Control Regime is Not an Effective Population Management Tool

- 2.3 The Housing Control regime was originally introduced in 1948 because of a need to “protect” the Island's very limited housing stock in the immediate post-war years for the indigenous population, including those wanting to return to Guernsey after having left the Island as a result of the Occupation. The Island's housing stock was depleted during the war years as a result of the way in which properties were treated by the occupying forces. The States agreed to require any person not ordinarily resident in the Island before June 1940 to have a licence before occupying any dwelling house on the Island. Given these origins, it must be acknowledged that the current regime is not about managing population levels; it is concerned with numbers of households and not numbers of people.
- 2.4 The Law's primary purpose is to preserve a stock of Local Market housing for occupation by qualified residents and existing licence holders. However, over the last 60 years the Housing Control regime has evolved and is now used to attempt to regulate length of residence and type of employment.
- 2.5 The Housing Control regime has served the Island well for 60 years and it can still be applied effectively in the vast majority of cases. But, it only controls a small proportion of the Island's population – those who require a Housing Licence. At any one time, the residence of only around 15% of the population is subject to control through the Housing Control regime.

- 2.6 Because the primary purpose of the current Law is to preserve a stock of Local Market housing for occupation by qualified residents and existing licence holders, at the heart of any decision made within the Law is a justification based on housing availability. This is problematic, firstly because there is currently insufficient information available to reliably match the Island's housing needs with what is actually available. Secondly, because every action which is taken to improve the Island's housing situation weakens the justification for refusing a housing licence.
- 2.7 In wanting to behave as a fair society, the Island has adopted Human Rights legislation. Having adopted such legislation, it is right and proper to abide by it, however the Housing Control Law itself has not kept pace with the development of Human Rights legislation. This is explored more fully in [Section 6 – HUMAN RIGHTS](#), but the Housing Department is finding itself in an increasingly difficult position where the Housing Control Law itself may suggest that a decision is lawful, but applying that Law in the light of Human Rights legislation may suggest otherwise.
- 2.8 All of the above has led to a situation today where the justification behind some policies is weak or outdated and the justification for certain decisions can be open to legal challenge. The decision making process has become over reliant on the exercise of discretion and is perceived as being confusing rather than being open and transparent. Even more importantly, the current regime is very much a reactive one as opposed to being proactive in attempting to support the Island's strategic aims.

Summary

- 2.9 The Population Policy Group (PPG) has been tasked with developing proposals for a comprehensive population management regime that needs to provide the States with the ability to manage the migration of people in and out of Guernsey to live. The new regime needs to include detailed and explicit policies which determine who should be able to come to live in Guernsey, either permanently or temporarily. Whether someone was born in the Island, or whether they want to move to Guernsey for economic reasons or to be near to family, there is a need to have in place clear policies which manage their ability to move to Guernsey and the length and purpose of their stay.
- 2.10 This needs to be done in a way that will benefit the community – maintaining Guernsey's unique character and environment, while ensuring that the Island remains an attractive place to live and work with a buoyant and diverse economy.

**Summary of Section 2 – THE NEED FOR A NEW POPULATION MANAGEMENT
REGIME**

The current Housing Control regime is not capable of delivering States strategic objectives related to population management. A new regime is therefore required.

3

THIS CONSULTATION DOCUMENT

- 3.1 This document does not focus on, or seek to establish, what the total size of Guernsey's population should be. Its starting point is the current States policy to maintain a population of approximately 61,000. Equally, this document does not attempt to provide an evaluation of, or solutions to, every challenge that the Island faces with regard to the size and make-up of its population.
- 3.2 What the document focuses on are the issues that must be addressed in any attempt to manage Guernsey's population effectively and options for a mechanism by which the size and make-up of the Island's population could be managed. The regime described is aimed at influencing the population over the medium to long term and is designed to be effective whether the States population policy at any point in the future is for the population to rise, to fall or to remain static.
- 3.3 This consultation document makes proposals and provides options for a comprehensive population management regime that will, among other things;
- Provide the States with a mechanism that can influence the size and make-up of the population
 - Complement the existing Immigration Acts as extended to the Bailiwick
 - Reflect the Island's commitment to upholding its international obligations, particularly Human Rights
 - Recognise the need to have regard to demographic changes
 - Require the creation of primary legislation, and
 - Replace the current Housing Control and Right to Work laws.
- 3.4 These proposals, which have been developed by the Policy Council's Population Policy Group (PPG), are not set in stone. Nor do they attempt to address every issue in absolute detail at this early stage. Rather, the document has been developed as a starting point for seeking the public's response to a set of ideas and options which can then be refined and developed into a comprehensive and workable set of proposals.

Communications Strategy – Aims and Objectives

- 3.5 The PPG has developed its communications strategy, including its aims and objectives, which are outlined below. [Appendix A – COMMUNICATIONS STRATEGY](#) contains more detail on how the PPG intends to achieve these objectives.

Aim

- To secure the widest possible engagement across all parts of the community on the proposals for a new Population Management Regime.

Objectives

- To promote effective and informed debate which will improve public understanding of the issues involved
- To obtain considered responses from as wide a range of contributors as possible
- To provide a key reference point for further review, by the public and the PPG, prior to final proposals being prepared for consideration by the States.

Summary of Section 3 – THIS CONSULTATION DOCUMENT

This consultation is not about whether the strategic policy objectives related to population are right. It is about a mechanism to deliver those objectives, whatever they may be, either now or in the future.

The main aim of the Population Policy Group’s communications strategy is to secure the widest possible engagement across all parts of the community on the proposals for a new Population Management Regime.

4

THE EFFECT OF THIS CONSULTATION

- 4.1 It is important to point out that while these proposals are about managing changes in Guernsey's population and therefore go much further than the current Housing Control regime, the proposals are intended to replace that regime. There will be a date in the future when the new regime will come into effect and the current Housing Control regime will no longer apply. The transition arrangements from one regime to another will need to be carefully managed.
- 4.2 Following this consultation process, the Population Policy Group (PPG) will develop firm proposals for debate by the States. If these proposals are accepted, the next stage in the process will then be to draft the necessary legislation. This will allow the transitional arrangements to be defined for those individuals who are currently resident on the Island and for everybody who has acquired certain rights under the current Housing Control regime. The legislation and the transitional arrangements will be subject to debate in the States and will therefore be made public before any decisions are made.
- 4.3 At this early stage, it is not possible to predict what proposals might be approved by the States in the future. It is therefore not possible to predict what impact any future proposals might have on specific individuals. In the meantime, the current Housing Control regime will remain in force.
- 4.4 **It should be emphasised that these proposals are not intended to remove, or reduce, any pre-existing rights which somebody has acquired under the existing or previous laws.**
- 4.5 Whether or not everybody will be required to obtain some form of document, or whether people will be required to exchange a document issued under the current regime for one which is issued under the new regime has yet to be determined. The responses to questions in this consultation document will be used to develop final proposals in this respect.
- 4.6 The PPG has concluded that there needs to be an acceptance that whatever scheme is designed and implemented by the States, it is unlikely to find favour with everyone. In order to address the needs of employers, to honour the Island's commitment to Human Rights and to acknowledge concerns about the impact on our culture and the environment of increasing population numbers, a degree of compromise will be required between individuals and groups if a

workable, sustainable and flexible regime is to be implemented. Accordingly the PPG makes proposals for pragmatic solutions which satisfy the interests of the majority of Islanders, but accepts that parts of the proposals may not be welcomed by some.

- 4.7 Finally, the PPG recognises that because any successful population management regime will have an impact to a greater or lesser degree on every single member of the population, discussion prompted by this document is bound to touch on sensitive subjects. This may generate some controversy because of the anticipated personal impact that the proposals and options might have as they attempt to intervene in the choices people make about their lives. The PPG asks the States and the community to bear these points in mind when considering the contents of this document.

Summary of Section 4 – THE EFFECT OF THIS CONSULTATION

This consultation will lead to definitive proposals for new legislation which will be submitted to the States. They will include arrangements for transition between the current Housing Control regime and a new population management regime.

These proposals are not intended to remove, or reduce, any pre-existing rights which somebody has acquired under the existing or previous laws.

5

STRATEGIC OBJECTIVES OF THE STATES

- 5.1 The States Strategic Plan is a tool to enable the States to decide what they want to achieve over the medium to long term and how they will allocate limited public resources to fulfil those objectives. The Plan aims to generate a strong sense of direction within Guernsey's government and the first annual review, which covers the period 2010 - 2015, has just been debated by the States¹.
- 5.2 The States Strategic Plan includes a statement of government aims as follows:
- The government of Guernsey aims to improve the quality of life of Islanders and to secure our economic future while protecting the Island's natural environment, unique cultural identity and rich heritage. It recognises that this requires:
- Maintenance and enhancement of Guernsey's standing in the global community
 - Wise long term management of Island resources
 - Co-ordinated and cost-effective delivery of public services
 - Sustainable economic growth and effective public services without increasing the population to the detriment of our environment and way of life
 - Improved awareness of the culture and identity of Guernsey.
- 5.3 It can be seen that the effective management of the size and make-up of the Island's population, one of the Island's major "resources", cannot be considered in isolation from those aims listed above.
- 5.4 In addition, the States Strategic Plan goes on to detail the principal objectives of the Fiscal and Economic Plan, the Social Policy Plan and the Environmental Policy Plan. Getting the right balance between economic gain and the resulting environmental and social impacts is fundamental to the Island's quality of life and standard of living. Many of the objectives listed in the States Strategic Plan

¹ Billet d'État XIX 2010, Policy Council – States Strategic Plan

are not “people free” options and some are heavily dependent on the availability of highly skilled individuals and well-qualified staff. One of the fundamental objectives of the new population management regime is that it needs to be capable of taking into account the objectives, policies and priorities which are set out in the States Strategic Plan and needs to be flexible enough to take into account any changes in them.

An Integrated Strategy

- 5.5 Section 1 of this document outlined the reasons why the community needs to be concerned about the size and make-up of Guernsey’s population. These included some explanation of the challenges facing the Island in the future due to the population ageing. The need for people to be brought into the Island to deliver services in order to provide the quality of life that Islanders want in environmental, social and economic terms was also highlighted.
- 5.6 Having a regime in place that enables the States to manage changes in the size and make-up of Guernsey’s population is only one part of the wider picture of how these challenges might be met. The States needs to have in place an integrated strategy that ensures that these challenges are being tackled from a number of policy directions, therefore allowing the level of inward migration that is needed to be kept to a minimum.
- 5.7 There are a number of policy developments in other areas that are already in place or are currently being progressed. These are listed below.
- 5.8 **Developing the Workforce** – In 2009 the Commerce and Employment Department commissioned a strategic review of Guernsey’s investment in providing work related skills. The resultant report recommended the development of an integrated skills strategy. A public/private Skills Strategy Development Group has subsequently been formed and is tasked with producing a Strategy for stakeholder consideration at the end of March 2011. The Development Group is developing the Strategy within two principal ‘pillars’, the first pillar is concerned with increasing skill levels and the effectiveness of the workforce, and the second pillar is concerned with increasing participation in the workforce.
- 5.9 **Increasing the pension age** – As part of a package of measures designed to ensure the long term sustainability of the social insurance fund, the States resolved in July 2009 to increase the pension age to 67 incrementally between 2020 and 2031.

- 5.10 **Reviewing of causes and responses to long term sickness** – Since 2009 the number of long term sickness benefit claims has continued to rise. Mental health related illness continues to be the most common primary diagnosis among all short term and long term sickness benefit claims. The Social Security Department and the Health and Social Services Department are continuing to work together to develop a funding model to enable talking therapies to be delivered at an early stage of illness through the development of an integrated mental health service. It is hoped that earlier intervention will help people to remain in work or get back to work more quickly than would otherwise be the case.
- 5.11 **Older People’s Strategy** – The Strategy will examine the social and financial implications of an ageing population and recommend how best to address the predicted additional demands on housing, health and social care services. It will emphasise that the types of services older people want and need to remain independent in the community (rather than move into institutional care) are cost effective in the long term.
- 5.12 **Increasing the school leaving age** – From the school year 2008/09 all young people have to stay on at school until they are 16 and have completed their Year 11 studies. The post-16 participation rate now stands at 74% of 16 year olds in full time education and 82% engaging in some form of education and training. This is the highest ever participation rate.
- 5.13 **Key Worker Accommodation** – In March 2007 a report was presented to the States on the recruitment and retention of public sector “key workers”. It examined the complex interplay of factors affecting the recruitment and retention of key workers, including remuneration, housing licence policy and accommodation. It highlighted changes to current policy that could deliver significant long term savings primarily by re-focusing the ways that key workers are accommodated and by phasing down the payment of housing related subsidies. This work is being taken forward through the Corporate Housing Programme.
- 5.14 **Research on childcare needs and improving the quality, availability and affordability of childcare** – The Policy Council has commissioned a survey of childcare needs. One of the aims of the survey is to ascertain whether there is a pool of people on the Island who would like to work, or would like to work more, but are prevented from doing so because of childcare issues. The outcome of this research will be used to prepare a report to the States on whether (and how) the quality, availability and affordability of childcare should be improved.

- 5.15 **A Strategy for Young People Not in Employment, Education or Training (NEET Strategy)** – The development of this cross departmental strategy is being led by the Education Department. The strategy will be designed to help both those young people who are currently not in employment, education or training and to prevent other young people from becoming “NEET” in the future.
- 5.16 These policy developments, combined with a new population management regime, will provide an integrated strategy to enable Guernsey to meet the challenges of an ageing population and the challenge of obtaining the skills and manpower that the Island needs.

Summary of Section 5 – STRATEGIC OBJECTIVES OF THE STATES

Population management is not an isolated issue, but must be integrated with a number of other strategic objectives of the States.

6

HUMAN RIGHTS

- 6.1 The European Convention on Human Rights was extended to Guernsey in the 1950's and our own Human Rights Law came into force in 2006. This Law means that we are required to protect the Human Rights of all members of the community and that all of Guernsey's laws must be applied in a way that respects those Human Rights. A summary of the rights which must be protected can be found in [Appendix B – HUMAN RIGHTS](#).
- 6.2 When considering how to manage changes in the size and make-up of Guernsey's population, there is one set of rights that is of particular significance: *Article 8 - the right to respect for private and family life, home and correspondence*. This is significant because any regime which determines who should be able to come to live in Guernsey, for how long and whether specific conditions should apply to them during their stay, has the potential to cause a direct intrusion into a person's private and family life and their home.
- 6.3 Article 8 becomes particularly relevant when deciding whether or not somebody can remain in Guernsey after they have already had a period of residence in the Island.
- 6.4 When somebody first arrives in Guernsey their private life, family life and home will not be established in Guernsey. However, from the point at which they arrive they will gradually establish links to Guernsey and its community, they will start to set down roots and develop a sense of "belonging" to the Island. The longer they are here, the stronger their roots in Guernsey will become.
- 6.5 Therefore, if a regime is in place which allows conditions to be applied to someone's residence in Guernsey and that regime allows the States to require some people to leave the Island after a period of residence, there is a risk that the individual's right to respect for their private and family life and their home might be infringed.
- 6.6 However, the rights described above are "qualified rights", which means that rights in these areas can be interfered with in certain, defined circumstances. Article 8 states that:
- (1) Everyone has the right to respect for his private and family life, his home and correspondence.*

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

6.7 The European Convention on Human Rights does not stop Guernsey from having a regime that applies conditions to someone's residence in Guernsey and that allows the States to require some people to leave the Island after a certain period of residence, BUT this "interference" in an individual's Article 8 Rights can only be justified when it is "*necessary in a democratic society*" for defined reasons. In respect of Guernsey's Housing Control regime, the European Court of Human Rights stated:

"... the Housing Laws and the licensing system in general pursued the legitimate aim of ensuring that accommodation was available in Guernsey for persons with strong connections or associations with the island and of responding to the problem of potential overpopulation, taking account of the overall population density of the island and its economic, agricultural and tourist interests."

"A law which confers a discretion is not in itself inconsistent ... provided that the scope of the discretion and the manner of its exercise are indicated with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference.... the Court finds that the scope of the discretion ... is sufficient to satisfy the requirements of the Convention inherent in the expression "in accordance with the law"."²

6.8 It has to be remembered that the Article 8 rights of those individuals who are already resident in the Island also need to be protected. The fact that Guernsey is able to exercise its own domestic regime which places an additional layer of legislation on the freedoms of European Union citizens recognises that the rights of the existing residents in Guernsey also need to be protected. Being able to have such a regime in place recognises that Guernsey is a small Island and therefore needs to manage the size and make-up of its population. Any measures in place to manage population levels must very carefully balance the impact of population growth on the rights of the whole community against the

² *Gillow v the United Kingdom [1986] 11 EHRR 335*

impact on the person (and his family) of being asked to uproot himself and move elsewhere.

- 6.9 This means that somebody can be prevented from living in Local Market accommodation, effectively requiring them to leave Guernsey, but only if that is a proportionate and necessary response to protect the rights of the rest of the Island's population.
- 6.10 Guernsey's current Housing Control regime allows the States to require some people to leave Local Market accommodation, and consequently the Island in some cases, after a certain period of residence. Cases have been tested by the European Court of Human Rights and by the Guernsey Courts. Both Courts have raised the concern that the States must exercise these powers with an extreme level of care and for justifiable reasons.
- 6.11 This is highlighted in the following quotes which have been taken from the judgements on various Housing Control cases that have been considered by the Courts:

*"... such drastic power calls for meticulous care in its exercise and scrupulous balancing of the conflicting interests which it offers."*³

*"The existence of powers such as these is unusual in a democratic society and must be exercised with care and sensitivity to avoid any abuse of those powers."*⁴

*"The lack of meticulous care is evidenced in part by a failure to provide the Appellant, and the Court, with a proper record of the deliberations of the Board of the Department that properly explains the reasons why it decided to reject the application and to require her to leave Guernsey."*⁵

- 6.12 As mentioned above, the existence of a Law which allows Guernsey to require some people to leave Local Market accommodation after a certain period, and in some cases those individuals may consequently have to leave the Island, does not in itself contravene the European Convention on Human Rights. Such powers have been considered to be appropriate given Guernsey's particular circumstances.

³ *Ward v States Housing Authority [1989] Civil Appeal 135*

⁴ *Perkins v States Housing Authority [1995] 20 GLJ 36*

⁵ *Kinley v The Minister of the Housing Department [2009] Unreported Judgement 24/2009*

- 6.13 However, in having such a regime, Guernsey must justify that any interference with an individual's Article 8 rights is in accordance with Part 2 of Article 8 as detailed above in paragraph 6.6. The States must undertake a balancing act between the rights of that individual and the needs of the community as a whole. Any measures that are taken to protect the needs of the community as a whole must be reasonable and proportionate in terms of the rights of the individual and must be justifiable. The proposals for a new population management regime for Guernsey which are described later in this document are believed to meet these criteria.

Summary of Section 6 – HUMAN RIGHTS

The European Convention on Human Rights does not prevent Guernsey from having a mechanism to manage the size and make-up of the population. However, Article 8 of the Convention restricts the circumstances in which such a mechanism can be applied and imposes a duty on the States to exercise its powers in a careful and sensitive manner in order to ensure that those powers are not abused.

7

IMMIGRATION CONTROLS

- 7.1 It is important to recognise that the immigration regime operated in Guernsey applies across the Bailiwick and very closely reflects UK provisions. Determining nationality, and associated immigration issues, depends on international law and relations, for which the UK is responsible. Guernsey's regime comprises the extension of the UK Immigration Act 1971 and a set of detailed Rules based on those made for the UK but tailored for the Bailiwick. The States have little scope to depart from rules applying consistently throughout the British Islands.
- 7.2 Guernsey is part of the Common Travel Area (the islands of Great Britain, the Channel Islands, the Isle of Man and Ireland). What this means is that once somebody has lawfully entered the Common Travel Area, wherever they did so, they can then come and go throughout the Common Travel Area, including Guernsey, without the need for them to show their passport / visa again.
- 7.3 Immigration controls are primarily concerned with improving domestic security through strong border protection, targeting those who represent the greatest risk while welcoming legitimate travellers. Although other jurisdictions may use their immigration regimes as a population management tool, the extended Immigration Act was not designed for that purpose.
- 7.4 The European Union (EU) law on free movement of persons for the purpose of taking up work or engaging in other economic activity does not apply in Guernsey. The special relationship that Guernsey has with the EU under Protocol 3 to the UK's 1972 Act of Accession (subsequently extended to include Iceland, Liechtenstein and Norway as the European Economic Area (EEA)) primarily relates to the removal of barriers to free trade in goods, but also contains a principle of non-discrimination on grounds of nationality. This generally means that different treatment cannot be afforded to nationals of other EEA States coming to, and already in, Guernsey than it is to British citizens. Equally, it means that many Islanders can travel freely throughout the EEA States, although not all of them will be able to exercise the full EU law rights relating to employment, etc.
- 7.5 The Immigration Act, as extended, does not apply to British citizens and only applies to EEA State nationals to a limited degree. Any population management regime will need to avoid infringing the immigration-related rights of British citizens and EEA State nationals and must not discriminate regarding their ability to exercise those rights.

- 7.6 These rights are not infringed by the current Housing Control regime's controls on housing occupation and employment. If the new population management regime were adversely to affect these rights, it would be inconsistent with the UK Immigration Act as extended to Guernsey and may even be in breach of Protocol 3. Any attempt to manage the population through nationality based border controls could not be introduced for the majority of those who might wish to come to the Island (British citizens and EEA State nationals) without changes to existing international law. This would be extremely difficult, would require the agreement of all affected parties and might have undesirable reciprocal consequences.
- 7.7 Some parts of the Immigration Act as extended to the Bailiwick will have an impact on any proposals for population management. In developing proposals for a new regime, the Population Policy Group (PPG) has taken into account where the extended Immigration Act and the new population management regime might interlink and overlap. It is possible for both regimes to operate side by side in a complementary way without needing to make changes to the extended Immigration Act.

Summary of Section 7 – IMMIGRATION CONTROLS

Immigration controls were not intended to be, and cannot be used as, a means to manage the size and make-up of the population. Any new population management regime will need to run in tandem with the Immigration regime, which will remain in place.

8

DEMOGRAPHIC MAKE-UP OF THE POPULATION

8.1 The diagrams below, known as population pyramids, give a representation of the age and gender distribution of the population of Guernsey. Each bar represents a particular age group and the length of that bar shows the population of that age. Changes to the shape of the pyramid over time are determined by births, deaths and migration.

Chart 8.1 Age and Gender Distribution at **31st March 2009**

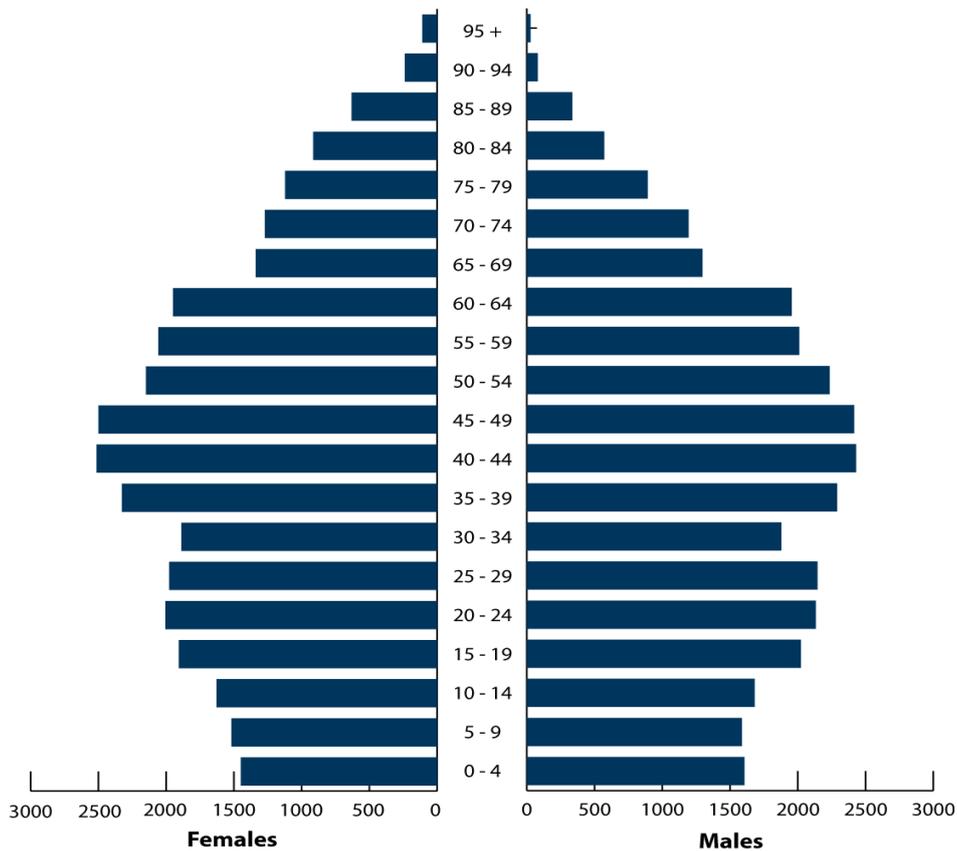
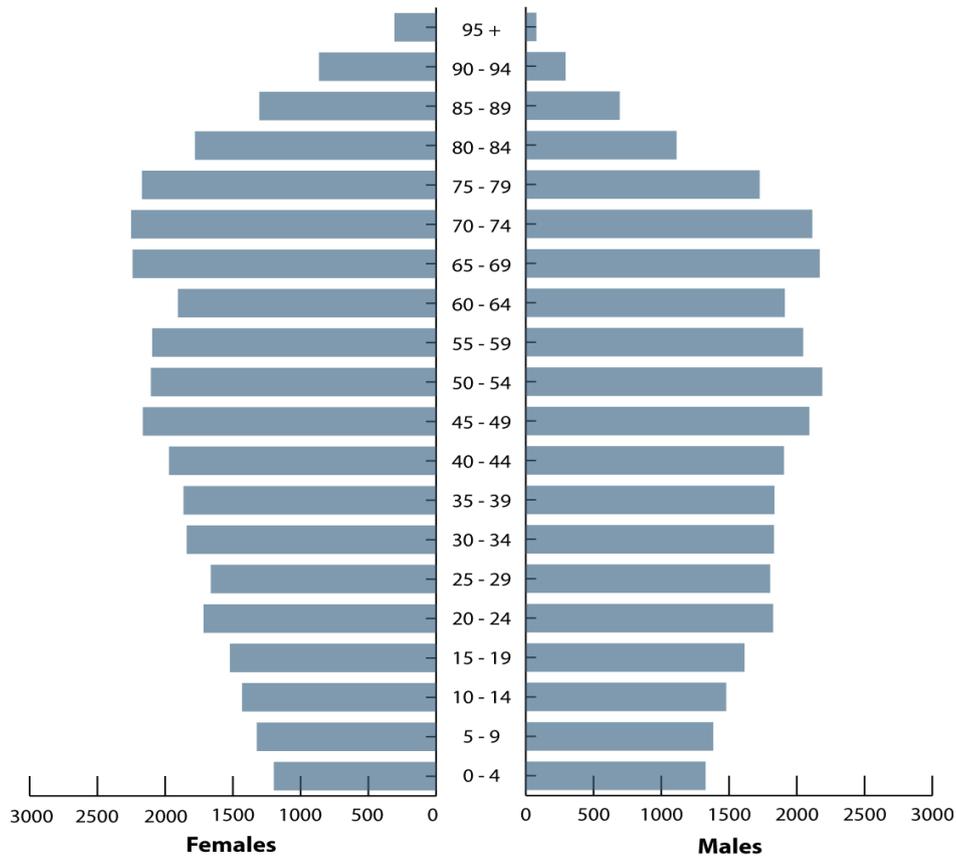


Chart 8.2 Age and Gender Distribution Forecast for **2039**



- 8.2 This forecast assumes that the current life expectancy trends and birth rates continue, and that migration levels are maintained at their current levels⁶.
- 8.3 The bulge in the pyramids is a consequence of the “baby boom” in Guernsey which occurred between the 1950’s and 1970’s. This bulge will move progressively further up the pyramid as this group of people gets older. In the pyramid forecast for 2039, the bulge can be seen in the retirement age groups.
- 8.4 From Chart 8.2 it can be seen that by 2039 the largest age groups are projected to be between 65 and 74 for males and between 65 and 79 for females. The number of people aged 60 years or over is projected to approximately double between 2009 and 2039. Conversely, the population under 60 years of age is projected to decrease over the same time period.

⁶ For more information on population and projections, see www.gov.gg/population

- 8.5 Dependency ratios are used to indicate the proportion of the population which is likely to be economically dependent. Trends in the dependency ratio are used, for example, to assess the Social Security contribution rates required from the economically active (aged between 16 and 64) in order to support the economically dependent (aged 15 and under and aged 65 and over). The dependency ratio in 2009 was 0.48, which means that for every one hundred people of working age, there were 48 people of non-working age i.e. those under the minimum school leaving age or above State pension age. The dependency ratio is projected to increase to 0.75 by 2039, which means that for every one hundred people of working age, there is predicted to be 75 people of non-working age.
- 8.6 This “ageing” of the population will have major economic and social consequences as we move towards a population where an unprecedented number of people beyond working age will be required to be supported, both physically and financially, by a diminishing number of people of working age.
- 8.7 Against this background there is now, more than ever, a need to have in place a regime which enables the States to manage the size and make-up of the population. Any new regime must have the ability to influence the demographic make-up of the population in order to assist the Island to mitigate against any potentially negative effects of the demographic changes described above.

Summary of Section 8 – DEMOGRAPHIC MAKE-UP OF THE POPULATION

Demographic changes will mean that an increasing proportion of the population will have to be supported by a decreasing number of economically active people in the foreseeable future.

9

OTHER JURISDICTIONS

- 9.1 The Population Policy Group (PPG) reviewed a number of other jurisdictions in order to understand how they tackle the issue of managing changes in the size and make-up of their population and to see if there is a regime already in use elsewhere which could be adopted for use in Guernsey.
- 9.2 In selecting the jurisdictions for review, the PPG took into account the characteristics of each in terms of their:
- stated policy objectives with regard to population management, for example some jurisdictions may be actively seeking to increase their population level, or may be actively trying to discourage their young people from emigrating and taking their skills with them
 - legal (both domestic and international) framework, in particular the impact of human rights obligations and/or legislation
 - constitutional relationship to the UK
 - relationship to other jurisdictions in respect of immigration matters, particularly rights of entry and/or settlement
 - relationship with other jurisdictions, in particular “free movement of persons” agreements (e.g. within the European Union and between Australia and New Zealand, etc)
 - demographic profile, population size and density
 - geography.
- 9.3 Each of the factors in the list above has a fundamental influence on population management issues and every jurisdiction is different in terms of what they are trying to achieve and in what context.
- 9.4 The following jurisdictions were reviewed and a summary of the key points relating to how they are approaching the issue of managing changes in their population level can be found in [Appendix C – OTHER JURISDICTIONS](#):

Crown Dependencies	British Overseas Territories	Commonwealth Countries	EU Countries
Jersey	Gibraltar	Australia	Cyprus
Isle of Man	Bermuda	Canada	Malta
	Cayman Islands	New Zealand	
	Turks and Caicos Islands		
	British Virgin Islands		

9.5 As mentioned above, a summary of the key findings is contained in [Appendix C](#) and so they are not repeated here. However, a number of questions have been raised in the past about residence permits and work permits and how they might apply to Guernsey. Because of the specific interest in these two areas, some of the main points are expanded upon below.

Residence Permits

- 9.6 While the exact conditions associated with a residence permit differ across different jurisdictions, they are generally issued to give someone the right to reside in a particular country. In the UK, a residence permit is not generally required by an individual who is a European Union (EU) or European Economic Area (EEA) member state national.
- 9.7 In general, a residence permit may apply terms and conditions to a person's residency i.e. working in a certain type of employment.
- 9.8 In some jurisdictions, certain rights may not be granted to residence permit holders, for example they may be denied the right to vote or they may not have the freedom to stand for public office.
- 9.9 Residence permits can be revoked in some jurisdictions if the permit holder does not comply with the obligations placed on them, for example if they become a threat to national security or they commit a crime which is serious enough to warrant deportation.
- 9.10 Residence permit systems do offer some ability to assist in managing changes in Guernsey's population and a number of the characteristics of the systems which have been reviewed could be useful in Guernsey. Where relevant, these have been included in the proposals for a new population management regime for Guernsey.

Work Permits

- 9.11 A Work Permit is a generic term for a document which allows a person to take up employment in a particular country for a specific period of time. It is most often used where someone is given permission to work in a country where they do not hold citizenship / residency qualifications. It is often a requirement for a work permit to be shown to immigration officials before a person is allowed to enter a particular jurisdiction.
- 9.12 An employer who wants to recruit someone requiring a work permit must usually prove that it has made reasonable efforts to fill the position with somebody who does not require a work permit (for example, someone who is already a permanent or qualified resident of the jurisdiction).
- 9.13 The availability of a work permit will vary depending on the nature of the job and will reflect the scarcity of skills and/or labour shortages in the jurisdiction.
- 9.14 A work permit may be withdrawn in certain circumstances, for example where a fraudulent application is made or where the holder commits a serious offence.
- 9.15 Guernsey already has a system for issuing work permits for nationals of some countries via our Immigration regime, which comprises the extension of the UK Immigration Act 1971 and a set of detailed rules based on those made for the UK, but tailored for the Bailiwick. In the main, a person who is not a national of a member state of the EEA requires a work permit in order to take up employment in Guernsey. Work permits are normally issued for up to a maximum of four years.
- 9.16 Permits will not be issued to those who have an adverse immigration record or who pose a security, criminal or immigration threat to the United Kingdom, the Bailiwicks of Guernsey and Jersey or the Isle of Man.
- 9.17 Work permit systems do have some useful characteristics that could assist in managing changes in the population in Guernsey, but only in respect of employment related matters. In fact, some of the concepts are already very similar to those used within the current Housing Control regime.
- 9.18 The proposals for a new population management regime for Guernsey are designed to work alongside our own Immigration regime and not to replace any aspect of it, but some useful concepts from the work permit regimes reviewed have been adopted in developing the new proposals.

Summary

- 9.19 Having reviewed regimes that already exist, either in Guernsey or in other parts of the world, it becomes clear that there is no single regime that delivers everything that Guernsey needs in terms of managing changes in the population. Some of those regimes however, do contain aspects that could be effective in meeting the population management objectives as described in [Section 10 – OBJECTIVES OF A NEW REGIME](#). Where that is the case, those aspects have been included in the new proposals described later.
- 9.20 The new proposals can therefore be considered to offer a completely new regime which is bespoke to Guernsey, but they include some relevant parts of regimes that have already been proven to be effective, either in Guernsey, or elsewhere in the world including work permits, residence permits and Guernsey’s Housing Control regime.

Summary of Section 9 – OTHER JURISDICTIONS

A review of population management measures in other jurisdictions does not reveal a complete solution that would immediately suit the needs of Guernsey. A bespoke Guernsey solution is therefore required, but it can draw on selected aspects of controls that are in place elsewhere.

10

OBJECTIVES OF A NEW REGIME

- 10.1 Having reviewed the key factors which need to be taken into account in developing a new population management regime, the objectives which the Population Policy Group (PPG) believes a new regime should aim to achieve are listed below.
- a) The proposed regime needs to be effective in enabling the States to manage the size and make-up of the population.
 - b) The proposed regime needs to be legally robust and designed to meet the Island's domestic and international obligations. Human Rights considerations and the Immigration regime are of particular significance in managing changes in the population level and are expanded on at various points in this document.
 - c) The States Strategic Plan sets out objectives, policies and priorities for various aspects of Island life. The new regime needs to be capable of taking into account what those objectives, policies and priorities are and needs to be flexible enough to take into account any changes in them.
 - d) The regime should, as far as possible, give the States the ability to respond quickly to the Island's changing economic, social and environmental demands without the need for changes in legislation.
 - e) The regime needs to be supported by an efficient and flexible administrative process that supports the Island in being an attractive place to live, to work and to do business. The process must not deter people from using it and it should avoid being unnecessarily complex and bureaucratic.
 - f) The new regime needs to be capable of providing regular population statistics. This will allow the States to monitor changes in the population level and the extent to which the new regime is effective in managing changes in the population. Informed decisions can then be made on what policies need to be adjusted to take account of changes in the population.
 - g) To ensure that the new regime is delivering what the community needs, there needs to be a good degree of transparency with well publicised policies, procedures and rules. The public need to be able to understand how and why decisions are being made.

Summary of Section 10 – OBJECTIVES OF A NEW REGIME

A new regime must have clear and transparent objectives. These are listed in the consultation document.

Your Views

**Question
10a**

Do you agree with the objectives as described in paragraph 10.1 above? If not, which do you disagree with and why?

**Question
10b**

Are there any other objectives, not covered by those listed above, which you believe that the new regime should be aiming to achieve? If so, please describe them.

**Question
10c**

Are there any further comments that you wish to make in relation to what is covered in Section 10 of this Consultation Document? Please provide us with those comments.

11

LEGISLATIVE AND POLICY FRAMEWORK

Legislation

- 11.1 It is proposed that the new population management regime will sit within a legal framework which will be supported by a set of States policies. Although the drafting of the legislation is a major consideration in its own right, it is useful to summarise the framework and how this can be used to support the objectives of a new population management regime.
- 11.2 A new regime for managing changes in the size and make-up of Guernsey's population will need new primary legislation (approved by the Queen in Council). It will set out the general powers available to the States and will enable the States to prescribe more detailed requirements by Ordinance (i.e. without the need for further approval by the Queen in Council).
- 11.3 The primary legislation will be drafted in such a way that it will give directions as to how to administer the new legislation in accordance with policies approved by the States. The primary legislation will itself give directions but will also enable the States to give some directions by Ordinance or by resolution.

Policies

- 11.4 Underpinning the Law, there will need to be clear policies which govern the decision making on who is able to move to Guernsey to live, either temporarily or permanently, for what reasons and for how long.
- 11.5 If the States change an existing policy, or bring in a new policy, the decision making body will be directed to take that policy change into account without the need to go through the very lengthy process of changing the primary legislation. This means that the new regime will always be current as it is taking into account the most recent policies of the States. The range of possibilities on which directions can be made in this way would be detailed in the primary legislation.
- 11.6 It is envisaged that the various policies will sit within a hierarchy with each "level" of policy being treated differently in terms of how they can be changed and the detail that they contain.

- 11.7 For example, high level policies for dealing with situations affecting migration on employment grounds will generally be led by the States Strategic Plan. The States would identify in its Strategic Plan the broad areas of employment which it wants to support and those which it may seek to discourage in order to meet its strategic social, economic and environmental policy objectives. Population management policies will then implement this strategic direction, by enabling inward migration in favoured areas and restricting inward migration in less favoured areas.
- 11.8 At the next level, the States will define in greater detail the types of business and the parts of the public sector for which inward migration will be permitted. For each of these, a further layer of policies will define specific occupations and posts where there are recognised skills and/or manpower shortages and the conditions which will be applied to post holders, for example, how long they can stay.
- 11.9 In essence, it is envisaged that employers and potential employees would immediately be able to know whether or not there was a strong likelihood of inward migration being permitted in a particular area if the skills or level of manpower required were not already available locally.

Transparency

- 11.10 At each level of the new framework, it is proposed that all policies will be published and will be made available to the general public. The level of consultation that will take place as each policy level is reviewed, and with whom, has not yet been defined, but it is envisaged that the process will include the requirement to gain input from the public and from particular interest groups. This will be of great importance if the new regime is to meet the objective of greater transparency and helping the public to understand and appreciate how and why decisions on inward migration are being made.
- 11.11 The policy framework outlined above will offer a good level of transparency and will mean that the new population management regime is able to reflect the same policies and priorities that the States agrees each year in the States Strategic Plan. This will provide flexibility and the ability for the new population management regime to be responsive to the Island's needs. The community and the States will have an influence over, and a greater understanding of, the policies which govern who is able to move to Guernsey, either temporarily or permanently, for what reasons and for how long.

The Situation Today

- 11.12 Within the current Housing Control regime, there is very little States direction as to how the Law should be applied. The policies currently in use have been largely developed internally by the Housing Department in response to particular situations, they are not strategic in focus, are not widespread in their coverage and the majority have no statutory status in relation to the Housing Control regime, or any other Law.
- 11.13 Although the Housing Department has consulted with various industry sectors in developing these policies, they have not been subject to public consultation or States approval and, in the main, the public is not aware of what policies exist or how they are being applied.

Summary of Section 11 – LEGISLATIVE AND POLICY FRAMEWORK

A new regime will need to be established in law, but it will be “driven” by policies set by the States. Those policies will be responsive to the Island’s needs as they change over time and the policies will be made public to ensure that the system is transparent.

Your Views

Question 11a

Do you agree that population management policies should be determined by reference to the strategic objectives of the States? If not, how do you think they should be determined?

Question 11b

Do you agree that population management policies should be published and made available to the general public? If not, why?

Question 11c

Are there any further comments that you wish to make in relation to what is covered in Section 11 of this Consultation Document? Please provide us with those comments.

12

POLITICAL AND ADMINISTRATIVE RESPONSIBILITY

The Situation Today

- 12.1 Within the current Housing Control regime, the five politicians serving on the Board of the Housing Department are responsible not only for developing and approving policies which govern day-to-day decisions on licence applications, but also for interpreting those policies and how they should be applied with respect to individual applications.
- 12.2 By contrast, the Director of Income Tax and the Administrator of Social Security are both statutory posts. Although the political Boards of these departments are responsible for developing the legislation, administering and implementing the requirements of that legislation falls to the Statutory Officials themselves. In these examples, the legislation holds the Statutory Official responsible for making day-to-day decisions within the Law on individual cases and the political Board plays no part in that decision making process.

Proposals

- 12.3 The Population Policy Group (PPG) proposes the establishment of:
- A Sub-Committee of the Policy Council which will be responsible for the development of population management policies and for implementing those policies which are agreed by the States
 - A Statutory Official who will be responsible for making day-to-day administrative decisions under the new regime
 - An Advisory Panel who will provide independent advice to both the Sub-Committee and the Statutory Official.

Policy Council Sub-Committee

- 12.4 In order to improve the coordination between different areas of States policy which affect the management of the population, political responsibility for population policy should fall specifically within the mandate of the Policy Council. The PPG proposes that the Policy Council should appoint a political

Sub-Committee to take responsibility for developing population management policies and for implementing those policies which are agreed by the States. The exact constitution of the Sub-Committee can be defined at a later point, but the PPG envisages that this Sub-Committee may be required to hold delegated responsibility⁷ for decision making in specifically defined areas. The Sub-Committee would also have responsibility for monitoring and publishing regular information on the size and make-up of the Island's population.

- 12.5 It is important that the new regime is driven by the overall objectives of the States and is able to take into account a broad range of policy objectives as defined in the States Strategic Plan. The PPG believes that a centrally co-ordinated structure that is not linked to one department should ensure that a corporate approach is adopted for the future.

Decision Making Responsibility

- 12.6 It is proposed to establish a Statutory Official who will be responsible for making the day-to-day administrative decisions as to who is able to move to Guernsey, either temporarily or permanently, for what reason and for how long. The Statutory Official will make those decisions in line with the directions given to him by the States, whether via the legislation or policy / strategic guidelines. This means that the Statutory Official will be obliged to act in accordance with the wishes of the States.
- 12.7 The reason for this proposal is the need to provide a clear and transparent separation between the two distinct roles in the process – policy making and administration. The States, as the political body, has the responsibility for policy making which forms the basis of the population management regime, whereas the Statutory Official has the administrative responsibility for making decisions on individual cases in line with those policies.
- 12.8 The proposal should reduce any perception of bias or pre-determination. Individual political members might disagree with the policy direction which has been decided by the States and might therefore be at risk of being accused of making a decision which is more in line with their own views than those of the States. The proposed structure will enable States members to express their views on population management matters at a *policy level* and to govern policies directing the decision making process without any conflict of interest with the day-to-day administrative decision-making.

⁷ Rules 16 and 16A of *The Constitution and Operation of States Departments and Committees* defines the rules regarding Sub-Committees with delegated responsibility.

- 12.9 The relationship between a Statutory Official and the political process must always be carefully balanced. There are various models, some already in existence within the States, which could be adopted and which would allow for clear political accountability for the administration of the new regime, without compromising the need to separate the roles of policy making and decision making. The merits of various such models will be explored if the proposal to establish a Statutory Official who is responsible for day-to-day decision making is accepted. In the meantime, examples of where similar relationships already exist within the States are summarised in [Appendix D – STATUTORY ROLES](#).

Advisory Panel

- 12.10 The proposed structure for the new population management regime includes the creation of an Advisory Panel to assist and advise both the Policy Council Sub-Committee and the Statutory Official in respect of the new regime. It is envisaged that the Panel would provide advice and evidence-based recommendations to the Policy Council Sub-Committee where it believes policies need to be changed. The Sub-Committee could also ask the Advisory Panel to “test” any new policies or proposed changes to the regime. The Advisory Panel’s relationship with the Statutory Official would be to provide him with advice and guidance regarding skills and labour shortages.
- 12.11 It is proposed that the Advisory Panel would draw its membership from members of the community. Those members would be required to draw on their personal experience to provide general advice and on their professional experience to provide regular monitoring of the Island’s economy and labour market.

Other Options

- 12.12 In coming to the proposals above, the PPG also considered alternative approaches. These other options do not go far enough in removing the limitations that are described above and therefore the PPG does not recommend them at this stage. These include:
- Not appointing a Statutory Official but having a group of politicians make day-to-day decisions under the new regime.
 - Establishing a new States department to administer the new regime.

- Giving the responsibility for the new regime to an existing States department, for example the Housing Department or the Home Department (given the intrinsic links with housing policy and with the Immigration regime).

Summary of Section 12 – POLITICAL AND ADMINISTRATIVE RESPONSIBILITY

Setting policy will be the political responsibility of the States. A new Statutory Official will administer the population management regime in accordance with policy directions from the States.

The Policy Council, through a new Sub-Committee, will co-ordinate policy proposals on population related matters that will be considered by the States. The Policy Council will also act as the link between the Statutory Official and the States.

Your Views

Question 12a

Do you agree that political responsibility for the new regime should rest with a Sub-Committee of the Policy Council? If not, what alternative would you propose?

Question 12b

Do you agree that a Statutory Official should be established who would be responsible for day-to-day decisions under the new regime? If not, who do you think should have this responsibility?

Question 12c

Do you agree that an Advisory Panel, with members drawn from the community, would be a useful source of independent expertise to advise the Sub-Committee and the Statutory Official? If not, why?

Question 12d

Are there any further comments that you wish to make in relation to what is covered in Section 12 of this Consultation Document? Please provide us with those comments.

13

SYSTEM OF PERMITS

Residence and Employment Permits

- 13.1 One of the main reasons why the Housing Control regime has proved to be ineffective in allowing the States to manage the size and make-up of the Island's population is that the vast majority of the population do not require any form of Housing Licence in order to be able to live here. Everyone who wishes to take up employment is required to obtain a Right to Work document which confirms that they are legally housed, but those who do not work do not have any requirement to make themselves known to the Housing Department. For this reason, it is not possible for the Housing Department to determine the size and make-up of the Island's population at a particular point in time.
- 13.2 Under the new regime, the Population Policy Group (PPG) proposes that a system of Permits be introduced. There will be different types of Permits issued, depending on the reason why someone is permitted to live in the Island.

Employment Permits

- 13.3 Employment Permits will be issued for those who are permitted to live in the Island for employment reasons. There will be different types of Employment Permit with different conditions attached to them, including conditions on which posts and individuals would be eligible to receive them and restrictions on the period of time for which the Permit holder can continue to live in the Island. These conditions are considered in further detail in the following sections of this document.

Residence Permits

- 13.4 Residence Permits will be issued for those who are permitted to live in the Island for reasons other than their employment. There will be different types of Residence Permit depending on the length of time which the individual is permitted to live in Guernsey. Again, the circumstances in which a Residence Permit will be issued, and the conditions that would be attached to those Permits are considered in further detail in the following sections of this document.

Who Needs to Obtain a Permit?

- 13.5 It could be argued that in order to be able to effectively manage the size and make-up of the Island's entire population, everybody who is permitted to live on the Island should be required to obtain some form of Permit. However, requiring everybody to obtain a Permit would be a substantial administrative undertaking. It would also be a radical departure from the situation as it stands today and may therefore, in some instances, represent a cultural shift which the public find difficult to accept.
- 13.6 If everybody was required to obtain a Permit, this would include the individuals listed below.
- a) Existing Qualified Residents – those who are already living in the Island as Qualified Residents and those who do not currently live on the Island if they decided to return to the Island at some point in the future.
 - b) Employment - those who are already living in the Island, or wish to move here in the future, for employment reasons.
 - c) Family Connections – those who are already living in the Island, or wish to move here in the future, because they have a strong family connection with someone who lives here. This would include the family members of Qualified Residents and the family members of those who are permitted to live here for other reasons, including employment.
 - d) Children – those who have been, or will be, born here and those who came to live here at some point during their childhood, or do so in the future.
 - e) People living in uncontrolled properties owned by the States – including those people who have already come, or wish to come in the future, to work in the Island in a public service that provides accommodation for them which is currently uncontrolled in terms of who may occupy it.
 - f) People living in uncontrolled properties – those people who have already come, or wish to come in the future, to live in the Island in housing which is currently uncontrolled in terms of who may occupy it i.e. Open Market residents.
- 13.7 Each group described in a) to f) above is explored in more detail in sections 14 – 22 of this document. The effects that the Permit system will have on individuals who are currently permitted to live on the Island and those who will be

permitted to live here in the future, including whether or not they will be required to obtain a Permit and the conditions that may apply in each case, are examined.

Exemptions

- 13.8 It is proposed that certain groups of people will not need to obtain a Permit. These will include tourists; those in the Island for very temporary periods of employment e.g. entertainers; and people who are required to come to the Island to work for short periods on an intermittent basis.

Summary of Section 13 – SYSTEM OF PERMITS

The proposed new regime will be managed using a system of Employment Permits and Residence Permits.

Your Views

- 13.9 This section of the document is simply designed to introduce the concept of an Employment and Residence Permit based system. Discussion of who may require a Permit, the various conditions that might be associated with such permits and options associated with long term residency are covered in the sections 14 – 22 of this document. For this reason, consultation questions related to the Permit system are contained in each of those relevant sections.

14

PERMITS FOR LONG TERM RESIDENCY

- 14.1 In this section, the circumstances under which someone is permitted to reside in the Island for the long term are explored, along with the concept of becoming a Qualified Resident – how that happens under the current Housing Control regime and proposals for how a similar approach might work under the new population management regime. It is important to cover this aspect of the proposals before considering the details associated with the proposed system of Employment Permits and the detail of other Residence Permits, which are discussed in the following sections of this document.
- 14.2 The concept of a person becoming a Qualified Resident is particularly important in terms of how we are able to manage the size and make-up of the Island’s population in the future, primarily because Qualified Residents have obtained the right to choose whether or not to live in Guernsey at any point and therefore can influence the long term population of the Island.

Qualified Resident Status – The Situation Today

- 14.3 Under the current Housing Control regime there are certain groups of people who, depending on their circumstances, are granted Qualified Resident status after they have been resident in the Island for a significant period of time.
- 14.4 It is important to point out here that the majority of people living in Guernsey are already defined as Qualified Residents under the current Housing Control Law. Where an individual is familiar with the Law, or has needed to contact the Housing Department in order to obtain a document (for example a Status Declaration), they will probably already be aware that they are defined as a Qualified Resident under the provisions of the current Law.
- 14.5 However, there are some Guernsey residents (an example might include someone who was born here, has lived here for a significant period of time and has never worked) who may not appreciate that, technically, they are defined as a Qualified Resident under the current Law. Details of the circumstances under which someone becomes a Qualified Resident under the current Law are contained in [Appendix E – QUALIFICATION ROUTES](#).

- 14.6 Everyone who acquires the status of Qualified Resident is treated the same, at least in respect of the Law, regardless of the circumstances which led to them becoming qualified.
- 14.7 Becoming a Qualified Resident means that:
- The individual concerned does not require a Housing Licence to occupy any property in Guernsey
 - They can leave Guernsey and return at any time in the future without being subject to any controls
 - They have the automatic right to accommodate their immediate family within their own household
 - Their spouse, and any children born in the Island, can qualify in the shortest qualification period of only 10 years.
- 14.8 There are currently 13 different routes to becoming a Qualified Resident. The full details are contained in [Appendix E – QUALIFICATION ROUTES](#) but, in broad terms, they relate to an individual’s residence on a particular date or during a particular period and reflect a complex combination of different conditions which may include:
- An individual’s place of birth
 - The residential status of their parents
 - Their length of residence in Guernsey
 - Their status during their period of residence.
- 14.9 The number of years that an individual must have been “ordinarily resident” on the Island before they can become a Qualified Resident is 10, 15 or 20 years depending on the route through which somebody qualifies.

14.10 There are two fundamental concerns with the current regime which relate to how a person acquires Qualified Resident status. These two concerns are explored below:

- Complexity
- Challenges on Human Rights grounds

Complexity

14.11 One of the fundamental concerns with the existing system of how a person acquires Qualified Resident status is its complexity and lack of clarity for members of the public. These concerns have been a constant theme reflected in political and public debate over the years.

14.12 The main reason behind this level of complexity is that the conditions that are required to be met in order for someone to become a Qualified Resident differentiate between groups of people on a number of levels as described above. Given the length of residency required, it is not surprising that the circumstances of those concerned can change, causing them to switch from one qualification route to another.

14.13 This level of complexity is also a function of the existing system having been developed over a lengthy period of time. Since 1948, the Housing Control regime has been through various changes, amendments and extensions with each change being driven by the need to address the various issues that the Island faced at each point. It is easy to understand how the changes in the Island's environmental, economic and social pressures over a period of more than 60 years, not to mention changes in the political objectives of successive States Assemblies during that time, set against the need to respect people's acquired rights, has led to the complex system which exists today.

Challenges on Human Rights Grounds

14.14 Another fundamental issue with the current regime, which is intrinsically linked to the system of acquiring Qualified Resident status, is the likelihood of successful challenge on Human Rights grounds.

14.15 For some people their circumstances will change (e.g. their Housing Licence has expired or a relationship with a Qualified Resident or Licence holder has broken down) and they face the prospect of having to leave Guernsey because they are not yet Qualified Residents and they cannot afford Open Market

accommodation. In these circumstances, the individual concerned may approach the Housing Department to request that they are given a Housing Licence which will enable them to remain in the Island.

- 14.16 In these cases the Housing Department must look at “*whether the person who would be permitted by the Housing Licence to occupy a dwelling has familial or like connections with Guernsey of sufficient strength to justify the grant of a Licence*” and “*the periods during which and circumstances in which that person has been resident in Guernsey or elsewhere*” (Section 6 (2)(b) of the Housing Control Law). The “*familial or like connections with Guernsey*” can cover any and every aspect of the person’s home, family and private life. It is at this point that Human Rights considerations, particularly in respect of Article 8, will come into play. The effect of these rights was explained in [Section 6 – HUMAN RIGHTS](#).
- 14.17 Since the Human Rights (Bailiwick of Guernsey) Law, 2000 came into force it has – quite intentionally and properly – become less difficult for people who have been here for six, seven, eight years or more and who wish to remain indefinitely to assert their rights under, in particular, Article 8 of the Human Rights Convention. Those rights exist because the longer somebody lives in a particular place, the stronger their ties to that place become. People will have made friends, joined organisations and started to feel “settled”. Their children will have settled in at school, will have made their own friends and Guernsey may be the only place that they really know. It is these everyday and ordinary things that go into the mix that is somebody’s “*home, family and private life*” which must be protected as a result of their Article 8 rights.
- 14.18 In each case, the Housing Department must show that a decision not to grant a Housing Licence is not an unreasonable interference in the Article 8 rights of the individual and their family.
- 14.19 The Human Rights Law incorporates into domestic law a requirement that every law is applied in accordance with human rights principles. Therefore, when somebody’s Housing Licence expires or their circumstances change and they can no longer live lawfully in Guernsey, although the Housing Control Law itself implies that the individual must cease to live in Local Market accommodation in Guernsey, the Housing Department must look again at the individual’s situation, from the perspective of the Human Rights Law, and ask itself “*Has this person established their home and/or family and private life in Guernsey?*” before reaching a final decision about whether or not to grant a Licence.

- 14.20 The legal advice which the Housing Department has been given over recent years is that in a number of cases, after a period of around six, seven or eight years living in Guernsey, the answer to that question is likely to be “yes”. If a Licence is not issued – which might be in line with the original philosophy of the Housing Control Laws – the person may win any appeal because the decision is an interference with their Article 8 rights and the extent of that interference is not *“necessary in a democratic society for the protection of the rights and freedoms of others”*.
- 14.21 Although somebody coming to work in Guernsey knows from the outset how long their Licence is for, and this is a relevant factor, Human Rights considerations can nevertheless intervene and that factor cannot be conclusive.
- 14.22 However, it is important to note that when the Housing Department grants a Licence in these circumstances, this does not mean that the person becomes a Qualified Resident at that point in time. The further Licence, in most cases, allows the person to remain in Guernsey, if they so choose, long enough for them to become a Qualified Resident in the future.

Proposals

- 14.23 The Population Policy Group (PPG) believes that the principle of a person acquiring Qualified Resident status after a significant period of residence is a sound one and therefore proposes that this principle is carried through into the new population management regime. As mentioned above in paragraph 14.2, Qualified Residents add to the long term population of the Island because they can choose whether or not to live in Guernsey. A system of establishing Qualified Resident status therefore forms a key part of the proposals.
- 14.24 However, as explained at various points earlier in this document, there are a number of problems associated with the details of the existing system and these proposals aim to ensure that those problems are not continued into the future. The proposals are effectively a very different system for establishing Qualified Resident status, even though the principle of someone obtaining Qualified Resident status remains the same.

14.25 After considering the detail of the current regime and its associated problems, the PPG believes that there are two significant milestones that are reached by an individual who is permitted to live in Guernsey for a significant period of time:

- The **first milestone** is the point after which a person's connections with the Island are likely to have become so strong that to require them to leave Guernsey would be an unjustifiable infringement of their Human Rights.
- The **second milestone** is the point after which the community believes that it is reasonable to acknowledge a person's status as an "Islander" or "citizen" because of the contribution and commitment that they have made having lived in the Island for a significant period.

14.26 The PPG has concluded that these two separate milestones are very distinct and are potentially reached at different stages, they should therefore be considered separately within the new regime. The implications of this are discussed below, along with proposals for how this might be managed in the future.

The First Milestone

(Open Market residents are considered in Section 18)

14.27 As described in [Section 6 – HUMAN RIGHTS](#), there comes a point after which a person's connections with the Island are likely to have become so strong that to require them to leave Guernsey would be an unjustifiable infringement of their Human Rights.

14.28 Is it very difficult to determine exactly what that period of time is, and arguably it will be different for each individual as their personal circumstances will vary. However, in order to provide certainty it is important to determine, and set out in the Law, the period after which someone will have the right to continue living in Guernsey permanently if they so choose. This is the first milestone and the PPG proposes that people who acquire that right should be defined as Permanent Residents and therefore will be issued with a Permanent Residence Permit.

14.29 The PPG has examined what the period of residence should be in order to uphold the Island's commitment to Human Rights and for the new regime to be capable of withstanding legal challenges on Human Rights grounds.

- 14.30 After considering the casework associated with administering the current Housing Control regime and taking into account legal advice, the PPG has concluded that a period of residence of:
- 5 years or less would almost certainly be capable of withstanding legal challenges in most cases
 - 8 years or more would almost certainly leave the new regime susceptible to frequent legal challenge
- 14.31 Having concluded that the period should be between 5 and 8 years, the question is what period should be specified in the law. The shorter the period, the lower the risk of successful legal challenge, but this needs to be balanced against the risk that the community will find the period unacceptable because someone living in Guernsey for that period of time will have the choice to remain living here permanently.
- 14.32 The PPG proposes that a period of 7 years represents a reasonable compromise. After someone has lived in the Island for a continuous period of 7 years, it is likely that they will have established their home, family and private life in Guernsey to such an extent that to require them to leave the Island after such time would be considered to be an unreasonable interference with their Human Rights. The PPG considers that in the majority of cases, this period would be deemed to be reasonable from a Human Rights perspective and that, provided exceptional circumstances are properly considered; challenges on Human Rights grounds involving people who have lived in the Island for less than 7 years are likely to be defensible.
- 14.33 This means that in the future, in most circumstances, if someone has lived continuously, and lawfully, in Guernsey for 7 years, under the new regime they will acquire the right to continue living in Guernsey permanently if they so choose and will be issued with a Permanent Residence Permit. (As mentioned above, Open Market residents are considered in Section 18.)
- 14.34 However, it must be pointed out that whatever the period of residency which is defined in the law, an individual living in Guernsey for *any* period of time, could claim that their Article 8 rights have been infringed by a requirement for them to leave the Island if they believed that to be the case. In determining specific applications to remain in the Island indefinitely in these cases, the States must justify that any interference with an individual's Article 8 rights is justifiable and in accordance with Article 8(2) and must undertake a balancing act between the rights of the individual and the needs of the community as a whole.

- 14.35 Because this first milestone forms a fundamental part of the Island's commitment to protecting the Human Rights of all members of the community, the same conditions must apply to everyone in the same way - regardless of place of birth, Guernsey ancestry or route by which the person came to be resident in Guernsey originally.

Rights to Return Having Left the Island After the First Milestone

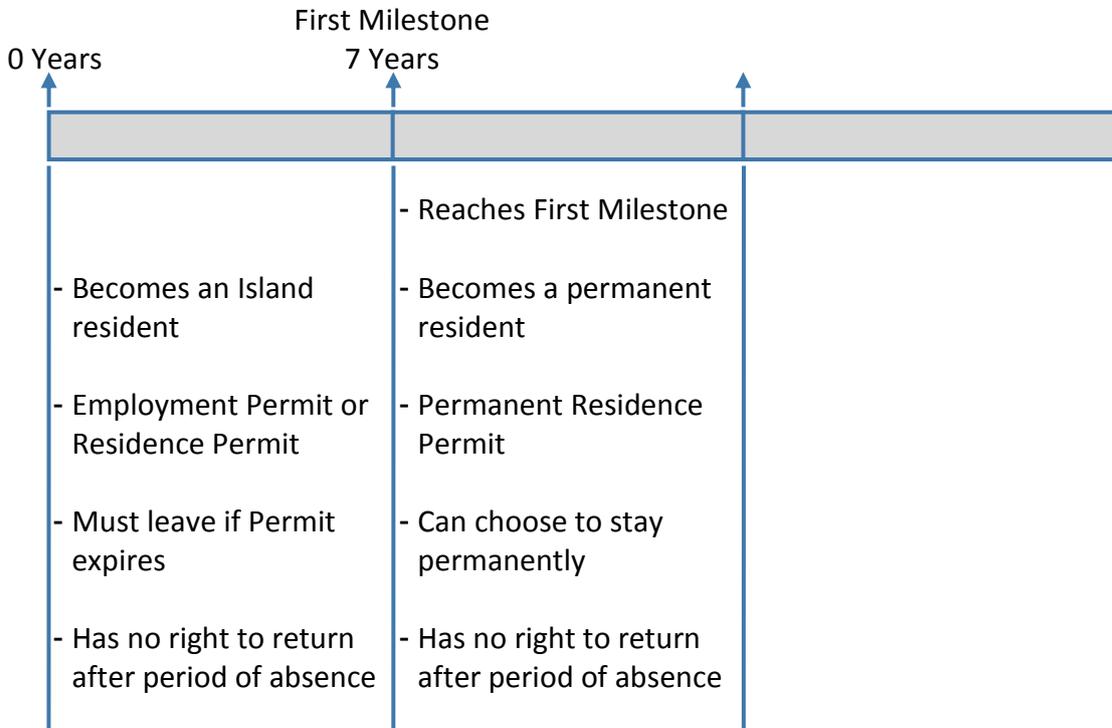
- 14.36 Although an individual who has reached the first milestone and acquired a Permanent Residence Permit will have the right to continue living in the Island permanently if they so choose, it is proposed that if they decide to break that period of permanent residency and move away from the Island *before* they have reached the second milestone (which is explained below), they *will not* have the automatic right to return to live in Guernsey at a later point. Proposals regarding rights to return to the Island *after* somebody has reached the second milestone are explained later in this section.

Other Conditions

- 14.37 In later sections of this document, the different conditions that may be applied to an individual during their period of residence on each type of Permit are considered. Those sections will explore various conditions (including conditions relating to the property in which the Permit holder can live, the work they can undertake and who they can accommodate within their household) along with options for the public to comment on as part of the consultation process. Those later sections will include consideration of what conditions may apply to holders of a Permanent Resident Permit. However, it is important to point out here that any conditions that are placed on an individual once they have acquired a Permanent Resident Permit must not include conditions which have the potential to infringe that person's Article 8 Rights – their right to respect for their private and family life and their home.

Summary of First Milestone

14.38 The diagram below provides a summary of the effect of this first milestone.



The Second Milestone

14.39 As described above, the PPG believes that there is a second, and distinct, milestone that is reached by a person who is permitted to live in Guernsey. This is the point after which the community believes that it is reasonable to acknowledge a person’s status as a Guernsey “citizen” or a “belonger” because of the contribution and commitment that they have made having lived in the Island for a significant period.

14.40 As described earlier in this section, the longer someone has lived in Guernsey, the stronger their links will have become. They will have set down roots and developed a sense of “belonging” to the Island. They will have made friends, joined clubs and organisations; their children will have attended school and made friends of their own. All of these factors will become stronger for those individuals who have lived in the Island until they reach the first milestone and then decide to continue living here after that point. During their time in the Island, such individuals will have made a significant contribution to Guernsey through their work, the taxes that they pay and through their own personal achievements.

14.41 Under the new regime, the PPG proposes that individuals who reach this second milestone in the future should be defined as Qualified Residents and they will be issued with a Qualified Resident Certificate.

The Point at Which an Individual Reaches the Second Milestone and Becomes a Qualified Resident

14.42 In order to provide certainty it is important to determine, and set out in the Law, the period after which someone will acquire the status of Qualified Resident. Because this second milestone is more about how the Island's community values the contribution and commitment that is generated from a lengthy period of residence, and less directly about Human Rights in a legal sense, there is arguably less constraint in determining what that period of residence should be.

14.43 The current Housing Control regime enables an individual to become a Qualified Resident after a period of residence of 10, 15, or 20 years depending on their circumstances and the route through which they qualify – See [Appendix E – QUALIFICATION ROUTES](#). Historically, the community appears to have accepted that a person's contribution and commitment to the Island should be recognised after some point between 10 and 20 years.

14.44 As described earlier in this section, the PPG is concerned that, because the existing system of becoming a Qualified Resident differentiates between groups of people on a number of levels, the system is unnecessarily complex and difficult to understand. The PPG is mindful that these concerns have been a constant theme reflected in political and public debate over the years and wants to ensure that the new regime does not replicate those issues.

14.45 The PPG therefore proposes that an individual will reach the second milestone and become a Qualified Resident after a continuous period of residence in the Island of 14 years.

14.46 This means that in the future, in most circumstances, if an adult or child has lived continuously and lawfully in Guernsey for 14 years, under the new regime they will acquire the status of Qualified Resident and will be issued with a Qualified Resident Certificate. (Open Market residents are considered in Section 18.)

Other Options

14.47 In developing this proposal, the PPG considered some alternative options which are described below.

Discriminating between different groups of people

14.48 An alternative approach would be to allow different groups of people to become Qualified Residents after different periods of time, depending on their circumstances. For example, depending on where they were born or whether they, or their parents, came to the Island for employment reasons etc. The PPG does not recommend this approach, which would replicate a number of the problems associated with the existing system. However, the questions at the end of this section will help the PPG to gauge the views of the public on this issue.

Children becoming Qualified Residents after a shorter period than adults

14.49 The point at which a child becomes a resident in Guernsey, and the length of their stay, will be entirely dependent on the decisions made by their parents. If their parents decide to move away from the Island after the child has lived here for a period of time, for example 7 or 10 years, this does not mean that the child feels any less a part of the Guernsey community.

14.50 The period of time during which the child has lived in the Island may be a significant proportion of their lifetime and, for many, Guernsey may well be the only place that they really know. Their lifestyle choices, cultural views and influences, lifelong friendships and many aspects of their character may have been largely developed while they have been resident in the Island. There is a view that their sense of “belonging” and commitment to the Island will be reached after a shorter period than, for example, in the case of an adult who spends only 7 or 10 years in the Island, having spent significant parts of their life living elsewhere.

14.51 For these reasons, the PPG considered, but does not recommend at this stage, the option of allowing children to become Qualified Residents after a shorter period of continuous residence than adults. Again, the questions at the end of this section will help the PPG to understand the public’s view on this before final proposals are developed.

Rights to Return Having Left the Island After the Second Milestone

14.52 In paragraph 14.33, it was explained that once somebody has reached the *first milestone* they will have the right to continue living in the Island permanently but, if they decide to break that period of permanent residency and move away

from the Island *before* they have reached the second milestone, they *will not* have the automatic right to return to live in Guernsey at a later point.

- 14.53 Once somebody has reached the *second milestone* and has become a Qualified Resident it is proposed that, if they then decide to break their period of residency and move away from the Island, they *will* have the automatic right to return to live in Guernsey at a later point. However, whether or not that automatic right to return should be lost after a period of absence is discussed below.

Losing the Right to Return

- 14.54 There is a view that this right to return to the Island after a period of absence should never be lost. Once somebody has made a long term commitment to Guernsey and therefore acquired their status as a Qualified Resident, that commitment should entitle them to come and go from the Island as they choose later in their life.
- 14.55 There is an alternative view that this right to return to the Island after a period of absence should be lost if that period of absence is significant.
- 14.56 Currently, anybody who has gained Qualified Resident status under the current Housing Control regime and has chosen to leave the Island, can return at any point in the future and live in Guernsey indefinitely, free from any existing controls. The same would be true for a Qualified Resident who currently lives in Guernsey but chooses to leave at some point in the future. (There is no proposal to change the rights to return of existing Qualified Residents.)
- 14.57 As discussed previously in this document, the new population management regime seeks to enable Guernsey to manage changes in the size and make-up of the population in a way that will benefit the community, maintaining the Island's quality of life and standard of living.
- 14.58 There is no way of predicting what impact existing Qualified Residents who are currently living off-Island will have on the quality of life for the Island's community, if and when they do choose to return to the Island. For example, it is not known whether their skills and experience will be of benefit to the Island's economy; whether their age will have a negative impact on the demographic makeup of the population; whether they have made, or will make, any contribution to the Island through paying taxes or through their own personal achievements.

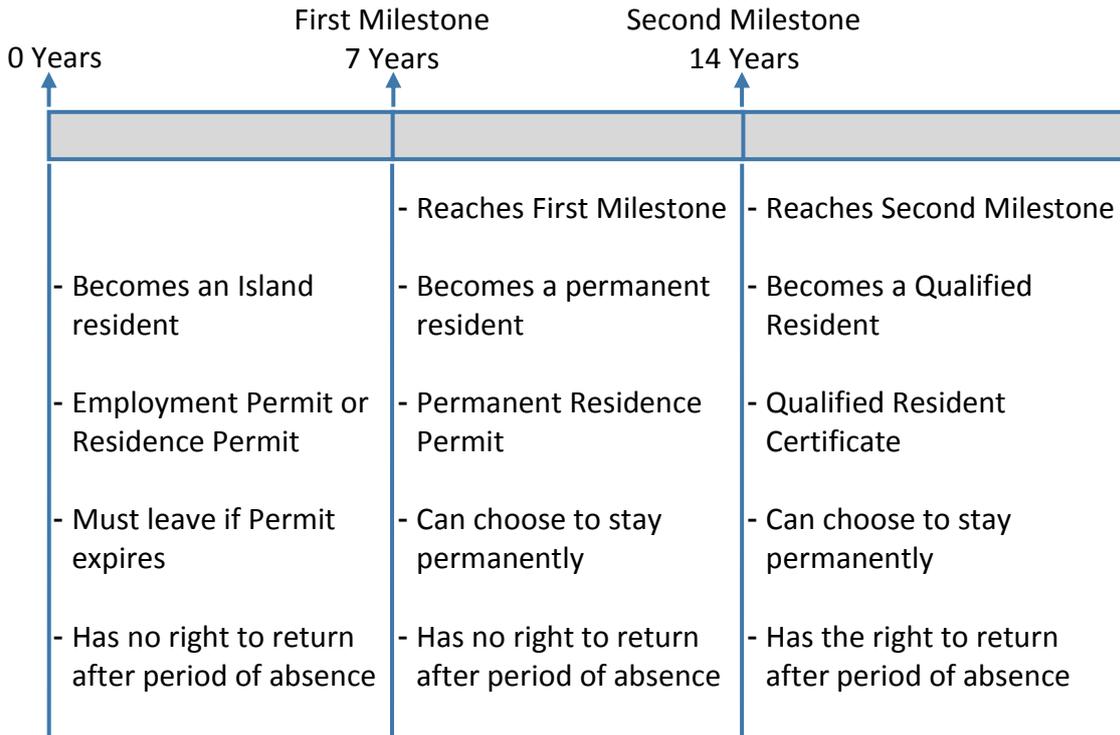
- 14.59 While the PPG considers it inevitable that the above uncertainties will probably have to remain in place in respect of those individuals who have already gained Qualified Resident status under the current Housing Control regime, it is necessary to consider whether or not to adopt policies to reduce those uncertainties for the future.
- 14.60 If the pool of Qualified Residents who can automatically return to the Island to live is allowed to continue to increase in an uncontrolled manner, then it is impossible to ensure that changes in the population are managed in a way that benefits the community in the future.
- 14.61 Once an individual has been away from the Island for a significant period of time, made their home and life elsewhere and has therefore not continued to contribute to the Island financially or personally, there is a view that they should not have the automatic right to return to the Island later in life.
- 14.62 It is perhaps helpful to note the approach adopted by other jurisdictions in terms of loss of qualifications / rights to return. Some jurisdictions distinguish between those who attain their right to return through birth or through close familial connections and those who acquire them through other routes, e.g. for employment reasons. [Appendix C – OTHER JURISDICTIONS](#) includes an overview of how a number of jurisdictions limit an individual’s automatic right to return to live and/or work after a significant break in residence.
- 14.63 The PPG has mixed views on whether or not this automatic right to return should be lost and, if so, after what period of absence from the Island. The questions at the end of this section will help to inform the PPG on what the public’s view is on this point.

Other Conditions

- 14.64 The different conditions that may be applied to an individual during their period of residence on each type of Permit are considered later in this document. However, it is proposed that a Qualified Resident will have the maximum possible freedom from any of those restrictions or conditions related to population management.

Summary of First and Second Milestones

14.65 The diagram below provides a summary of the two milestones and the differences between periods of residence.



Existing Qualified Residents

14.66 As described earlier in this section, the majority of people living in Guernsey are already defined as Qualified Residents and details of the circumstances under which someone can acquire that status under the current Law are contained in [Appendix E – QUALIFICATION ROUTES](#).

14.67 Under the current Housing Control Regime, a Qualified Resident is not required to obtain a Housing Licence. However, they are required to obtain a Right to Work document if they wish to be employed in the Island. This requirement was introduced to enable the Housing Department to confirm that everybody who is employed in the Island is legally housed and that is the only condition which needs to be met in order to obtain a Right to Work document.

- 14.68 It could be argued that in order to be able to effectively manage the size and make-up of the Island's entire population, all existing Qualified Residents should be required to obtain some form of Permit or Qualified Resident Certificate.
- 14.69 The PPG has reviewed this requirement for existing Qualified Residents in three groups:
- a) Existing Qualified Residents who are not currently resident in the Island but who decide to return in the future
 - b) Existing Qualified Residents who are, or wish to be, employed in the Island who are currently required to obtain a Right to Work document
 - c) Existing Qualified Residents who are not currently required to obtain any document under the current regime.
- 14.70 In the case of the first group, the PPG proposes that any existing Qualified Resident who is not currently resident in the Island, but who decides to return in the future, will be required to obtain a Qualified Resident Certificate. There will be no conditions attached to the Certificate, but it would be issued to improve the monitoring of the size and make-up of the population.
- 14.71 In the case of the second group, the PPG proposes that any existing Qualified Resident who is, or wishes to be, employed in the Island, will be required to obtain a Qualified Resident Certificate.
- 14.72 With respect to the third group, before drawing their own individual conclusions and coming up with final proposals, the members of the PPG are keen to gauge the views of the public on whether or not an existing Qualified Resident, who is not currently required to obtain any document under the current regime and who is not – and does not intend to be – in employment, should be required to obtain a Qualified Resident Certificate.
- 14.73 The advantages of requiring this third group to obtain a Qualified Resident Certificate would be firstly, that all Qualified Residents would be treated in the same way, therefore reducing any discrimination within the new regime. Secondly, this would provide more data from which to monitor the size and make-up of the population. However, some data is available from other sources within the States which could be combined, for monitoring purposes, with information held under the new population management regime.

14.74 The disadvantages of requiring this third group to obtain a Qualified Resident Certificate would be firstly, an additional administrative undertaking in terms of issuing Certificates and verification processes. Secondly, the community may find it difficult to accept.

14.75 The questions at the end of this section will help the PPG to gauge the views of the public on this point.

Periods of Time Spent Off-Island

14.76 There will be situations where an individual may spend some time off-Island and the PPG proposes that, in some specific circumstances, they will be considered to have been “ordinarily resident” in Guernsey during that time. Their residence will be considered to be continuous as though they had not left the Island. In the case of children, their parents must be resident in the Island during these periods. These situations will include:

- Any period of time spent in full-time education
- A “Gap Year” additional to time spent in full-time education
- Time spent in the service of HM Forces
- Time spent off-Island for medical reasons
- Time spent off-Island for welfare reasons, for example rehabilitation, or in foster care, or while serving a sentence of imprisonment
- Periods of time necessary to gain work related training or experience not available in Guernsey
- Off-Island work placements and secondments.

14.77 It is envisaged that some of these situations will require the prior approval of the Statutory Official in order for the period of time to be considered to be “ordinary residence”.

Summary of Section 14 – PERMITS FOR LONG TERM RESIDENCY

An individual who has lived continuously and lawfully in Guernsey for 7 years will have reached the *first milestone*. They will acquire the right to continue living in Guernsey permanently if they so choose and will be issued with a Permanent Residence Permit. (Open Market Residents are considered separately, in Section 18.)

An individual who has lived continuously and lawfully in Guernsey for 14 years will have reached the *second milestone*. They will be defined as a Qualified Resident and will be issued with a Qualified Resident Certificate. (Open Market Residents are considered separately, in Section 18.)

Once somebody has reached the *second milestone* and has become a Qualified Resident it is proposed that, if they then decide to move away from the Island, they will have the automatic right to return to live in Guernsey at a later point. This consultation seeks the public's views on whether or not that automatic right to return should be lost after a period of absence, if that period of absence is significant.

In certain circumstances, existing residents would have to obtain some form of Permit or Qualified Resident Certificate. Views on whether this requirement should extend to all existing residents are sought as part of this consultation.

In specific circumstances, certain periods of time spent off-Island will be considered in the same way as if the individual had been resident in the Island during that period, e.g. time spent in full time education.

Your Views

The First Milestone

Question 14a

Do you agree that a continuous period of residence of 7 years represents a reasonable point at which somebody should reach the *first milestone* and therefore be able to reside in the Island permanently if they so choose?

**Question
14b**

If no to Question 14a, what period between 5 and 8 years do you feel would be more reasonable? Can you explain your reasons?

**Question
14c**

Once someone has reached the first milestone and acquired a Permanent Residence Permit (but has not yet become a Qualified Resident), do you agree that they should not have the right to return to Guernsey after a period of absence? If not, why?

The Second Milestone

**Question
14d**

Do you agree with the proposal that somebody should reach the *second milestone* and acquire the status of Qualified Resident after a continuous period of residence of 14 years? If not, after what period of time would you propose?

**Question
14e**

Do you agree with the proposal that individuals should reach the *second milestone* and acquire the status of Qualified Resident after the same period of continuous residence regardless of the circumstances of the individual concerned? If not, what circumstances do you believe should make a difference and why?

Rights to Return

**Question
14f**

Once someone has reached the *second milestone* and become a Qualified Resident, do you agree that they should have the automatic right to return to Guernsey if they choose to move away at some point? If not, why?

**Question
14g**

If yes to Question 14f, do you believe that they should lose that automatic right to return if their period of absence is significant? If so, after what period of absence do you think that right should be lost? Why?

Existing Long Term Residents

**Question
14h**

Do you agree that any existing Qualified Resident who is not currently resident in the Island, but who decides to return in the future, should be required to obtain a Qualified Resident Certificate for the purposes of monitoring? If not, can you explain your reasons?

**Question
14i**

Do you agree that any existing Qualified Resident who is, or wishes to be, employed in the Island, should be required to obtain a Qualified Resident Certificate? If not, can you explain your reasons?

**Question
14j**

Do you believe that existing Qualified Residents, who are not currently required to obtain any document under the current regime (e.g. those who are not, and do not intend to be, in employment), should be required to obtain a Qualified Resident Certificate for the purposes of monitoring? Please explain your reasons.

Periods of Time Spent Off-Island

**Question
14k**

Do you agree with the proposed list describing those periods of time spent off Island which will be considered to be “ordinary residence”? If not, which do you disagree with and why? Are there any additions that you believe should be made to the list?

Other Comments

**Question
14l**

Are there any further comments that you wish to make in relation to what is covered in Section 14 of this Consultation Document? Please provide us with those comments.

15

EMPLOYMENT PERMITS

Proposals

- 15.1 As discussed previously, there are a number of situations where it would be appropriate to allow someone to move to Guernsey to live for a period of time. One of these is for employment related reasons. Guernsey does not have all of the skills that it needs within the existing population. Incoming workers have been in the past, and still are, filling skills shortages in the Island. These individuals are nursing in our hospitals and teaching in our schools and colleges. They are also working in our wealth creating businesses.
- 15.2 It is recognised that the success of Guernsey's economy and the quality of its public services owe a lot to the diverse skills and experience of those who have moved to the Island to work. It would be unrealistic to believe that all of these levels of skills and experience could have been obtained entirely from within the Island's population. If public services and a vibrant economy are to be maintained, then the Island needs to continue to permit people with certain skills to come to the Island to work.
- 15.3 It is proposed that those people who are permitted to come to the Island to live for employment related reasons will be issued with an Employment Permit.
- 15.4 These Employment Permits will be issued for someone to move to Guernsey to fill a post of employment where it has not proved possible to fill the post with someone who is already a Qualified Resident or Residence Permit holder and where the post falls into one of the three categories set out below:
- 15.5 **LEVEL 1** – These Permits will be issued to respond to a persistent and enduring skills shortage where the following criteria apply:
- The skills required are in short supply in Guernsey.
 - They will also be relatively scarce globally.
 - It will be highly unlikely that the skills shortage will be able to be met by Qualified Residents or Residence Permit holders in the foreseeable future.

- The global shortage of skills means that it will be difficult to recruit a replacement Employment Permit holder in the future should the post holder leave.
- 15.6 While it is the application process which will determine whether or not a post meets the criteria for a specific type of Permit, by way of illustration, examples of posts which are likely to result in the issue of a Level 1 Employment Permit might include a specialist medical post or a post which requires rare commercial expertise.
- 15.7 **LEVEL 2** – These Permits will be issued in two sets of circumstances.
- 15.8 The first scenario:
- A post requires specific skills which *are not* available in Guernsey.
 - That skills shortage *is* likely to be able to be met in the foreseeable future. (This may be because of either an anticipated reduction in demand for those skills locally or because a suitably skilled Qualified Resident or Residence Permit holder is likely to become available to fill the post upon the expiry of the Employment Permit.)
- 15.9 The second scenario:
- A post requires specific skills which *are* available in Guernsey.
 - The number of people resident in Guernsey with those skills is not sufficient to fill the number of posts requiring a similar or identical skill set.
 - In the foreseeable future, it will be highly unlikely that the full shortage of these skills will be able to be met by the number of Qualified Residents or Residence Permit holders available with those skills.
- 15.10 However, as distinct from Level 1 posts, in both of the scenarios described above, it will be possible, should the need arise, to source a replacement Employment Permit holder with relative ease, because the skills required are not in short supply globally.

15.11 Again, although it is the application process which will determine whether or not a post meets the criteria for a specific type of Permit, by way of illustration, examples of posts which are likely to result in the issue of a Level 2 Employment Permit might include some teaching posts or a skilled commercial accounting post.

15.12 **LEVEL 3** – These Permits will be issued to respond to manpower shortages where:

- Posts require no specific skills or skills of a lower order than those at Levels 1 and 2.
- There is a need for additional manpower over and above that which can be met by Qualified Residents or Residence Permit holders.

15.13 Examples of posts which are likely to result in the issue of a Level 3 Employment Permit might include those relating to a specific construction project or those where additional manpower is only required on a seasonal basis. However, again these are only offered as illustrative examples because it is the application process which will determine whether or not a post meets the criteria for a specific type of Permit.

Other Conditions

15.14 There will be different conditions attached to the Permits issued for each of the three levels listed above, including conditions on which posts and individuals would be eligible to receive them and restrictions on the period of time for which the holder of a permit in each of the Levels can stay. These conditions are explained below.

LEVEL 1 EMPLOYMENT PERMITS

Long Term Residency

15.15 A Level 1 Employment Permit will be issued for a period of 7 years.

15.16 As discussed previously in [Section 14 – PERMITS FOR LONG TERM RESIDENCY](#), a Permanent Residence Permit will be acquired after a person has been a lawful resident in Guernsey for a continuous period of 7 years. Therefore, if the

circumstances of the Level 1 Permit holder do not change during the 7 year period of their Employment Permit, then they will have the right to continue living in Guernsey permanently. After the first 7 years of their employment, the Permit holder's ability to remain in Guernsey will no longer be conditional upon their continued employment in a specific post. If they decide to continue living in Guernsey until they reach the second milestone, they will then be defined as a Qualified Resident.

- 15.17 A person obtaining a Level 1 Employment Permit for a duration of 7 years would know from the outset that, unless their circumstances change significantly, they will be granted a Permanent Residence Permit after 7 years and will be able to continue living in Guernsey permanently if they so choose.

Family Members

- 15.18 The holder of a Level 1 Employment Permit will be able to accommodate certain "immediate" family members within their household. The details and conditions relating to those family members are contained in [Section 16 – RESIDENCE PERMITS – FAMILY CONNECTIONS](#).

LEVEL 2 EMPLOYMENT PERMITS

Temporary Residency

- 15.19 A Level 2 Employment Permit would be issued for a period of up to 4 years.
- 15.20 At the end of the period for which the Employment Permit was issued, the postholder will be required to leave the Island. If the conditions that led to the issue of the original Permit still apply, it will be possible for the employer to obtain a new Level 2 Employment Permit in relation to the post, but it will not be possible for it to be issued to the same postholder. More details about Subsequent Permits are set out later in this Section.
- 15.21 A person obtaining a Level 2 Employment Permit for up to 4 years would know from the outset that, if their circumstances do not significantly change, they will not be permitted to continue to live in Guernsey for any longer than 4 years.

Family Members

- 15.22 The holder of a Level 2 Employment Permit will be able to accommodate certain “immediate” family members within their household. The details and conditions relating to those family members are contained in [Section 16 – RESIDENCE PERMITS – FAMILY CONNECTIONS](#).

LEVEL 3 EMPLOYMENT PERMITS

Temporary Residency

- 15.23 A Level 3 Employment Permit would be issued for a period of up to 1 year.
- 15.24 At the end of the period for which the Level 3 Permit was issued, the postholder will be required to leave the Island.
- 15.25 However, if, at the end of the period for which the Level 3 Permit was issued, the conditions that led to the issue of the permit still apply, then the Level 3 Permit may be re-issued for a further year. A Level 3 Permit may be re-issued twice for the same person, up to a maximum period of 3 years, without any breaks in residence.
- 15.26 All Level 3 Permit holders will be required to leave the Island after their Permit expires or after 3 years’ residence, whichever is the sooner. More details about Subsequent Permits are set out later in this Section.

Family Members

- 15.27 The holder of a Level 3 Permit will not be permitted to be accompanied by any family members.
- 15.28 Because the primary purpose of Level 3 Permits is to address manpower or lower order skill shortages, the Population Policy Group (PPG) does not consider it unreasonable for the holder of such a Permit to be restricted from accommodating their immediate family, as they are only in the Island on a short term basis. In addition, there is no evidence to suggest that the availability of short term manpower would be reduced as a result of continuing this existing restriction.

ADMINISTRATION ARRANGEMENTS FOR EMPLOYMENT PERMITS

Flexibility

- 15.29 In the previous paragraphs, specific time periods for each type of Employment Permit have been defined. However, the PPG recognises that, in unusual or exceptional circumstances, there may need to be some flexibility within those time periods. The PPG also recognises that the circumstances of the individual, the business, or the situation regarding skills shortages may well change for a given Permit during its lifespan.
- 15.30 The PPG proposes that the Statutory Official will have the discretion to consider requests to adjust the time periods prescribed, if there are unusual or exceptional circumstances related to a specific application for a Permit.

Issuing the Permit

- 15.31 It is proposed that the Employment Permit will be issued to an individual and that the Permit will enable that individual to work in a specific post for a specific employer.
- 15.32 It is proposed that an Employment Permit must be issued before the individual sets foot on the Island to work. It will be an offence for anybody to undertake any work on the Island unless they first obtain an appropriate Permit. Equally, it will be an offence for an employer to allow an employee to commence working without the appropriate Permit.

The Application Process

- 15.33 As discussed earlier in this document, the new population management regime needs to be supported by efficient and flexible administrative processes that support the Island in being an attractive place to live, to work and to do business. If the process for applying for an Employment Permit is unnecessarily complex and bureaucratic, then there is a risk that Guernsey's economy and public services will suffer because we will be unable to attract people with the skills that are needed and will be unable to maintain other support services, for example, hospitality.
- 15.34 The regime will have a good degree of transparency with well publicised policies, procedures and rules. This means that an employer, and any potential employee, should be able to establish the likelihood, and type and duration, of

an Employment Permit being issued before they begin the application process. As a result, the number of unsuccessful applications should be minimal.

- 15.35 Before an Employment Permit is granted, the potential employee will be required to provide the following information:
- A job offer, from an employer, for a post which is identified in the published policies
 - Details of their relevant qualifications and experience
 - Details of any criminal convictions
 - Evidence of English language skills where appropriate for the post
 - Details of any existing connections to Guernsey, e.g. close family members already resident in Guernsey
 - Their age
 - Details of the people who will be accompanying them if permitted
 - Details of any criminal convictions for those accompanying them.
- 15.36 Some of the information provided will be used as determining factors in the decision making process and some will be used for population monitoring purposes.
- 15.37 The employer will be required to:
- Confirm the details of the job offer, thereby acting as the “sponsor” of the Employment Permit holder
 - Demonstrate that it has not proved possible to fill the post with somebody who is a Qualified Resident or Residence Permit holder
 - Confirm that they have taken up references and carried out appropriate criminal records checks for the potential employee.
- 15.38 More generally, as discussed in [Section 11 – LEGISLATIVE AND POLICY FRAMEWORK](#), before any request for an Employment Permit can be considered, the employer will be required to demonstrate that his business falls

within an area of business where, as a result of the direction given by the States Strategic Plan, inward migration will be permitted.

- 15.39 Rather than this requirement having to be met in respect of each request for an Employment Permit, it might be possible for employers to submit details about their business activities at agreed intervals, for example annually, in order to reduce the administrative processes required for each individual application for an Employment Permit.
- 15.40 Once the application process has been successfully completed, the Employment Permit will be issued to the individual who can then move to Guernsey to take up the post specified by the Employment Permit.

Changing Jobs

- 15.41 It is proposed that holders of Employment Permits will be able to apply to change job at any time during the life of their Permit, as long as the new post is also identified in the published policies as one which will attract an Employment Permit.
- 15.42 This proposal seeks to recognise that businesses change and develop over the period for which these Employment Permits will be issued. If a business reorganisation creates a role which will attract an Employment Permit, then the employer will be permitted to fill that role with an existing Employment Permit Holder, as long as all of the relevant criteria are met.
- 15.43 This proposal also recognises that an individual will continue to develop skills over the duration of their Employment Permit and that they are likely to want to develop their career. If an employee wants to change employer, or change jobs with the same employer, within the life of their Employment Permit, then they will be able to do so, as long as the new post is identified in the published policies as one which will attract an Employment Permit and as long as all of the relevant criteria are met.
- 15.44 A Permit will only be issued for the balance of the original Permit duration i.e. if someone moves from a post which attracts a 4 year Employment Permit after 1 year to another post attracting the same length Permit, the new Permit would only be issued for 3 years. This is to ensure that someone who would not meet the criteria for filling a post attracting a Level 1 Employment Permit does not accrue 7 years continuous residence by “stacking” licences of a shorter duration.

- 15.45 The employment and training opportunities available for Qualified Residents and Residence Permit holders will not be affected as an Employment Permit holder will only be able to move to another post which will also attract an Employment Permit – one of the criteria that needs to be met before any Employment Permit will be issued is that the employer must demonstrate that it has not proved possible to fill the post with somebody who is a Qualified Resident or Residence Permit holder.
- 15.46 These proposals will mean that those individuals who have been issued an Employment Permit will be able to deliver the best possible value to Guernsey's economy but not at the expense of the opportunities available to Qualified Residents or Residence Permit holders.

Additional Jobs

- 15.47 It is proposed that anyone who has been issued with an Employment Permit may hold more than one job.
- 15.48 This proposal reflects the current arrangements and the PPG has not found any evidence to suggest that these arrangements are having a negative impact on the employment situation in the Island.
- 15.49 There is a view that unemployment numbers in the Island could be reduced if existing employment related licence holders were restricted from having second jobs. However, there is anecdotal evidence to suggest that many of the roles which are taken as second jobs are not roles which those individuals who are registered as unemployed are looking to fill.
- 15.50 The PPG believes that its proposal will give Employment Permit holders flexibility and choice and will enable Guernsey to maximise the productivity of its available workforce.

Subsequent Permits

- 15.51 Where an individual has been issued with a Permit for a given period and has then left the Island once that period of time has been completed, they may subsequently wish to seek to obtain an Employment Permit to return to live in the Island at a later point.
- 15.52 The PPG proposes that issuing an Employment Permit in these circumstances will only be considered where the individual concerned has lived away from the Island for a specified minimum period of time between Permits. It is proposed

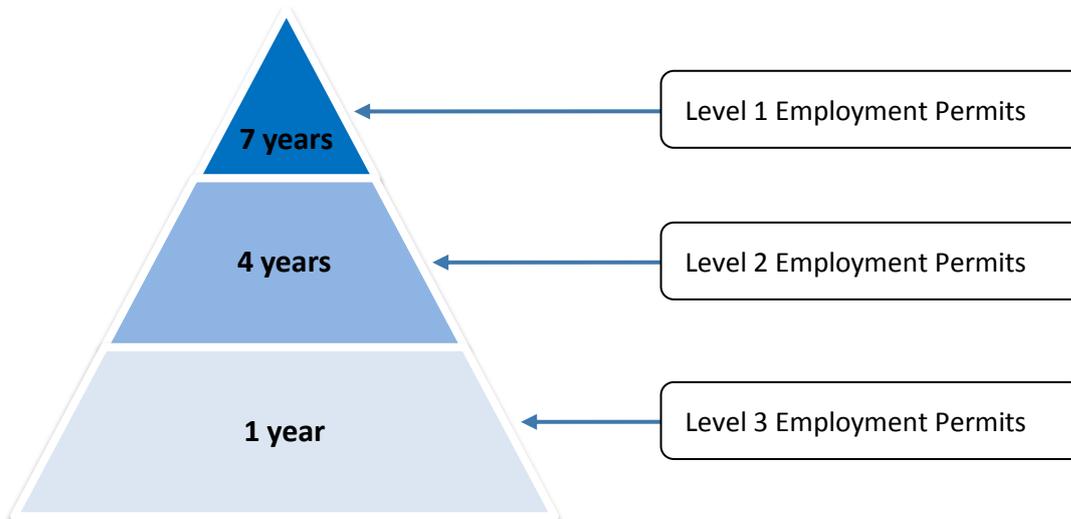
that an individual must have been away from the Island for a period of time which is at least equal to the duration of their last period of residence in the Island.

- 15.53 For example, an individual who leaves the Island having lived here for 4 years by virtue of a Permit would need to spend at least 4 years away from the Island before they would be eligible to obtain an Employment Permit for a subsequent period of residence.
- 15.54 Similarly, an individual who leaves the Island having lived here for 1 year, would need to spend at least 1 year away from the Island before they would be eligible to obtain an Employment Permit for a subsequent period of residence. (It should be remembered that, as described in paragraph 15.25, it is proposed that Level 3 Employment Permits of 1 year duration may be re-issued twice for the same person in certain circumstances, up to a maximum period of 3 years, without any breaks in residence.)
- 15.55 The new regime is aimed at enabling the States to manage the size and make-up of the Island's population. It therefore aims to restrict the number of people who can obtain the right to live here permanently, for reasons of their employment, to only those who meet the requirements to fill a post attracting a Level 1 Employment Permit (as detailed in paragraph 15.5) and are therefore eligible to obtain a Permit of 7 years duration. It will be important to ensure that other individuals coming to the Island for employment reasons (who are eligible for Employment Permits of a shorter duration) do not build up a number of separate periods of residence that, when added together, may lead to them being able to live in the Island permanently if they so choose.
- 15.56 In [Section 6 – HUMAN RIGHTS](#) it was explained that there comes a point after which a person's connections with the Island are likely to have become so strong that to require them to leave Guernsey would be an unjustifiable infringement of their Human Rights. Including a requirement for an individual to have spent a specified minimum period of time away from the Island before being issued with a subsequent Permit for employment reasons should ensure that they do not establish their private and family life and their home in the Island to such an extent that a requirement for them to leave the Island would be considered to be an unjustifiable interference in their Article 8 Rights.
- 15.57 The PPG believes that its proposal will give employers a reasonable degree of flexibility and a good return on their "investment" in their employees, but without compromising the new regime's overriding objective to enable the management of the size and make-up of the Island's population.

Number of Employment Permits

15.58 It is not possible to accurately predict the level of skills shortages that Guernsey will experience in the future and this will vary over time depending on the changing economic climate. Consequently, it is not possible to predict the number of posts that will fall into each of the three groups described above.

15.59 Looking back at the Island's historical skills shortages, for the year ending 31st March 2009, 88% of employment related licences were short term licences issued to fill manpower shortages. Only 2% were issued for essential employment posts for 15 years i.e. those which give rise to an expectation of permanent residence in the Island. From this, it can be seen that the most significant number of Employment Permits are likely to be issued for posts that fill manpower shortages i.e. Level 3 Employment Permits. At the other end of the scale, the number of Level 1 Employment Permits issued is likely to be limited. This is illustrated in the pyramid below:



Summary of Section 15 – EMPLOYMENT PERMITS

Level 1 Employment Permits will be issued for a period of 7 years to address persistent and enduring skills shortages where it is unlikely that those skills will be easily sourced, either on Island or globally, in the foreseeable future. If the circumstances of the Permit holder do not change during that 7 year period, they will acquire the right to continue living in Guernsey permanently if they so choose and will be issued with a Permanent Residence Permit.

Level 2 Employment Permits will be issued for a period of up to 4 years either

- (i) Where a post requires specific skills which are not available in Guernsey, but where that skills shortage is likely to be able to be met in the foreseeable future; or
- (ii) Where the skills required are held by Qualified Residents or Residence Permit holders, but the number of people resident in Guernsey with those skills is insufficient to fill the total number of posts requiring a similar or identical skill set.

In both cases, it should be possible, if required, to source a replacement Employment Permit holder with relative ease, because the skills required are not in short supply globally. Ordinarily, the holder of a Level 2 Employment Permit would not acquire any residence rights.

Level 3 Employment Permits will be issued for a period of up to 1 year to fill posts where there is not a need for a high level of skill, but where there is a need for additional manpower over and above that which can be sourced from within the Island. Such a Permit could be issued up to 3 times for the same person without any breaks in residence. The holder would acquire no residence rights.

Your Views

**Question
15a**

Do you agree with the proposals set out in paragraphs 15.5 and 15.15 – 15.18 for issuing Level 1 Employment Permits? If not, can you explain your reasons?

**Question
15b**

Do you agree with the proposals set out in paragraphs 15.7 – 15.10 and 15.19 – 15.22 for issuing Level 2 Employment Permits? If not, can you explain your reasons?

**Question
15c**

Do you agree with the proposals set out in paragraphs 15.12 and 15.23 – 15.28 for issuing Level 3 Employment Permits? If not, can you explain your reasons?

**Question
15d**

Do you agree with the proposed application process as detailed in paragraphs 15.33 – 15.40? If not, can you explain your reasons?

**Question
15e**

Do you agree that holders of Employment Permits should be able to apply to change job, as long as the new post is also identified in the published policies as one which will attract an Employment Permit? If not, can you explain your reasons?

**Question
15f**

Do you agree that anyone who has been issued with an Employment Permit should be able to hold more than one job if they are content to do so? If not, can you explain your reasons?

**Question
15g**

Do you agree with the proposals for the issuing of subsequent permits as detailed in paragraphs 15.51 – 15.57? If not, can you explain your reasons?

**Question
15h**

Are there any further comments that you wish to make in relation to what is covered in Section 15 of this Consultation Document? Please provide us with those comments.

16

RESIDENCE PERMITS – FAMILY CONNECTIONS

Proposals

- 16.1 As discussed previously, there are a number of situations where it would be appropriate to allow someone to move to Guernsey to live for a period of time. It is recognised that people may want to live in Guernsey because they have strong family connections with someone who is already permitted to live here. In these cases, it is proposed that these individuals will be required to obtain a Temporary Residence Permit before they are able to come to the Island to live.
- 16.2 Since the early 1980's the Housing Control regime has limited who may be accommodated, without the need for a separate Licence, within the household of Qualified Residents and holders of Essential and Non-Essential Licences. Since short term Licences were introduced in 1982, the holder of such a Licence has not been permitted to be accompanied by any members of his immediate family.
- 16.3 As described in [Section 15 – EMPLOYMENT PERMITS](#), the Population Policy Group (PPG) proposes that the holder of a Level 1 or Level 2 Employment Permit *will* be able to accommodate certain “immediate” family members within their household. The PPG also proposes that the holder of a Level 3 Employment Permit *will not* be permitted to be accompanied by any family members.
- 16.4 The PPG also proposes that the holders of Permanent Residence Permits and Qualified Residents will be able to accommodate certain “immediate” family members within their household.
- 16.5 Under the new regime, Immediate family members will be defined as an individual’s:
- a) Spouse / Partner
 - b) Parents and Parents-in-law
 - c) Children
 - d) Grandchildren

- 16.6 The PPG believes that this definition should allow most close family relationships to be maintained and should allow an individual to continue to support those who are their genuine dependents.
- 16.7 The PPG also believes that this definition, which is the same as the provisions under the current Housing Control regime, will not be considered unreasonable by the community or by those who may be looking to relocate to Guernsey for employment reasons.
- 16.8 Experience of administering the current Housing Control regime has shown that relatively few people wish to be accompanied by members of their immediate family beyond their spouse or partner and children. It is not common for people to choose to live in families comprising more than their most immediate family and the cost of property in Guernsey makes this an expensive option.
- 16.9 Where people are joined by other family members it is usually because an unforeseen event has occurred that makes this necessary – the most obvious being where an elderly parent is no longer able to look after themselves independently. In those circumstances, it is a natural reaction for the family to want to relocate their relative so that they can live in their household to provide that support.

Conditions

- 16.10 The duration of a Temporary Residence Permit will be dependent on the length of time which the individual with whom the Family Member has a close relationship is permitted to live in Guernsey. For example, a 4 year Temporary Residence Permit will be issued to allow a Family Member to live with the holder of a Level 2 Employment Permit which has been issued for 4 years. A 7 year Temporary Residence Permit will be issued to allow a Family Member to live with the holder of a Permanent Residence Permit or Qualified Resident Certificate.
- 16.11 This Temporary Residence Permit will be linked to the individual with whom they have a close family relationship and will be conditional on the continued residency of that person and the continuation of that relationship.
- 16.12 The Family Member must live within the family home of the individual with whom they have a close family relationship.
- 16.13 The Temporary Residence Permit will enable the Family Member to work if they so wish, with no restrictions on the type of work they can undertake. This proposal is discussed further in [Section 22 – OTHER CONDITIONS](#).

- 16.14 Other conditions which might be applied to the holders of Temporary Residence Permits are discussed in [Section 22 – OTHER CONDITIONS](#).

Long Term Residency

- 16.15 As discussed previously in [Section 14 – PERMITS FOR LONG TERM RESIDENCY](#), a Permanent Residence Permit will be acquired after a person has been a lawful resident in Guernsey for a continuous period of 7 years. If the Family Member described above lives continuously, and lawfully, in Guernsey for 7 years, then they will have the right to continue living in Guernsey permanently. Once they reach their Qualification Point, they will then be defined as a Qualified Resident.
- 16.16 The period after which someone will become a Qualified Resident was discussed in Section 14 and will be influenced by the outcome of this consultation.
- 16.17 However, a person obtaining a Temporary Residence Permit would know from the outset that they will be granted a Permanent Residence Permit after 7 years if their circumstances do not change.
- 16.18 The PPG proposes that family members will need to continue to live within the household of the individual with whom they have the close relationship during their period of residence under a Permanent Residence Permit. Once they become a Qualified Resident, they will have the right to live independently if they so choose. The question of what other conditions might apply to the holder of a Permanent Resident Permit are discussed in sections 20 – 22 of this document and this consultation process will help to determine what those might be.

Changes in Circumstances

- 16.19 Where there is an unforeseeable change in circumstances which affects the ability of a Family Member to be able to remain living within the family home of the individual with whom they have a close relationship, for example the breakdown of a relationship, they might be entitled to obtain a Residence Permit in their own right. The circumstances in which this may apply are detailed later in [Section 19 – UNFORESEEABLE CHANGES IN CIRCUMSTANCES](#).

Existing Residents

- 16.20 Under the current Housing Control regime, in most cases family members who are permitted to reside in the Island as “members of a household”, are not required to obtain a document unless they wish to be employed in the Island (in which case they are required to obtain a Right to Work document).
- 16.21 In order to be able to effectively manage the size and make-up of the Island’s population, the PPG proposes that every adult who is currently permitted to live in the Island under the existing provisions for “members of a household” will be required to obtain a Temporary Residence Permit under the new regime.

The Situation Today

- 16.22 The current Housing Control regime allows Qualified Residents and the holders of Essential and Non-Essential Licences to be accompanied by their spouse/partner, children, grandchildren and their parents and in-laws, subject to them all living as part of his household.
- 16.23 There are no restrictions on the type of work they can undertake.
- 16.24 All can become qualified residents, although only the children and spouse/partner have an automatic route to qualification.
- 16.25 The holder of a short term Licence may not be accompanied by any dependents and/or members of his immediate family.

Other Options

- 16.26 In coming to the proposals relating to family members, the PPG also considered alternative approaches. These other options are not recommended for the reasons described below.
- 16.27 **Limiting family members to spouse / partner and children** – the PPG is not persuaded that the evidence from the current regime suggests that there is a need to reduce the current list of “members of household” for the reasons set out in the above discussion. The PPG is also concerned that if the list was restricted in this way it may prove to be unattractive to potential skilled employees who would otherwise be interested in working in Guernsey. This will place additional limitations on the pool of available people to fill some essential jobs in the Island.

- 16.28 **Allowing Level 3 Employment Permit holders to accommodate members of their immediate family** – the PPG concluded that as the primary purpose of Level 3 Employment Permits is to address short term or temporary manpower shortages, it would not be considered to be unreasonable for the holder of such a Permit to be restricted from accommodating their immediate family, as they are only in the Island on a short term or temporary basis. In addition, there is no evidence to suggest that the availability of short term labour would be reduced as a result of the restriction proposed.
- 16.29 **Restricting employment options for family members** – there is a view that employment options for family members should be restricted to posts which would attract an Employment Permit because of a skill or manpower shortage in the Island. The PPG does not recommend this restriction at the current time because it does not believe that there is any evidence to suggest that the unemployment situation in the Island would be improved by such a measure.
- 16.30 Anecdotal evidence suggests that having this group of people available as part of the general workforce may have contributed to the growth of some Island businesses, thereby creating increased job opportunities for the Island, not less.
- 16.31 The demographic challenges which the Island faces in terms of its ageing population suggest that Guernsey should be actively encouraging anybody of working age in the Island to be economically active. The Skills Strategy Development Group is examining this matter under its ‘Participation’ pillar (see 5.8) and to restrict the employment options of some members of the available workforce further would seem to run contrary to that aim.
- 16.32 The additional administrative commitment that would be required, combined with the potential to deter prospective employees that the Island needs in order to fill essential posts, suggests that there would need to be substantial benefits gained from the introduction of such a condition. The PPG has not found any evidence to suggest that that is likely to be the case.

Summary of Section 16 – RESIDENCE PERMITS – FAMILY CONNECTIONS

Temporary Residence Permits would be issued to enable immediate family members to live with a Qualified Resident or the holder of a Permanent residence Permit or Employment Permit (other than a Level 3 Employment Permit).

Your Views

Question 16a

Do you agree with the proposed definition of immediate family members as defined in paragraph 16.5? If not, why? Who would you define as an Immediate Family Member?

Question 16b

Do you agree that the holders of Level 1 and Level 2 Employment Permits should be able to accommodate certain immediate family members, as defined in paragraph 16.5, within their household? If not, can you explain your reasons?

Question 16c

Do you agree that the holder of a Level 3 Employment Permit should not be able to accommodate certain immediate family members? If not, why?

Question 16d

Do you agree that the holders of Permanent Residence Permits and Qualified Residents should be able to accommodate certain immediate family members as defined in paragraph 16.5 within their household? If not, why?

Question 16e

Do you agree that immediate family members should be required to continue to live within the household of the individual with whom they have the close relationship until that Family Member becomes a Qualified Resident? If not, can you explain your reasons?

Question 16f

Do you agree that every individual who is currently permitted to live in the Island under the existing provisions for "members of a household" should be required to obtain a Temporary Residence Permit under the new regime? If not, why?

Question 16g

Are there any further comments that you wish to make in relation to what is covered in Section 16 of this Consultation Document? Please provide us with those comments.

17

RESIDENCE PERMITS – UNCONTROLLED PROPERTIES (STATES OWNED)

Proposals

- 17.1 Currently, there are certain properties within States ownership, which are exempt from any controls, under the Housing Control Law, in terms of who may occupy them. Properties which fall within this exemption include, for example the Health and Social Services Department's (HSSD) staff accommodation. There are others living in this type of accommodation, but to illustrate the numbers involved - currently the HSSD employs just under 200 nursing staff who occupy such accommodation; these individuals make up more than 20% of HSSD's nursing staff.
- 17.2 This exemption has been in existence since 1948 and was originally intended to provide the States with the flexibility it needed to be able to bring in key labour with construction experience, and other essential skills, without restriction or delay as the Island recovered from its occupation during the war years.
- 17.3 Because there is no requirement for an individual who lives in one of these properties to obtain a housing licence under the Housing Control regime, the Housing Department does not have any control over who lives in these properties and for how long. If the occupants are employed, they will need to obtain a Right to Work document, but that simply requires that they are legally housed, there are no other conditions which need to be met. The essentiality of their employment is not assessed, neither is the strength of their connection with the Island. (The exception to this is States social housing, the occupation of which is managed by the Housing Department, but through its social housing allocations policies rather than through the administration of the Housing Control Law.)
- 17.4 Because the primary purpose of the Housing Control Law is to preserve a stock of Local Market housing for occupation by Qualified Residents and existing licence holders, the Housing Department has no reason to have an interest in the occupation of these properties. This is because, while they are Local Market properties, they would not be available for occupation by the general population of Qualified Residents and licence holders because there are other policies in place which may restrict who can occupy them. The properties therefore fall outside of the "stock of Local Market housing" which is the concern of the Housing Department.

- 17.5 However, from a population management perspective, the situation is different. Regardless of what type of accommodation an individual is living in, they still contribute to the population of the Island at any given time and depending on their length of residency, they could contribute to the Island's population in the longer term.
- 17.6 The new regime is intended to enable the States to manage the size and make-up of the Island's population. For this reason the Population Policy Group (PPG) does not see any justification for individuals living in States owned accommodation to be exempt from the requirement to obtain a Permit simply because of the type of accommodation which they occupy.
- 17.7 Because this accommodation is "managed" by the States, there is an argument that data relating to the number of people occupying this type of property could be made available from other sources within government for the purposes of population monitoring. However, the same could be said for other types of "managed" accommodation which is outside of the control of the States. There does not seem to be any reasonable justification for the States, as a landlord, to be treated any differently than any other landlord.
- 17.8 Given the proportion of, for example, nursing staff who are accommodated in such properties, it would not be unreasonable to assume that many such "key workers" would be employed in the future in a post that would attract an Employment Permit of 4 years or more duration. In examining this area, the PPG is conscious that work is ongoing with regard to a Key Worker Strategy, one part of which is focussed on resolving accommodation issues. The new population management regime should be capable of supporting whatever plans the Key Worker Strategy produces.
- 17.9 The PPG proposes that any individual living in States owned properties should be subject to the same requirements as any other member of the community with regards to their requirement to obtain the relevant Permit.

Other Options

- 17.10 The PPG has not considered any alternative options in this area. As explained above, the ownership of a property in which an individual lives is not something which the PPG believes has an impact on the management of the size and make-up of the population and the States, as an employer and a landlord, should be subject to the same population management requirements as any other employer or landlord in the Island.

**Summary of Section 17 – RESIDENCE PERMITS – UNCONTROLLED PROPERTIES
(STATES OWNED)**

The occupants of States owned properties would be subject to the same requirements as any other Island resident.

Your Views

**Question
17a**

Do you agree that any individual living in States owned properties should be subject to the same requirements as any other member of the community with regards to their requirement to obtain the relevant Permit? If not, why?

**Question
17b**

Do you agree that the States, as an employer and a landlord, should be subject to the same population management requirements as any other employer or landlord in the Island? If not, can you explain your reasons?

**Question
17c**

Are there any further comments that you wish to make in relation to what is covered in Section 17 of this Consultation Document? Please provide us with those comments.

18

RESIDENCE PERMITS – UNCONTROLLED PROPERTIES (OPEN MARKET)

- 18.1 This section of the consultation document differs from others in that it does not contain any options or proposals for change. Until the Population Policy Group (PPG) has been able to gain the views of the public on the *population management* aspects of the existing system for residence in the Open Market, it is not possible to determine what changes should be made, if any.
- 18.2 This section raises the question, from a population management perspective, of whether there should be provision in the new regime to allow an individual to live in the Island for any reason other than being a Qualified Resident, filling a skill or manpower shortage or having a close family connection. The questions at the end of this section will help to determine the public's views and those views will be taken into account when the PPG considers whether there is any justification for change. The PPG will then be in a position to bring forward proposals for any changes and how they might be implemented.

The Open Market Today

- 18.3 The Open Market Housing Register is a list of Open Market properties which are exempt, to varying degrees, from controls in terms of who may occupy them. On November 15th 2010, there were 1701 properties on the Register, which is broken down into four parts as listed below.

Part A – Private Houses and Flats (94.1% – 1601 properties)

Part B – Hotels and Guesthouses (3.4% – 59 properties)

Part C – Nursing and Residential Homes (0.7% – 12 properties)

Part D – Lodging Houses (1.7% – 29 properties)

- 18.4 The Open Market, as we know it today, has been in existence since 1957 in some form or another. This section of the consultation document does not attempt to provide details of the various States decisions which have shaped the Open Market over the years, however further information is available in a supplementary document entitled [THE DEVELOPMENT OF THE OPEN MARKET](#)⁸.

⁸ See www.gov.gg/population/openmarket.

- 18.5 In summary, in 1957 properties at the upper end of the housing market (defined as having a Rateable Value of over £50 at that time) were made exempt from any Housing Controls because it was acknowledged that there was little demand for such properties from “*local families*”. It was believed that the loss of such properties from within the stock of housing which was subject to Housing Control would not seriously affect the housing shortage which was concerning Islanders at that time.
- 18.6 As explained in [Section 2 – THE NEED FOR A NEW POPULATION MANAGEMENT REGIME](#), the primary purpose of the current Housing Control Law is to preserve a stock of properties for occupation by Qualified Residents and existing licence holders. Since 1957, successive States have continued to resolve that this can be achieved while allowing people to come to Guernsey and live in Open Market properties that may not be Qualified Residents, may not have strong family connections here and may not necessarily possess essential skills or fill manpower shortages.

The Purpose of the Open Market

- 18.7 In terms of housing availability and controls on who may occupy a property in Guernsey, the only resolutions that have been made by the States regarding the Open Market have related to the properties themselves and the fact that this group of properties should, to varying degrees, be exempt from Housing Controls. To date there has been no formal States policy that sets out the purpose of the Open Market.
- 18.8 However, the States has recognised the perceived benefits of the Open Market on various occasions. For example, in 1961, when the States considered proposals for the development of Fort George, the then Advisory and Finance Committee, stated:

“Fully developed, it [Fort George] could make an important contribution to Guernsey’s potential as a residential resort and consequently to that strengthening of her economy which is certain to be needed in the future.”⁹

- 18.9 Similarly, in 1969, the following benefits were listed in the States Report proposing the creation of the Housing Register to record all Open Market properties:

⁹ Billet d’État IX of 1961

(i) The benefits to the Guernsey economy of the tax on incomes arising from the capital brought to the Island by Open Market residents;

(ii) The benefits to Island financial institutions of Open Market residents¹⁰.

18.10 This is in contrast to the approach adopted in Jersey and a number of other jurisdictions. For example, Jersey's Housing Law specifically allows for certain high wealth immigrants, who will make a major contribution to the Island's tax revenues, to live in high value properties in Jersey without the need for a licence¹¹.

18.11 Despite the lack of States policies regarding the Open Market, there have been, and still are, many assumptions about residents of the Open Market and what effect they have on the Island. Some common perceptions are that

- *Open Market residents live off of their investment income and they don't work unless they own their own business,*
- *The Island benefits from their presence, primarily through the taxes that they pay, but also through the capital which they bring into the Island and their potential to invest in the local economy.*

In some cases these perceptions may be accurate but, in others, the realities are very different from those perceptions. The analysis of the population of the Open Market which follows later in this section attempts to provide some insight into those realities.

Human Rights Considerations

18.12 As described earlier in this document in [Section 6 – HUMAN RIGHTS](#), the European Convention on Human Rights was extended to Guernsey in the 1950's and our own Human Rights Law came into force in 2006. This means that we are required to protect the Human Rights of all members of the community, including those living in the Open Market, and that all of Guernsey's laws must be applied in a way that respects those Human Rights.

¹⁰ There is a view that the existence of the Open Market was the catalyst for the development of the financial services industry.

¹¹ These individuals are often referred to as "1(1)(k)'s" as this relates to the section of the 1949 Law which determines the conditions of their residence in Jersey.

- 18.13 When considering how to manage changes in the size and make-up of Guernsey's population, there is one set of rights that is of particular significance: *Article 8 - the right to respect for private and family life, home and correspondence*. This is significant because any regime which determines who should be able to come to live in Guernsey, for how long and whether specific conditions should apply to them during their stay, has the potential to cause a direct intrusion into a person's private and family life and their home.
- 18.14 While the detailed Human Rights considerations explained in Section 6 are not repeated here, some of the main issues specifically affecting the Open Market are explored below.
- 18.15 As noted above, the Human Rights of every member of the community must be protected, including those living in the Open Market. However, this does not mean that an Open Market resident should be permitted to move into a Local Market property simply because they wish to, regardless of the length of time that they have been resident in the Island.
- 18.16 There are a number of routes to becoming a Qualified Resident but, with the exception of children who meet specific criteria¹², occupation of an Open Market property is not one of them. In the main, Open Market residents who do not hold residential qualifications cannot live in a Local Market property unless they are granted a Housing Licence¹³.
- 18.17 Under a policy operated by the Housing Department, a Housing Licence can be issued to enable the owner(s) of an Open Market property to reside in Local Market accommodation provided that they have been resident in Guernsey for more than 20 years, are aged over 65 or are in ill health. However, this policy is subject to the person deleting an Open Market property from the Housing Register. Such applications are rare.
- 18.18 The only other means by which an Open Market resident who wishes to move into the Local Market can be permitted to do so, is if it can be demonstrated that there has been a significant change in their personal circumstances which means that they are unable to remain in the Open Market. The change in circumstances must be significant, normally such that if they were prevented from moving into the Local Market, then they would have to leave Guernsey, resulting in a breach of their Article 8 rights.

¹² Details of the circumstances under which someone becomes a Qualified Resident under the current Law are contained in Appendix E – QUALIFICATION ROUTES.

¹³ Somebody who is entitled to hold a Housing Licence but who opts to live in the Open Market will attain residential qualifications in the same way as if they had opted to live in the Local Market, as will their partner and children.

- 18.19 These restrictions on movements from the Open Market to the Local Market are not in breach of the Human Rights Law, BUT, as explained in detail in [Section 6 – HUMAN RIGHTS](#), any “interference” in an individual’s Article 8 Rights can only be justified when it is “*necessary in a democratic society*” for defined reasons.
- 18.20 In *Campbell v Housing Authority* [2002] the Court made the following observation regarding the general policy not to allow Open Market residents to move into the Local Market,

“In simple terms the authority has a general policy that those who have spent all their time in Guernsey as adults residing in open market accommodation will not be granted licenses to occupy local market accommodation. That may well be a wholly justified policy reflecting as it does the basic division between the open and local markets as mirrored, both in terms and in spirit, in the legislation; provided that the policy is expressed to be a general presumption capable of rebuttal in appropriate circumstances, so “that those who apply the policy are prepared to listen to reasons why it should not be applied in a particular case and in consequence in appropriate circumstances to make exceptions to it” (as per Beloff, JA). Indeed, the Authority has recognised exceptions in the case of long-term open market residents who are required to move into the local market for reasons of age and ill-health.”

- 18.21 Therefore, placing restrictions on movement from the Open Market to the Local Market does not constitute a breach of the Human Rights Law, as long as the general policy can be set aside in exceptional cases.

The Open Market in the Context of Population Management

- 18.22 [Section 20 – RESTRICTING WHERE PEOPLE CAN LIVE](#) discusses whether, from a population management perspective, there is a need to place conditions on who can occupy particular types of properties depending on the type of Permit they hold. However, it is worth pointing out here that it is possible, as part of the new population management regime, to place restrictions on the property in which somebody can live – as long as there is a legitimate reason for doing so.
- 18.23 It is also possible, should it be required, for a multi-tiered housing market to be effectively managed within a future regime which is based on managing the size and make-up of the Island’s population.

- 18.24 There is a view that there is still only limited demand, from the population of Qualified Residents and existing licence holders, for the type of property that is inscribed on the Housing Register. If this perception is correct, it could be argued that there is no reason to consider any significant changes to how the Open Market is managed in the future.
- 18.25 However, the new population management regime is concerned with the size and make-up of the population and, from that perspective, an individual's impact on the population is the same regardless of the type of property in which they live. It does not matter *where* a person lives in the Island, what matters is simply that they do live here.
- 18.26 There is also a view that because the Housing Register was effectively closed in 1982 (i.e. the stock of properties within the Open Market cannot get any larger) there is a self-limiting effect on the size of the population that can be accommodated within the Open Market, simply because there are only a limited number of properties available. However, the perception that there is a limiting effect is flawed given that there are currently no restrictions on how many people can be accommodated within 94% of Open Market properties (those private houses and flats which are on Part A of the Housing Register).
- 18.27 This lack of restrictions provides a flexible mechanism for employers to meet some of their ever changing skills requirements without the need for the granting of additional Housing Licences which, in the long term, could lead to the acquisition of residential qualifications. In terms of preserving the Island's housing stock for qualified residents, the purpose of the current Housing Control Law, it could be argued that having maximum occupancy of Open Market accommodation is a very efficient use of the Island's housing stock.
- 18.28 In the 1980's and 90's the then Housing Authority proposed that the occupation of Part A properties should be restricted to "members of the household" in the same way as such restrictions applied to Local Market properties i.e. Spouse, Parents, Children, Grandchildren and Parents-in-law. These proposals were rejected by the States¹⁴.

¹⁴ Further information is available in a supplementary document entitled THE DEVELOPMENT OF THE OPEN MARKET – See www.gov.gg/population/openmarket.

Open Market Residents within the New Population Management Regime

18.29 In earlier sections of this document, it was explained that the proposals for the new regime will mean that

- Employment Permits will be issued for those people who are permitted to live in the Island to fill a skill or manpower shortage
- Temporary Residence Permits will be issued for those people who have a strong family connection with someone who is already permitted to live here
- Permanent Residence Permits will be issued after 7 years continuous residence for the two groups above
- Qualified Resident Certificates will be issued to Qualified Residents.

18.30 There is no doubt that some residents of the Open Market make a major contribution to the economy of the Island, including a number of high profile individuals who have started successful businesses which provide significant employment opportunities. However, there is currently no practical mechanism to determine whether or not an existing or future Open Market resident would be eligible to obtain a Permit or Certificate under any of those circumstances listed above, and it is reasonable to assume that many of them would not.

18.31 The question, from a population management perspective, is whether there should be provision in the new regime to allow an individual to live in the Island for any reason other than being a Qualified Resident, filling a skill or manpower shortage or having a close family connection. If so, then those reasons need to be considered and the relevant Residence Permit made available as part of the new population management regime.

18.32 Until the PPG has been able to gain the views of the public on the *population management* aspects of the existing system for residence in the Open Market, it is not possible to determine what changes should be made, if any. Hence, this section of the document does not contain any proposals or options. The questions at the end of this section will help to determine the public's views and those views will be taken into account when the PPG considers whether there is any justification for change. The PPG will then be in a position to bring forward proposals for any changes and how they might be implemented.

18.33 The information presented below, which gives some analysis of the Open Market as it stands today, helps to give an understanding of the issues that will need to be addressed in deciding how the existing arrangements might be incorporated into the new population management regime.

The Size and Make-up of the Open Market Population

18.34 For the majority of Open Market properties there is no requirement for individuals living in them to obtain a document under the Housing Control regime, hence the Housing Department currently has very little knowledge about who lives in the Open Market, or for how long¹⁵.

18.35 The Social Security Department holds information about the majority of residents which provides some useful information about the size and make-up of the Open Market population. The Social Security Department's data for 2009 has been used to produce the information presented in the following paragraphs. The information provided for this exercise has all personal references removed and individuals cannot be identified.

18.36 When interpreting these figures, it is important to bear in mind that everybody living in Guernsey must register with the Social Security Department after they have been resident in Guernsey for 26 weeks or when they commence work, whichever is the sooner. Therefore, while the majority of Open Market residents will be required to register with the Social Security Department, a number may not have to because their Guernsey home is not currently their main residence and their periods of residence in Guernsey are short and they do not work when they are here.

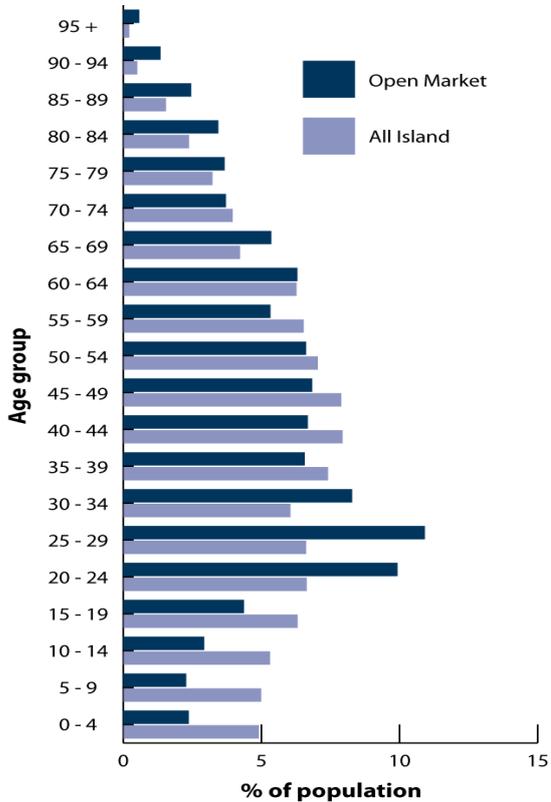
18.37 In December 2009, there were 5560 people living in Open Market properties, which was approximately 9% of the Island's total population¹⁶.

18.38 Chart 18.1 below shows the age distribution of the population living in Open Market properties compared with the age distribution of Guernsey's total population.

¹⁵ If they are employed, individuals will need to obtain a Right to Work document, but that simply requires that they are legally housed, there are no other conditions which need to be met.

¹⁶ All total population comparisons are based on March 2009 data, when the Island's population was reported to be 62,274.

Chart 18.1 Age Distribution – 2010

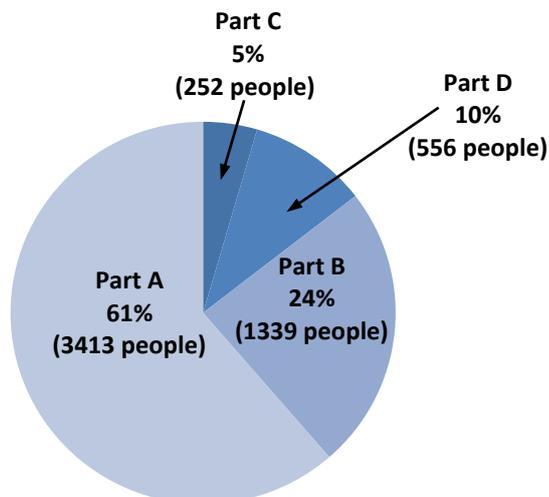


This diagram, known as a population pyramid, gives a representation of the age and gender distribution of the population of Guernsey and the population of the Open Market.

Each bar represents a particular age group and the length of that bar shows the proportion of the population of that age.

18.39 Chart 18.2 below shows the number of people who were living in properties listed in each of the four parts of the Open Market Housing Register. The size and characteristics of each of these groups are examined in more detail below.

Chart 18.2 Where the Open Market Population Live



The Population of Part A Open Market Properties (Private Houses and Flats)

- 18.40 Private houses and flats are listed on Part A of the Housing Register and may be occupied by the owner or principal tenant¹⁷ and members of his household for an indefinite period, without the need for a Housing Licence. There are no restrictions on who is considered to be a “member of the household” for properties listed on the Housing Register (the definition in the current Law limiting a member of the household to any of the Spouse, Parents, Children, Grandchildren and Parents-in-law of the owner or principal tenant only applies to Local Market properties).
- 18.41 As shown in Chart 18.2 above, in December 2009, 61% of those living in the Open Market were living in a Part A property (3413 people). This was approximately 5% of the Island’s total population.
- 18.42 In December 2009, the average household size for Part A properties was approximately 2.13 people. Although these household size figures are only indicative, the Open Market figure is lower than the average household size for the whole Island, which was estimated in the 2006 Housing Needs Survey at just over 2.5 people and at the time of the 2001 census, was 2.51 people.
- 18.43 An analysis of these households shows that approximately 9% of Part A properties have four or more adults living in them and just over 1% have seven or more adults living in them.
- 18.44 While some of these households are family units, the Housing Department is aware, from the information that it holds on Right to Work documents, that approximately 8% of Part A properties are occupied by groups of apparently unrelated adults. The information shows that more than half of the working adults in Part A of the Open Market are living in these properties.
- 18.45 A property may be owned by a number of individuals or by a single individual or a company. So long as the property is occupied in a way that means it can remain listed in Part A of the Housing Register, all of the occupants are exempt from controls over the length of their residence in the Island and are free to undertake any type of employment.
- 18.46 From the data available it is not possible to establish whether or not the employment that these individuals are engaged in would attract a Housing Licence if one were applied for.

¹⁷ The 1994 Law defines “*principal tenant*” in relation to a dwelling listed in the Housing Register as the person who is the principal tenant of the whole of that dwelling

The Population of Part B Open Market Properties (Hotels and Guesthouses)

18.47 An Open Market guesthouse or hotel with a valid Boarding Permit is listed on Part B of the Housing Register. The people who can occupy a Part B property without a Housing Licence are listed below.

- Qualified residents
- The owner or, if the property is let, the principal tenant
- The manager, provided he is employed full-time and does not work anywhere else
- The immediate family of either the owner, principal tenant or manager
- Full time staff of the hotel or guesthouse, provided they are not employed elsewhere
- Bona fide tourists.

18.48 As shown in Chart 18.2 above, in December 2009, 24% of those living in the Open Market were living in hotels and guesthouses on Part B of the Housing Register (1339 people). This was approximately 2% of the Island's total population.

The Population of Part C Open Market Properties (Nursing and Residential Nursing Homes)

18.49 An Open Market nursing or residential home is listed on Part C of the Housing Register. The people who can occupy a Part C property without a Housing Licence are listed below.

- Qualified Residents
- The owner or, if the property is let, the principal tenant
- The manager, provided he is employed full-time and does not work anywhere else
- The immediate family of either the owner, principal tenant or manager
- Full time staff of the home, provided they are not employed elsewhere.

- 18.50 As shown in Chart 18.2 above, in December 2009, 5% of those living in the Open Market were living in nursing and residential homes on Part C of the Housing Register (252 people).
- 18.51 The majority of people living in Part C are living in the residential or nursing homes as long-term residents and not as employees.

The Population of Part D Open Market Properties (Lodging Houses)

- 18.52 An Open Market lodging house is listed on Part D of the Register and can only be occupied, without a Housing Licence, by the owner and his immediate family. Anyone else living in an Open Market lodging house must hold either residential qualifications or a Housing Licence.
- 18.53 As shown in Chart 18.2 above, in December 2009, 10% of those living in the Open Market were living in Lodging Houses on Part D of the Housing Register (556 people). This was approximately 1% of the Island's total population.

Perceptions about Residents of the Open Market

- 18.54 As mentioned in paragraph 18.11, there are many assumptions about residents of the Open Market and what effect they have on the Island. A commonly held perception is that
- *Open Market residents live off of their investment income and they don't work unless they own their own business,*
 - *The Island benefits from their presence, primarily through the taxes that they pay, but also through the capital which they bring into the Island and their potential to invest in the local economy.*

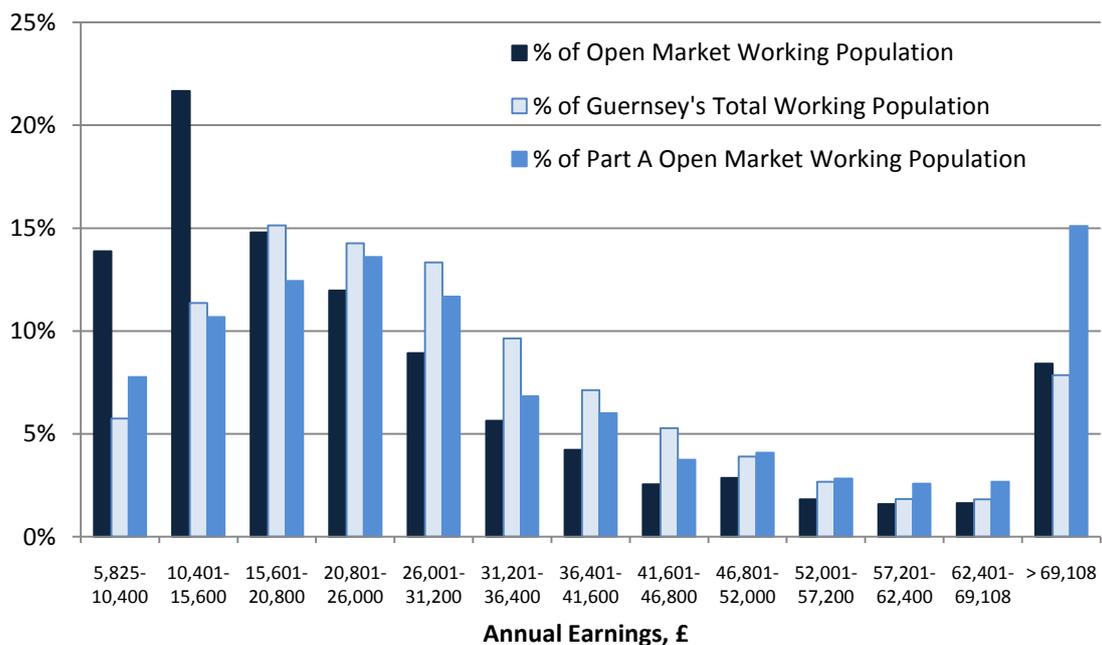
In some cases, these perceptions may be accurate but, in others, the realities are very different from those perceptions.

- 18.55 The information below is not intended to provide a complete analysis of the Open Market population. It is intended to provide an understanding that the perception noted above, which may be held by some Island residents, does not necessarily reflect the general reality. Without this understanding, opinions and views may well be based on mis-informed assumptions and perceptions.

Distribution of Earnings for the Working Population

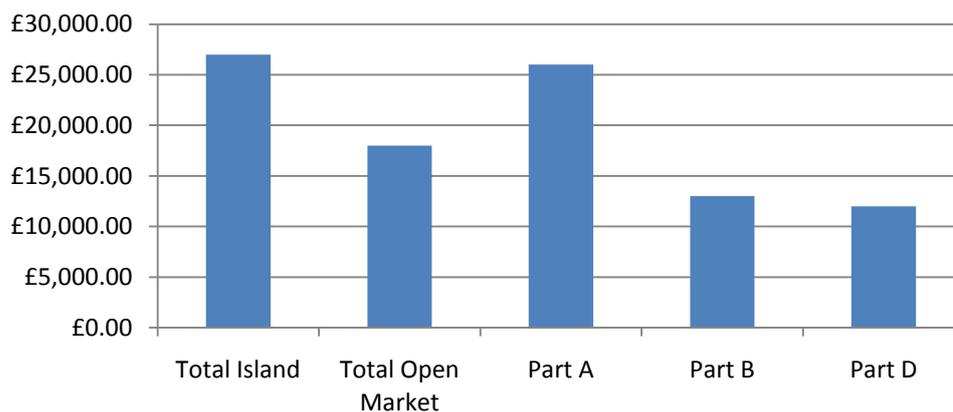
- 18.56 The Social Security Department's data on 2009 earnings for those who were working and living in Open Market properties and for the Island's total population provide some interesting comparisons.
- 18.57 When interpreting these figures, it is important to bear in mind that the data only provides an overview of earnings under the Social Insurance Law. In other words, it does not give any measure of wealth or economic contribution to the Island.
- 18.58 45% of those living in Open Market properties (2513 people) were working, either employed or self-employed, and they accounted for approximately 8% of the Island's total workforce.
- 18.59 The median earnings for those living in the Open Market who were working, either employed or self-employed, was approximately £18,000 per annum. The median earnings for the total employed and self-employed population of the Island was approximately £27,000 per annum.
- 18.60 The characteristics of the earnings of residents living in the different Parts of the Open Market help to explain the earnings distribution and how it compares with the distribution for the overall population.
- 18.61 The different distributions of annual earnings can be seen in Chart 18.3 below.

Chart 18.3 Earnings Distributions



18.62 Chart 18.4 below compares the median earnings for those who are working, either employed or self employed, for the Island’s total population and for the Open Market¹⁸.

Chart 18.4 Median Earnings for the Working Population



18.63 38% of those living in a **Part A** property were working (1303 people), either employed or self-employed, and they accounted for approximately 4% of the Island’s total workforce. While it is not possible to determine the extent of their contribution, we know that these people are contributing to the success of our economy to some degree, simply by virtue of the fact that they are employed. This group are employed in various parts of the Island’s economy across both the private and public sectors.

18.64 The median earnings for those living in Part A houses and flats who were working, either employed or self-employed, was approximately £26,000 per annum. This was comparable with the median earnings for those who were working across the Island’s total population, which was approximately £27,000 per annum.

18.65 60% of those living in a **Part B** property were working (805 people), either employed or self-employed, and they accounted for approximately 2.5% of the Island’s total workforce. Given the restrictions on who can live in this type of property, the majority of these people will be staff of the hotel or guesthouse in which they live (although members of the family of the owner, tenant or manager may be resident within the property and working elsewhere).

¹⁸ Information about employment and earnings for those living in Part C properties on the Housing Register has not been included for data protection reasons – the small size of some of the data sets leaves the potential for individual people or businesses to be identified.

- 18.66 The median earnings for those living in Part B hotels and guesthouses who were working, either employed or self-employed, was approximately £13,000 per annum. This was around half of the median earnings for those who were working across the Island's total population.
- 18.67 This difference is likely to be due to the restrictions on who can live in a Part B hotel or guesthouse, as described in paragraph 18.47, and the nature of the work undertaken by the majority of those residents. This group is likely to include a large number of people who are employed on a seasonal basis and the nature of the industry means that some staff are likely to receive "payment in kind" in the form of accommodation and meals and their rate of pay will reflect those adjustments¹⁹.
- 18.68 67% of those living in a **Part D** property were working, either employed or self-employed (375 people). Because of the restrictions on who can live in Part D properties, with the exception of the owner and their family, this group will all be Qualified Residents or holders of a Housing Licence.
- 18.69 The median earnings for those living in Part D lodging houses who were working, either employed or self-employed, was approximately £12,000 per annum. Again, this was around half of the median earnings for those who were working across the Island's total population.
- 18.70 This difference is again likely to be due to the nature of the work undertaken by the majority of those who live in a Part D lodging house. The Housing Department's data shows that the majority of licence holders living in these properties hold a Short Term Housing Licence which is valid for only nine months. Their annual earnings assessment will therefore only include nine months of earnings. As well as adjustments which may be made for "payment in kind" as mentioned above, Short Term Housing Licences are granted to fill manpower shortages in low-skilled or semi-skilled areas, which will be reflected in the rates of pay for those roles²⁰.

Assessable Income for the Non-Employed Population

- 18.71 The Social Security Department's data on 2009 assessable income for those who were non-employed and living in Open Market properties and for the Island's total population provide some interesting comparisons.

^{19,20} These figures pre-date the introduction of Minimum Wage legislation.

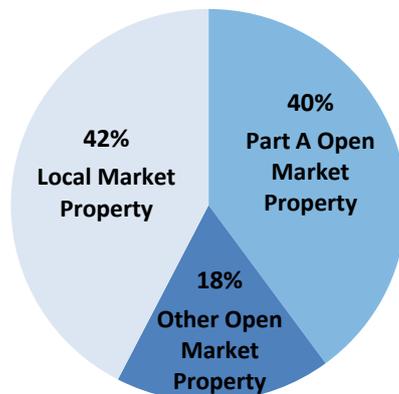
18.72 When interpreting these figures, it is important to bear in mind that the data only provides an overview of assessable income under the Social Insurance Law. In other words, it does not give any measure of wealth or economic contribution to the Island.

18.73 7% of those living in Open Market properties (391 people) were non-employed, but with an annual assessable income of more than £69,108²¹. These are people who are not working in Guernsey and will include those who are living off of unearned income (e.g. income from investments).

18.74 For comparison, the proportion of the Island's total population who were non-employed, but with an annual assessable income of more than £69,108, was 1% (679 people).

18.75 Chart 18.5 below shows which type of property this group of residents were occupying.

Chart 18.5 Type of Property Occupied



Guernsey's population of Non-Employed people who have an annual assessable income of more than £69,108.

Perceptions versus Reality

18.76 The information provided above shows that the common perception that is held by some Island residents that

- *Open Market residents live off of their investment income and they don't work unless they own their own business,*

²¹ In 2009, the *Upper Income Limit* was £69,108 per year. The *Upper Income Limit* is the highest level of income on which contributions are assessed.

- *The Island benefits from their presence, primarily through the taxes that they pay, but also through the capital which they bring into the Island and their potential to invest in the local economy,*

may be accurate in some cases, but for the majority of Open Market residents, the realities are very different from those perceptions.

Summary

18.77 As stated earlier, until the PPG has been able to gain the views of the public on the *population management* aspects of the existing system for residence in the Open Market, it is not possible to determine what changes should be made, if any. Hence, this section of the document does not contain any proposals or options. The questions at the end of this section will help to determine the public's views and those views will be taken into account when the PPG considers whether there is any justification for change. The PPG will then be in a position to bring forward proposals for any changes and how they might be implemented.

Summary of Section 18 – RESIDENCE PERMITS – UNCONTROLLED PROPERTIES (OPEN MARKET)

From a population management perspective, an individual's impact on the population is the same regardless of the type of property in which they live. It does not matter *where* a person lives in the Island, what matters is simply that they do live here.

There are a number of assumptions and perceptions about Open Market residents and what they bring to the Island. Many of those perceptions are not correct.

This section raises the question of whether there should be provision in the new regime to allow an individual to live in the Island for any reason other than being a Qualified Resident, filling a skill or manpower shortage or having a close family connection.

The question of how the new regime should apply to residents of Open Market properties forms part of this consultation, hence there are no options or proposals for change at this time.

Your Views

Question 18a

Do you believe that there should be provision in the new regime to allow an individual to live in the Island for any reason other than being a Qualified Resident, filling a skill or manpower shortage or having a close family connection? If so, for what reasons and why?

The list below includes some reasons which might be considered to be of relevance, but is only offered to assist your thinking.

- Economic contribution
 - Tax payable
 - Investment in property
 - Investment in local businesses
- Entrepreneurship
- Cultural enrichment
- Significant personal achievements
- Distinguished individuals
- Positive Island ambassadors

Question 18b

If yes to Question 18a, and if you have listed any which relate to economic contribution, do you believe that there should be a minimum level of contribution in order to be eligible to live here? Can you explain your reasons?

Question 18c

Do you believe that the size of the Open Market population is sufficiently well managed due to the fact that there are only a limited number of properties available?

Question 18d

Do you believe that it would be appropriate to place restrictions on who can be accommodated within a Part A Open Market property? If so, what restrictions would you propose and why?

Question 18e

Are there any further comments that you wish to make in relation to what is covered in Section 18 of this Consultation Document? Please provide us with those comments.

19

UNFORESEEABLE CHANGES IN CIRCUMSTANCES

Proposals

- 19.1 This section covers situations where an individual finds that their circumstances have changed while they are resident in Guernsey. The list of different circumstances below is not intended to be exhaustive; by their very nature it is impossible to predict all such scenarios. However, these examples are considered to be those in which somebody will find themselves in such a difficult position that it is considered important for them to have a clear understanding of the relevant policy. These policies are very similar to those which are used within the current Housing Control regime, although those policies are not published.
- 19.2 There will be many other circumstances which arise and it is intended that these will be dealt with by the Statutory Official on a case by case basis.

Relationship Breakdown

- 19.3 An individual may have been issued with a Temporary Residence Permit to allow them to live with their spouse / partner who is permitted to live in the Island. As described earlier, this Temporary Residence Permit will be linked to their spouse / partner and only allows the holder to live within the same household.
- 19.4 If this relationship breaks down, the Temporary Residence Permit holder will not be entitled to retain their Permit, because it was only issued on the condition that their relationship continues.
- 19.5 However, the Temporary Residence Permit holder would be able to retain their Permit, but the condition that requires them to live within the same household as their spouse / partner would be removed allowing them to live independently, only if:
- they have day-to-day care and control of dependent children from the relationship or
 - to enable them to maintain contact with such children for so long as their spouse / partner remains in Guernsey.

Bereavement

- 19.6 An individual may have been issued with a Temporary Residence Permit to allow them to live as an immediate family member with somebody who is permitted to live in the Island. As described earlier, this Temporary Residence Permit will be linked to the individual with whom they have a close family relationship and only allows the Permit holder to live within the same household.
- 19.7 In the event of the death of the individual with whom they have the relationship, the Temporary Residence Permit holder would be able to retain their Permit, but they would be permitted to live on the Island independently.

Serious Illness or Disability

- 19.8 Where an individual has been issued with an Employment Permit and they become seriously ill or disabled during the period for which the Employment Permit was issued, they will be issued with a Temporary Residence Permit that is not linked to their employment. In other words, irrespective of whether they can continue to work or not, they will be able to remain in Guernsey for the period for which the Employment Permit was originally issued. Requests to stay in Guernsey beyond that period will be considered only on medical grounds.
- 19.9 An immediate family member may have been issued with a Temporary Residence Permit to allow them to live with the person described above. They will be able to retain their Permit which allows them to live within the same household as their family member.

Victims of Abuse

- 19.10 An individual may have been issued with a Temporary Residence Permit to allow them to live as an immediate family member with someone who is permitted to live here. As described earlier, this Temporary Residence Permit will be linked to the individual with whom they have a close family relationship and only allows them to live within the same household.
- 19.11 In the event that any individual becomes the victim of abuse, they will be able to retain their Permit, but the condition requiring them to live within the same household as those carrying out the abuse would be removed which would allow them to live independently, or in the case of a dependent child, in the care of others.

19.12 This policy recognises the anecdotal evidence which suggests that people may feel forced to stay within an abusive environment, because they fear that they will have to leave the Island if they leave the family home. Such an individual, or their family members, will know with certainty that this is not the case and it is hoped that this certainty will go some way to assisting those affected in removing themselves from an abusive situation.

Summary of Section 19 – UNFORESEEABLE CHANGES IN CIRCUMSTANCES

If the circumstances under which a person is permitted to live in the Island change, in certain situations the conditions under which the permission was originally granted may be changed to allow them to remain in the Island.

Your Views

Question 19a

Do you agree that policies should be made public regarding what options might be available to Permit holders should they suffer an unforeseen change in their circumstances? If not, why?

Question 19b

Do you agree with the proposed course of action described in each of the circumstances listed above? If not, which do you disagree with and why?

Question 19c

Are there circumstances, other than those set out in this section, which you think should be covered under a clear and published policy? If so, please describe them and explain your reasons.

Question 19d

Are there any further comments that you wish to make in relation to what is covered in Section 19 of this Consultation Document? Please provide us with those comments.

20

RESTRICTING WHERE AN INDIVIDUAL CAN LIVE

Proposals

- 20.1 The Population Policy Group (PPG) is conscious that the primary purpose of the new population management regime is about managing the size and make-up of the population, rather than managing where a person can live. It therefore believes that if restrictions continue to be placed on where an individual can live under the new regime, they must be considered within that context.
- 20.2 The PPG recognises that such restrictions are at the very heart of the Housing Control regime, but has found no supporting evidence to show that they continue to be effective in ensuring that those who are permitted to live in Guernsey can find a property which meets their needs. Indeed, there has been respected economic opinion over recent years which suggests that the current approach is causing property prices to rise to the detriment of all Islanders, mainly because essential licence holders are being directed to particular parts of the property market and so increasing the demand in those areas.
- 20.3 The PPG proposes that restrictions on where the holder of a Level 3 Employment Permit can live should continue to be used. Under the current Housing Control regime, anybody on a short term employment related licence is not permitted to live independently and the PPG believes that this restriction should be carried through into the new regime for the holders of Level 3 Employment Permits.
- 20.4 The primary purpose of Level 3 Employment Permits is to address short term or temporary manpower shortages, and the PPG believes that it would not be unreasonable for the holder of such a Permit to be restricted from living independently, as they are only in the Island on a short term or temporary basis. In addition, there is no evidence to suggest that the availability of short term labour would be reduced as a result of this restriction.
- 20.5 However, the PPG proposes that, as a general principle, there should be no restrictions on where an individual can live attached to Level 1 and Level 2 Employment Permits. In reaching its proposals, the PPG is mindful that the individual will have skills and / or experiences which are in short supply within the Island and has therefore been identified as being essential to Guernsey's economy.

- 20.6 Further, the Housing Department had advised the PPG that from its experience essential licence holders, like the majority of people, look to secure the property that best suits their needs rather than simply looking for their cheapest option. Based on this experience it is questionable how far government interference in restricting where a small percentage of people can live can have any positive influence on the property market.
- 20.7 The PPG also noted that not all licence holders look to purchase property and so any proposals must work equally well in the rental sector.
- 20.8 In reaching these proposals, the PPG noted that not only is the effectiveness of the current approach open to question, but it is also difficult and time consuming to administer. However, the PPG accepts that the ability to impose some restrictions on where a Permit holder can live might be a useful tool in protecting parts of the housing market where there is an identified demand from Qualified Residents or existing licence holders.
- 20.9 The PPG therefore proposes that provision should be made within the new regime for the Statutory Official to include such restrictions, where there is an identified need to do so to protect a specific part of the Island's housing stock, as part of the conditions attached to Level 1 and Level 2 Employment Permits.

Current Situation

- 20.10 The Housing Control Law allows the Housing Department to attach conditions to any licence it issues, including conditions it believes are necessary to address any housing shortages in Guernsey. The ability to limit a licence holder's housing choices reflects the Law's primary purpose of ensuring that there is sufficient housing to meet the needs of Qualified Residents and current housing licence holders.
- 20.11 The Housing Department's approach is to attach standardised housing conditions to most employment-related licences which generally take the form of restricting the holder's housing options by:
- Setting a minimum Tax on Real Property (TRP) value for the property they may wish to rent or purchase, or
 - Setting a maximum number of habitable rooms (i.e. excluding kitchen and bathrooms etc.) the property can have.

- 20.12 These housing restrictions are calculated solely by looking at the licence holder's salary package (i.e. including salary, bonuses and any benefits such as a company car, housing subsidy or private health insurance). In general terms the higher the salary package of the licence holder the higher the minimum TRP. There is also a link between the licence holder's salary package and the number of habitable rooms offered.
- 20.13 The link between TRP and salary is important as not all licence holders are on high incomes. For example nurses, social workers and teachers will be on relatively modest salaries.
- 20.14 As TRP is calculated based on the size of the property, an assumption has been made that the higher the TRP the more expensive the property is likely to be. So, by setting a minimum TRP value by reference to the salary of the licence holder, those with higher incomes are directed to rent or buy larger properties.
- 20.15 The option based on a maximum number of habitable rooms is mainly aimed at single licence holders or couples without children, who may prefer to rent or buy a smaller property rather than occupy a larger property which may be too big for their needs using their TRP option.
- 20.16 The Housing Department has advised the PPG that using these options has a number of benefits, including:
- TRP is set by the Treasury and Resources Department and is calculated based on the measurements of the dwelling
 - A property's TRP is published and easily accessible
 - The use of TRP or number of habitable rooms reduces the possibility of under-occupancy as a single person with a high salary can be permitted to live in a smaller property rather than a larger one
- 20.17 However, the Housing Department has advised the PPG that the use of TRP-based housing controls is far from ideal for a number of reasons:
- a) The relationship between the cost of a property and its TRP is not as clear cut as it may first appear. Many other factors determine property prices – location, size of garden, parking, age and state of repair, etc. and so two properties with the same TRP can vary significantly in price.

- b) People's housing needs and wants vary – the number and age of any children, whether they have pets, life style and interests, etc - will all be factors that influence the type of accommodation a person wants; two Licence holders within the same TRP band might have very different housing needs / preferences.
- c) The TRP calculation is solely based on the licence holder's employment income. It does not include any other assets, income or expenditure the person and their household might have, for example the income of their partner if they have one.
- d) Neither the demand for, or the supply of, property at all price points in the housing market is uniform. By directing licence holders to parts of the housing market based solely on their income, additional demand might be placed on certain parts of the housing market which might contribute to inflated property prices which go against the policy objectives of the current Law.
- e) When an individual is looking to purchase a property the TRP band does not take into account their borrowing capacity, i.e. whether or not they can obtain a mortgage to purchase a property within those options.
- f) The assessment of the number of habitable rooms can be less than straightforward, particularly where the property is open plan or some of its rooms are very small.
- g) The TRP banding and number of habitable rooms apply throughout the duration of the housing licence. Therefore when a licence holder wants to move house during this time they must check with the Housing Department to see whether their TRP / habitable room threshold has changed because of changes in their salary package since the licence was first granted.
- h) For many essential licence holders securing employment is only one aspect of their decision to move to Guernsey. Finding a suitable home is also important and the use of housing conditions can lead to a tension for the licence holder; e.g. he has found a job he wants to take but his family's focus is likely to be on their new life and home in Guernsey. However, what type of property they can afford, or indeed whether they can afford to move to Guernsey at all, cannot be fully explored until the TRP banding is known and, for example, the licence holder's spouse has found employment, they have sold any existing property, etc.

- 20.18 It has already been mentioned that the current system is difficult and time consuming to administer. This situation becomes even more resource intensive because many licence holders need to ask the Housing Department for permission to buy or rent a house of a lower TRP, or with more rooms because they are unable to find or afford a property within the options they have been set.
- 20.19 When the Housing Department receives such requests it has to ask the individual to provide full details of their financial position (i.e. all assets, income and outgoings, including debts, maintenance payments, etc), properties they have considered and rejected, and the reasons why. This can be a very intrusive exercise but it is the only way that the Housing Department can obtain all the information it needs to reconsider the level of the TRP banding/number of habitable rooms associated with a particular licence. It also has to look at what properties are available to rent or buy in the Island at that particular time.
- 20.20 This is also a very time consuming process and, of course, the property market is not static – it changes daily. In many cases the licence holder will approach the Housing Department having found a property that they want to rent or buy but are unable to do so because it falls outside their options. In these cases, time is often of the essence as the individual will be pressing for an answer in order to secure the property.
- 20.21 The Housing Department has advised the PPG that in most cases a potential licence holder will not accept a post until he has found a suitable and affordable property. Restricting where a licence holder can live acts as another obstacle which the individual has to deal with when property hunting and in some cases results in the person deciding not to take up the job offer. It is important to remember that the licence has been granted because the post the individual will be filling is essential to Guernsey's economy and there is no Qualified Resident available to fill it.
- 20.22 When a job offer is not accepted for these reasons, the employer is frustrated and keen to avoid any repetition when another candidate for the post is found. In addition to adding to the Housing Department's work load, such cases also further undermine confidence in the Housing Control regime, increase recruitment costs and may lead to breaks in business or service continuity if the post remains unfilled for a protracted period.

Other Options

- 20.23 The PPG has considered a number of ways in which restrictions could be placed on where a Permit holder may live.

- 20.24 Although each of the following alternative approaches offers a different method for determining such restrictions for Permit holders, none has a direct link to population management issues.
- 20.25 Further, none of the options overcome all of the difficulties of the current TRP-based approach, as set out above. Some will not only recreate many of the existing problems but are likely to introduce additional problems. Others will do no more than mitigate some of the existing difficulties simply by reducing the number of Permit holders affected by such restrictions.
- 20.26 Perhaps most importantly, such conditions would continue to apply throughout the duration of the Level 1 or Level 2 Employment Permit and so require the holder to seek the agreement of the Statutory Official before moving house. This would create a layer of administration which is unrelated to the population management objectives of the regime and so may serve to undermine the strategic objectives of the new regime.

Price (the purchase or rental price)

- 20.27 The PPG believes that using the price of a property would be more difficult than the current TRP approach as it would have all of the problems associated with the present system and introduce new issues as the price of a property is not governed independently in the same way as TRP is. Property prices vary greatly over time and are affected by a range of factors; this would mean that assessments would have to be constantly revisited. There is also very little comprehensive data on private rental prices which would make it very difficult to set minimum rental options.
- 20.28 The use of property prices would also be more likely to have an inflationary effect if those selling or renting a house believed they could secure a higher price for their property because of demand from Permit holders. There is also an increased risk that those involved in the property transaction could manipulate the price to evade any Permit restrictions.
- 20.29 It would also require the “price” to be clearly defined: is it the “for sale” price or the purchase price? Should it be the price of the property itself and exclude fixtures and fittings? For rental properties, how would the price for furnished and unfurnished rentals be differentiated?

Size (e.g. number of rooms)

- 20.30 Here again the PPG does not believe that this approach would be any better than the current approach. TRP is already directly linked to the size of a house or flat (i.e. the size of the building rather than the whole plot) and so this approach would again have all of the problems associated with the current approach.
- 20.31 The current difficulties with the maximum habitable rooms' options would also arise when dealing with properties which have an open plan layout and/or have very small rooms.
- 20.32 In addition it is also likely to re-create the difficulties associated with determining how many rooms a particular individual "needs" as opposed to how many that they may actually want.

Local Market House Price Index

- 20.33 The Local Market House Price Index is calculated on a quarterly basis and the method ensures that the lower and upper quartiles are not skewed by a few very high or very low value property sales in a particular quarter. The lower quartile value represents the price of a property at the first quarter of transactions, i.e. if all property sales are listed by price, one quarter of them would be below this point and three quarters above.
- 20.34 There is a view that restricting access to properties in the lower quartile for Permit holders may help to achieve an objective of protecting properties at the lower end of the housing market for those Qualified Residents and existing Licence holders who most need them.
- 20.35 As noted above, not all Permit holders will be on high salaries and so some may not be able to afford a property outside the lower quartile. Therefore, if this approach was adopted, there would still be the likelihood that the Statutory Official would continue to receive requests for a variation of the restrictions placed on where the individual can live and, as with the current regime, would need to ask searching questions about the finances of the whole family in order to consider such requests fairly. In other words, the number of such requests may reduce but the level of work and bureaucracy would not.
- 20.36 As the Local Market House Price Index is published each quarter, this option would be based on current house price data and this should mean the new regime is as open and transparent as possible.

20.37 There is a risk that this option could have an inflationary effect on property prices just above the lower quartile level. Demand may be increased at this point in the market and there is a risk that sellers of properties will target this point in the property market in order to access the increased demand from Permit holders.

Price per TRP Unit

20.38 The Policy and Research Unit is currently undertaking research into the relationship between TRP and property prices to see whether it is possible to provide a House Price Index based on the number of TRP units assigned to a given property. Although the data collection for this analysis is well advanced, it is too early to say whether such an Index would be a suitable tool for setting restrictions on where the holder of a Level 1 or Level 2 Employment Permit can live or how it might be applied.

Summary

20.39 Having looked at all of these options the PPG had mixed views as to which, if any, could be employed to provide a genuine benefit to the Island without repeating the difficulties of the existing approach, resulting in house price inflation, creating a whole new set of difficulties, or a combination of all three of these. The PPG will use the feedback from this consultation in considering this issue further.

Summary of Section 20 – RESTRICTING WHERE AN INDIVIDUAL CAN LIVE

Restrictions on the occupation of property will apply to Level 3 Employment Permit holders and may be applied to the holders of Level 1 and Level 2 Employment Permits at the discretion of the Statutory Official to protect specific parts of the housing market.

Your Views

Question 20a

Do you agree that provision should be included within the new regime to prevent Level 3 Employment Permit holders from living independently? If not, can you explain your reasons?

**Question
20b**

Do you agree that, in general, there should be no restriction on where the holders of Level 1 and Level 2 Employment Permits may live? If not, what justification do you have?

**Question
20c**

If yes to Question 20b, do you agree that there should be some provision for the Statutory Official to restrict where the holders of Level 1 and Level 2 Employment Permits can live, where there is an identified need to protect specific parts of the housing market for those Qualified Residents and existing licence holders who most need them? If not, why?

**Question
20d**

If yes to Question 20c, do you agree that any restrictions placed on where the holders of Level 1 and Level 2 Employment Permits can live should be aimed at protecting the lower quartile of the housing market? Are there other objectives which you think such restrictions could be aimed at achieving?

**Question
20e**

Do you believe that any of the “other options” outlined in paragraphs 20.23 – 20.38 provide any advantage over any of the others? Can you explain why?

**Question
20f**

Are there any further comments that you wish to make in relation to what is covered in Section 20 of this Consultation Document? Please provide us with those comments.

21

CRIMINAL CONVICTIONS

Proposals

- 21.1 Since the early 1990's there has been a strong political desire that criminal conviction checks should be carried out on people who are permitted to live in the Island for employment and other reasons. Guernsey is a small community and there is a perception that, for that reason, the harm caused through serious offending can have much wider consequences than would be the case in a larger community.
- 21.2 The Population Policy Group (PPG) believes that the introduction of a new population management regime could also be used as an opportunity to meet the wider policy objectives of protecting the community from potential harm caused through serious offending and by preventing criminal behaviour.
- 21.3 It is therefore proposed that the new regime will include a system of criminal conviction checks. The PPG proposes that *everybody* applying for a Permit to live in the Island will be required to provide a criminal conviction check as part of the application process.
- 21.4 There is a view that certain groups of people should be exempt from criminal conviction checks depending on the reason that they are seeking to live in the Island. The PPG does not believe that the potential risk that may be presented to the community is in any way reduced because of the reason that an individual is seeking to live in the Island and therefore does not believe that any individual who is required to obtain a Permit in order to live in Guernsey should be exempt from this provision.
- 21.5 The PPG believes that this approach will be beneficial because:
- It may allow government to prevent some of those convicted of the most serious crimes from being able to live in the Island
 - The existence of such a system can act as a deterrent. There is anecdotal evidence to suggest that jurisdictions where a criminal conviction disclosure is required have benefitted simply by having that requirement in place – people with criminal convictions simply choose not to apply to live in that jurisdiction

- It will provide intelligence. Although the criminal conviction check may not provide sufficient justification for preventing someone from living in the Island, the information (subject to data protection considerations) can be used to good effect by the Home Department in the prevention and detection of crime.

21.6 Requiring a criminal conviction check on everybody who requires a Permit to live in Guernsey should be considered to be reasonable because:

- The application will be made, in most cases, before the individual has established themselves in Guernsey
- The applicant will know that previous criminal convictions will be one factor to be taken into consideration in deciding whether or not to issue a Permit
- The applicant will have provided this information so will know which convictions have been disclosed
- The existence of a criminal conviction will not automatically lead to refusal of a Permit
- Any information provided will be balanced against the reasons for the application, particularly the strength of any connections with Guernsey
- The applicant will have the right of appeal against any decision on whether or not to issue a Permit.

21.7 It must be pointed out that the circumstances under which it would be considered to be reasonable to refuse to issue a Permit based on the information provided in an individual's criminal conviction check will be limited. The process is about risk management and the decision whether or not to issue a Permit will need to take into account a number of factors which will help to determine the level of risk that the individual may present to the community. These factors may include, for example, consideration of the nature of the offence, whether there is any pattern to the convictions, how old the offender was and how long it has been since the offences occurred.

21.8 The assessment of whether to issue a Permit or not is a balancing exercise and the decision must be proportionate to the likely risk of harm that the individual presents to the community of Guernsey if a Permit is issued. The decision must also take into account the individual's Article 8 rights – their right to respect for

a private and family life and home (these rights are explained in [Section 6 – HUMAN RIGHTS](#)). Infringing these rights could only be justified on the basis that refusing a Permit was a proportionate response in the interests of “public safety” or the “prevention of disorder or crime”.

- 21.9 Although the administrative details of the proposals have not been set out at this stage, the intention is that any individual applying for a Permit will be requested to provide their own criminal conviction disclosure document which they will obtain in their home area. It is very common practice for people to have to provide criminal conviction checks for employment purposes and so this information is becoming increasingly accessible. This will reduce some of the administrative issues that have arisen with the existing system and will resolve some potential data protection issues.

Interaction with Other Regimes

- 21.10 Criminal conviction checks are undertaken by a number of arms of government and organisations for a range of reasons. Some examples of these are given in [Appendix F – OTHER CRIMINAL CONVICTION CHECK REGIMES](#). Whatever measures are included in the new population management regime, they will be designed to work alongside the provisions included in those other regimes.

The Situation Today

- 21.11 Within the current Housing Control Regime, criminal conviction checks are part of the application process for anybody applying for an employment-related Housing Licence under the 1994 Law. However, these checks only apply to a very small minority of people coming to Guernsey to live. The following groups are not checked:

- The spouse / partner and other household members of somebody on an employment-related Housing Licence
- The spouse / partner and other household members of a Qualified Resident
- Qualified Residents returning after a break in residence
- Anybody living in Open Market accommodation
- Anybody living in States owned accommodation.

Other Options

21.12 In coming to the proposals above, the PPG also considered alternative approaches which are not recommended for the reasons detailed in the discussion above. These include:

- Not including criminal conviction checks in the application process for a Permit under the new population management regime.
- Only requiring certain groups of people, depending on their circumstances, to have a criminal conviction check as part of the application process for a Permit.

Summary of Section 21 – CRIMINAL CONVICTIONS

Criminal conviction checks will form part of the application process for all Permits to live in Guernsey.

Your Views

Question 21a

Do you agree that criminal conviction checks should be included as part of the application process for a Permit to live in Guernsey? If not, why?

Question 21b

If yes to Question 21a, do you agree that criminal conviction checks should apply to *everybody* requiring a Permit, regardless of their circumstances? If not, who do you think should be exempt and why?

Question 21c

Are there any further comments that you wish to make in relation to what is covered in Section 21 of this Consultation Document? Please provide us with those comments.

22

OTHER CONDITIONS

- 22.1 There are some conditions that the Population Policy Group (PPG) has considered which could be applied to the holders of some types of Permit under the new regime. For the reasons described below, they are either not being proposed at all, or not being proposed for application at the introduction of the new regime.

Restricting the Maximum Age for Employment Permit Holders

- 22.2 Some jurisdictions apply a maximum age at which somebody can move to that jurisdiction for employment purposes. The main advantage in doing so is to assist in balancing the demographic make-up of an ageing population. Another reason cited is to ensure that an individual has the opportunity to contribute financially, through their taxes, for the services that they may want to draw upon as they themselves become older.
- 22.3 The disadvantages of doing so are that this provides an instant limitation on the size of the pool of available employees. Additionally, many of the posts which might attract a Permit associated with employment in such jurisdictions are likely to require significant experience in a particular field, something that is often demonstrated by employees who are in the latter stages of their career.
- 22.4 The PPG does not believe that there is enough evidence at this time to ensure that the advantages would outweigh the disadvantages of any such measure
- 22.5 For this reason, the PPG proposes that a maximum age restriction for Employment Permit holders should be built into the new regime as a condition which could be applied at some point in the future, if there is a legitimate reason for doing so. It is proposed that such a condition would be able to be “activated” by the States in the future, should the need arise.

Restricting the Employment Options of Family Members

- 22.6 As described in [Section 16 – RESIDENCE PERMITS – FAMILY CONNECTIONS](#), it is recognised that people may want to live in Guernsey because they have strong family connections with someone who is already permitted to live here. In these cases, it is proposed that these individuals will be required to obtain a

Temporary Residence Permit and that Permit will enable the Family Member to work if they so wish.

- 22.7 However, there is a concern that should the unemployment situation deteriorate, the Island could find itself in a position where substantial numbers of skilled Qualified Residents are unable to find employment. This would however, be balanced by a reduction in the need for Employment Permits, except for the most specialised posts.
- 22.8 Because of the concern above, there is a view that employment options for family members should be restricted to posts which would attract an Employment Permit because of a skill or manpower shortage in the Island. The PPG does not recommend this restriction at the current time because it does not believe that there is any evidence to suggest that the unemployment situation in the Island would be improved by such a measure.
- 22.9 In Section 16, it was explained that anecdotal evidence suggests that having this group of people available as part of the general workforce may have contributed to the growth of some Island businesses, thereby creating increased job opportunities for the Island, not less.
- 22.10 The demographic challenges which the Island faces in terms of its ageing population suggest that Guernsey should be actively encouraging anybody of working age in the Island to be economically active. The Skills Strategy Development Group is examining this matter under its 'Participation' pillar (see 5.8) and to restrict the employment options of some members of the available workforce further would seem to run contrary to that aim.
- 22.11 The additional administrative commitment that would be required, combined with the potential to deter prospective employees that the Island needs in order to fill essential posts, suggests that there would need to be substantial benefits gained from the introduction of such a condition. The PPG has not found any evidence to suggest that that is likely to be the case today, or in the future.
- 22.12 For these reasons, the PPG does not propose that a provision for restricting the employment options of family members should be included within the new regime.

Restricting Access to Services

- 22.13 There is a view that restricting access to certain public services should be a condition for the holders of some types of Permit, at least for their initial period of residency. The PPG has concluded that any restrictions placed on who can and cannot access public services, for example health care and social benefits, should be determined by the service providers themselves through their own “terms and conditions” and must be determined on the basis of need, not on the type of Permit that somebody holds.
- 22.14 The Legislative and Policy Framework described in Section 11 means that the new population management regime will be able to react to such measures if a particular service provider was successful in bringing in any such proposal in the future. The PPG believes that there is therefore no requirement for this condition to be directly included within the new regime.

Summary of Section 22 – OTHER CONDITIONS

There will be no restriction on the work that the holder of a Temporary Residence Permit can undertake and no conditions restricting access to public services.

There will be provision in the new Law to place a maximum age limit on applicants for Employment Permits which could be activated by the States in the future if there is a need to do so.

Your Views

Question 22a

Do you agree that there should be no maximum age restriction for Employment Permit holders, but that this should be built into the new regime as a condition which could be applied at some point in the future, if there is a legitimate reason for doing so? If not, can you explain why?

Question 22b

Do you agree that employment options for family members should remain unrestricted within the new regime? If not, why?

**Question
22c**

Do you agree that it would be inappropriate for the population management regime to define who can and cannot have access to certain public services? If not, can you explain your reasons?

**Question
22d**

Are there any other conditions which you believe should be applied to certain groups of people in order to benefit the Island in general? If so, which conditions should be applied to whom, and for what reasons?

**Question
22e**

Are there any further comments that you wish to make in relation to what is covered in Section 22 of this Consultation Document? Please provide us with those comments.

23

ESTABLISHING AN APPEALS REGIME

Proposals

- 23.1 It is proposed that an applicant will be able to appeal against a decision of the Statutory Official to an independent Appeals Tribunal.
- 23.2 Before progressing to the Appeals process, the Statutory Official can be asked to reconsider a particular case. This means that where an applicant believes that there is additional information that should be taken into account in making the decision, he may request that the Statutory Official reconsiders the decision in light of that new information.
- 23.3 If an applicant believes that the Statutory Official should have reached a different conclusion having considered all of the facts presented to him, then that decision can be appealed. The applicant will make a formal request for an appeal to the Appeals Tribunal.
- 23.4 The creation of a dedicated Appeals Tribunal to hear appeals against decisions made under the new population management regime mirrors the approach adopted for a number of other areas of legislation, e.g. planning decisions.
- 23.5 This approach should achieve the following objectives:
 - Allow for a reconsideration of the full facts of the case as well as the merits of the decision and the decision making process
 - Offer a relatively inexpensive and accessible route to appeal
 - Allow for appeals to be considered in a timely manner
 - Reduce the demands placed on the limited resources of the Royal Court
 - Offer transparency in the decision making process
 - Establish a consistent and easily accessible body of case law on the application of the new population management regime.

- 23.6 Full procedures relating to the appeal process will need to be developed, however it is anticipated that the elements listed below will form part of the process.

The Grounds for an Appeal

- 23.7 It is proposed that the grounds for appeal should be wide enough to allow for a full review of the merits of the original application. In other words the Tribunal would effectively be able to consider the application afresh. This should ensure that the new regime is seen as being transparent and fair.

The Nature of the Appeals Tribunal

- 23.8 It is proposed that the Tribunal would be made up of three members drawn from the local community, including a legally qualified Chairman. It is likely that a panel of tribunal members will be appointed, from which the Chairman will select two members for each individual case in rotation.

The Format of an Appeal

- 23.9 It is proposed that appeals are made on the evidence which was available to the Statutory Official when he made his decision. In other words neither the person bringing the appeal nor the Statutory Official would be able to introduce any new information.
- 23.10 The Tribunal would be able to invite the person bringing the appeal and/or the Statutory Official to give evidence in person, for example to explain or clarify something in their written submissions.
- 23.11 Similarly, there will be provision for the person bringing the appeal and/or the Statutory Official to request an opportunity to present their case in person to the Tribunal. However, there would need to be appropriate safeguards to prevent either party from using it as an opportunity to introduce new evidence.

Determination of Appeals

- 23.12 It is proposed that the Tribunal will be able to reach a different decision from that of the Statutory Official, provided that their decision is one that the Statutory Official could have reached given the evidence available to him.

Appeals Against Decisions of the Appeals Tribunal

23.13 It is proposed that an appeal against a decision of the Appeals Tribunal can be made, but only on a point of law. Such an appeal would be made to the Royal Court.

The Situation Today

23.14 Within the current Housing Control regime, an applicant who is aggrieved by a decision of the Housing Department in respect of a housing licence application may appeal the decision to the Ordinary Court. This appeal can only be made on the grounds that the decision was unlawful or was an unreasonable exercise of the Housing Department's powers. Any person wishing to appeal must do so within two months of the date of the Department's decision letter.

23.15 Appeals to the Ordinary Court are time consuming and costly, not only for the individual making the appeal, but also for the States in respect of the resources of the Housing Department and of the Court. There is some anecdotal evidence to suggest that, despite legal aid being available in some circumstances, a number of unsuccessful licence applicants do not exercise their right of appeal because they cannot afford the legal costs.

23.16 In recent times the States have approved new appeals regimes that are not through the Courts. For example, under the Land Planning and Development (Guernsey) Law, 2005 appeals are to a Planning Tribunal rather than the Royal Court. There is provision for appeals against a decision of the Planning Tribunal to the Royal Court, but only on a point of law.

Other Options

23.17 In coming to the proposals above, the Population Policy Group (PPG) also considered the alternative approaches listed below but, for the reasons described, does not recommend them at this stage.

23.18 **Appeals to the Ordinary / Royal Court** – this would replicate all of the shortcomings which have been highlighted above within existing similar appeals processes, particularly that appeals can only be made on limited legal grounds, the costs of such a system and the length of time taken to bring cases to court.

23.19 **The appointment of a Single Independent Adjudicator** – this approach would overcome many of the problems with the current Housing Control appeals process. However, a Single Independent Adjudicator is most typically used for appeals in technical or specialist matters where there is a need for professional knowledge of the subject matter, e.g. planning and tax appeals. This system does not lend itself to less technical matters, such as decisions affecting an individual’s life choices.

Summary of Section 23 – ESTABLISHING AN APPEALS REGIME

A person will be able to appeal against decisions of the Statutory Official at an Appeals Tribunal.

Your Views

**Question
23a**

Do you agree that an applicant should be able to appeal against a decision of the Statutory Official to an independent Appeals Tribunal? If not, what appeal mechanism would you propose?

**Question
23b**

Are there any further comments that you wish to make in relation to what is covered in Section 23 of this Consultation Document? Please provide us with those comments.

24

OFFENCES AND SANCTIONS

Proposals

24.1 In order to ensure that the new population management regime is effective, it will need to include a robust enforcement regime. This will include a range of offences and associated sanctions designed to encourage compliance on the part of individuals and employers.

Offences

24.2 It is not possible for the Population Policy Group (PPG) to determine at this early stage what range of offences will be included within the new regime, but any offence must reflect the Law's primary purpose and will relate to breaches of the requirements under the Law. The offences will need to be set out in the Law and they will therefore be subject to further consultation once the drafting of new legislation is approved by the States at a later point.

Sanctions

24.3 In designing an enforcement regime, the PPG has considered what mix of penalties should be included. It is proposed that the new regime will include both civil and criminal sanctions. Civil sanctions are increasingly being used where breaches of statutory obligations occur, for example in respect of health and safety requirements and environmental protection.

24.4 The PPG believes that a shift away from a regime solely based on criminal sanctions to a hybrid approach involving both civil and criminal sanctions will provide the following advantages:

- More flexible as any sanction can reflect the seriousness of, and / or the level of benefit gained from, the non-compliance
- Able to focus enforcement resources on identifying breaches, as fewer resources are engaged in preparing prosecution files for court cases
- Encourage compliance through the opportunity to rectify non-compliance without gaining a criminal record

- More immediate, as criminal sanctions often take a long time to process

24.5 There are many types of civil sanction available and the list below provides an overview of those which are likely to be adopted under the new population management regime:

Warning Letter – A written notice which requires action to be taken to ensure the law is complied with. The letter will specify a short period of time for compliance to be demonstrated and if the required action is taken within the time permitted, the offender is unlikely to face further sanctions.

Fixed (Monetary) Penalty – Usually a relatively low level fixed fine which is used for minor breaches.

Variable (Monetary) Penalty – A proportionate monetary penalty which is used for a more serious breach, where prosecution is not in the public interest, e.g. the breach has been immediately corrected. The level of the penalty can be varied according to the seriousness of the breach.

Injunction – Prevents access to further permissions for a period of time where this is seen as the only way to ensure future compliance, for example, on the part of an employer. Such sanctions would normally be used only where there is evidence of serious continuing breaches.

24.6 Criminal prosecutions would be reserved for breaches of the legislation which have the most serious consequences and/or where there is evidence of deliberate or repeated disregard for the requirements of the law. It is likely, in these cases, that civil sanctions will have already been used, or that there is reason to believe that civil sanctions are unlikely to secure compliance.

The Situation Today

24.7 Within the current Housing Control regime there are a number of offences relating to:

- Making a false declaration
- Forging or altering documentation
- Failing to retain records

- In relation to the inscription of a property on the Housing Register
- Occupying, or permitting a person to occupy, a controlled dwelling
- Being employed, or employing somebody, without the relevant document.

24.8 These offences may be dealt with before either the Magistrate's Court or Royal Court. The criminal sanctions include a range of fines and / or imprisonment for up to 6 months. There are no civil sanctions available in the current regime.

Summary of Section 24 – OFFENCES AND SANCTIONS

Whilst the details of offences and penalties have yet to be determined, in the latter case both civil and criminal sanctions will be considered.

Your Views

Question 24a

Do you agree that a combination of civil and criminal sanctions should be adopted as part of the enforcement regime? If not, why?

Question 24b

Are there any further comments that you wish to make in relation to what is covered in Section 24 of this Consultation Document? Please provide us with those comments.

25

OTHER ISLANDS OF THE BAILIWICK

- 25.1 The proposals and options contained in this consultation document are, at this stage, primarily concerned with the Island of Guernsey. However, it will be important to determine how the other islands of the Bailiwick, and their residents, might be considered as part of the new population management regime.
- 25.2 It is therefore important to understand the relationships that exist between the islands in terms of the way that government and legislation is administered. These relationships are important in respect of how the other islands might be able to, or want to, be integrated within the new population management regime. The different relationships are explained below.
- 25.3 The Bailiwick of Guernsey includes the three separate jurisdictions of Guernsey, Alderney and Sark. The islands of Herm, Jethou and Lihou are part of Guernsey and the Island of Brecqhou is part of Sark.

Alderney

- 25.4 Alderney is governed by the States of Alderney. However, the States of Guernsey exercise financial and administrative responsibility for certain public services in Alderney and they apply Guernsey taxes, duties and impôts, which accrue to Guernsey general revenues. The States of Guernsey legislates for Alderney in respect of those services for which Guernsey has responsibility and in recognition of this, Alderney is represented by two members in the States of Deliberation.
- 25.5 The States of Guernsey may legislate for Alderney in any matter with the consent of the States of Alderney. In criminal matters and in respect of the services for which they are responsible, the States of Guernsey may legislate for Alderney without their consent.

Sark

- 25.6 Sark is governed by the Chief Pleas of Sark who, by means of a committee system, administer the functions of government in a manner broadly similar to the States of Guernsey and the States of Alderney. As with Alderney, the States

of Guernsey may legislate for Sark in criminal matters without the agreement of Chief Pleas, but on any other matter only with their prior agreement.

Proposals

25.7 As part of this consultation process, the Population Policy Group (PPG) is seeking to ascertain the views of those living in the other islands of the Bailiwick, as well as the views of the community in Guernsey, about how the other islands of the Bailiwick and their residents might be included within, or otherwise interrelate to, the new population management regime.

The Situation Today

25.8 The current Housing Control regime only applies to the Island of Guernsey. People living in the other islands of the Bailiwick:

- are not accruing any residence that will assist them to become a qualified resident in Guernsey
- gain no benefit from being born in Guernsey in the absence of maternity services in the other islands
- need to apply for a housing licence if they want to live in Local Market accommodation in Guernsey.

25.9 Licences are granted in limited circumstances as set out in Housing Department policies. Broadly speaking, under the current regime housing licences will be granted to people resident in the other islands of the Bailiwick who, upon moving to Guernsey:

- are living with a 'host' family while in secondary education
- are living in Residential or Nursing Homes so long as they meet certain criteria with regard to age, length of residence in the Bailiwick and eligibility for Long Term Care Benefit.
- are aged under 26 and are commencing higher education or employment so long as they and/or their parents meet certain criteria with regard to their length of residence in the Bailiwick. The accommodations options associated with these types of licence will vary depending on the individual's circumstances and will be relaxed over time.

Summary of Section 25 – OTHER ISLANDS OF THE BAILIWICK

The proposals relate primarily to Guernsey, but they will have an effect on the other islands of the Bailiwick. How the other islands are integrated into the new regime is part of this consultation.

Your Views

Question 25a

What are your views on how the other islands of the Bailiwick, and the residents of those islands, should be integrated with the new population management regime?

Question 25b

Are there any further comments that you wish to make in relation to what is covered in Section 25 of this Consultation Document? Please provide us with those comments.

26

TRANSITIONAL ARRANGEMENTS

- 26.1 As described in [Section 4 – THE EFFECT OF THIS CONSULTATION](#), these proposals are intended to replace the current Housing Control regime. There will be a defined point in the future when the new regime will come into effect and the current Housing Control regime will no longer apply. The transition arrangements from one regime to another will need to be carefully managed.
- 26.2 Following this consultation process, the Population Policy Group (PPG) will develop firm proposals for debate by the States. If these proposals are accepted, the next stage in the process will be to draft the necessary legislation. This will allow the transitional arrangements to be defined for those individuals who are currently resident on the Island and for everybody who has acquired rights under the current Housing Control regime. The legislation and the transitional arrangements will be subject to debate in the States and will therefore be made public before any decisions are made.
- 26.3 At this early stage, it is not possible to predict what proposals might be approved by the States in the future. It is therefore not possible to predict what impact any future proposals might have on specific individuals. In the meantime, the current Housing Control regime will remain in force.
- 26.4 **It should be emphasised again here that these proposals are not intended to remove, or reduce, any pre-existing rights which somebody has acquired under the existing or previous laws.**
- 26.5 Whether or not people will be required to obtain a Permit, or whether they will be required to exchange a document issued under the current regime for one which is issued under the new regime has yet to be determined. The responses to questions in this consultation document will be used to develop final proposals in this respect.

Summary of Section 26 – TRANSITIONAL ARRANGEMENTS

Arrangements for the transition from the current Housing Control regime to the proposed new regime will be defined at a later date taking account of the responses to this consultation. These will be debated by the States.

27

WHAT HAPPENS NEXT – PROGRESSING THE DEVELOPMENT OF A NEW REGIME

- 27.1 As described earlier, this document has not focused on, or attempted to establish, what the total size of Guernsey's population should be. Its starting point is the current States policy to maintain a population of approximately 61,000. Equally, this document has not attempted to provide an evaluation of, or solutions to, every challenge that the Island faces with regard to the size and make-up of its population.
- 27.2 What this document has focused on are the issues that must be addressed in any attempt to manage Guernsey's population effectively and options for a mechanism by which the size and make-up of the Island's population could be managed.
- 27.3 The Population Policy Group (PPG) is very aware that having a regime in place that enables Guernsey to manage changes in the size and make-up of Guernsey's population is only one part of the wider picture of how the Island might meet the challenges it faces which are related to the size and make-up of its population. The States needs to have in place an integrated population strategy that ensures that these challenges are being tackled from a number of policy directions, therefore allowing the level of inward migration that is needed to be kept to a minimum. The work of the PPG will progress over the coming months to establish that integrated strategy.
- 27.4 Developing a mechanism which allows the States to have an impact on the size and make-up of the population has taken priority because there is little to be gained from having a Population Policy which cannot be delivered due to the lack of such a mechanism.
- 27.5 This consultation process will be open for 10 weeks, until the end of March 2011, following which the PPG will analyse the feedback that has been received. This feedback will be used to develop firm proposals for a new population management regime. The PPG intends to publish those firm proposals in the Summer of 2011 with a view to progressing to a States debate later in the year.

**Summary of Section 27 – WHAT HAPPENS NEXT – PROGRESSING THE
DEVELOPMENT OF A NEW REGIME**

Feedback from this consultation process will be used to develop firm proposals for a new population management regime. The PPG intends to publish those firm proposals in the Summer of 2011 with a view to progressing to a States debate later in the year.

28

HOW YOU CAN PLAY YOUR PART – RESPONDING

- 28.1 As described in Section 3, the Population Policy Group (PPG) has developed a full communications strategy. The main aim of that strategy is to secure the widest possible engagement across all parts of the community on the proposals for a new Population Management Regime.
- 28.2 This consultation process provides the opportunity for you to have an input into the work of the PPG and to have your say on how Guernsey should manage the size and make-up of its population in the future. There are a number of ways in which you can do that:
- You can read the document and respond to the questions online at:

www.gov.gg/population
 - You can email any response to:

population@gov.gg
 - You can post any response to:

The Chairman
Population Policy Group
Sir Charles Frossard House
La Charroterie
St. Peter Port
Guernsey
GY1 1FH
- 28.3 This document is available to download from the States of Guernsey website at www.gov.gg/population. Copies are also available for collection from the reception at Sir Charles Frossard House.
- 28.4 This consultation process is open for 10 weeks until **31st March 2011**.

29

SUMMARY OF CONSULTATION QUESTIONS

Section 10 – OBJECTIVES OF A NEW REGIME

Question 10a

Do you agree with the objectives as described in paragraph 10.1 above? If not, which do you disagree with and why?

Question 10b

Are there any other objectives, not covered by those listed above, which you believe that the new regime should be aiming to achieve? If so, please describe them.

Question 10c

Are there any further comments that you wish to make in relation to what is covered in Section 10 of this Consultation Document? Please provide us with those comments.

Section 11 – LEGISLATIVE AND POLICY FRAMEWORK

Question 11a

Do you agree that population management policies should be determined by reference to the strategic objectives of the States? If not, how do you think they should be determined?

Question 11b

Do you agree that population management policies should be published and made available to the general public? If not, why?

Question 11c

Are there any further comments that you wish to make in relation to what is covered in Section 11 of this Consultation Document? Please provide us with those comments.

Section 12 – POLITICAL AND ADMINISTRATIVE RESPONSIBILITY

Question 12a

Do you agree that political responsibility for the new regime should rest with a Sub-Committee of the Policy Council? If not, what alternative would you propose?

Question 12b

Do you agree that a Statutory Official should be established who would be responsible for day-to-day decisions under the new regime? If not, who do you think should have this responsibility?

Question 12c

Do you agree that an Advisory Panel, with members drawn from the community, would be a useful source of independent expertise to advise the Sub-Committee and the Statutory Official? If not, why?

Question 12d

Are there any further comments that you wish to make in relation to what is covered in Section 12 of this Consultation Document? Please provide us with those comments.

Section 14 – PERMITS FOR LONG TERM RESIDENCY

The First Milestone

Question 14a

Do you agree that a continuous period of residence of 7 years represents a reasonable point at which somebody should reach the *first milestone* and therefore be able to reside in the Island permanently if they so choose?

Question 14b

If no to Question 14a, what period between 5 and 8 years do you feel would be more reasonable? Can you explain your reasons?

**Question
14c**

Once someone has reached the first milestone and acquired a Permanent Residence Permit (but has not yet become a Qualified Resident), do you agree that they should not have the right to return to Guernsey after a period of absence? If not, why?

The Second Milestone

**Question
14d**

Do you agree with the proposal that somebody should reach the *second milestone* and acquire the status of Qualified Resident after a continuous period of residence of 14 years? If not, after what period of time would you propose?

**Question
14e**

Do you agree with the proposal that individuals should reach the *second milestone* and acquire the status of Qualified Resident after the same period of continuous residence regardless of the circumstances of the individual concerned? If not, what circumstances do you believe should make a difference and why?

Rights to Return

**Question
14f**

Once someone has reached the *second milestone* and become a Qualified Resident, do you agree that they should have the automatic right to return to Guernsey if they choose to move away at some point? If not, why?

**Question
14g**

If yes to Question 14f, do you believe that they should lose that automatic right to return if their period of absence is significant? If so, after what period of absence do you think that right should be lost? Why?

Existing Long Term Residents

**Question
14h**

Do you agree that any existing Qualified Resident who is not currently resident in the Island, but who decides to return in the future, should be required to obtain a Qualified Resident Certificate for the purposes of monitoring? If not, can you explain your reasons?

**Question
14i**

Do you agree that any existing Qualified Resident who is, or wishes to be, employed in the Island, should be required to obtain a Qualified Resident Certificate? If not, can you explain your reasons?

**Question
14j**

Do you believe that existing Qualified Residents, who are not currently required to obtain any document under the current regime (e.g. those who are not, and do not intend to be, in employment), should be required to obtain a Qualified Resident Certificate for the purposes of monitoring? Please explain your reasons.

Periods of Time Spent Off-Island

**Question
14k**

Do you agree with the proposed list describing those periods of time spent off Island which will be considered to be “ordinary residence”? If not, which do you disagree with and why? Are there any additions that you believe should be made to the list?

Other Comments

**Question
14l**

Are there any further comments that you wish to make in relation to what is covered in Section 14 of this Consultation Document? Please provide us with those comments.

Section 15 – EMPLOYMENT PERMITS

**Question
15a**

Do you agree with the proposals set out in paragraphs 15.5 and 15.15 – 15.18 for issuing Level 1 Employment Permits? If not, can you explain your reasons?

**Question
15b**

Do you agree with the proposals set out in paragraphs 15.7 – 15.10 and 15.19 – 15.22 for issuing Level 2 Employment Permits? If not, can you explain your reasons?

**Question
15c**

Do you agree with the proposals set out in paragraphs 15.12 and 15.23 – 15.28 for issuing Level 3 Employment Permits? If not, can you explain your reasons?

**Question
15d**

Do you agree with the proposed application process as detailed in paragraphs 15.33 – 15.40? If not, can you explain your reasons?

**Question
15e**

Do you agree that holders of Employment Permits should be able to apply to change job, as long as the new post is also identified in the published policies as one which will attract an Employment Permit? If not, can you explain your reasons?

**Question
15f**

Do you agree that anyone who has been issued with an Employment Permit should be able to hold more than one job if they are content to do so? If not, can you explain your reasons?

**Question
15g**

Do you agree with the proposals for the issuing of subsequent permits as detailed in paragraphs 15.51 – 15.57? If not, can you explain your reasons?

**Question
15h**

Are there any further comments that you wish to make in relation to what is covered in Section 15 of this Consultation Document? Please provide us with those comments.

Section 16 – RESIDENCE PERMITS – FAMILY CONNECTIONS

**Question
16a**

Do you agree with the proposed definition of immediate family members as defined in paragraph 16.5? If not, why? Who would you define as an Immediate Family Member?

**Question
16b**

Do you agree that the holders of Level 1 and Level 2 Employment Permits should be able to accommodate certain immediate family members, as defined in paragraph 16.5, within their household? If not, can you explain your reasons?

**Question
16c**

Do you agree that the holder of a Level 3 Employment Permit should not be able to accommodate certain immediate family members? If not, why?

**Question
16d**

Do you agree that the holders of Permanent Residence Permits and Qualified Residents should be able to accommodate certain immediate family members as defined in paragraph 16.5 within their household? If not, why?

**Question
16e**

Do you agree that immediate family members should be required to continue to live within the household of the individual with whom they have the close relationship until that Family Member becomes a Qualified Resident? If not, can you explain your reasons?

**Question
16f**

Do you agree that every individual who is currently permitted to live in the Island under the existing provisions for “members of a household” should be required to obtain a Temporary Residence Permit under the new regime? If not, why?

**Question
16g**

Are there any further comments that you wish to make in relation to what is covered in Section 16 of this Consultation Document? Please provide us with those comments.

Section 17 – RESIDENCE PERMITS – UNCONTROLLED PROPERTIES (STATES OWNED)

**Question
17a**

Do you agree that any individual living in States owned properties should be subject to the same requirements as any other member of the community with regards to their requirement to obtain the relevant Permit? If not, why?

**Question
17b**

Do you agree that the States, as an employer and a landlord, should be subject to the same population management requirements as any other employer or landlord in the Island? If not, can you explain your reasons?

**Question
17c**

Are there any further comments that you wish to make in relation to what is covered in Section 17 of this Consultation Document? Please provide us with those comments.

Section 18 – RESIDENCE PERMITS – UNCONTROLLED PROPERTIES (OPEN MARKET)

**Question
18a**

Do you believe that there should be provision in the new regime to allow an individual to live in the Island for any reason other than being a Qualified Resident, filling a skill or manpower shortage or having a close family connection? If so, for what reasons and why?

The list below includes some reasons which might be considered to be of relevance, but is only offered to assist your thinking.

- Economic contribution
 - Tax payable
 - Investment in property
 - Investment in local businesses
- Entrepreneurship
- Cultural enrichment
- Significant personal achievements
- Distinguished individuals
- Positive Island ambassadors

**Question
18b**

If yes to Question 18a, and if you have listed any which relate to economic contribution, do you believe that there should be a minimum level of contribution in order to be eligible to live here? Can you explain your reasons?

**Question
18c**

Do you believe that the size of the Open Market population is sufficiently well managed due to the fact that there are only a limited number of properties available?

**Question
18d**

Do you believe that it would be appropriate to place restrictions on who can be accommodated within a Part A Open Market property? If so, what restrictions would you propose and why?

**Question
18e**

Are there any further comments that you wish to make in relation to what is covered in Section 18 of this Consultation Document? Please provide us with those comments.

Section 19 – UNFORESEEABLE CHANGES IN CIRCUMSTANCES

**Question
19a**

Do you agree that policies should be made public regarding what options might be available to Permit holders should they suffer an unforeseen change in their circumstances? If not, why?

**Question
19b**

Do you agree with the proposed course of action described in each of the circumstances listed above? If not, which do you disagree with and why?

**Question
19c**

Are there circumstances, other than those set out in this section, which you think should be covered under a clear and published policy? If so, please describe them and explain your reasons.

**Question
19d**

Are there any further comments that you wish to make in relation to what is covered in Section 19 of this Consultation Document? Please provide us with those comments.

Section 20 – RESTRICTING WHERE AN INDIVIDUAL CAN LIVE

**Question
20a**

Do you agree that provision should be included within the new regime to prevent Level 3 Employment Permit holders from living independently? If not, can you explain your reasons?

**Question
20b**

Do you agree that, in general, there should be no restriction on where the holders of Level 1 and Level 2 Employment Permits may live? If not, what justification do you have?

**Question
20c**

If yes to Question 20b, do you agree that there should be some provision for the Statutory Official to restrict where the holders of Level 1 and Level 2 Employment Permits can live, where there is an identified need to protect specific parts of the housing market for those Qualified Residents and existing licence holders who most need them? If not, why?

**Question
20d**

If yes to Question 20c, do you agree that any restrictions placed on where the holders of Level 1 and Level 2 Employment Permits can live should be aimed at protecting the lower quartile of the housing market? Are there other objectives which you think such restrictions could be aimed at achieving?

**Question
20e**

Do you believe that any of the “other options” outlined in paragraphs 20.23 – 20.38 provide any advantage over any of the others? Can you explain why?

**Question
20f**

Are there any further comments that you wish to make in relation to what is covered in Section 20 of this Consultation Document? Please provide us with those comments.

Section 21 – CRIMINAL CONVICTIONS

Question 21a

Do you agree that criminal conviction checks should be included as part of the application process for a Permit to live in Guernsey? If not, why?

Question 21b

If yes to Question 21a, do you agree that criminal conviction checks should apply to *everybody* requiring a Permit, regardless of their circumstances? If not, who do you think should be exempt and why?

Question 21c

Are there any further comments that you wish to make in relation to what is covered in Section 21 of this Consultation Document? Please provide us with those comments.

Section 22 – OTHER CONDITIONS

Question 22a

Do you agree that there should be no maximum age restriction for Employment Permit holders, but that this should be built into the new regime as a condition which could be applied at some point in the future, if there is a legitimate reason for doing so? If not, can you explain why?

Question 22b

Do you agree that employment options for family members should remain unrestricted within the new regime? If not, why?

Question 22c

Do you agree that it would be inappropriate for the population management regime to define who can and cannot have access to certain public services? If not, can you explain your reasons?

**Question
22d**

Are there any other conditions which you believe should be applied to certain groups of people in order to benefit the Island in general? If so, which conditions should be applied to whom, and for what reasons?

**Question
22e**

Are there any further comments that you wish to make in relation to what is covered in Section 22 of this Consultation Document? Please provide us with those comments.

Section 23 – ESTABLISHING AN APPEALS REGIME

**Question
23a**

Do you agree that an applicant should be able to appeal against a decision of the Statutory Official to an independent Appeals Tribunal? If not, what appeal mechanism would you propose?

**Question
23b**

Are there any further comments that you wish to make in relation to what is covered in Section 23 of this Consultation Document? Please provide us with those comments.

Section 24 – OFFENCES AND SANCTIONS

**Question
24a**

Do you agree that a combination of civil and criminal sanctions should be adopted as part of the enforcement regime? If not, why?

**Question
24b**

Are there any further comments that you wish to make in relation to what is covered in Section 24 of this Consultation Document? Please provide us with those comments.

Section 25 – OTHER ISLANDS OF THE BAILIWICK

**Question
25a**

What are your views on how the other islands of the Bailiwick, and the residents of those islands, should be integrated with the new population management regime?

**Question
25b**

Are there any further comments that you wish to make in relation to what is covered in Section 25 of this Consultation Document? Please provide us with those comments.

**APPENDIX
A****COMMUNICATIONS STRATEGY****Communications Strategy – Aims and Objectives**

The Population Policy Group (PPG) has developed its communications strategy, including its aims and objectives, which are outlined below.

Aim

- To secure the widest possible engagement across all parts of the community on the proposals for a new Population Management Regime.

Objectives

- To promote effective and informed debate which will improve public understanding of the issues involved
- To obtain considered responses from as wide a range of contributors as possible
- To provide a key reference point for further review, by the public and the PPG, prior to final proposals being prepared for consideration by the States.

Achieving the Objectives of the Communications Strategy

The PPG's first objective is: *To promote effective and informed debate which will improve public understanding of the issues involved.* In order to achieve this objective, the PPG is:

- Putting as much information as is reasonable into the public domain – too little and the public will not be in a position to fully understand the issues concerned, too much and there is a risk that people may feel overwhelmed
- Keen to engage in discussion about the issues raised in the document
- Launching a 10 week consultation period which is designed to give sufficient time for the public to consider the proposals, attend related events, engage in discussions and to respond

- Including in the document unbiased explanations of views which are known to exist, including where members of the PPG do not support those views
- Expecting conflicts of opinion – the PPG will not be attempting to defend matters of opinion, rather to generate informed debate on the many opinions that will exist
- Keen to identify issues, concerns and ideas which have not been picked up through the PPG’s work so far
- Working with the Island’s media on an “inform and educate” campaign to get the key messages out
- Planning to produce general press releases for a full media list as and when appropriate
- Keen to acknowledge key issues that are raised during the consultation and respond publicly where appropriate
- Inviting responses in a way that facilitates analysis and helps to identify the underlying principles and reasons for those responses.

The PPG’s second objective is: *To obtain considered responses from as wide a range of contributors as possible.* In order to achieve this objective, the PPG has agreed to:

- Explain that respondent’s views will have an impact on the PPG’s work on developing final proposals
- Adopt the “Clear Print” guidelines as far as possible in the layout and language of the consultation document (these guidelines, originally developed by the RNIB, have been created to enable everyday information to be accessed by more people)
- Make the document and response facility available on-line through a dedicated web-site and via links from other sites
- Advertise details of how to obtain the document and how to provide responses through the media
- Producing a “flyer” for wide circulation to help people to understand what the consultation process is all about, to generate interest and to encourage people to engage in the process

- Accept requests to address any group where possible, reflecting their own preferences on the way they are engaged
- Make special provision for engaging with young people – working alongside the Education Department
- Monitor response levels at intervals during the consultation period and adjust the strategy if necessary.

The PPG's third objective is: *To provide a key reference point for further review, by the public and the PPG, prior to final proposals being prepared for consideration by the States.* In order to achieve this objective, the PPG has committed to:

- Produce a report detailing the response generated, after the consultation period is closed. The content will not reveal any personal details
- Treat all information provided in response to this consultation in accordance with the Data Protection (Bailiwick of Guernsey) Law, 2001
- Provide independent confirmation that the consultation feedback report is an impartial reflection of the responses received
- Analyse and draw conclusions from the responses received in a fair and transparent way
- Outline what impact the responses have had when drafting the report containing the final proposals – people who invest the time to respond deserve to be told what has been done in response.

**APPENDIX
B****HUMAN RIGHTS****THE RIGHTS**

The European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) provides that certain basic rights and freedoms should be secured. These include:

- The right to life
- Freedom from torture or inhuman or degrading treatment or punishment
- Freedom from slavery or compulsory labour
- The right to liberty and security of person
- The right to fair trial for the determination of civil rights and criminal charges
- The right to respect for private and family life, home and correspondence
- The right to freedom of thought, conscience and religion
- The right to freedom of expression
- The right to peaceful assembly and association with others
- The right to marry and to found a family
- The prohibition of discrimination.

Article 8 of the Convention is the most relevant in respect of the current Housing Control regime and any new population management regime because it protects a person's right to a private life, family life, home and correspondence. It states:

- "1. Everyone has the right to respect for his private and family life, his home and correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a*

democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

THE MEANING OF "PRIVATE LIFE"

Many issues fall within the meaning of "private life". In *Kinley v the Minister for the Housing Department*²² the Court provided a clear statement of its preferred definition of "private life" by following the definition in *Human Rights Law and Practice*²³,

"In the leading case of Niemietz (1992) 16 EHRR 97, the ECt HR [European Court of Human Rights] pronounced that:

"The court does not consider it possible or necessary to attempt an exhaustive definition of the notion of 'private life'. However, it would be too restrictive to limit the notion to an 'inner circle' in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings.

'There appears to be no reason of principle why this understanding of 'private life' should be taken to exclude activities of a professional or business nature since it is in the course of their working lives that the majority of people have a significant, opportunity of developing relationships with the outside world ... his work may form part and parcel of his life to such a degree that it becomes impossible to know in what capacity he is acting at a given time."

Further the Court went on to say that the Department must not simply rely on the fact that a person knew their Housing Licence was for a limited period but must consider private and family life in a wider context.

THE MEANING OF "FAMILY LIFE"

The concept of "family life" is not the same as that of "family". The Court of Appeal in *Singh v Entry Clearance Officer, New Delhi*²⁴ stated,

²² [2009] Unreported Judgement 24/2009

²³ 2nd edition edited by Lord Lester of Herne Hill QC and David Pannick QC

²⁴ [2004] EWCA Civ 1075

“Family life for the purposes of Article 8 is essentially a question of fact depending on the real existence in practice of close personal ties”.

In the case of parents and minor children there is a general presumption of family life:

“... will be presumed to exist as between children and their natural parents, but exceptionally the presumption may be displaced ... the relationship between an adoptive parent and an adopted person is in principle of the same nature as a family relationship protected by Article 8”.

Wider relationships such as grandparents, grandchildren, aunts and uncles, etc will only fall within family life if there is a strong emotional tie or dependency. Relationships between adult children and their parents will not normally constitute family life unless there are special dependency issues, beyond normal emotional ties,

“... a family life is not established between an adult child and his surviving parent or other siblings unless something more exists than normal emotional ties.

Most of us have close relations of whom we are extremely fond and whom we visit; but none of us would say on those grounds alone that we share a family life with them within the meaning and purpose of Article 8”.²⁵

The Courts have allowed interferences under Article 8(2), except where it may restrict contact between children and their parents and seek to prevent an arbitrary interference:

“Matters such as the age, health and vulnerability of the applicant, the closeness and previous history of the family, the applicant’s dependence on the financial and emotional support of the family, the prevailing cultural tradition and conditions in the country of origin and many other factors may all be relevant. ... the Convention confers no right on individuals or families to choose where they prefer to live.”²⁶

²⁵ *Kugathas v Secretary of State for the Home Department* [2002] EWCA Civ 31

²⁶ *Huang -v- Secretary of State for the Home Department; Kashmiri -v- Secretary of State for the Home Department* [2007] UKHL 11

THE MEANING OF “HOME”

“Home” has also been widely interpreted by the European Court but in general terms it has been taken to mean the place where a person lives on a settled basis²⁷. The protection of “*respect for home*” implies a right of access and occupation²⁸.

The definition of “home” will depend on the individual circumstances, including his current home and anywhere else he may have established ties. Its meaning was examined in *Harrow London Borough Council v Qazi* [2004] 1 AC 983 where it was observed that:

“... the need for some protection of the home was recognised in the convention, since few things are more central to the enjoyment of human life than having somewhere to live... the expression 'home' appears to invite a down-to-earth and pragmatic consideration whether the place in question is that where a person 'lives and to which he returns and which forms the centre of his existence'.

...

In Gillow v UK (1986)²⁹, the court held that the house in question was the applicants' home because although they had been absent from Guernsey for many years they had not established any other home elsewhere in the United Kingdom and had retained 'sufficient continuing links' with the house for it to be considered their home for the purposes of art 8.

...

A person's home is ... the place where he and his family are entitled to be left in peace free from interference by the State.”

In this context “home” relates to the property in which the person lives and not the community and place in a wider sense in which the person is living.

Article 8 does not guarantee:

- The right to a home
- The right to have one's housing problems solved by the authorities or
- For an acquired right to be protected regardless of a break in residence.

²⁷ *Murray v United Kingdom* [1994] 19 EHRR 193

²⁸ *Gillow v United Kingdom* [1986] 11 EHRR 335 and *Wiggins v United Kingdom* [1978] 13 DR 40

²⁹ 11 EHRR 335

**APPENDIX
C**
OTHER JURISDICTIONS
Introduction

The mechanisms for managing population, including those wishing to migrate for economic and non-economic reasons, in the following jurisdictions were examined:

Crown Dependencies	British Overseas Territories	Commonwealth Countries	EU Countries
Jersey	Gibraltar	Australia	Cyprus
Isle of Man	Bermuda	Canada	Malta
	Cayman Islands	New Zealand	
	Turks and Caicos Islands		
	British Virgin Islands		

Charts 1 and 2 at the end of this Appendix provide a comparison of the various international obligations which the jurisdictions are party to and their relationship with the UK.

THE CROWN DEPENDENCIES
Background

The Channel Islands and the Isle of Man are not part of the United Kingdom and their constitutional relationship with the United Kingdom is not enshrined in a formal constitutional document.

Their relationship with the European Union (EU) is governed by Article 299(6)(c) of the EU Treaty and Protocol 3 to the UK's Act of Accession to the Community. The EU provisions on the free movement of persons do not apply to the Islands but Islanders can benefit from them if they have close ties with the UK.

The Islands, together with the United Kingdom and the Republic of Ireland, form a Common Travel Area with immigration control at the periphery. There are no immigration controls between the United Kingdom and the Islands.

Population

Table 1 provides an overview of how many people live in each jurisdiction.

Table 1	Total Population	Area (km²)	Population Density
<i>Guernsey</i>	<i>62274</i>	<i>63</i>	<i>988</i>
Jersey	92500	116	797
Isle of Man	80058	572	140

Immigration Regime

The immigration regimes for each of the Crown Dependencies very closely reflect the UK provisions, comprising the extension of the UK Immigration Act 1971 and a set of detailed Rules, based on those made for the UK, but tailored to each Crown Dependency.

JERSEY

Background

Jersey faces a number of challenges which can be either directly or indirectly linked to the management of population size, including:

- It is seen as desirable places to live and work
- The indigenous population cannot meet employment needs
- It faces significant demographic challenges from an ageing population
- Land, and in particular land for building homes, is very limited
- The average size of households is falling and so demand for housing is rising.

In the immediate post-war years Jersey adopted a housing control regime to manage the demands for housing. Jersey's housing control regime has been variously amended and the most recent amendments (approved in July 2009) reflect a shift of emphasis from a control of housing to population management while retaining elements of housing controls by restricting the accommodation options for migrants.

Jersey's population has increased steadily in recent years from 87,400 in 2001 to 92,500 in 2009. This is an overall increase of approximately 5.5%.

Population Policy

Before reviewing Jersey's approach it is important to note that Jersey has accepted that to maintain its economic well-being, international competitiveness and address the challenges associated with an ageing population it must allow the population to grow. Therefore, its current population policy allows for managed population growth.

In 1997 Jersey agreed to a population policy based on maintaining the population at or below its 1995 level (85,150).

However, this was reviewed in October 2003 as Jersey accepted that the 1997 policy was impossible to achieve because the States did not have sufficient control, through the Housing Control regime, to achieve the policy objective for the following reasons:

- The States had no control over the majority of the Island's population
- It took no account of the demographic profile or economic policy objectives
- Jersey needed access to skilled migrant labour to meet economic and social objectives.

Jersey has now shifted its focus from population numbers to the skills needed to maintain and grow the economy. The focus is now looking to attracting migrants who can make a positive contribution to the Island's economy.

In July 2005 the following propositions were approved:

- Monitoring and regulating the factors governing migration
- Integrating its housing, employment and regulation of undertakings laws
- Consolidating the types of housing status
- Linking access to housing with access to employment
- Establishing a Population Office and Register.

The 2009 Strategic Plan proposed that the total population should not exceed 100,000 and, in the short term, migration should not exceed 150 heads of household per annum (i.e. an overall increase of c. 325 people per year) and the policy is set to be reviewed every three years.

Housing Control Regime

Jersey's Housing Control regime is currently based on the Housing (Jersey) Law, 1949 and its general provisions are set out below.

However, a full review of this legislation is well advanced and the States has approved two new laws which will replace the 1949 Law. The two new laws – the Register of

Names and Addresses (Jersey) Law and the Migration (Jersey) Law – are currently being drafted but no date has been set for their commencement.

The new laws will change how Jersey manages its population, the routes and time scales for attaining qualified status and how this status may be lost after a period of absence. The new regime will continue to restrict access to employment and housing for anybody who does not hold residential qualifications.

- **Housing Qualifications**

The 1949 Law provides the following ways for somebody to gain housing qualifications in Jersey:

- Where born in Jersey, by having lived in Jersey for 10 years residence in aggregate
- Where born outside Jersey, by having lived in Jersey continuously for 10 years
- Where born outside Jersey, having arrived before 20th birthday and lived in Jersey for 10 years in aggregate
- As the spouse by having lived in Jersey with a qualified spouse for 10 years.

- **Housing Controls**

The 1949 Law prevents certain groups from owning property. It also restricts the pool of properties from which others can either buy or rent.

In general terms the 1949 Law allows the following groups to buy or rent any property:

- Those born in Jersey and who have lived in the Island for 10 years
- Those not born in Jersey but who have lived continuously in the Island for 10 years
- Any child who comes to live in Jersey before their 20th birthday, and who has at least one parent who was Jersey born.

Where somebody comes to Jersey to work as an “essential employee” he can purchase or lease a property but the pool of properties he can choose from is restricted. He must also remain in an “essential” post until he has gained residential qualifications.

Residential qualifications can be gained after 10 years continuous residence. At this point he may seek any employment he wants or retire and is also free to buy or rent any property he may chose.

High-net worth individuals can also live in Jersey. This group is often referred to as “Category 1(1)(k) residents” as this relates to the section of the 1949 Law which determines the conditions of their residence in Jersey. Prior to 2010, residence under

this category was dependent on a minimum tax contribution of £200,000 per annum. Their tax contribution is now on a statutory basis whereby any Jersey income is taxed at 20% and foreign income on a sliding scale from 20% for the first £1 million to 1% for income over £1.5 million.

In addition they are restricted to the most expensive properties in Jersey and the Housing Department decides whether or not their chosen property falls within this narrow pool of properties from which they can rent or buy. Each application is viewed on its merits,

"... consent that can be justified on social or economic grounds or both and as being in the best interests of the community."

Finally, the 1949 Law allows for anybody to apply to rent or buy a controlled property on the grounds of "hardship". These applications generally arise following the death of the qualified resident or after a relationship break-up to allow contact with children. Again, each case is considered on its merits and conditions as to the size or type of property may be attached if permission is granted.

- Non-Qualified Accommodation

Anybody who does not satisfy one of the above categories is not permitted to purchase or rent a property. However, they can live in Jersey in either a registered lodging house or private lodgings. This group of people can apply for residential qualifications after they have lived in Jersey continuously for 10 years and may then buy or rent any property they wish.

There are currently some 250 Registered Lodging Houses. Registered lodging houses are subject to inspection by the Housing Department and the accommodation varies from single and double rooms with cooking facilities where bathroom facilities are shared, to fully self-contained one and two bedroom flats.

Private householders may also accommodate up to 6 people as lodgers. Such lodgers are free to undertake any work they may wish.

- Loss of Housing Qualifications

Jersey has provision for housing qualifications to be lost following a break in residence. Under the present regime where residential qualifications are acquired by somebody who was not born in Jersey or who is not the child of a Jersey born qualified resident the qualifications may be lost after a break in residence of 5 years.

Under the new Migration (Jersey) Law residential qualifications will only be lost where the person was not born in Jersey and has not lived in the Island for 10 years.

However, where the person has lived in Jersey for 25 years continuous residence he will retain his residential status for life.

ISLE OF MAN

Background

The Isle of Man's work permit-based regime aims to protect employment opportunities for local workers. The current regime applies to most people who do not have links to the Isle of Man but wish to take up employment and so should not be seen as a mechanism for controlling population.

The 2006 census showed that approximately 12% of the Isle of Man's working population relied on a work permit to work lawfully, compared with 14.5% at the time of the 2001 census.

The work permit regime is seen as effective in protecting employment opportunities of Isle of Man workers but requires robust enforcement to maintain its effectiveness and public confidence.

The Isle of Man has also approved, though not enacted, residency legislation. The Residence Act, 2001, provides a mechanism for controlling residency. It is seen as contingency planning legislation should the work permit regime need to be supported by additional legislation to protect the character and the status of the Isle of Man.

Population Policy

The Isle of Man does not have a population policy per se but the Strategic Plan 2007-2011 states:

“Current population projections point to an increasing resident population of around 81,000 by 2010 and 86,000 by 2020 together with some changes in age profiles i.e. 35% increase in 60 years and over population and 20% increase in 75 years and over.”

Priority 1 of the Plan seeks to raise the living standards through the development the economy and to maintain full employment through developing the existing workforce and enabling anybody who wants to work to be able to do so by providing flexible working and childcare.

Work Permit Regime

- Isle of Man Worker

The work permit regime adopts the concept of an “Isle of Man worker” who is exempt from the need for a work permit. To gain this status somebody must either have:

- Been born in the Isle of Man
- Lived in the Isle of Man for at least 10 consecutive years
- Married an Isle of Man worker
- Spent their first 5 years in the Island and have at least one parent who was born in the Isle of Man
- Received full time education while ordinarily resident in the Isle of Man.

- Work Permits

Non-Isle of Man Workers must get a work permit before starting work and the permit may be for:

- 5 years – after which the holder can change job without need for a work permit
- 1 year or less – e.g. where an Isle of Man worker is not immediately available but may be in the near future; the permit may be extended if no Isle of Man worker becomes available
- A specified period, e.g. duration linked to length of a fixed term contract.

The work permit is not transferrable and so where somebody changes jobs the new employer must apply for a new permit. Also, the employer cannot assume that because a permit had been issued a further one will be granted.

The spouse of a work permit holder is automatically entitled to a 1 year work permit which is renewable for so long as the original permit holder continues to be employed.

- Exemptions

The regime includes a number of posts that are exempt from the work permit regime and includes Crown Officers, Police Officers, clergy, doctors and dentists. However, the Isle of Man is considering replacing the current list with one based on skill shortage and economic benefit where there is a world-wide skill shortage or where the business is seen as beneficial to the Isle of Man’s economy.

- Decision Making

Decisions are made by a statutory body which looks at the following criteria:

- The likelihood of a suitable Isle of Man worker being available or one becoming available within 12 months
 - The circumstances of the applicant
 - Criminal convictions
 - The size of the person's family.
- **Revocation of Work Permits**

Permits can be revoked where the holder:

- Commits an offence punishable by imprisonment³⁰
 - Makes a false statement when applying for a work permit
 - Fails to pay National Insurance contributions.
- **Appeals**

Appeals against decisions are to an independent tribunal comprising a legally qualified Chairman and two ordinary members. The appeal must be made within 7 days of the date of the decision. An appeal can be made by the person concerned or any Isle of Man Worker who has "*suffered a definite loss because a permit has been granted*". This right of appeal is regarded as potentially restrictive as an employer cannot complete the recruitment process until the appeal has been heard.

- **Loss of Isle of Man Worker Status**

Under the regime Isle of Man worker status acquired through essential employment is lost following a break in residence where a person leaves the Isle of Man within 5 years of becoming an Isle of Man worker and lives elsewhere for more than 15 years. However, where the status is gained through birth or familial connections it is retained for life.

THE BRITISH OVERSEAS TERRITORIES

Background

There are 14 British Overseas Territories of which 10 have a permanent population³¹ and 4 have no permanent or indigenous population³². The UK does not interfere with

³⁰ A judgment in the Isle of Man's Court of Appeal in September 2000 means that whilst the work permit may be withdrawn the person cannot be required to leave the Isle of Man if he has established his home and family life there (*Galloway 2SD 2000/17*)

the Overseas Territories right for self-government so long as they ensure that human rights are not infringed and good governance prevails. This broadly mirrors the Crown Dependencies relationship but with two important differences:

- The Overseas Territories are answerable to the UK government rather than through the Crown
- The relationship is on a statutory basis (the British Overseas Territories Act 2002)

Finally, there are important constitutional differences between Gibraltar's relationship with the UK and the other Overseas Territories. Gibraltar is an integral part of the European Union and under Article 227(4) of the Treaty of Rome is a European Territory of the UK. Residents of Gibraltar also have a right to vote in the elections for UK members of the European Parliament.

Human Rights and the Overseas Territories

The Overseas Territories have extended the European Convention on Human Rights but have not incorporated the Convention Rights into their domestic legislation. However, the Privy Council has ruled that where Convention Rights are incorporated in the constitution, any domestic laws must be interpreted so as to protect these rights³³.

How were the Five Overseas Territories Selected?

The jurisdictions were selected because of their similarities with Guernsey, particularly in respect of the importance of financial services to their economies. Table 2 gives a breakdown of the contribution of financial services to their Gross Domestic Product (GDP) and the size of the workforce in that sector³⁴.

³¹ Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, the Falkland Islands, Gibraltar, Montserrat, the Pitcairn Islands, St. Helena and its dependencies (Ascension Island and Tristan da Cunha) and the Turks and Caicos Islands

³² The British Antarctic Territories, the British Indian Ocean Territories, South Georgia and the South Sandwich Islands have no indigenous population; The Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus also have no permanent population.

³³ *Minister of Home Affairs v Fisher* [1979] 3 All ER 21

³⁴ Source: *Progress Report of the Independent Review of British Offshore Financial Centres*, April 2009, HM Treasury

Table 2	Total GDP	Percentage GDP in Financial Services	Employment
Guernsey	£1666m	£528m (32%)	7500 (24%)
Bermuda	£2925m	£1207m (41%)	7600 (19%)
Cayman Islands	£1283m	£465m (36%)	7500 (21%)
Gibraltar	£740m	£145m (20%)	2400 (12%)
British Virgin Islands	£571m	£206m (36%)	2100 (13%)
Turks & Caicos Islands	£414m	£44m (11%)	500 (3%)

Population

The population profiles of each of the Overseas Territories are different from each other and Guernsey but many of the population challenges they face are also faced in Guernsey – e.g. an ageing population, skills and/or labour shortages, and the possible impact of emigration by people of working age.

Each of the five jurisdictions has immigration and settlement regimes which seek to manage population while balancing the desire to grow the economy.

Table 3 provides an overview of how many people live in each jurisdiction.

Table 3	Total Population	Area (km²)	Population Density
Guernsey	62274	63	998
Bermuda	64209	54	1181
Cayman Islands	54248	260	209
Gibraltar	29431	6	4905
British Virgin Islands	24900	153	163
Turks and Caicos Islands	32200	417	77

BERMUDA

Bermuda does not have a population policy *per se* and seeks to manage its population through its immigration laws.

The key aspects of Bermuda's regime are:

- Work permits are generally limited to 6 years but can be extended in exceptional circumstances
- There must be a 2 year break between a work permit expiring and a new one being issued

- Work permits must be applied before moving to Bermuda
- The Immigration Department can refuse entry unless the person can produce a work permit
- The employer must show the post satisfies a “key employee” test³⁵
- Limits the number of work permits issued to the family of the holder
- Posts are categorised according to difficulty to fill:
 - *Open Category* - open to non-Bermudians, if no Bermudian is available
 - *Closed Category* - non-Bermudians are not allowed to work
 - *Restricted Category* - non-Bermudians may be permitted to work
- A non-Bermudian may apply to change job once in any 5 year period but only if the new job also satisfies the criteria for issuing a work permit.

THE CAYMAN ISLANDS

The Cayman Islands do not have a population policy *per se*. However, the Islands’ immigration and work permit regimes act as a population limiter. The two regimes allow non-Caymanians to fill temporary skills and labour shortages. Permanent residence is permitted in limited circumstances after 8 years ordinary residence.

The following are key aspects of the Cayman Islands’ regimes:

- The regime distinguishes between entry and residence
- A work permit holder may apply for permanent residence after 8 years residence
- Permanent residence can be “lost” after a break in residence of 1 year
- All applicants must be competent in English
- The Employer Accreditation System gives a fast track application process.

GIBRALTAR

Gibraltar does not have a population policy *per se*. It manages migration through its immigration and employment legislation. When reviewing Gibraltar’s population management regime it is important to remember two differences between Gibraltar and the other Overseas Territories:

³⁵ One or more of the following criteria must be satisfied:

- The person is among the best practitioners in the world; or
- The person has rare specialised expertise that cannot be easily found world-wide; or
- Although not particularly specialised, there is a severe shortage of the particular skills;
- Without the individual the business will be damaged to the detriment of Bermuda; or
- The person has crucial business contacts critical to the business's continued success; or
- The individual is directly responsible for creating posts for Bermudians; or
- The person is directly responsible for training Bermudians.

- Gibraltar is an integral part of the European Union, though not a Member States. This means that EU nationals have the right to enter, live and work in Gibraltar
- Gibraltar has a land border with Spain. This means there is an alternative option for those working in Gibraltar as they can live in Spain and commute into Gibraltar for work. Nearly 30% of Gibraltar's workforce do this and are often referred to as Frontier Workers.

The following are key aspects of Gibraltar's regimes:

- The regime distinguishes between a right to enter and applications for permanent residence
- Acquired permanent residence can be lost after a 2 year break in residence
- Gibraltar's system allows for exemptions for government employees.

THE TURKS AND CAICOS ISLANDS

The Turks and Caicos Islands do not have a population policy *per se*. Its immigration policy favours skilled migrants and those looking to invest and create jobs. Permanent residence may be granted after 5 years ordinary residence. The population has doubled since 1990, largely to meet labour needs as the economy has grown. Approximately 50% of residents are from outside the Islands.

The following are key aspects of the Turks and Caicos' regimes:

- Residential qualifications may be gained through birth/ancestry, marriage or by making a significant social or economic contribution to the Islands
- Where residential qualifications are acquired other than through birth these can be lost after a 3 year break in residence
- The use of business plans for companies with ten or more employees seeking work permits acts as an alternative to an accredited employer scheme.

THE BRITISH VIRGIN ISLANDS

In the 1960's and 1970's the British Virgin Islands experienced high levels of emigration, especially amongst its economically active population. However, as the economy developed in the 1980's through its growth as an offshore finance centre and tourist destination, this trend reversed and there was a large influx of migrant labour to fill labour and skills shortages in these two areas.

The Islands have established strategic policies which focus on demographic changes – both through an ageing population and to prevent emigration. The policies seeks to balance labour needs with the Islands’ environment while maintaining a diverse and vibrant economy and providing opportunities for the indigenous population to develop their own skills and experience.

The following are key aspects of the British Virgin Islands’ regimes:

- Employers are expected to interview any suitably experienced qualified residents
- Work permits are issued for one year and can be renewed if there is no suitable qualified resident available
- Residential qualifications can be “lost” if there is a break in residence of 5 years.

THE EUROPEAN UNION

Background

The EU is an economic and political union of 27 member states which is committed to regional integration. The EU dates back to the Treaty of Rome formed in 1957. The EU has developed a single market for the free movement of people, goods and services.

Malta and Cyprus were selected because they are the two EU Member States which are also islands and so have some similarities with Guernsey. Both Cyprus and Malta have developed immigration regimes for non-EU migrants that reflect their desire to protect their culture and environment whilst also enabling them to develop new industries, including financial services and e-gaming, to allow their economies to grow.

Population

	Total Population	Area (km ²)	Population Density
<i>Guernsey</i>	62274	63	998
Cyprus	862434	9250	93
Malta	411950	316	1304

CYPRUS

Cyprus is an EU Member State and therefore there are no restrictions on the movement of EU citizens. EU citizens do not require a work permit.

There are two principal routes available to non-EU citizens looking to settle in Cyprus:

Temporary Permit – these are granted upon documentary proof of a bank account in Cyprus, sufficient foreign income to support the applicant and his/her family and the sales agreement of the property purchased. Temporary residence status can be for 1 to 4 years.

Permanent Residence Permit – applicants provide proof that they and their families are self-supported and have been in Cyprus for a continuous period of more than 5 years.

Non-EU citizens must also obtain a work permit if they wish to work. These are categorised either as Executives or non-Executives. Executives are defined as “senior manager” and generally only 3 are permitted per company. Work permits are normally issued for 2 years, renewable for a further 3 years.

MALTA

Malta operates a work permit regime for non-EU nationals. Work permits are only issued if there is no suitably qualified local person or EU national to fill the post. The restrictions can be relaxed where the post is linked to substantial foreign investment, including the creation of additional posts for the local labour force, in Malta.

A non-EU national may apply for permanent residence but must have personal health insurance, be able to support himself and any dependents without recourse to public funds and be of good character. This permit is issued on an indefinite basis. A non-EU national can only buy one property and it must be used solely as a residence of the owner and his relatives and must be worth at least €95,900 (£78,790) for apartments, and €155,000 (£127,330) for other types of property.

These figures do not appear to have been reassessed to reflect the general house price trends in Malta. In July 2010 the Bank of Malta published a review of house prices which indicated that the average price of a house of 200m² was €573,000 (£471,310). EU nationals can only buy properties as of right but the property must be used solely as a residence for the owner or for his immediate family. A second property may only be purchased after 5 years continuous residence.

THE COMMONWEALTH**Background**

The Commonwealth is an inter-governmental organisation of 54 independent member states. The member states co-operate within a framework of common values and goals, including the promotion of democracy, human rights, good governance and free trade.

Australia, Canada and New Zealand were selected because each has developed its points-based system to support its immigration policies and with particular regard to attracting skilled labour where there are domestic shortages.

AUSTRALIA

Australia's immigration regime recognises that:

- For the economy to grow and develop there is a need for skilled labour
- It cannot fill all its labour and/or skill vacancies
- Many migrants do not want to stay permanently in Australia.

Each year the Australian Migration Programme is reviewed to ensure that there is a sufficient supply of the right skills to achieve the country's economic objectives. In 2008 – 09 the Migration Programme identified that some 171,800 migrants across a large range of skills were needed. This was an increase of 8.2 % over the previous year.

The General Skilled Migration visa is linked to a published Skilled Occupations List showing those occupations where there is a skills shortage. Applicants must be aged under 45 years, have skills on the Skilled Occupations List, be able to speak English and have recent experience in the post he is looking to take.

CANADA

Canada's immigration policy objectives are:

- To maximise the social, cultural and economic benefits of immigration
- To support the development of a strong and prosperous economy
- To enrich and strengthen the cultural and social fabric of Canadian society.

The Canadian Skilled Worker Visa allows migration to Canada, without the need for an employer or sponsor, to seek employment and apply for jobs following the same

process as a Canadian citizen. The holder of a Skilled Worker Visa can seek a Permanent Residence Visa after 3 years and citizenship after a further 3 years residence.

The holder of a Permanent Residence Visa and any accompanying dependants are permitted to permanently reside and work in Canada. Permanent residents may access public services.

NEW ZEALAND

The New Zealand system is broadly similar to that of Australia but the application process is different.

There are several routes for those who wish to work and settle in New Zealand including:

- *Skilled Migrant Category* – for those with shortage skills who want to settle
- *Work to Residence* – for those wanting to work while deciding whether to settle permanently
- *Residence from Work* – enables those already in New Zealand to seek permanent residence.

The Essential Skills Work Policy was introduced in July 2008 and differentiates between occupations on the basis of their skill level where there are identified skill shortages. Where there is a skills shortage the occupation is included on Skill Shortage List. Employers must show they have made attempts to recruit a New Zealander.

Allocation of Points

While the three points-based systems operated are tailored to each country's skills and labour shortages they all follow a similar formula.

Each awards points in the following headings:

- Employment – including skills, qualifications and/or experience
- Age
- Academic qualifications
- Familial links with the country
- Partner's skills and/or qualifications
- Offer of employment
- Knowledge of English (or French in Canada)

APPENDICES

Chart 1 – Overview of International Obligations

	Crown Dependencies			EU		British Overseas Territories					Commonwealth Countries		
	Guernsey	Jersey	Isle of Man	Cyprus	Malta	Gibraltar	Bermuda	Cayman Islands	Turks and Caicos Islands	British Virgin Islands	Australia	Canada	New Zealand
Universal Declaration of Human Rights	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
European Convention on Human Rights and Fundamental Freedoms	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			
ECHR enshrined in domestic law	✓	✓	✓	✓	✓	✓							
EU Member State				✓	✓								
EU Special Relationship under Accession Treaty	✓ ³⁶	✓ ³⁶	✓ ³⁶			✓ ³⁷							
International Labour Organisation Migration for Employment Convention	✓	✓	✓	✓		✓	✓	✓	✓	✓			
International Covenant on Civil and Political Rights	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓

³⁶ The relationship with the EU is governed by Article 299(6)(c) of the EU Treaty and Protocol 3 to the UK's Act of Accession to the Community

³⁷ Gibraltar is an integral part of the European Union. Under Article 227(4) of the Treaty of Rome

APPENDICES

Chart 2 – Overview of Relationships with the UK

	Crown Dependencies			EU		British Overseas Territories					Commonwealth Countries		
	Guernsey	Jersey	Isle of Man	Cyprus	Malta	Gibraltar	Bermuda	Cayman Islands	Turks and Caicos Islands	British Virgin Islands	Australia	Canada	New Zealand
Parts of the UK Immigration Act extended to the jurisdiction	✓	✓	✓										
Within the Common Travel Area	✓	✓	✓										
British Citizenship under the British Overseas Territories Act 2002						✓	✓	✓	✓	✓			
Provision for people with UK ancestry under UK Immigration Rules				✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Full EU free movement rights				✓	✓								
Limited EU free movement rights	✓ ³⁸	✓ ³⁸	✓ ³⁸										
Other special provisions with another jurisdiction for the free movement for work and/or settlement											With New Zealand		With Australia

³⁸ Article 6 of Protocol 3 states that a Channel Islander or Manxman shall mean any citizen of the U.K. and Colonies who holds that citizenship by virtue of the fact that he, a parent or grandparent was born, adopted, naturalized or registered in the Island in question; but such a person shall not for this purpose be regarded as a Channel Islander or Manxman if he, a parent or grandparent was born, adopted, naturalized or registered in the U.K. Nor shall he be so regarded if he has at any time been ordinarily resident in the U.K. for five years.

**APPENDIX
D****STATUTORY ROLES**

There are many existing examples of statutory roles within the States which allow for clear separation between the roles of policy making and administrative decision making. Some examples are listed below. (This list is not intended to be exhaustive.)

Data Protection Commissioner

Powers under: Data Protection (Bailiwick of Guernsey) Law, 2001.

Director General of Utility Regulation

Powers under: Regulation of Utilities (Bailiwick of Guernsey) Law, 2001.

Director of Civil Aviation

Powers under: Aviation (Bailiwick of Guernsey) Law, 2008.

Director of Income Tax

Powers under: Income Tax (Guernsey) Law, 1975.

Director of Public Health

Powers under: Loi relative à la Santé Publique, 1934, Ordonnance relative à la Santé Publique, 1936 and Smoking (Prohibition in Public Places and Workplaces) (Guernsey) Law, 2005.

Director of Environmental Health and Pollution Regulation

Powers under: Loi relative à la Santé Publique, 1934, Ordonnance relative à la Santé Publique, 1936 and Environmental Pollution (Guernsey) Law, 2004.

Registrar of Companies

Powers under: Companies (Guernsey) Law, 2008.

Chief Health and Safety Officer

Powers under: Health and Safety at Work etc (Guernsey) Law, 1979, Poisonous Substances (Guernsey) Law, 1994, Food and Environment Protection Act 1985(a) as extended to the Bailiwick of Guernsey by the Food and Environment Protection Act 1985 (Guernsey) Order 1987, Loi relative aux Substances Explosives, 1939, the Safety of Employees (Miscellaneous Provisions) (Guernsey) Ordinance, 1952 and Loi relative aux Huiles ou Essences Minérales ou autres substances de la même nature, 1927.

**APPENDIX
E****QUALIFICATION ROUTES****Extract from the Housing (Control of Occupation) (Guernsey) Law, 1994, as amended****Section 10 - Qualified residents not to require housing licence**

- (1) Subject to the succeeding provisions of this Law, a qualified resident shall not require a housing licence to occupy a dwelling in Guernsey.
- (2) The following persons are qualified residents-
 - (a) a person-
 - (i) who, at any time during the period commencing on the 1st January, 1938 and ending on the 30th June, 1957, was ordinarily resident in Guernsey; and
 - (ii) who, on the 31st July, 1968, was occupying a dwelling in Guernsey;
 - (b) a person who, on the 31st July, 1968, was the spouse or child of a person described in paragraph (a) and who, prior to the 26th March, 1975, had been ordinarily resident in Guernsey for an aggregate of not less than 5 years;
 - (c) a person who was born in Guernsey before the commencement of this Law and who, since his birth, has been continuously ordinarily resident in Guernsey;
 - (d) a person-
 - (i) who was born in Guernsey before the commencement of this Law;
 - (ii) who has been ordinarily resident in Guernsey for an aggregate of not less than 10 years in any 20 year period; and
 - (iii) who is the child of parents at least one of whom was ordinarily resident in Guernsey at the time of the birth of that person;
 - (e) a person-
 - (i) who was born in Guernsey on or after the commencement of this Law;

- (ii) who has been ordinarily resident in Guernsey for an aggregate of not less than 10 years in any 20 year period; and
 - (iii) who is the child of parents at least one of whom is a qualified resident and was ordinarily resident in Guernsey at the time of the birth of that person;
- (f) a person who has been ordinarily resident in Guernsey for an aggregate of not less than 10 years in any 20 year period as the child of a person-
- (i) described in paragraph (d) or (e); or
 - (ii) deemed to be a person described in paragraph (d) or (e) by virtue of paragraph (m);
- (g) a person-
- (i) who has been ordinarily resident in Guernsey for a period of not less than 10 consecutive years and who has, throughout that period, cohabited with a qualified resident as his spouse; or
 - (ii) who is the surviving spouse of a qualified resident and who cohabited with him as his spouse for a period of not less than 5 consecutive years immediately prior to his death and who has been ordinarily resident in Guernsey for a period of not less than 10 consecutive years after the date of their marriage;
- (h) a person who has been ordinarily resident in Guernsey for a period of not less than 15 consecutive years and who throughout that period has been in occupation of a dwelling or dwellings-
- (i) under or by virtue of a licence granted under the Law of 1948, the Law of 1967, the Law of 1969, the Law of 1975, the Law of 1982 or section 3 of this Law; or
 - (ii) under or by virtue of successive such licences, because his employment was, by reason of his qualifications, skill or experience, essential to the community; or
 - (iii) otherwise than under or by virtue of such licences but in circumstances which, in the Authority's opinion stated in a notice served on that person, are such that his period of occupation should be treated as being occupation under or by virtue of such licences;

- (i) a person-
 - (i) who is the child of a person described in paragraph (h);
 - (ii) who first occupied a dwelling in Guernsey as a minor and as a member of the household of a person described in paragraph (h); and
 - (iii) who has been ordinarily resident in Guernsey for an aggregate of not less than 15 years in any 25 year period;
- (j) a person who has been ordinarily resident in Guernsey for a period of not less than 20 consecutive years and who throughout that period has been in occupation of a dwelling or dwellings-
 - (i) under or by virtue of a licence (other than a licence for the occupation of a dwelling which, at the time in question, was a dwelling inscribed in Part B or C of the Housing Register or was a dwelling inscribed in Part D of the Register of which he was the owner) granted under the Law of 1948, the Law of 1967, the Law of 1969, the Law of 1975, the Law of 1982 or section 3 of this Law;
 - (ii) under or by virtue of successive such licences; or
 - (iii) otherwise than under or by virtue of such licences but in circumstances which, in the Authority's opinion stated in a notice served on that person, are such that his period of occupation should be treated as being occupation under or by virtue of such licences;
- (k) a person, whether or not born in Guernsey, who has been ordinarily resident in Guernsey for an aggregate of not less than 20 years in any 30 year period and who first occupied a dwelling in Guernsey as a minor and as a member of the household of his father or mother;
- (l) the surviving spouse of a person described in paragraph (d), (e) or (f) who died while serving in the armed forces of the Crown if the surviving spouse was cohabiting with him as his spouse immediately prior to his death and became ordinarily resident in Guernsey within a period of six months immediately following the date of his death;
- (m) a person-
 - (i) whose birth took place elsewhere than in Guernsey by reason of a need for special medical or surgical care or treatment at or in connection with the birth or for other reasons or in other circumstances beyond the control of his mother;

- (ii) whose mother was ordinarily resident in Guernsey at the time of his birth; and
 - (iii) who, but for the fact that he was born elsewhere than in Guernsey, would be a person described in paragraph (c), (d) or (e).
- (3) For the purposes of subsection (2), a person born elsewhere than in Guernsey at any time during the period commencing on the 1st June, 1940 and ending on the 31st December, 1947 shall be deemed to satisfy the requirements of subsection (2)(d)(i) and (iii) if at least one of his parents-
 - (a) was ordinarily resident in Guernsey at any time during 1940;
 - (b) subsequently ceased to be so ordinarily resident; and
 - (c) having so ceased to be so ordinarily resident, resumed such ordinary residence before the 31st December, 1947.

**APPENDIX
F****OTHER CRIMINAL CONVICTION CHECK REGIMES****Immigration Regime**

The Immigration Rules provide that a person with an unspent³⁹ criminal conviction may be refused entry to the UK. These rules apply to Guernsey, insofar as non – European Economic Area citizens are concerned, through the extension of the Immigration Act 1971 and the Bailiwick’s Immigration Rules.

European Union Directive on the Free Movement of Persons

The European Union (EU) law on free movement of persons for the purpose of taking up work or engaging in other economic activity does not apply in Guernsey. However, the special relationship that Guernsey has with the EU under Protocol 3 to the UK’s 1972 Act of Accession (subsequently extended to include Iceland, Liechtenstein and Norway as the European Economic Area (EEA)) incorporates the principle of non-discrimination on grounds of nationality. This generally means that different treatment cannot be afforded to nationals of other EEA States coming to, and already in, Guernsey than it is to British citizens. Therefore it would not be lawful to issue a Permit to a UK citizen with a criminal conviction but refuse a similar application from the citizen of another EEA country.

EEA citizens can only be excluded from the UK (and therefore Guernsey) on very limited grounds of public policy, public security or public health and previous criminal convictions cannot alone constitute grounds for taking such measures.

Safeguarding Regime

The UK Safeguarding Vulnerable Groups Act 2006 provides the legal framework for the Vetting and Barring Scheme. The Scheme aims to provide a comprehensive,

³⁹ **Spent Convictions** - A ‘spent’ conviction is one which the person concerned does not have to reveal or admit its existence in most circumstances. This means that once their conviction is spent, they do not have to disclose it when filling in application forms, applying for insurance, jobs, or when asked. An employer cannot refuse to employ someone because he or she has a spent conviction. They are also not permitted to dismiss them on that ground. However, there are some exceptions relating to certain types of employment. Some convictions are never ‘spent’.

Unspent Convictions - If a person is convicted of an offence and a sentence of more than 30 months is imposed, the conviction is never spent. As it remains an unspent conviction, the person must always disclose their conviction when asked about their criminal record.

centralised, integrated and updated system to prevent unsuitable people from gaining access to vulnerable groups through their work (paid or voluntary), and to ensure that those who become unsuitable do not continue in such work. The Act makes it an offence for an employer to employ somebody without having made appropriate checks through the Scheme. In September 2009 the States approved proposals for parts of this Act to be extended to the Bailiwick and for local legislation to be drafted to replicate the offences contained within the 2006 Act.

Regulation within the Financial Services Sector

Anybody working at managerial level and above and controllers within a Financial Services Business are required under the Regulation of Fiduciaries, Administration Business and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 to disclose details of any unspent convictions and any “relevant” spent convictions, e.g. a conviction for fraud, money laundering, etc. Although there is no statutory requirement for more junior staff to be checked, most employers will ask all staff to provide an appropriate level of disclosure to ensure the future integrity of the business.