

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

29th March, 2017

Proposition P.2017/18
AMENDMENT

Proposed by: Deputy E. A. Yerby
Seconded by: Deputy H. J. R. Soulsby

THE POPULATION MANAGEMENT (GUERNSEY) LAW, 2016
(COMMENCEMENT) ORDINANCE, 2017

To amend the Proposition as follows –

(a) by numbering the Proposition as “1.”, and

(b) by inserting the following Proposition immediately thereafter –

“2. To direct the Committee *for* Home Affairs to adopt a policy, as of 3 April, 2017, under which there is a presumption that, upon application for a Short Term Employment Permit in circumstances where the person to whom the application relates –

(a) was resident prior to commencement of the Population Management Law under a short term housing licence issued under the Housing (Control of Occupation) Law (and including for the avoidance of doubt a person who was taking a mandatory 3-month break in residence on commencement), and

(b) has accrued not less than 5 years aggregate residence prior to commencement,

a Discretionary Resident Permit shall be granted for a maximum period of 9 months, containing conditions including that the holder shall not be a householder and must undertake full-time employment in the post to which the application relates; and that, following a 3 month break in residence, this process of application and pattern of employment, shall be allowed to continue, unless: (a) the granting of the Permit would not be consistent with the Criminal Convictions & Public Interest Policy, or (b) the person to whom the application relates has not been ordinarily resident for a period of three consecutive years at the time of the application.”

EXPLANATORY NOTE

There are a number of people who have worked in Guernsey on a seasonal basis (“nine months on, three months off”) for many years, who would wish to continue doing so indefinitely, but who do not see Guernsey as their permanent home. Under Section 59(1) of the Population Management (Guernsey) Law, 2016, anyone who has done so for an aggregate period of at least five years (that is, who has spent at least 60 months in Guernsey – the calculation is based on the amount of time actually spent here, not the number of calendar years that have passed) is entitled to be granted a single, one-year Short Term Employment Permit (“STEP”), after which they must leave the island.

This amendment would create some additional protection for people who have been doing this for at least that five year period. If approved, there would be a presumption that upon an application by an employer for a STEP, where the person to whom the application relates has been in Guernsey doing seasonal work for an aggregate period of five years (that is, who has spent at least 60 months in Guernsey) there would be an entitlement to a Discretionary Resident Permit. There would be included in the conditions attached to any such Discretionary Resident Permit, that the person in receipt of it could not be a “householder” – that is, the permit would not grant the person holding it the right to bring their family over to live in Guernsey. This reflects the nature of the current “nine months on, three months off” approach, where it is not expected that workers will settle (or, indeed, will want to settle) in Guernsey on a permanent basis.

Discretionary Resident Permits are described, in paragraph 7 of Schedule 2 to the Law, as permits which “enable a person to be resident ... in circumstances where it would otherwise be unlawful ... and it is necessary to ensure compatibility with one or more Convention rights, **or otherwise equitable**, that he should be so able.”

In these circumstances, granting a Discretionary Resident Permit would ensure greater parity of treatment between long-term seasonal workers and those who have lived in Open Market accommodation on a long-term basis (who have an indefinite right to stay, provided they remain in the same type of accommodation) and would be a fairer reflection of the long-term commitment that workers have made to this Island and to their employer, sometimes over decades of seasonal work.

The policy created further to this amendment would protect people who have a long record of working in Guernsey and who, until the Population Management regime was designed and comes into force, might reasonably have expected to be able to carry on working here, on a seasonal basis, for many years. In that respect, it responds to concerns from businesses who fear losing valuable and committed employees. However, it would not change the rules and policies which apply to people coming to Guernsey as seasonal workers for the first time following the commencement of the Law, nor for those whose ties to the island are less long-term.