

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *for* HOME AFFAIRS

THE POPULATION MANAGEMENT (GUERNSEY) LAW, 2016
PROPOSALS TO REGULATE THE RESIDENTIAL STATUS OF INDIVIDUALS IN SPECIFIC
CIRCUMSTANCES

The States are asked to decide:-

Whether, after consideration of 'The Population Management (Guernsey) Law, 2016 Proposals to Regulate the Residential Status of Individuals in Specific Circumstances' dated 17 October 2016, they are of the opinion:-

1. To agree to treat any period during which a minor is accommodated under a fostering arrangement in Guernsey in accordance with the provisions of the Children (Guernsey and Alderney) Law, 2008, as ordinary residence in Guernsey;
2. To agree to treat any period of residence during which a minor is accommodated under a pre-adoptive arrangement in Guernsey in accordance with the provisions of the Children (Guernsey and Alderney) Law, 2008, as ordinary residence in Guernsey;
3. To agree to treat a minor being accommodated in a fostering or pre-adoptive arrangement in Guernsey in accordance with the provisions of the Children (Guernsey and Alderney) Law, 2008, as being lawfully accommodated by the householder without the need to hold a Discretionary Resident Permit for the duration of that arrangement;
4. To agree to treat any period of time spent by a minor in a fostering or pre-adoptive arrangement outside Guernsey in accordance with the provisions of the Children (Guernsey and Alderney) Law, 2008, as ordinary residence in Guernsey;
5. To agree that students from the other islands of the Bailiwick being accommodated in accordance with the term-time host scheme coordinated by the Committee *for* Health and Social Care's Children & Family Community Services, remain ordinarily resident elsewhere than in Guernsey during the period over which they are being educated in Guernsey;
6. To agree that students from the other islands of the Bailiwick being accommodated in accordance with the term-time host scheme operated by the Committee *for* Health and Social Care's Children & Family Community Services are lawfully accommodated

by the householder without the need to hold a Discretionary Resident Permit for the duration of that arrangement;

7. To agree to treat a period of time spent receiving treatment/care elsewhere than in Guernsey as ordinary residence in Guernsey so long as the person concerned:
 - i. was ordinarily resident in Guernsey immediately prior to the commencement of that treatment/care; and
 - ii. can demonstrate that, were it not for their need for treatment/care, they could reasonably expect to be ordinarily resident in Guernsey;
8. To agree that (subject to Recommendation 9) time spent in prison in Guernsey (or elsewhere at the behest of a court in Guernsey), either on remand or as the result of a custodial sentence, should be:
 - i. treated as lawful residence in Guernsey without the person concerned being required to hold a Certificate or Permit;
 - ii. removed from a person's overall qualification period (so that the impact of the period of remand or imprisonment insofar as a person's ability to gain residential qualifications is concerned, is entirely neutral), and
9. To agree that, where a person is detained on remand in circumstances that do not lead to a conviction, the Administrator should be required to ask him to elect on his release whether the time during which he was detained on remand should be treated as ordinary residence, or deemed to be time away from Guernsey; and if no such election is made, the Administrator should treat the person's period on remand, for the purposes of the Law, in such a way as appears to the Administrator to be most advantageous to that person; and
10. To direct the preparation of one or more Ordinances in accordance with the provisions of sections 78(9) and (10) of the Population Management (Guernsey) Law, 2016, to give effect to Recommendations 1 – 9 above, including any necessary consequential and incidental provision.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *for* HOME AFFAIRS

THE POPULATION MANAGEMENT (GUERNSEY) LAW, 2016
PROPOSALS TO REGULATE THE RESIDENTIAL STATUS OF INDIVIDUALS IN SPECIFIC
CIRCUMSTANCES

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

17 October 2016

Dear Sir

1 Executive Summary

- 1.1 Following public consultation in 2011, and debate on a number of Policy Letters between 2012 and 2015¹, in March 2016, the States of Deliberation approved the Projet de Loi entitled The Population Management (Guernsey) Law, 2016² (“the Law”). Along with the Open Market Housing Register (Guernsey) Law³, the Law will replace both the Housing (Control of Occupation) (Guernsey) Law, 1994 and the Right to Work (Limitation and Proof) (Guernsey) Law, 1990. It is anticipated to come into force on 3rd April 2017.
- 1.2 The Law has been designed to assist the States to manage the size and make-up of the Island’s population. It sets out the various ways via which a person can gain residential qualifications, such that they acquire an enduring right to remain in – and return to – Local Market accommodation in the Island.
- 1.3 There are certain groups of people who will be resident in Guernsey, or absent from Guernsey, for periods of time for pre-defined purposes, who do not fit neatly within the standard provisions of the Law, and who require specific legislative provision to be

¹ See “Policy Letters and supplementary information” www.gov.gg/populationmanagement

² [“The Population Management \(Guernsey\) Law, 2016” – Billet d’État VI March 2016](#)

³ [“The Open Market Housing Register \(Guernsey\) Law, 2016” – Billet d’État VI March 2016](#)

made for them to ensure that they are treated fairly and appropriately under the Law. It is right that time spent off-Island for certain purposes is treated as ordinary residence in Guernsey for the purposes of the Law, while time living in Guernsey in other circumstances is not. These include people receiving medical treatment off-Island; children and young people in fostering and pre-adoptive arrangements off-Island; and prisoners, both on Island and off-Island. In respect of such persons the Law empowers the States – at sections 78(9) and (10) - to make provision by Ordinance to regulate their residential status.

- 1.4 This Policy Letter outlines recommendations in respect of the treatment of such people, and the preparation of one or more Ordinances under sections 78(9) and (1) of the Law to give effect to those recommendations. This will ensure that, from the very outset of the introduction of the Law, there is clarity in respect of the residential status of such people.
- 1.5 This Policy Letter uses terminology pertaining to the Law that readers might not be familiar with. For this reason, a glossary is included as **Appendix 1** to explain terms shown in *italics* (on their first use in this paper) that are not specifically defined in the Law. A definition of terms shown in ***bold italics*** (on their first use in this paper) can be found in [the Law](#), usually at section 78.

2. Strategic and legal context of the proposals

- 2.1 From 3rd April 2017 onwards, the Law will become the States' primary means of managing the size and make-up of the Island's population.
- 2.2 The Law has been developed around a number of high level objectives that the States have previously confirmed need to be taken into account when developing the population management regime⁴. These objectives are listed in full in **Appendix 2** and, in the context of this Policy Letter, the most relevant of the objectives are that the new system should be:
 - as effective as possible in enabling the States to manage the size and make-up of the Island's population;
 - legally robust and designed to meet the Island's domestic and international obligations, taking into account that human rights considerations and the immigration regime are of particular significance in managing the size and make-up of the Island's population;
 - supported by an efficient and flexible administrative process which contributes to making the Island an attractive place to live, work and do business and which

⁴ [Policy Council "Managing the Size and Make-up of the Island's Population" - Billet d'État XI 2013](#) and [Resolutions](#)

is not so complex and bureaucratic as to deter people from using that process;
and

- transparent in its policies, procedures and rules in order that the public understands how and why decisions are made.

Insofar as it is possible to do so, the recommendations in this Policy Letter reflect the above objectives.

2.3 In December 2015, the States introduced a new Population Objective:

“That, as far as practicable, Guernsey’s population should, in the long-term, be kept to the lowest level possible to achieve the “Statement of Aims” in [the States Strategic] Plan.”⁵

When developing policies related to the new Population Management regime, it is necessary to ensure that they accord with the above objective, and the Committee *for* Home Affairs is of the view that the recommendations in this Policy Letter are consistent with it.

2.4 When it comes to gaining residential qualifications, the Law requires a person to be **ordinarily resident** in Guernsey during their qualification period. Not all people who are living in Guernsey at a given point in time will satisfy the necessary requirements to be treated as being ordinarily resident.

2.5 The Law provides for the States, by Ordinance, to make further provisions relating to how various types and periods of residence, both in Guernsey and elsewhere, should be treated. Sections 78(9) and (10) of the Law provide:

“(9) The States may by Ordinance make further provision relating to the treatment, for the purposes of Part 2 of this Law⁶, of periods of time spent by–

(a) persons in prison, both in Guernsey and in the United Kingdom, and

(b) other persons outside Guernsey, including (but not limited to) minors in fostering and pre-adoptive arrangements and persons receiving medical treatment.

(10) The States may by Ordinance make provision relating to and regulating the residential status, for the purposes of this Law, of –

(a) minors in fostering and pre-adoptive arrangements who are ordinarily resident, and

⁵ [Policy Council “Maintaining Guernsey’s Working Population” – Billet d’État XXIV 2015](#)

⁶ [Part 2 of the Law deals with the “Control of residence and employment”.](#)

(b) students from other islands within the Bailiwick (including Herm) who are lodgers or otherwise resident in Guernsey during the academic year.”

- 2.6 Thus there are a number of circumstances where further consideration of the treatment of a person’s period of residence is required by the States, namely in relation to:
- a) the residential status of minors in fostering or pre-adoptive arrangements in Guernsey (see section 3 of this report);
 - b) the residential status of minors in fostering or pre-adoptive arrangements elsewhere than Guernsey (see section 4 of this report);
 - c) the residential status of people from the other Islands of the Bailiwick being educated in Guernsey as visiting students (see section 5 of this report);
 - d) the residential status of Guernsey residents receiving medical treatment off-Island (see section 6 of this report);
 - e) the residential status of Guernsey residents serving a prison sentence elsewhere than Guernsey (see section 7 of this report); and
 - f) the residential status of people serving a prison sentence in Guernsey (see section 7 of this report).
- 2.7 Before considering detailed proposals relating to each of the circumstances outlined in paragraph 2.6, is important to note that the number of people that will be affected by these proposals is likely to be limited. This is because once a person has become a **Permanent Resident**, that status is conferred upon them for life and so the contents of this Policy Letter will be relevant only to those who find themselves in the circumstances described above prior to completing the necessary qualification period. However, because of the emotive nature of these circumstances and because, for the most part, they arise as a direct result of the limitations of services provided by the States of Guernsey and/or within the Bailiwick of Guernsey, it is right and proper that people facing these situations have absolute certainty over their residential status when these situations do arise.
- 2.8 The remainder of this Policy Letter deals with each of the circumstances set out in paragraph 2.6 in turn.

3. Minors in fostering and pre-adoptive arrangements on-Island

- 3.1 For these children there is a need not only to clarify the child’s status under the Law at times when they are not living with their birth family, but also to ensure that those accommodating the child under a formal fostering or pre-adoptive arrangement are not at risk of doing so in contravention of the Law. This is because the provisions of

the Law are such that a person is not permitted to accommodate a child who is not an **immediate family member** (and/or an **extended family member** in the case of Open Market Part A dwellings) without first obtaining specific permission, by way of the grant of a *Discretionary Resident Permit*, to do so.

- 3.2 As the circumstances in which a child becomes accommodated under a fostering arrangement can arise with little or no notice, it is prudent to deal with such matters at a policy level, so that there is no need for the Administrator to become involved on a case-by-case basis at a time when there will already be a team of social care professionals involved to ensure that appropriate arrangements are made to protect the best interests of the child.
- 3.3 From time to time, informal fostering arrangements can arise, for example between family friends. For the avoidance of any doubt, it is proposed that only formal fostering and pre-adoptive placements, that is to say those arranged as the result of arrangements made by a placement agency⁷ will be covered by this policy.
- 3.4 Thus it is proposed that any period of residence under a formal fostering arrangement in Guernsey as the result of arrangements made by a placement agency, regardless of whether the child is accommodated on a voluntary basis or as the result of a formal Order or Care Requirement⁸, should be deemed to be ordinary residence for the purposes of the Law.
- 3.5 Treating any such period as ordinary residence enables that residence, where necessary, to be 'qualifying residence' and thus ensures that a child in these circumstances is not disadvantaged, in terms of their overall ability to gain residential qualifications, by being accommodated under a fostering arrangement in Guernsey.
- 3.6 Similarly, for a child being accommodated in a pre-adoptive arrangement, their prospective adoptive parent(s) will also need clarification of the child's residential status during that pre-adoptive period. Again, it is proposed that any period of residence under a pre-adoptive arrangement made by a placement agency should be deemed to be ordinary residence for the purposes of the Law.
- 3.7 (For the avoidance of doubt, the Law provides, for the purposes of that Law, that a child who is formally adopted becomes the child of their adoptive parent(s). Furthermore, the Law deems a child not born in Guernsey, but later adopted by a Guernsey-resident parent(s), to have been born in Guernsey⁹. These provisions are of particular importance to ensure equal treatment between a birth child and an

⁷ [As defined in section 78\(1\) of The Children \(Guernsey and Alderney\) Law, 2008](#)

⁸ Issued under the provisions of The Children (Guernsey and Alderney) Law, 2008

⁹ [See section 78\(8\) and section 80\(3\) of the Law](#)

adoptive child given that children born in Guernsey and/or with strong ancestral connections with Guernsey have *birthright* or shorter qualification periods.)

- 3.8 The Committee *for* Home Affairs further proposes, for the purposes of administering the Law, that a child being accommodated by a lawful householder under a fostering or pre-adoptive arrangement as described above, is treated as being lawfully accommodated by the householder for the duration of the placement. This ensures that there is no need for the child to be issued with a Discretionary Resident Permit, so as to regularise the householder's position when accommodating the child.
- 3.9 For the avoidance of doubt, any situation where informal arrangements arise will need to be dealt with by way of an application for a Discretionary Resident Permit, and it will be necessary for any such arrangement to be regularised by way of a Permit, where it is appropriate to do so. As a matter of policy (as has been the case under the Housing Control regime) such situations will be regularised only after the necessary assurances as to the suitability of the arrangement have been received from the Committee *for* Health & Social Care's Children & Family Community Services.
- 3.10 The Committee *for* Home Affairs recommends the States to:
1. agree to treat any period during which a minor is accommodated under a fostering arrangement in Guernsey in accordance with the provisions of the Children (Guernsey and Alderney) Law, 2008, as ordinary residence in Guernsey;
 2. agree to treat any period during which a minor is accommodated under a pre-adoptive arrangement in Guernsey in accordance with the provisions of the Children (Guernsey and Alderney) Law, 2008, as ordinary residence in Guernsey; and
 3. agree to treat a minor being accommodated in a fostering or pre-adoptive arrangement in Guernsey in accordance with the provisions of the Children (Guernsey and Alderney) Law, 2008, as being lawfully accommodated by the householder without the need to hold a Discretionary Resident Permit for the duration of that arrangement.

4. Minors in fostering and pre-adoptive arrangements off-Island

- 4.1 On occasion, it is necessary for a child to spend time away from the Island as the result of arrangements made by a placement agency¹⁰. This will usually be because the child's specific needs cannot be met locally or, more exceptionally, because there are insufficient foster carers available in Guernsey to provide a temporary home for all the

¹⁰ [As defined in section 78\(1\) of The Children \(Guernsey and Alderney\) Law, 2008](#)

children the Committee *for* Health & Social Care needs to accommodate at any one time.

- 4.2 In such circumstances, as there will be an order made in respect of the child, the Committee *for* Health & Social Care continues to have parental responsibility for the child¹¹. Given the circumstances and decision-making processes surrounding such off-Island placements which must, as a matter of law¹², always focus on the child's welfare and best interests, it naturally follows that there should be no disadvantage to the child, in terms of their ability to gain residential qualifications, as a result of such a placement.
- 4.3 In the case of children in pre-adoptive placements, where a child is due to be adopted by an approved adopter(s) based elsewhere than in Guernsey, it is usual for the child to be placed with the adopter(s) prior to the adoption being formalised by legal proceedings. Regrettably, it is a fact that a small number of pre-adoptive placements break down. There are also occasions when, for a number of reasons, the final adoption order is not made. Given that the Committee *for* Health & Social Care's responsibilities to the child do not end until the formal adoption order is made, it is prudent to maintain the child's residential position in the Island until that time.
- 4.4 It is, therefore, proposed that the period of time spent by a minor in a temporary fostering arrangement with a Departmental foster carer or relative¹³, or in a pre-adoptive arrangement, off-Island at the behest of a placement agency, should be deemed as continuous ordinary residence in Guernsey for the purposes of the Law. Treating such periods as ordinary residence enables the child, where necessary, to continue to accrue 'qualifying residence' and ensures that a child in these circumstances is not disadvantaged, in terms of their overall ability to gain residential qualifications:
- (i) as a result of being accommodated under a formal fostering arrangement off-Island; or
 - (ii) in the event that an off-Island pre-adoptive placement does not result in the formal adoption of the child.
- 4.5 The Committee *for* Home Affairs recommends the States to -
- 4. agree to treat any period of time spent by a minor in a fostering or pre-adoptive arrangement outside Guernsey in accordance with the provisions of

¹¹ [See Section 8 of The Children \(Guernsey and Alderney\) Law, 2008](#)

¹² See sections 3 & 4 of The Children (Guernsey and Alderney) Law, 2008

¹³ As defined in section 20(3) of The Children (Guernsey and Alderney) Law, 2008

the Children (Guernsey and Alderney) Law, 2008, as ordinary residence in Guernsey.

5. Visiting students being temporarily educated in Guernsey

- 5.1 There are a number of children and young people who are ordinarily resident in the other islands of the Bailiwick who are educated in Guernsey and, therefore, spend week days and/or term-time residing in the Island. However, the Law applies only to the Island of Guernsey (and its territorial waters) and, as such, people residing elsewhere in the Bailiwick are not building up rights to live and work in Guernsey.
- 5.2 Approximately 30 students from the other islands, mostly under the age of 18 years, are resident in Guernsey at any one time for educational purposes. In most cases, the students are from Alderney and are accommodated in Guernsey under an arrangement between the student's parent(s) and a host family in Guernsey. Although the hosting arrangement is a private one, the term-time host scheme is coordinated by the Committee *for* Health and Social Care's Children & Family Community Services, and the host family is vetted and matched with the student to ensure that the placement is suitable.
- 5.3 For such students, as their established family home is elsewhere in the Bailiwick, the student remains ordinarily resident in that island (i.e. elsewhere than in Guernsey), and it is proposed, for the avoidance of any doubt, that the student continues to be considered to be ordinarily resident elsewhere than in Guernsey, such that they are not building up any rights to reside in Guernsey during periods when they are being accommodated by a term-time host in Guernsey, but have a family home elsewhere. Treating such students as continuing to be resident in their home island is entirely consistent with the way Guernsey's children and young adults will be treated under an agreed absence¹⁴ if they undertake full-time education outside Guernsey, but have an established family home in Guernsey.
- 5.4 With regard to the host families, as explained above in the context of foster carers, where a householder is accommodating a person who is not an immediate family member (and/or, an extended family member in the case of an Open Market Part A householder), the Law requires the person being so accommodated to hold a Discretionary Resident Permit in order for them to be accommodated lawfully. However, given the specific circumstances described above, it is proposed that, in the case of students from the other islands of the Bailiwick being accommodated under the term-time host scheme operated by the Committee *for* Health and Social Care's Children & Family Community Services, such students are considered to be lawfully

¹⁴ [See section 82 of the Law](#)

accommodated in Guernsey without the need for them to hold a Discretionary Resident Permit.

- 5.5 For the avoidance of doubt, it is not proposed that the above applies to students living with a Guernsey-based family other than under the term-time host scheme. In the case of all other private or informal hosting situations, it will be necessary for the student to hold a Discretionary Resident Permit before being accommodated in Guernsey. In the context of such applications, the Administrator will need to be satisfied, after consultation with the Committee *for* Health and Social Care's Children & Family Community Services, that the proposed placement is appropriate, prior to granting any such Permit.
- 5.6 Moreover, should a student wish to continue to be accommodated by their host family once their course of study has been completed such that they no longer fall under the term-time host scheme, they would be required to obtain a Discretionary Resident Permit in order to be lawfully accommodated, and, in due course, the Committee *for* Home Affairs intends, in consultation with the other islands of the Bailiwick, to develop a clear policy so that there is transparency about how such applications will be treated under the new regime.
- 5.7 The Committee *for* Home Affairs recommends the States to –
5. agree that students from the other islands of the Bailiwick being accommodated in accordance with the term-time host scheme coordinated by the Committee *for* Health and Social Care's Children & Family Community Services, remain ordinarily resident elsewhere than in Guernsey during the period over which they are being educated in Guernsey; and
 6. agree that students from the other islands of the Bailiwick being accommodated in accordance with the term-time host scheme operated by the Committee *for* Health and Social Care's Children & Family Community Services are lawfully accommodated by the householder without the need to hold a Discretionary Resident Permit for the duration of that arrangement.

6. People receiving medical treatment off-Island

- 6.1 There will be people who would otherwise be *ordinarily resident* in Guernsey but who, by necessity of receiving specialist medical treatment and/or having their complex care needs met, are required to spend time receiving treatment/care elsewhere. There might also be circumstances where a person chooses to receive private medical treatment and/or care off-Island, even when local services are available.

- 6.2 The Committee *for* Health and Social Care funds approximately 50 people with complex disability or mental health care needs to receive long-term off-Island care. In addition, each year approximately 4,000 people based in Guernsey will spend time in the UK receiving acute medical/surgical intervention. This can be inpatient or outpatient treatment, the duration of which varies but, in the vast majority of cases, is short-term.
- 6.3 Again, it must be kept in mind that most people receiving off-Island treatment will already be Permanent Residents and so spending significant periods of time away from Guernsey will have no impact on their residential status. However, for those who have not yet completed their qualification period, it would seem inequitable for them to be disadvantaged simply because Guernsey, as a result of the limitations of its on-Island healthcare provision, is unable to meet their specific medical needs locally, or because they (or their family on their behalf) prefer to receive private treatment/care elsewhere.
- 6.4 However, not every person who is ordinarily resident in Guernsey has a reasonable expectation of being able to remain in the Island for sufficient time, or in such circumstances, so as to acquire Permanent Resident status. For example, they might be in resident in Guernsey under a *Medium Term Employment Permit*, the duration of which is limited to a maximum of 5 years. As such, when considering how to treat a period of time spent off-Island for the purposes of medical treatment, it is necessary to have regard to the person's current – and prospective – position under the Law.
- 6.5 Moreover, it might be the case that the immediate family members (and/or extended family members in the case of Open Market Part A dwellings) of the person requiring off-Island treatment are reliant upon that person to regularise their own status under the Law, for example, where they are the spouse and children of a Medium Term Employment Permit holder. In such cases it would be inequitable for these family members to find themselves in contravention of their Permit, which will require them to live with a named person, simply because that person is receiving treatment/care elsewhere than in Guernsey.
- 6.6 In this respect, for the purposes of administering the Law, the Committee *for* Home Affairs proposes that, for people who were ordinarily resident in Guernsey immediately prior to their treatment, the period of residence out of the Island for the purpose of receiving treatment/care should be treated as ordinary residence in Guernsey for so long as the person could demonstrate that, were it not for their need for that treatment/care, they could reasonably expect to be ordinarily resident in Guernsey.
- 6.7 Not only will this have the effect of ensuring that the person is in no way disadvantaged as a result of their medical treatment not being available locally or

them choosing to obtain private treatment elsewhere, it will also ensure that their immediate/extended family members remain lawfully housed in their absence.

- 6.8 For the avoidance of doubt, for people receiving medical treatment off-Island whose period of ordinary residence in Guernsey would otherwise come to an end during their absence off-Island through, for example, the expiry of an Employment Permit, they would not be deemed to be ordinarily resident in Guernsey beyond the expiry date of that Permit, unless they would, immediately upon its expiry, become eligible for another type of Permit/Certificate. To do otherwise could enable a person, and their immediate family members, to reach one of the key qualification *milestones* set out in the Law as a result of a protracted period of off-Island treatment/care when they would have had no expectation of reaching that milestone as a result of the Employment Permit under which they had taken up lawful residence in Guernsey.
- 6.9 In such circumstances, it will remain open to the person and/or their immediate family members to make an application for a Discretionary Resident Permit in the event that want to remain ordinarily resident in Guernsey.
- 6.10 The Committee *for* Home Affairs recommends the States to –
7. agree to treat a period of time spent receiving treatment/care elsewhere than in Guernsey as ordinary residence in Guernsey so long as the person concerned:
 - i. was ordinarily resident in Guernsey immediately prior to the commencement of that treatment/care; and
 - ii. can demonstrate that, were it not for their need for treatment/care, they could reasonably expect to be ordinarily resident in Guernsey.

7. People being accommodated in prison, both in Guernsey and off-Island

- 7.1 By way of background, it should be noted that, under the Housing Control regime, dwellings in the possession or ownership of the States are exempt from the provisions of the Housing (Control of Occupation) (Guernsey) Law, 1994¹⁵. Given this, it has hitherto been unnecessary to consider how those accommodated in Guernsey's prison might be treated in terms of the status of their residence and/or occupation of a dwelling in Guernsey.
- 7.2 However, as the States have previously agreed that no such exemption should exist under the new Population Management Law, it is necessary to consider the residential status of people serving a custodial sentence having been convicted of an

¹⁵ [Section 65 of the Housing \(Control of Occupation\) \(Guernsey\) Law, 1994](#)

offence by a court in Guernsey¹⁶.

- 7.3 The need to expressly make provisions for these groups of people is twofold:
- (i) to ensure that people being accommodated in Guernsey's prison cannot find themselves in breach of the Law; and
 - (ii) to determine whether a person who is serving a custodial sentence should accrue qualifying residence during their period of imprisonment.
- 7.4 (For the avoidance of any doubt, readers are again reminded that the above considerations apply only to people who are not already Permanent Residents at the time they are imprisoned.)
- 7.5 As will be explained in more detail below, it is necessary to consider the above matters in respect of people imprisoned both in Guernsey's prison or elsewhere, in the event that, for whatever reason, they are not able to be accommodated in Guernsey's prison, despite being imprisoned at the behest of the court in Guernsey.

Residential status during periods of imprisonment

- 7.6 In general terms, it will be usual for the residence in Guernsey of a person who is not (yet) a Permanent Resident to be conditional upon them remaining in a specific post of employment or being accommodated: (i) in a particular sector of housing; or (ii) in the household of a named person with whom they have a familial connection. Obviously, when a person is serving a custodial sentence, it will not be possible for them to continue to satisfy these types of conditions.
- 7.7 The Committee *for* Home Affairs considers it to be unnecessary and bureaucratic for a person serving a custodial sentence to have to apply for a Discretionary Resident Permit to regularise their residential status during this time.
- 7.8 Given this, the Committee *for* Home Affairs considers it prudent to ensure that any person who is being accommodated in Guernsey's Prison should be treated as being lawfully resident in the Island, and exempt from the need to hold a Certificate or Permit issued under the Law to demonstrate that they are being lawfully accommodated in the Island.
- 7.9 Although it might not seem obvious to do so, after considering this matter in detail, the Committee *for* Home Affairs also proposes that where a person is serving a custodial sentence handed down by the court in Guernsey elsewhere than in

¹⁶ References in this section to custodial sentences imposed by a court in Guernsey include references to a Guernsey resident being sentenced by a court in the United Kingdom, but serving that sentence in Guernsey

Guernsey, they too are treated as being lawfully resident in the Island for the duration of their period of imprisonment.

7.10 This serves to ensure that, regardless of the location in which a person is physically imprisoned, the impact their imprisonment will have on their position under the Law is the same. This is because it is likely to be as a direct consequence of the limitations of Guernsey's Prison Service, and/or as a result of the person's complex needs, that they cannot be accommodated locally, and such factors will, in all likelihood, be beyond the control of the person concerned. Thus it would be inequitable that their status and future options under the Law should differ considerably only as a result of the location in which they are imprisoned.

7.11 The need to ensure such parity is best explained by considering the following examples:

- (i) A person has been in the Island for four years under a series of *Short Term Employment Permits* and is then sentenced to two years' imprisonment. The sentence is served in Guernsey and, upon their release from prison, the person has been resident in Guernsey for a total period of six years. In line with the Law, this person would not be eligible for a further Employment Permit until they have taken a ***Recognised Break in Residence***, which, in this example, would be a break of at least six years' duration.
- (ii) A person has been in the Island for four years under a series of Short-Term Employment Permits and is then sentenced to two years' imprisonment. Because of their complex health needs, the sentence is served in the UK and, upon their release from prison, the person (were it not for the recommendations herein) would have been resident in Guernsey for a total period of four years, and would already have accrued two of the four years needed to satisfy the requirement for a Recognised Break in Residence, prior to potentially being eligible for a further Employment Permit.

Qualification periods interrupted by imprisonment

7.12 With regard to whether a person sentenced to imprisonment should be treated as being ordinarily resident such that it assists them to gain residential qualifications, again it is the view of the Committee *for* Home Affairs that the location in which the sentence is served should be irrelevant when addressing this question.

7.13 More relevant is the overriding objective of the Law, which is to manage the size and makeup of the Island's population. It is also appropriate to keep in mind the high-level objectives of the new regime, as set out in paragraph 2.2.

7.14 The Committee *for* Home Affairs has concluded in the light of these objectives that it is fairest and most appropriate for the same ‘rules’ to apply to the treatment of all people sentenced to imprisonment who are not Permanent Residents, regardless of their position and expectations under the Law.

7.15 After agreeing on this principle, the Committee then considered a number of options, and these are set out below:

Option 1:

Allow the whole of the period during which a person is imprisoned to be treated as ordinary residence in Guernsey such that it is treated as ‘qualifying residence’ under the Law.

This option was dismissed as it appeared, in some instances (see the example below), to put a person in a more advantageous position under the Law as a result of their period of imprisonment than would have been the case had they not been imprisoned.

For example: a person has accrued five consecutive years’ Local Market residence as a result of their employment in the Island but has no expectation of being permitted to remain in Local Market accommodation beyond this five-year limit. However, just prior to leaving the Island the person is convicted of an offence committed locally, and sentenced to 6 years’ imprisonment. Assuming they are required to serve two-thirds of their sentence, upon their release from prison, the person would have crossed the first (eight-year) milestone, having lived lawfully in Local Market accommodation throughout this period, and thus be classified as an **Established Resident**. As an Established Resident, they will have acquired the right to access to Local Market accommodation and to undertake any employment in the Island.

Option 2:

Have regard to the whole of the period during which a person is imprisoned, but treat it as not being ordinary residence such that it is not treated as ‘qualifying residence’ under the Law.

This option was dismissed as it appeared, in some instances (see the example below), to be draconian in that it could unfairly disadvantage people with a long history of residence in the Island, and who reasonably expect to be lawfully housed in Guernsey upon their release from prison.

For example: a person is required to complete 14 consecutive years’ ordinary residence in Local Market accommodation in order to become a Permanent Resident, as a result of their marriage to a Permanent Resident. In their 13th year of residence, the person commences a two-year custodial sentence. If their time in prison is not

treated as ordinary residence (and thus is not qualifying residence), at the end of their sentence, the person would not satisfy the test of having completed “...14 consecutive years’ ordinary residence...” as their 13 years’ consecutive ordinary residence would then be followed by two years’ non-qualifying residence. In this example, the person would, therefore, be required to commence their qualification period from the beginning (i.e. their ‘qualification clock’ would be re-set to zero upon their release from prison), despite them having accrued 13 consecutive years’ qualifying residence prior to their conviction.

Option 3:

Completely remove the whole period during which a person is imprisoned from any calculation of a person’s qualification period and qualifying residence for the purpose of them gaining residential qualifications. The consequence of this approach would be that any period of ordinary residence immediately prior to the period of imprisonment and any period of ordinary residence immediately subsequent to release from prison would be joined together so that, where relevant, they are considered to be one unbroken period of ordinary residence in Guernsey (with the period during which they were imprisoned effectively ‘dropping out of the calendar’ for these purposes).

This is the preferred option as it neutralises the impact that the period of imprisonment will have on the person’s ability to gain residential qualifications, so that they are neither advantaged nor disadvantaged as a result of the custodial sentence.

For example: a person who came to Guernsey as an adult because they married a Permanent Resident, is required to complete 14 consecutive years’ ordinary residence in Guernsey in order to become a Permanent Resident. After completing 13 years’ ordinary residence, the person commences a 2-year custodial sentence in Guernsey. Assuming they are required to serve the whole sentence, at the end of their sentence, the person is still treated as having completed 13 years’ ordinary residence, and can continue (so long as they are able to demonstrate that they are lawfully housed) to accrue the one remaining year of ordinary residence required to complete their qualification period as though the first 13 years’ residence prior to the prison sentence and the remaining one year of residence following the prison sentence are one continuous and unbroken period of ordinary residence.

7.16 The Committee *for* Home Affairs proposes that option 3 above should be adopted.

Periods on remand

- 7.17 There is also a need to consider how the issues explored in paragraphs 7.6 to 7.16 should be applied to a person who has been charged with an offence and, by order of the court, is being held on remand (in prison) pending trial.
- 7.18 The Committee for Home Affairs proposes that, for any such person, their residential status and the impact on their overall qualification period should (subject to section 7.19) be as outlined above in the case of a person who is serving a term of imprisonment having been sentenced by a court in Guernsey.
- 7.19 However, in the event that a person is ultimately not convicted of the crime in respect of which he has been held on remand, it is right that he should not be disadvantaged under the Law as a result of being so detained, and indeed that he should be treated as equitably as possible. In those circumstances, it may be to his advantage for that time on remand to be treated as ordinary residence; equally, it may be to his advantage for that time not to be treated as residence in Guernsey, so that it may, for example, count towards a Recognised Break in Residence. In such circumstances it is simplest, and fairest, for the person to be asked by the Administrator to elect (on his release) whether the time he spent detained on remand should be treated as ordinary residence, or time away from Guernsey. If no such election is made, it is proposed that the Administrator should treat the person's period on remand, for the purposes of the Law, in such a way as appears to the Administrator to be most advantageous to that person.
- 7.20 The States is asked to endorse the policy approaches set out above and to:
8. agree that (subject to Recommendation 9) time spent in prison in Guernsey (or elsewhere at the behest of a court in Guernsey), either on remand or as the result of a custodial sentence, should be:
 - i. treated as lawful residence in Guernsey without the person concerned being required to hold a Certificate or Permit;
 - ii. removed from a person's overall qualification period such that the impact of the period of remand or imprisonment insofar as a person's ability to gain residential qualifications is concerned, is entirely neutral, and
 9. agree that, where a person is detained on remand in circumstances that do not lead to a conviction, the Administrator should be required to ask him to elect on his release whether the time during which he was detained on remand should be treated as ordinary residence, or deemed to be time away from Guernsey; and if no such election is made, the Administrator should

treat the person's period on remand, for the purposes of the Law, in such a way as appears to the Administrator to be most advantageous to that person.

8. Resource and implementation plan

8.1 Other than the preparation of the necessary legislation, there are no direct resource implications arising from this Policy Letter. The policy approaches outlined in this Policy Letter will be implemented and administered by the Population Management Office when the new legislation comes into effect, which is expected to be on 3rd April 2017.

9. Engagement and consultation

9.1 In formulating the above policy approaches, the Committee *for* Home Affairs has consulted with the Committee *for* Health and Social Care, and that Committee is supportive of the relevant proposals contained herein.

9.2 Advice has also been sought from the Law Officers' Chambers about the contents of this Policy Letter.

10. Recommendations

The Committee *for* Home Affairs recommends the States to endorse the policy approaches set out in this Policy Letter and, for the purposes of the Population Management (Guernsey) Law, 2016: –

1. To agree to treat any period during which a minor is accommodated under a fostering arrangement in Guernsey in accordance with the provisions of the Children (Guernsey and Alderney) Law, 2008, as ordinary residence in Guernsey;
2. To agree to treat any period of residence during which a minor is accommodated under a pre-adoptive arrangement in Guernsey in accordance with the provisions of the Children (Guernsey and Alderney) Law, 2008, as ordinary residence in Guernsey;
3. To agree to treat a minor being accommodated in a fostering or pre-adoptive arrangement in Guernsey in accordance with the provisions of the Children (Guernsey and Alderney) Law, 2008, as being lawfully accommodated by the householder without the need to hold a Discretionary Resident Permit for the duration of that arrangement;
4. To agree to treat any period of time spent by a minor in a fostering or pre-adoptive arrangement outside Guernsey in accordance with the provisions of the Children (Guernsey and Alderney) Law, 2008, as ordinary residence in Guernsey;

5. To agree that students from the other islands of the Bailiwick being accommodated in accordance with the term-time host scheme coordinated by the Committee *for* Health and Social Care's Children & Family Community Services, remain ordinarily resident elsewhere than in Guernsey during the period over which they are being educated in Guernsey;
6. To agree that students from the other islands of the Bailiwick being accommodated in accordance with the term-time host scheme operated by the Committee *for* Health and Social Care's Children & Family Community Services are lawfully accommodated by the householder without the need to hold a Discretionary Resident Permit for the duration of that arrangement;
7. To agree to treat a period of time spent receiving treatment/care elsewhere than in Guernsey as ordinary residence in Guernsey so long as the person concerned:
 - iii. was ordinarily resident in Guernsey immediately prior to the commencement of that treatment/care; and
 - iv. can demonstrate that, were it not for their need for treatment/care, they could reasonably expect to be ordinarily resident in Guernsey;
8. To agree that (subject to Recommendation 9) time spent in prison in Guernsey (or elsewhere at the behest of a court in Guernsey), either on remand or as the result of a custodial sentence, should be:
 - iii. treated as lawful residence in Guernsey without the person concerned being required to hold a Certificate or Permit;
 - iv. removed from a person's overall qualification period (so that the impact of the period of remand or imprisonment insofar as a person's ability to gain residential qualifications is concerned, is entirely neutral), and
9. To agree that, where a person is detained on remand in circumstances that do not lead to a conviction, the Administrator should be required to ask him to elect on his release whether the time during which he was detained on remand should be treated as ordinary residence, or deemed to be time away from Guernsey; and if no such election is made, the Administrator should treat the person's period on remand, for the purposes of the Law, in such a way as appears to the Administrator to be most advantageous to that person; and
10. To direct the preparation of one or more Ordinances in accordance with the provisions of sections 78(9) and (10) of the Population Management

(Guernsey) Law, 2016, to give effect to Recommendations 1 – 9 above,
including any necessary consequential and incidental provision.

11. Committee Support for Propositions

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

Yours sincerely,

M M Lowe
President

R H Graham
Vice-President

M P Leadbeater
V Oliver
R G Prow

Glossary of terms pertaining to the Population Management (Guernsey) Law, 2016

Birthright

A term coined to describe the acquisition of residential qualifications at birth by Guernsey-born children whose parents were ordinarily resident at the time of their birth and who also have a parent and grandparent (in the same ancestral line) born in Guernsey.

Discretionary Resident Permit

A permit issued to persons who would not otherwise be permitted to reside in Guernsey, but in respect of whom, in their specific circumstances, it is equitable to permit residence subject, where necessary, to certain conditions.

Medium Term Employment Permit

A permit granted for a maximum of five years' duration, allowing the holder, and their immediate family members, to live in Local Market accommodation as one household, subject to the holder undertaking a specific post of full-time employment in Guernsey.

Milestones

The point in time at which a person has lived in Guernsey under specified circumstances for long enough to become:

- an Established Resident – the first milestone, reached after 8 consecutive years' lawful Local Market residence
- a Permanent Resident – the second milestone, reached after 14 consecutive years' lawful Local Market residence.

Short-Term Employment Permit

A permit granted for a maximum of 12 months (but renewable until the holder has accrued an aggregate of five years' residence in Guernsey, allowing the holder to live in Local Market lodgings or shared accommodation, subject to the holder undertaking a specific post of full-time employment in Guernsey. The holder is not permitted to accommodate any other person.

Extract from Policy Council 'Managing the Size and Make-up of the Island's Population'
(Billet d'État XI 2013 - Resolutions)

"To agree that the new population management regime should aim to be:

- a) as effective as possible in enabling the States to manage the size and makeup of the island's population;*
- b) legally robust and designed to meet the island's domestic and international obligations, taking into account that human rights considerations and the Immigration regime are of particular significance in managing the size and makeup of the island's population;*
- c) capable of fulfilling the strategic policies of the States, especially any strategic population policies of the States, including any which are in place at the time of the inception of the new regime, and sufficiently flexible to adapt to any changes to such policies;*
- d) sufficiently flexible to allow the States to respond wisely, and where necessary quickly, to economic, social and environmental changes, including to demographic challenges, without the need for changes in primary legislation;*
- e) supported by an efficient and flexible administrative process which contributes to making the island an attractive place to live, work and do business and which is not so complex and bureaucratic as to deter people from using that process;*
- f) capable of providing regular statistics to allow the States to monitor, and understand how the regime is affecting, changes in the size and makeup if the population in order to ensure that the States is in receipt of as much information as possible when developing policies; and*
- g) transparent in its policies, procedures and rules in order that the public understands how and why decisions are made."*