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BILLET D'ÉTAT

WEDNESDAY 26th JUNE 2013

POLICY COUNCIL – MANAGING
THE SIZE AND MAKE UP OF THE
ISLAND'S POPULATION

BILLET D'ÉTAT

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I hereby give notice that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **26th JUNE, 2013** at **9.30 a.m.**, to consider the item contained in this Billet d'État which has been submitted for debate.

R. J. COLLAS
Bailiff and Presiding Officer

The Royal Court House
Guernsey

10th May 2013

POLICY COUNCIL

MANAGING THE SIZE AND MAKE UP OF THE ISLAND'S POPULATION

EXECUTIVE SUMMARY

The purpose of this Report is to invite the States to review the guiding principles for the development of a population management regime, originally set out in a report to the States by the Policy Council in Billet I of January 2012, and to vote on a series of specific recommendations relating to the key components of the proposed regime. By acquiring States direction in this way the Policy Council will be able to proceed with developing clear drafting instructions for new legislation, designing the associated administrative procedures and developing detailed policies for consideration by the States, secure in the knowledge that such work will not be wasted as it will be undertaken in the context of clear States commitment.

The report also makes recommendations designed to secure the future of the Open Market and remove the recent uncertainty in this sector. These proposals provide for the continued operation of the Open Market largely along historic lines where Part A family residences predominate, but also address the future of multiple occupancy dwellings within the sector in a manner which ensures that they are managed in a way compatible with the objectives of the population management regime.

While the States is invited to vote on the core components of the regime, which will form the framework for new legislation, and to agree to a broad approach to its governance and management, one or more further reports will be submitted for approval in due course in the form of detailed proposals built on these foundations. It is for this reason that some of the recommendations seek only in principle agreement at this stage. The recommendations contained in this report are listed below. It is the Policy Council's intention that all legislative, governance and procedural aspects of the new regime should be concluded within the present States term i.e. before May 2016.

Finally, the Report recommends the extension of the Housing (Control of Occupation) (Guernsey) Law, 1994, which otherwise will come to an end in December 2013. Although the Report proposes an extension of this legislation for the standard 5 year period i.e. to December 2018, the expectation is that new legislation and a new regime will be introduced well in advance of that date.

RECOMMENDATIONS

The Policy Council recommends the States:

Objectives of a New Regime

- 1 To agree the objectives which the new Population Management regime should aim to achieve, as described in paragraph 5.3.

Long Term Residency

- 2 To agree that:
 - (a) individuals who have lived continuously and lawfully in Local Market property for 8 years will be issued with an Established Residence Permit, will acquire the right to continue living in the Island permanently if they so choose and will be defined as Established Residents.
 - (b) individuals who have lived continuously and lawfully in Local Market property for 14 years will be issued with a Permanent Residence Permit, will acquire the right to continue living in the Island permanently if they so choose and will be defined as Permanent Residents.

Right to Return

- 3 To agree that once an individual becomes an Established Resident, if he or she then decides to move away from the Island, he or she will not have the automatic right to return to live in the Island at a later point.
- 4 To agree that once an individual becomes a Permanent Resident, if he or she then decides to move away from the Island, he or she will have the automatic right to return to live in the Island at a later point.
- 5 Where an individual has acquired the automatic right to return to live in the Island, this right will be retained regardless of the length of time that the individual is away from the Island.

Existing Qualified Residents

- 6 To agree the requirement that any existing Qualified Resident who:
 - (a) is not resident in the Island, but decides to return in the future, will be required to obtain a Permanent Residence Permit.
 - (b) is resident in the Island and is, or wishes to be, employed in the Island, will be required to obtain a Permanent Residence Permit.

- (c) is resident in the Island and is not, and does not intend to be, in employment will not be required to obtain a Permanent Residence Permit.
- 7 To agree that in some specific circumstances, to be defined in policies agreed by the States, individuals may spend time off-Island, but still have their residence considered to be continuous residence in the Island.

Employment Permits

- 8 To agree that:
- (a) Long Term Employment Permits will be issued for a period of 8 years to address persistent and enduring skills shortages where it is unlikely that those skills will be easily sourced, either in the Island or globally, in the foreseeable future or where continuity in the post in the longer term is in the Island's interest.
 - (b) Medium Term Employment Permits will be issued for a period of up to 5 years in circumstances where:
 - a post requires specific skills which are not available in the Island, but where that skills shortage is likely to be able to be met in the foreseeable future; or
 - the skills required are held by Qualified Residents and Residence Permit holders, but the number of people resident in the Island with those skills is insufficient to fill the total number of posts requiring a similar or identical skill set.
 - (c) Short Term 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.
 - (d) Short Term Employment Permits can be re-issued to the same individual, subject to a maximum period of continuous residence of 3 years and a maximum aggregate period of 5 years residence.
- 9 To agree that an individual must have been away from the Island for a period of time which is at least equal to the duration of his or her last period of residence in the Island before that individual will be eligible to obtain an Employment Permit for a subsequent period of residence.
- 10 To agree that an Employment Permit must be issued before an individual arrives on the Island to work, or before an individual who is already

resident in the Island changes jobs.

- 11 To agree that the holder of an Employment Permit will be able to apply to change job at any time during the life of his or her Permit, as long as the new post is also identified as one which will attract an Employment Permit.
- 12 To agree that anyone who has been issued with an Employment Permit may hold more than one job.
- 13 To agree that 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 an identified and proven need to do so.

Residence Permits – Family Connections

- 14 To agree that immediate family members will be defined as an individual's:
 - Spouse / Partner
 - Parents and Parents-in-law
 - Children
 - Grandchildren
- 15 To agree that Qualified Residents, Permanent Residents and holders of Established Residence Permits will be able to accommodate immediate family members within their household.
- 16 To agree that holders of Long Term or Medium Term Employment Permits will be able to accommodate immediate family members within their household.
- 17 To agree that the holder of a Short Term Employment Permit will not be permitted to be accompanied by any family members.
- 18 To agree 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 Temporary Residence Permit and Established Residence Permit.
- 19 To agree that all adults and children in employment who are permitted to live in Local Market accommodation under the provisions for immediate family members will be required to obtain a Residence Permit.

The Open Market

- 20 To agree that an Open Market, largely in its current form, should be

retained as part of the new population management regime to allow people to come to live in the Island who might not be Qualified or Permanent Residents, might not have strong family connections here and might not possess essential skills or fill manpower shortages.

- 21 To agree that the children of Open Market residents should become Permanent Residents after a period of continuous residence of 14 years. This will be the case as long as they were first resident in the Island before the age of 18 and as a member of the household of their Mother or Father.
- 22 To agree that the general policy should remain that, with the exception of those children mentioned in the previous recommendation, any Open Market resident without residential qualifications will not be permitted to live in Local Market property.
- 23 To agree that adult Open Market residents, and any of their children who are in employment, will be required to hold an Open Market Residence Permit.
- 24 To agree to redefine Part D of the Open Market Housing Register such that it will incorporate all lodging houses and all Part A properties in use for the multiple occupation of unrelated adults and that such properties will be defined as Houses in Multiple Occupation.
- 25 To agree:
 - (a) that the number of properties that can be inscribed in the Register in the newly-defined Part D of the Open Market will be capped and that the level of that cap should be decided by the States, having regard to the size and make-up of the Island's population at any given point in time.
 - (b) that from the coming into force of the new regime, the cap will be set at the number of existing Part D Lodging Houses plus the number of Part A properties in established use for the multiple occupation of unrelated adults on the date of publication of this States Report.
 - (c) that, having regard to a particular property's established use, only those Part A properties that are in use for the multiple occupation of unrelated adults on the date of publication of this States Report will be given the option to transfer to the newly-defined Part D of the Open Market Housing Register, subject to meeting acceptable accommodation standards.
 - (d) To agree that any redefined Part D property may, at the owner's request, be returned to Part A for occupation as a family home.
- 26 To agree that tenants of a Part D House in Multiple Occupation will be

able to benefit from the Open Market status of the property and will be free to live in the Island, and to work in any employment, for a maximum period of 5 years' continuous residence in the Island.

- 27 To agree that an individual must have been away from the Island for a period of time which is at least equal to the duration of his or her last period of residence in the Island, before that individual will be eligible to obtain an Open Market Residence Permit permitting him or her to live in a redefined Part D property.
- 28 To agree that employees living and working in Part B and Part C properties will be able to benefit from the Open Market status of the property and will be free to live and work in the property for a maximum period of 5 years' continuous residence in the Island.
- 29 To agree that an individual must have been away from the Island for a period of time which is at least equal to the duration of his or her last period of residence in the Island, before that individual will be eligible to obtain an Open Market Residence Permit permitting him or her to live and work in a Part B or Part C property.
- 30 To agree that genuine tourists and guests will not be required to obtain a Permit to stay in a Part B hotel or guesthouse, as long as their length of stay is for less than 90 days per year.
- 31 To agree that an individual who wishes to live in a Part C nursing or residential home to benefit from the health and social care services offered will be required to obtain a Permit to do so, unless he or she is a Qualified or Permanent Resident, and such Permits will not be time-limited.

States Controlled Properties

- 32 To agree that any individual living in States controlled property should be subject to the same requirements as any other member of the community with regards to his or her requirement to obtain the relevant Permit.

Restricting Where an Individual Can Live

- 33 To agree that Short Term Employment Permit holders will not be permitted to be householders in their own right. This means that they will only be permitted to live in accommodation that is shared with others.
- 34 To agree that there should be no general restriction on where the holders of Long Term and Medium Term Employment Permits may live, other than where there is an identified and proven need to protect specific parts of the housing market.

Criminal Convictions

- 35 To agree that criminal conviction checks will form part of the application process for everyone moving to the Island who is required to obtain a Permit.

Governance Arrangements and Responsibilities

- 36 To agree that the Policy Council will be responsible for overseeing the development of population management policies in accordance with the strategic objectives of the States, and for monitoring and publishing regular information on the size and make-up of the Island's population arising from their implementation.
- 37 To agree that under the political oversight of the Policy Council, a Statutory Body will be responsible for making day-to-day administrative decisions in accordance with policy directions from the States, the details of how such arrangements will work to be brought to the States for approval ahead of the new population management regime coming into force.
- 38 To agree to the establishment of an Advisory Panel to provide independent advice to the Policy Council in relation to population management policies.

Legislative and Policy Framework

- 39 To agree that the new regime will be driven by policies set by the States and that, wherever possible, those policies will be determined by reference to the strategic objectives of the States.
- 40 To agree that population management policies should be made public to ensure that the system is transparent.
- 41 To agree that the legislation will provide for an applicant to exercise a formal right of appeal against any decision taken under the Law.
- 42 To agree that the legislation will provide for both civil and criminal sanctions for proven offences.

Extension of the Housing Control Law

- 43 To agree to the preparation of an Ordinance to enable the Housing (Control of Occupation) (Guernsey) Laws, 1994 to 2008, to remain in force until 31 December 2018 or until such time as a new population management regime and related legislation is in place, whichever is the sooner.

Further Development Work

- 44 To note the Policy Council's intention to return to the States with further detailed recommendations during the development of the new population management regime.

Preparation of Legislation

- 45 To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

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SECTION 1 – INTRODUCTION

- 1.1 In March 2012, Guernsey's population was 63,085¹. Although the States current strategic 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. 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.
- 1.2 It is against this background that the Policy Council has been tasked by the States to develop a legal and administrative framework for a comprehensive population management regime. That new regime needs to provide the States with the ability to manage, as far as is possible, the size and make-up of the Island's population and will ultimately replace the Housing Control regime. It will need to include detailed and explicit policies which determine who should be able to come to live in Guernsey, either permanently or temporarily. Whether an individual 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 live in Guernsey and the length and purpose of their stay.
- 1.3 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.
- 1.4 This report 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 strategic policy to maintain a population of approximately 61,000. Developing a mechanism which allows the States to have an impact on the size and make-up of the population must take priority because there is little to be gained from having a strategic population policy which cannot be delivered due to the lack of such a mechanism.
- 1.5 The proposals described later in this report are aimed at influencing the size of the Island's population over the medium to long term and are designed to be effective whether the States strategic population policy at any point in the future is for the population to rise, to fall or to remain static.

Background

¹ This was 170 people (0.3%) higher than the previous year. The majority of the growth was due to a natural increase of 127 people. Net migration contributed 43 people to the growth over the year.

- 1.6 In January 2011 the Policy Council, through its Population Policy Group, published a consultation document, *Managing Guernsey's Population – A Consultation Document*², which marked the launch of a 14 week consultation process providing the community with the opportunity to have an input into options for a population management regime for Guernsey at a very early stage in the complex development process. This major consultation followed almost two years of research and development of possible options for a mechanism to enable the States to manage the size and make-up of the Island's population.
- 1.7 In January 2012, the States considered a report from the Policy Council entitled "Guiding Principles for the Development of a Population Management regime"³. This comprehensive report provided the first opportunity in decades for the States to fully debate a potential mechanism for managing, as far as is possible, the size and make-up of the Island's population.
- 1.8 The debate was conducted in accordance with Rule 12(4) of the Rules of Procedure which allowed the general principles underlying the policy issues contained in the report to be debated without amendment on the basis that "*if the recommendations are accepted, the Policy Council will return to the States with detailed proposals for debate which can be accepted or rejected together with any amendments*".
- 1.9 It was therefore of great significance that the States resolved "*to approve the replacement of the Housing Control and Right to Work Laws with a Population Management regime, based on a system of Permits for Residence and Employment, which determines and manages the circumstances under which people may reside in Guernsey, for what reasons and for how long*".

Current Position

- 1.10 The previous Policy Council envisaged that its successor would bring to the States a series of reports each dealing with different components of the regime as described in the 2012 report. However, the current Policy Council is mindful that, whereas the previous States reached its conclusion on the basis of considerable engagement and understanding through a series of workshops and meetings, the General Election in 2012 resulted in twenty two new States Members, almost half of the Assembly, and in these circumstances it would be unwise to assume that they were familiar with, or accepted the specific proposals outlined in the January 2012 States Report.
- 1.11 Having reviewed the work of previous groups involved in developing a mechanism through which to manage the Island's population, the current Policy Council believes it would be unwise to use scarce staff resources, including time from the Law Officers, in crafting detailed proposals and to take them to the

² www.gov.gg

³ Billet d'État I 2012

States in a series of reports – only to run the risk that when presented, they may be rejected because they were not in accord with current States thinking.

- 1.12 It is against this background that the Policy Council is setting out in this report a description of the proposed regime, similar to that previously published in Billet I of 2012, but with a clear set of recommendations which, if agreed by the States, will provide a sound basis for detailed work including the preparation of clear drafting instructions. Such work can then proceed with certainty set in the context of clear States direction.
- 1.13 Having made this point it will still be necessary to bring one or more further reports to the States which will focus on matters of detail. This is particularly relevant in terms of the proposed governance arrangements and the drawing of boundaries between the role of policy making and the operational activities of the proposed Statutory Body. It is for this reason that some of the recommendations seek only in principle agreement at this stage.
- 1.14 Once the States has made resolutions in respect of each of the component parts of the regime set out in this report, the Policy Council intends to implement the new population management regime well within this States Term i.e. before May 2016.

The Open Market

- 1.15 The January 2012 States Report acknowledged the need for further research on the use of multiple occupancy dwellings within the Open Market, prior to presenting to the States firm proposals setting out the relationship between the Open Market and the future population management regime. Such research has now been completed and as a result this report makes recommendations which, if approved, will:
 - Ensure that the Open Market will continue to exist largely in its present form with its dominant focus on Part A family residences.
 - Remove any uncertainty about the future of the Open Market.
 - Address issues surrounding multiple occupancy dwellings in a manner that recognises the added value that some forms of multiple occupancy can deliver, but provides a means of ensuring that this sub sector of the market is managed in a manner compatible with the overall aims of the population management regime.

SECTION 2 – THE CURRENT HOUSING CONTROL REGIME

- 2.1 The current Housing Control regime, which is regarded by many as a population management tool, was never designed for that purpose and the Policy Council is firmly of the view that it cannot fulfil the Island's future population management requirements.
- 2.2 The Housing Control regime was originally introduced in 1948 because of a need to preserve 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 individual not ordinarily resident in the Island before June 1940 to have a Licence before occupying any dwelling house on the Island.
- 2.3 The Law's primary purpose was, and still is, to preserve a stock of Local Market housing for occupation by Qualified Residents⁴ and existing Housing Licence holders. Given these origins, contrary to popular misconception, the current regime is not about managing population levels; it is concerned with the availability of Local Market housing and not numbers of people. However, over the last 60 years the Housing Control regime has evolved and has been increasingly used to attempt to regulate the length of residence and type of employment for some people living in the Island, even though its principal purpose remains unchanged since 1948.
- 2.4 There is no doubt that the Housing Control regime has served the Island well for more than 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 13% of the population is subject to some form of control through the Housing Control regime.
- 2.5 Further, because the primary purpose of the current Law is purely to preserve a stock of Local Market housing for occupation by Qualified Residents and existing Housing Licence holders, at the heart of any decision made under the Law is a justification based on housing availability. This causes particular difficulties as the Housing Department strives to improve the Island's housing situation in fulfilment of the States Housing Strategy. However, it has to be acknowledged that the challenges associated with managing the size and make-up of the Island's population go much further than the single issue of housing

⁴ 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. 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. Details of the circumstances under which an individual becomes a Qualified Resident under the current Law are contained in Appendix D – *QUALIFICATION ROUTES*.

availability, albeit that decisions made under the new population management regime will still need to have regard to the housing needs of the Island's existing residents.

- 2.6 Furthermore, the Island has adopted Human Rights legislation and, having done so; it is right and proper to abide by it. In recent years, the Housing Department has found itself in an increasingly difficult position whereby the Housing Control Law might suggest that a decision is lawful, but applying that Law in the light of Human Rights legislation might suggest otherwise. This is explored more fully in Section 4 – *The Influence of Human Rights*,
- 2.7 All of the above has led to a situation today where, from a Housing Control perspective, the justification behind some policies is weak or outdated and the justification for certain decisions has been open to successful legal challenge. Furthermore, there is a concern that the decision making process is over reliant on the exercise of discretion, while its provisions and the manner in which it is administered are perceived as being confusing, and not open and transparent. Even more importantly, because of the lack of strategic direction provided by the States to guide the decision making process, the current regime is very much a reactive one as opposed to being proactive in supporting the Island's strategic aims.

SECTION 3 – WIDER CONTEXT

- 3.1 Managing growth in population is a major challenge for many 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 make-up of its population in the future.
- 3.2 Before considering any new proposals, it is important to acknowledge that developing a mechanism that is capable of influencing the size and make-up of the Island's population cannot be done in isolation. While a population management regime cannot provide solutions to every challenge that the Island faces with regard to its population level, there are some key factors which it must take into account and, in some cases, seek to influence. The Policy Council wants to reiterate the importance of some of those key factors which were detailed in the Policy Council's consultation document⁵ and these are summarised below.

⁵ www.gov.gg

An Integrated Strategy

- 3.3 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 meeting the Island's environmental, social and economic challenges. The States needs to have in place an integrated strategy that ensures that these challenges are being tackled from a number of policy directions.
- 3.4 Getting the right balance between economic gain and the resulting environmental and social impacts is fundamental to the quality of life and standard of living of Islanders and this forms a primary aim of the States Strategic Plan⁶.
- 3.5 The States Strategic Plan 2013 includes a statement of government aims as follows:

The government of Guernsey aims to protect and improve:

- The quality of life of Islanders
- The Island's economic future
- The Island's environment, unique cultural identity and rich heritage

It recognises that this requires:

- Maintenance and enhancement of Guernsey's standing in the global community.
- Sustainable economic growth and effective public services without increasing population to the detriment of our environment and way of life.
- Conditions that encourage enterprise and successful business.
- Wise long term management of Island resources including the maintenance of a highly skilled and well educated workforce.
- Efficient transport and communication systems including digital connectivity.
- Good governance and public engagement.
- Co-ordinated and cost effective delivery of public services through cooperative working and transformation change management.

⁶ Billet d'État VI 2013 – Policy Council, States Strategic Plan, 2013 – 2017

- Improved awareness of the culture and identity of Guernsey both internally (within the Island) and externally.
 - All people having opportunities and support where needed, to enable them to reach their full potential.
 - Policies which protect the natural environment and its biodiversity by accounting for the wider impacts that human activity has on it.
- 3.6 These aims are complemented by a statement of General Objectives derived from the corporate Social, Environmental and Fiscal & Economic Policy Plans, which can be found in Appendix A – *States Strategic Plan – General Objectives*.
- 3.7 It is clear that the effective management of the size and make-up of the Island’s population, which is one of the Island’s major resources, cannot be considered in isolation from these aims. In addition, the Population Management Plan should be recognised as forming just one part of the “family” of Island Resource Plans as detailed in the States Strategic Plan, which also includes the Energy, Strategic Land Use and Island Infrastructure Plans.

The Island’s Housing Stock

- 3.8 Three successive Housing Needs Surveys⁷, undertaken at 5 year intervals, have found that the supply of housing in the Island is insufficient to meet the housing needs of its residents. This remains the case despite the fact that sufficient planning permissions have been granted to meet the current strategic target of 300 permissions per year⁸. Consequently, it is not possible to completely separate matters concerned with population management from those concerned with ensuring that there is enough housing to meet the needs of the Island’s residents.
- 3.9 There exists a tension between the need to satisfy the Island’s wider obligations under the immigration regime and the need to meet the housing needs of the Island’s residents, and it is inevitable that the supply of – and demand for – housing in the Island will remain a key consideration under the population management regime. This tension can, however, be eased by ring-fencing certain properties such that they can be accessed by people wishing to live in the Island, despite the fact that they might not otherwise be permitted to live here because they do not have close connections with the Island and have not been invited to work here to help support the Island’s economy and community.
- 3.10 Therefore, the population management regime will need to retain the concept of a two-tier housing market and this will be achieved by maintaining an Open Market and a Local Market largely similar to those in existence today. People occupying properties on the Open Market will not be subject to the same

⁷ www.gov.gg/housingneedssurvey

⁸ Quarterly Housing Monitoring Report – Available from the Environment Department upon request

restrictions applied to those who, under the population management regime, wish to access properties on the Local Market. (Detailed information and proposals relating to the Open Market are set out in Section 13.)

Limited Skills Pool

- 3.11 In common with many other small jurisdictions across the world, a degree of inward migration of people, both for economic and other reasons, is inevitable and, to some extent, necessary in order to maintain the current quality of life enjoyed on the Island.
- 3.12 There are a number of situations where it would be appropriate to allow an individual to move to Guernsey to live for a period of time. One such circumstance is for employment-related reasons, particularly where the Island needs access to skills and experience that are either not available locally, or not available in sufficient quantity to meet the Island's needs.
- 3.13 The Skills Guernsey initiative has two principal pillars:
- To improve the skills of the working population, in line with the needs of employers in all sectors.
 - To increase workforce participation i.e. to enable everyone who is willing and able to find employment.
- 3.14 The Group's recently published Review of 2012/Plan for 2013⁹ states that the Skills Guernsey mission is: *'To create the infrastructure for and the conditions whereby every individual, whether in work or seeking work, can realise their potential, participate in the community, and contribute to Guernsey's economic success'*.
- 3.15 While the Skills Guernsey initiative aims to continue to increase the range of skills available in the Island, 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, experience and manpower 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 to come to the Island to work in order to fill skills, experience and manpower shortages.

Future Demographic challenges

- 3.16 The number of people aged 65 years or over is projected to approximately double between 2010 and 2040. Conversely, the population under 65 years of age is projected to decrease over the same time period.

⁹ www.gov.gg/skillsguernsey

- 3.17 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 2011 was 0.48, which meant that for every 100 people of working age, there were 48 people of non-working age i.e. those under the minimum school leaving age or above pension age.
- 3.18 Based on the same age groupings, the dependency ratio is projected to increase to 0.76 by 2040, which means that for every 100 people aged between 16 and 64, there is predicted to be 76 people aged 15 and under and aged 65 and over. However, the pension age is set to be increased to 67 by the year 2031. Based on the changed age groupings by 2040, for every 100 people of working age (16 to 66), there is projected to be 70 people of non-working age (15 and under and 67 and over). Both forecasts assume that the current life expectancy trends and birth rates continue, and that migration levels are maintained at their current levels¹⁰.
- 3.19 This ageing of the population will have major economic and social consequences as, in the foreseeable future, we will move towards a population where an increasing proportion of people beyond working age will need to be supported, both physically and financially, by a decreasing number of people who are economically active. This is despite the raising of the pension age.
- 3.20 Any new regime must have the ability to influence the demographic make-up of the population in order to assist the Island to mitigate any potentially negative effects of the demographic changes described above.

Existing Rights to Live in Guernsey

- 3.21 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. 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.
- 3.22 Anybody who has already 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. (There is no proposal to change the automatic right to return for existing Qualified Residents.)
- 3.23 It is also recognised that people might want to live in Guernsey because they have strong family connections with an individual who is already permitted to live here. Preventing some such individuals from being able to live in Guernsey

¹⁰ For more information on population and projections, see www.gov.gg/population

to maintain their family relationships would not reflect Guernsey's desire to behave as a fair society.

- 3.24 For these reasons, there is a constant and unrestricted ebb and flow of Qualified Residents and people with strong family connections with Guernsey 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.

Immigration Regime

- 3.25 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.
- 3.26 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 has little scope to depart from rules applying consistently throughout the British Islands.
- 3.27 Guernsey is part of the Common Travel Area (the islands of Great Britain, the Channel Islands, the Isle of Man and Ireland). This means that once an individual 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.
- 3.28 Immigration controls are primarily concerned with improving domestic security through strong border protection, targeting those who represent the greatest risk, while welcoming legitimate travellers. These controls were not intended to be, and cannot be used as, a means to manage the size and make-up of the population.
- 3.29 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 Accession¹¹ 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 European Economic Area (EEA) Member States coming to, and already in, Guernsey than to British citizens. That principle similarly means that Islanders who travel throughout the EEA Member States cannot generally be subjected to discrimination on grounds of nationality, although not all of them are able to exercise the full EU law rights relating to employment, etc.

¹¹ Subsequently extended to include Iceland, Liechtenstein and Norway as the European Economic Area

- 3.30 The Immigration Act, as extended, does not apply to British citizens and only applies to EEA Member State nationals to a limited degree. Any population management regime will need to avoid infringing the immigration-related rights of British citizens and EEA Member State nationals and must not discriminate regarding their ability to exercise those rights.
- 3.31 These rights are not infringed by the current Housing Control regime's controls on housing occupation and employment, primarily because the occupation of some housing in the Island is free from the controls imposed by that regime. 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 might even be in breach of Protocol 3.
- 3.32 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 Member 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.
- 3.33 In developing proposals for a new regime, the need for the extended Immigration Act and the new population management regime to interlink and overlap has been taken into account. The Policy Council believes that 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.

Other Jurisdictions

- 3.34 It has to be remembered that the Island does not sit in isolation from other jurisdictions, some of which Guernsey is in direct competition with in terms of wanting to be an attractive place to live, work and do business.
- 3.35 As part of its initial research, the Population Policy Group 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. A summary of the Group's findings is contained in its consultation document¹².
- 3.36 The Policy Council acknowledges that every jurisdiction is different in terms of what it is trying to achieve from a population management perspective. For example some jurisdictions might be actively seeking to increase population levels, or trying to discourage their skilled young people from emigrating. Having reviewed other regimes, it is clear that there is no single regime that delivers everything that Guernsey needs in terms of managing changes in population levels.

¹² www.gov.gg

- 3.37 The proposals which are detailed later in this report 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 current Housing Control regime. However, the Policy Council believes that these proposals offer a completely new regime which is, appropriately, bespoke to Guernsey.

SECTION 4 – THE INFLUENCE OF HUMAN RIGHTS

- 4.1 The Policy Council is keen that all of those involved in debating this important issue understand the influence that Guernsey's Human Rights legislation rightly has over how the States can seek to manage the size and make-up of the Island's population. The main points are explained in the paragraphs below.
- 4.2 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*.
- 4.3 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 and for how long; whether specific conditions should apply to them during their stay; and which allows the States to require some people to move out of Local Market property after a period of residence; has the potential to cause a direct intrusion into an individual's private and family life and their home.
- 4.4 However, the rights described above are "qualified rights", which means that rights in these areas can be interfered with in certain, defined circumstances. In full, 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."*

- 4.5 The European Convention on Human Rights does not stop Guernsey from having a regime that applies conditions to an individual's residence in Guernsey and that allows the States to require some people to move out of Local Market property after a certain period of residence; BUT this interference with 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 has 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."*¹³

- 4.6 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 supplements the basic principle of non-discrimination on grounds of nationality applicable to EU citizens, acknowledges 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 impact on the individual (and their family) of being asked to move out of Local Market accommodation, a consequence of which might be that they have little option but to uproot themselves and leave the Island.
- 4.7 This means that an individual can be prevented from living in certain properties in Guernsey, but only if that is a proportionate and necessary response to protect the rights and freedoms of other members of the Island's population.
- 4.8 As mentioned above, the existence of a Law which allows Guernsey to require some people to leave Local Market property after a certain period – and in some cases those individuals might 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.
- 4.9 However, in having such a regime, Guernsey must be able to demonstrate that any interference with an individual's Article 8 rights is in accordance with Paragraph 2 of Article 8 as detailed above. Any measures that are taken to protect the needs of the community as a whole must be reasonable, proportionate and justifiable in terms of their potential effect on the rights of individuals. The Policy Council believes that the proposals for a new population management regime for Guernsey which are described later in this report meet these criteria.

¹³ *Gillow v the United Kingdom* [1986] 11 EHRR 335

Challenges to the Housing Control Regime on Human Rights Grounds

- 4.10 As mentioned earlier, a fundamental issue with the current regime, which is intrinsically linked to the system of acquiring Qualified Resident status, is the likelihood of a successful challenge on Human Rights grounds.
- 4.11 For some people their circumstances will change (e.g. their Housing Licence has expired or a relationship 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 in Local Market property.
- 4.12 Although an individual coming to work in Guernsey knows from the outset how long their Housing Licence has been issued for and what conditions have to be met for the Licence to remain valid, Human Rights considerations can still intervene when considering a request for a further Licence.
- 4.13 Since the Human Rights (Bailiwick of Guernsey) Law, 2000 came into force in 2006, it has – quite intentionally and properly – become less difficult for people who have been here for six, seven, eight or more years and who wish to remain indefinitely, to assert their rights under, in particular, Article 8 of the Human Rights Convention.
- 4.14 Those rights exist because the longer an individual lives in a particular place, the stronger their ties to that place become. They will have set up a home in the Island, made friends, joined organisations and started to feel settled. Their children will be settled at school, will have made their own friends and Guernsey might be the only place that they really know. It is these everyday and ordinary things that go into the mix that is an individual's *"home, private and family life"* which must be considered as a result of their Article 8 rights.
- 4.15 In each case, the Housing Department must show that a decision to refuse a Housing Licence is not an unreasonable interference with the Article 8 rights of the individual and their family.
- 4.16 The Human Rights Law incorporates into domestic law a requirement that every law is applied in accordance with Human Rights principles. Therefore, if an individual's Housing Licence expires or their circumstances change such that they can no longer live lawfully in a particular property in Guernsey, although application of the Housing Control Law might lead to a provisional decision that the individual must cease to live in Local Market property, the Housing Department must look again at the individual's situation, from the perspective of the Human Rights Law, and ask itself *"Has this individual and their family established their home and/or private and family life in Guernsey to such an*

extent that to require them to leave Local Market property would be unreasonable and disproportionate?” before reaching a final decision about whether or not to grant a Housing Licence permitting them to live in Local Market property.

- 4.17 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 Local Market property in Guernsey, the answer to that question is likely to be “yes, *an interference with the family’s Article 8 rights would be unreasonable*”. However, it is important to note that when the Housing Department grants a Licence in these circumstances, this does not mean that the individual becomes a Qualified Resident at that point in time. The further Licence, in most cases, allows the individual to remain living in Local Market property in Guernsey, if they so choose, long enough for them to become a Qualified Resident in the future.
- 4.18 If a Housing Licence is not issued – which might be in line with the original intent of the Housing Control Law – the individual has the right to challenge that decision via a formal appeal on grounds established under either the Housing Control Law and/or the Human Rights Law. As mentioned above, the Housing Department is finding itself in an increasingly difficult position where the Housing Control Law itself might suggest that a decision is lawful, but applying that Law in the light of Human Rights legislation would suggest otherwise.

SECTION 5 – OBJECTIVES OF A NEW REGIME

- 5.1 As mentioned earlier in this report, having a population management regime in place is only one part of the wider picture of how Guernsey achieves the economic, social and environmental balance that is fundamental to the Island’s quality of life and standard of living. The States needs to have in place an integrated strategy that ensures that these challenges are being tackled from a number of policy directions and this forms the primary aim of the States Strategic Plan¹⁴. Many of the objectives listed in the States Strategic Plan are not “people free” options and some are heavily dependent on the availability of highly skilled and well-qualified individuals.
- 5.2 Some of the respondents to the earlier consultation exercise undertaken by the Policy Council referred to wider States objectives which fall outside of the scope of the mechanism for managing the size and make-up of Guernsey’s population (for example cultural and environmental issues). The proposed objectives 3 and 4 listed below aim to ensure that the population management regime can react to, and act as an enabler for, some of those objectives, but the population management regime itself cannot be the policy driver for them.

¹⁴ Billet d’État VI 2013 – Policy Council, States Strategic Plan, 2013 – 2017

5.3 Having reviewed the key factors which need to be taken into account in developing a new population management regime, the objectives which the Policy Council believes a new regime should aim to achieve are listed below:

- a) The new regime needs to be as effective as possible in enabling the States to manage the size and make-up of the Island's population.
- b) The 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 Island's population level.
- c) The States Strategic Plan sets out objectives, policies and priorities for the Island. 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 give the States the ability to respond quickly to the Island's changing economic, social and environmental demands, including the Island's demographic challenges, without the need for changes in primary 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 should 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.

5.4 **Recommendations – Objectives of a New Regime**

The Policy Council recommends the States to agree the objectives which the new Population Management regime should aim to achieve, as described in paragraph 5.3.

SECTION 6 – GOVERNANCE ARRANGEMENTS AND RESPONSIBILITIES

- 6.1 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 Housing Licence applications, but also for interpreting those policies and how they should be applied with respect to individual applications. That said, the Housing Control Law allows for the delegation of certain functions of the Board to a Sub-Committee and/or officers of the Housing Department, and many decisions are taken under this delegated authority.
- 6.2 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 Directors themselves. In these examples, the legislation holds the Director responsible for making day-to-day decisions within the Law on individual cases and the political Board rightly plays no part in that decision making process.

Political Accountability

- 6.3 In order to improve the coordination between different areas of States policy which affect the management of the Island's population, the Policy Council proposes that political responsibility for overseeing the new population management regime should fall specifically within its own mandate. The Policy Council would be accountable for developing population management policies in accordance with the strategic objectives of the States, for implementing those policies that are agreed by the States, and for monitoring and publishing regular information on the size and make-up of the Island's population arising from their implementation.
- 6.4 The exact mechanism for how this will work in practice will be defined and agreed at a later stage, but one possibility would be for the Policy Council to create a Sub-Committee to fulfil its responsibilities under the new regime. This might include States Members who are not members of the Policy Council.
- 6.5 There is also the question of whether the Policy Council (or any political body to whom it may delegate specific responsibilities¹⁵) should exercise any decision-making functions in specifically defined areas and/or in relation to individual cases. While the Policy Council is of the view that, as a matter of principle, the political focus should be on policy-making rather than day-to-day decision making, this matter will be considered further as part of its wider consideration of the operation of the Statutory Body charged with administering the new Law and its associated policies, which is proposed in the paragraphs following.

¹⁵ Rules 16 and 16A of *The Constitution and Operation of States Departments and Committees* defines the rules regarding Sub-Committees with delegated responsibility.

- 6.6 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 Policy Council believes that a centrally co-ordinated structure that is not linked to one department, and where political accountability rests specifically with the Policy Council, should ensure that a corporate approach is adopted for the future.

Decision Making Responsibility – Statutory Body

- 6.7 A key principle in developing the proposals for a population management regime has been to provide clear and transparent separation between two distinct roles in the process – policy making and day-to-day administration. This is intended to enable States members to freely 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.
- 6.8 The States, as the political body, will thus have the responsibility for policy making, but there also needs to be a body that has the administrative responsibility for making day-to-day decisions in line with those policies on the high volume of individual cases that can be anticipated for the various Permits.
- 6.9 It is therefore proposed to establish a Statutory Body with responsibility for making the wide range of day-to-day administrative decisions that will be required to implement the new population management regime. Principally, these will concern who is able to move to Guernsey, either temporarily or permanently, for what reason and for how long, although, as the Housing Department does now, the Statutory Body will have to consider cases where people's original employment and/or personal circumstances have changed, or where they apply to remain in Guernsey notwithstanding the expiry of a Permit.
- 6.10 The Statutory Body will make decisions in line with the directions given by the States, whether via the legislation or policy / strategic guidelines. This means that the Statutory Body will always be obliged to act in accordance with the wishes of the States. Further, as explained earlier in this section, the Policy Council will be accountable for the new population management regime and for exercising political oversight of the day-to-day operation of the Statutory Body.
- 6.11 However, while, in strict terms, there should be a clear separation between policy making and the exercising of day-to-day decision making in order to reduce any perception of bias or pre-determination, there are concerns about the practicality of achieving this within our small Island community where strong and often conflicting views are held about population management matters. For example, one concern is that individual political members might disagree with the policy direction which has been decided by the States and thus, if given decision-making powers, they might be at risk of being accused of making a

decision which is more in line with their own views than those of the States. Equally, there is a political concern that without very clear parameters being set, there is a risk that a Statutory Body charged with exercising day-to-day administrative decision-making could act inappropriately, particularly if the mechanism for political oversight is not robust enough.

- 6.12 The Policy Council understands both concerns, and considers that the relationship between a Statutory Body and the political process must always be carefully balanced. There are various models, some already in existence within Guernsey, which could be adopted or modified, 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.
- 6.13 The merits of various such models are currently being explored by the Policy Council and upon acceptance of the principle of establishing a Statutory Body with responsibility for day-to-day decision making, overseen politically by the Policy Council, a report detailing the scope of the responsibilities that a Statutory Body might have, with the associated reassurances regarding political oversight of such a role, will be brought to the States for debate. In the meantime, examples of where similar relationships already exist are summarised in Appendix C – *Statutory Roles*.

Advisory Panel

- 6.14 The proposed structure for the new population management regime includes the creation of an Advisory Panel to assist and advise the Policy Council in respect of the new regime. It is envisaged that the Panel would provide advice and evidence-based recommendations to the Policy Council where it believes policies need to be changed. The Policy Council could also ask the Advisory Panel to test any new policies or proposed changes to the regime. The Advisory Panel will have close links with the Skills Guernsey group.
- 6.15 It is proposed that members of the Advisory Panel, which might include representatives of interest groups, 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. The exact constitution of the Advisory Panel will be defined at a later stage, but it is envisaged that its members would be appointed by the States, on the recommendation of the Policy Council. This will be the subject of a further report to the States.

6.16 Recommendations – Governance Arrangements and Responsibilities

The Policy Council recommends the States:

To agree that the Policy Council will be responsible for overseeing the development of population management policies in accordance with the strategic objectives of the States, and for monitoring and publishing regular information on the size and make-up of the Island's population arising from their implementation.

To agree that under the political oversight of the Policy Council, a Statutory Body will be responsible for making day-to-day administrative decisions in accordance with policy directions from the States, the details of how such arrangements will work to be brought to the States for approval ahead of the new population management regime coming into force.

To agree to the establishment of an Advisory Panel to provide independent advice to the Policy Council in relation to population management policies.

SECTION 7 – LEGISLATIVE AND POLICY FRAMEWORK

Legislation

- 7.1 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.
- 7.2 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) which will set out the general powers available to the States.
- 7.3 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 and/or by resolution (i.e. without the need for further approval by the Queen in Council).

Appeals

- 7.4 The primary legislation will include provision for an applicant to exercise a right of appeal against any decision taken under the Law. A range of well informed views regarding the pros and cons of various appeal mechanisms were expressed

by respondents during the consultation process. The States itself is also still gathering experience and learning from appeals mechanisms which have been recently established and the appeal mechanism associated with the new population management regime, and the procedures related to the appeal process, need further research and have yet to be developed. However, the Policy Council intends to bring detailed recommendations in this area back to the States for debate.

Sanctions

- 7.5 In designing an enforcement regime, the Policy Council 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 environmental protection.
- 7.6 The Policy Council 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 flexibility, will encourage compliance and will enable enforcement resources to be focussed more effectively.
- 7.7 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.

Transparent Policies

- 7.8 Underpinning the new 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.
- 7.9 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 necessarily 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.
- 7.10 Although the Housing Department has consulted with various industry sectors in developing some of 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.
- 7.11 Within 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 are being made on who is able to move to Guernsey to live, for what reasons and for how long.

- 7.12 The policy framework outlined above will also 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.
- 7.13 If the States change an existing policy, or bring in a new policy, the Policy Council and the Statutory 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.
- 7.14 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 e.g. by resolution of the States, and the detail that they will contain.
- 7.15 **Recommendations – Legislative and Policy Framework**

The Policy Council recommends the States:

To agree that the new regime will be driven by policies set by the States and that, wherever possible, those policies will be determined by reference to the strategic objectives of the States.

To agree that population management policies should be made public to ensure that the system is transparent.

To agree that the legislation will provide for an applicant to exercise a formal right of appeal against any decision taken under the Law.

To agree that the legislation will provide for both civil and criminal sanctions for proven offences.

SECTION 8 – SYSTEM OF PERMITS

- 8.1 One of the main reasons why the Housing Control regime has proved to be deficient 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 Control Law to be used to determine the size and make-up of the Island's population at a particular point in time.
- 8.2 Under the new regime, the Policy Council proposes that a system of Permits be introduced. Various options were explored in the Policy Council's consultation document¹⁶. There will be different types of Permits issued, depending on the reason why an individual is permitted to live in the Island.

Employment Permits

- 8.3 Employment Permits will be issued for those who are permitted to live in the Island in Local Market property 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 a Permit 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 report.

Residence Permits

- 8.4 Residence Permits will be issued for those who are permitted to live in the Island for reasons other than their employment, although they will be permitted to work. 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 report.

Who Needs to Obtain a Permit?

- 8.5 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 might therefore, in some instances, represent a cultural shift which the public might find difficult to accept.

¹⁶ www.gov.gg

- 8.6 The various groups of people who may, or may not, be required to obtain some form of Permit are explored in more detail in the following sections of this report. 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 might apply in each case, are examined.

Exemptions

- 8.7 While the detail has yet to be established, it is also proposed that certain groups of people will not need to obtain a Permit. These might 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 e.g. consultants.
- 8.8 This section of the report is simply designed to introduce the concept of an Employment and Residence Permit based system. Details of who will require a Permit, the various conditions that might be associated with such permits and options associated with long term residency, are covered in sections 9 – 17 of this report. For this reason, proposals and recommendations related to the Permit system are contained in each of those relevant sections.

SECTION 9 – LONG TERM RESIDENCY

- 9.1 In this section, the circumstances in which an individual is permitted to reside in the Island for the long term are explored, along with the concept of becoming a Permanent 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 subsequent sections of this report.

Qualified Resident Status – The Situation Today

- 9.2 Under the Housing Control Law 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.
- 9.3 It is important to point out here that the majority of people living in Guernsey are already defined as Qualified Residents under the 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.

- 9.4 However, there are some Guernsey residents (an example might include an individual who was born here, has lived here for a significant period of time and has never worked) who might not appreciate that, technically, they are defined as a Qualified Resident under the current Law. Details of the circumstances today under which an individual becomes a Qualified Resident are contained in Appendix D – *Qualification Routes*.
- 9.5 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.
- 9.6 Becoming a Qualified Resident under the Housing Control Law 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, regardless of the length of their absence from the Island,
 - They have the automatic right to accommodate their immediate family within their own household, and
 - Their spouse, and any children born in the Island, can qualify in the shortest qualification period of only 10 years residence in the Island.
- 9.7 There are currently 13 different routes to becoming a Qualified Resident. The full details are contained in Appendix D – *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 can include:
- An individual's place of birth,
 - The residential status of their parents,
 - Their length of residence in Guernsey, and/or
 - Their status during their period of residence.
- 9.8 Currently, the number of years that an individual must have been "ordinarily resident" in the Island before they can become a Qualified Resident is 10, 15 or 20 years depending on the route through which the individual qualifies.

9.9 There are two fundamental concerns with the current regime which relate to how a person acquires Qualified Resident status –

- Challenges on Human Rights grounds.
- Complexity.

The issues regarding challenges on Human Rights grounds are detailed earlier in this report in Section 4 – *The Influence of Human Rights* and are therefore not repeated here.

Complexity

9.10 Among the concerns with the existing system of how a person acquires Qualified Resident status are 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.

9.11 The main reason behind this level of complexity is that the conditions that are required to be met in order for an individual to become a Qualified Resident differentiate between groups of people on a number of levels as described above. In addition, 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 during their potential qualification period.

9.12 This level of complexity is also a reflection of the fact that the existing system has 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.

Proposals

9.13 The Policy Council 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 a similar principle recognising long term residents is carried through into the new population management regime.

9.14 However, as explained at various points earlier in this report, 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 long term resident status, even though the principle remains the same.

- 9.15 After considering the detail of the current regime and its associated problems, the Policy Council believes that there are two significant milestones that are reached by an individual who is permitted to live in Local Market property 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 Local Market property in Guernsey – a decision that, for some, will lead to them having to leave the Island – 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 Local Market accommodation in the Island for a significant period.
- 9.16 The Policy Council has concluded that because these two separate milestones are very distinct and are potentially reached at different stages, they should 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

- 9.17 As described in Section 4 – *The Influence of 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 Local Market property in Guernsey would be an unjustifiable infringement of their Human Rights.
- 9.18 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 new Law, the period after which an individual will have the right to continue living in the Island permanently if they so choose. This is the first milestone and the Policy Council proposes that people who acquire that right should be defined as Established Residents and be issued with an Established Residence Permit.
- 9.19 The Policy Council 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. After considering the casework associated with administering the current Housing Control regime and taking into account legal advice, the Policy Council has concluded that the period of residence should be between 5 and 8 years.

- 9.20 That leaves the question of what exact 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 an individual living in Local Market property in Guernsey for that period of time will then have the ability to remain living here permanently if they so choose.
- 9.21 During the consultation process mixed views were expressed about this proposal, but, acknowledging the arguments set out in the consultation document, there was general acceptance that a continuous period of residence of around 7 years represented a reasonable point at which an individual should reach the first milestone. However, except for those who were born in the Island, or had strong family links here, some respondents felt that this period was too short.
- 9.22 Many of the respondents who did not agree with the proposal simply expressed the view that a continuous period of residence of 7 years was too short. Some expressed concerns about the impact that this change would have on overall population numbers. Some respondents felt that the period should be slightly longer than the 7 years proposed and suggested that by increasing it to 8 years it would still be possible to demonstrate Guernsey's desire to want to behave as a fair and reasonable society and protect the Human Rights of all its residents.
- 9.23 Balancing the risk of the new regime being subject to frequent legal challenge with the need for the community to understand and accept the proposals, the Policy Council proposes that a period of 8 years represents a reasonable compromise. After an individual has lived in Local Market property in the Island for a continuous period of 8 years, it is likely that they will have established their home, private and family life in Guernsey to such an extent that to require them to move out of Local Market property after such time would be considered to be an unreasonable interference with their Human Rights.
- 9.24 This means that in the future, in most circumstances, if an individual has lived continuously, and lawfully, in Local Market property for 8 years, under the new regime they will acquire the right to continue living in the Island permanently if they so choose and will be issued with an Established Residence Permit.
- 9.25 However, it must be pointed out that whatever the period of residency which is defined in the Law, it will remain the case that an individual living in Local Market property in Guernsey for *any* period of time, could claim that their Article 8 rights have been infringed by a requirement for them to leave a Local Market property, and consequently, in some cases, the Island. In determining specific applications to remain in the Island in these cases, the States will have to demonstrate that any interference with an individual's Article 8 rights is justifiable and in accordance with Article 8(2), and must undertake a balancing exercise between the rights of the individual and the rights and freedoms of the community as a whole.

Rights to Return Having Left the Island After the First Milestone

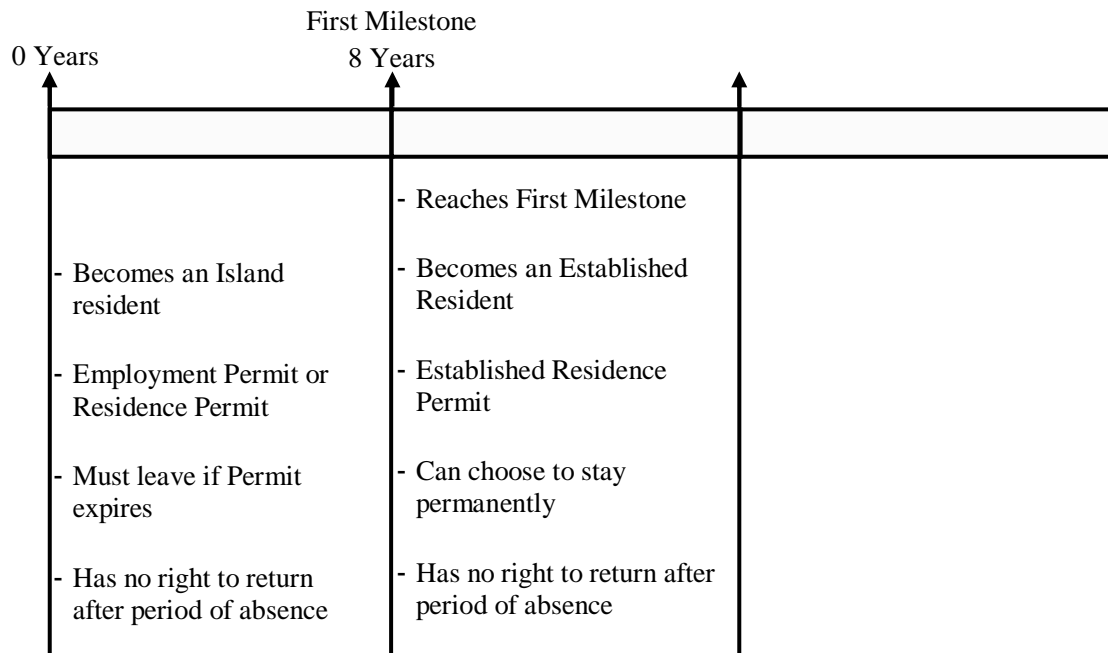
- 9.26 Although an individual who has reached the first milestone and acquired an Established Residence Permit will have the right to continue living in the Island permanently if they so choose, it is proposed that if they decide to move away from the Island *before* they have reached the second milestone (which is explained below), they *will not* have the automatic right to return to live in the Island at a later point. Proposals regarding rights to return to the Island *after* an individual has reached the second milestone are explained later in this section.
- 9.27 This means that if a person leaves the Island at any point before reaching the second milestone (save for some pre-agreed absences which are discussed later in this report) they could only return to Local Market accommodation in the Island by making a successful Permit application before they planned to return.

Other Conditions

- 9.28 In later sections of this report, the different conditions that may be applied to an individual during their period of residence on each type of Permit are considered (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). Those later sections include consideration of what conditions may apply to holders of an Established Residence Permit. However, it is important to point out here that any conditions that are placed on an individual once they have acquired an Established Residence 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

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



The Second Milestone

9.30 As described above, the Policy Council believes that there is a second, and distinct, milestone that is reached by a person who is permitted to live in Local Market property 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 will have made having lived in the Island for a significant period.

9.31 As described earlier, the longer an individual has lived in Local Market property 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 be settled in at school and will have made friends of their own. All of these factors will become even stronger for individuals who have chosen to remain in the Island beyond the first milestone. During their time in the Island, such individuals are likely to have made a significant contribution to Guernsey through their work, the taxes that they pay and through their own personal achievements.

- 9.32 Under the new regime, the Policy Council proposes that individuals who reach this second milestone should be defined as Permanent Residents and be issued with a Permanent Residence Permit.

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

- 9.33 In order to provide certainty it is important to determine, and set out in the Law, the period after which an individual will acquire the status of Permanent Resident. Because this second milestone is more about how the Island's community values the contribution and commitment that results 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.
- 9.34 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 D – *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 residence.
- 9.35 As described earlier in this section, the Policy Council is concerned that, because the existing system of recognising long term residents i.e. becoming a Qualified Resident, differentiates between groups of people on a number of levels, the system is unnecessarily complex and difficult to understand. The Policy Council 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.
- 9.36 Respondents to the consultation process had mixed views about this proposal but there was general acceptance that an individual should reach the second milestone, and acquire some form of long term resident status, after a *continuous* period of residence of 14 years. The most frequently cited reasons included a simplification of the qualification routes under the current Housing Control regime, the removal of any discrimination between different groups of people and the same qualification period applying where an individual moves from one qualification route to another (i.e. where their personal circumstances change during their qualification period).
- 9.37 Many expressed the view that individuals should reach the second milestone after the same period of continuous residence regardless of the circumstances of the individual concerned. However, some respondents indicated a preference for a 10 year qualification period for an individual who was born in Guernsey or who has a strong family link with the Island. Some respondents were concerned that for this group of individuals, the proposal of 14 years would increase the length of time before they would become recognised as long term residents.

- 9.38 Having considered all of the feedback, the Policy Council proposes that an individual will reach the second milestone and become a Permanent Resident after a continuous period of residence in Local Market property of 14 years.
- 9.39 This means that in the future, in most circumstances, if an adult or child has lived continuously and lawfully in Local Market property for 14 years, under the new Law they will acquire the status of Permanent Resident and be issued with a Permanent Residence Permit.

Other Options

- 9.40 In developing this proposal, the Policy Council considered some alternative options which are described below.
- 9.41 **Discriminating between different groups of people** – An alternative approach would be to allow different groups of people to become Permanent 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 Policy Council does not recommend this approach, which would replicate a number of the problems associated with the existing system, particularly those relating to complexity, which were outlined earlier in this section.
- 9.42 **Children becoming Permanent Residents after a shorter period than adults** – 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 8 or 10 years, this does not mean that the child feels any less a part of the Guernsey community.
- 9.43 The period of time during which the child has lived in the Island might be a significant proportion of their lifetime and, for many, Guernsey might well be the only place that they really know. Their lifestyle choices, cultural views and influences, lifelong friendships and many aspects of their character might 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 8 or 10 years in the Island, having spent significant parts of their life living elsewhere.
- 9.44 For these reasons, the Policy Council considered whether the new regime should include provision for children to become Permanent Residents after a shorter period of continuous residence than adults. Again, it was concluded that this would replicate a number of the problems associated with the existing system which were outlined earlier in this section, as well as introducing the difficulties

associated with a child potentially becoming a Permanent Resident before their parents, and is therefore not recommended.

- 9.45 **Aggregating Periods of Residence** – An alternative approach to requiring an individual to complete a *continuous* period of residence of 14 years would be to allow that 14 years to be made up of a number of shorter periods i.e. requiring an individual to be resident in the Island for an *aggregate* period of 14 years. The Policy Council rejected this proposal because it does not believe that the additional administrative complexity associated with such arrangements is justifiable. In addition, the Policy Council’s proposals for periods of time spent off-Island, which will be considered to be continuous residence, will account for many of the circumstances which might cause an individual to spend periods of time away from the Island. These are outlined later in this section.

Rights to Return Having Left the Island After the Second Milestone

- 9.46 In paragraph 9.26, it was explained that once an individual has reached the *first milestone* they will have the right to continue living in the Island permanently but, if they decide to move away from the Island *before* they have reached the second milestone, they *will not* have the automatic right to return to live in the Island at a later point.
- 9.47 Some responses were received during the consultation process which solely addressed the issue of Rights to Return. Many respondents strongly supported the proposal that once an individual had reached the second milestone, and become recognised as a long term resident, they should have an automatic right to return to Guernsey if they choose to move away at some point in the future.
- 9.48 The Policy Council has concluded that once an individual has reached the *second milestone* and has become a Permanent Resident, if they then decide to move away from the Island, they should have the automatic right to return to live in the Island at a later point.

Losing the Right to Return

- 9.49 There is a view that this automatic right to return to the Island after a period of absence should never be lost. Once an individual has made a long term commitment to Guernsey and therefore acquired the status of a Permanent Resident, that commitment should entitle them to come and go from the Island as they choose later in their life.
- 9.50 There is an alternative view that 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, they should not have the automatic right to return to the Island later in life.

- 9.51 Currently, anybody who has gained Qualified Resident status under the Housing Control Law 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.
- 9.52 As discussed previously in this report, 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.
- 9.53 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 make-up of the population; whether they have made, or will make, any contribution to the Island through paying taxes or through their own personal achievements.
- 9.54 The Policy Council considers it inevitable that the above uncertainties will have to remain in place in respect of those individuals who have already gained Qualified Resident status under the current Housing Control regime. Accordingly, there is no proposal to change the automatic right to return for existing Qualified Residents. However, it is important to consider whether or not to adopt policies to reduce those uncertainties for the future.
- 9.55 If the pool of Qualified Residents / Permanent Residents who can automatically return to the Island to live is allowed to continue to increase in an uncontrolled manner, then it will compromise the ability to ensure that changes in the Island's population are managed in the future. However, this compromise has to be balanced against the community's acceptance of any proposal to remove an individual's automatic right to return.
- 9.56 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.
- 9.57 As mentioned above, some responses were received during the consultation process which solely addressed the issue of Rights to Return. A very significant majority of respondents indicated that they disagreed with any proposal to remove a long term resident's automatic right to return to Guernsey, regardless of how long the individual might have lived away from Guernsey. Many commented that such a change would be particularly unfair for Qualified /

Permanent Residents who had been born in Guernsey or who had strong family connections with the Island.

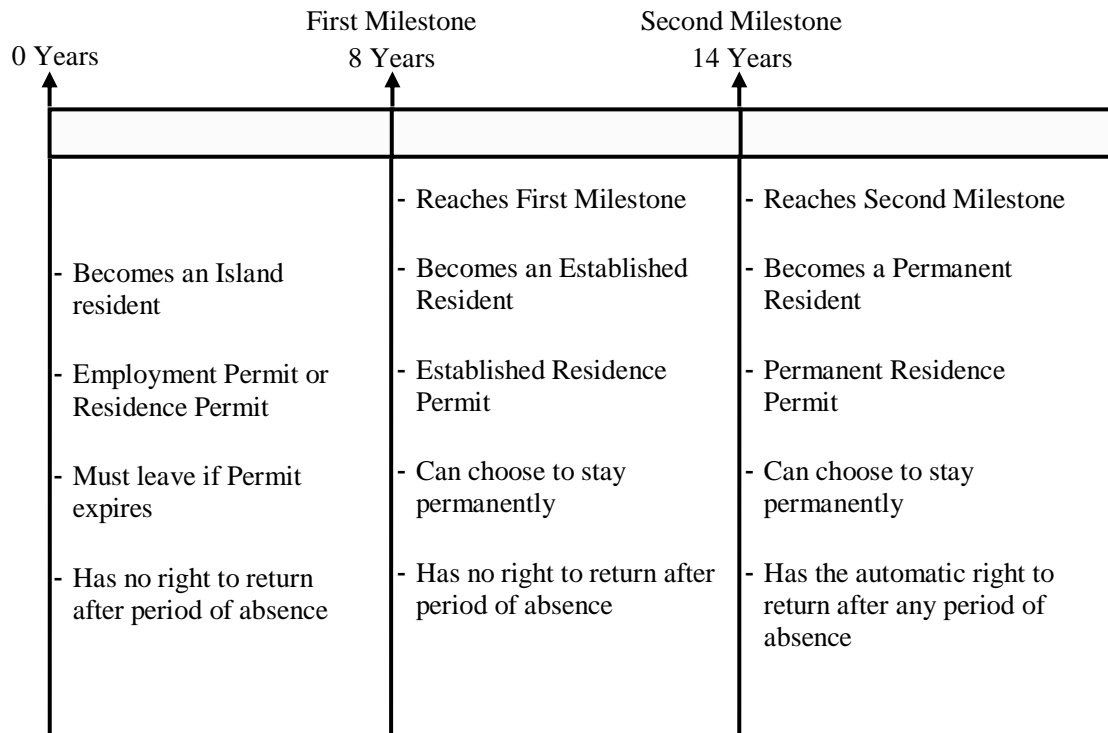
- 9.58 The Policy Council has mixed views on this issue, but, by a majority, has concluded that once an individual has reached the *second milestone* and has become a Permanent Resident, if they then decide to move away from the Island, they should retain the automatic right to return to live in the Island at a later point, regardless of how long they are away from the Island.
- 9.59 However, the Policy Council proposes, later in this section, that any existing Qualified Resident who is not resident in the Island, but who decides to return in the future, will be required to obtain a Permanent Residence Permit. This requirement will provide a detailed picture of return patterns for such individuals.
- 9.60 The Policy Council believes that this new data should be regularly reviewed in the future and that the issue of whether or not an individual should retain the automatic right to return to the Island to live after a significant break in residence should be revisited based on that data.

Other Conditions

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

Summary of First and Second Milestones

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



Existing Qualified Residents

9.63 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 an individual can acquire that status under the current Law are contained in Appendix D – *Qualification Routes*.

9.64 Under the Housing Control Law 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.

9.65 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.

- 9.66 The Policy Council has reviewed this requirement for existing Qualified Residents in three groups:
- a) Existing Qualified Residents who are not resident in the Island but 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, and
 - c) Existing Qualified Residents who are not currently required to obtain any document under the current regime.
- 9.67 In the case of the first group, the Policy Council proposes that any existing Qualified Resident who is not resident in the Island, but who decides to return in the future, will be required to obtain a Permanent Residence Permit. There will be no conditions attached to the Permit, but it would be issued to improve the monitoring of the size and make-up of the population.
- 9.68 As mentioned earlier, this will help to give a detailed picture of return patterns for existing Qualified Residents who are currently residing off-Island. Such information can be used in the future to better understand the impact of the policy to enable Permanent Residents to have the automatic right to return to the Island in the future.
- 9.69 There was strong support for this proposal, with respondents appearing to accept the need to monitor the number of existing Permanent Residents who were returning to the Island after a period of absence if the population management regime was to be successful.
- 9.70 In the case of the second group, the Policy Council proposes that any existing Qualified Resident who is resident in the Island and is, or wishes to be, employed in the Island, will be required to obtain a Permanent Residence Permit.
- 9.71 A large majority of respondents supported the proposal, with some making the link with the current requirement for those working in the Island to obtain a Right to Work document to show that they were lawfully housed under the Housing Control regime. Many respondents felt that without this requirement, it would be very difficult for employers to know with any certainty whether an individual is lawfully entitled to work without the need for an Employment Permit.
- 9.72 With respect to the third group, the advantages of requiring them to obtain a Permanent Residence Permit are firstly, that all existing 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 which could be combined, for monitoring purposes, with information held under the new population management regime.

- 9.73 The disadvantages of requiring the third group to obtain a Permanent Residence Permit are firstly, an additional administrative undertaking in terms of issuing Permits and verification processes. Secondly, the community might find it difficult to accept.
- 9.74 During the consultation process, mixed views were expressed, but there was general acceptance that if existing Qualified Residents, who are not currently required to obtain any document under the current regime, were required to obtain a Permanent Residence Permit, then monitoring of the size and make-up of the population would be improved in the future. However, many respondents felt that to require everybody, regardless of age, status and the length of time they had lived in Guernsey, to obtain a Permanent Residence Permit was culturally unacceptable, unnecessary and would be very costly to administer.
- 9.75 The Policy Council therefore proposes that other data sources should be used for monitoring purposes and that existing Qualified Residents who are not, and do not intend to be, in employment will not be required to obtain a Permanent Residence Permit.

Agreed Absence Provisions

- 9.76 There will be situations where an individual might spend some time off-Island and the Policy Council proposes that, in some specific circumstances, their residence will be considered to be continuous or unbroken.
- 9.77 Some of those circumstances are listed below; however, this list is not intended to be exhaustive:
- 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,
 - Periods of time necessary to gain work-related training or experience not available in the Island, and
 - Off-Island work placements and secondments.

- 9.78 It is envisaged that some of these situations will require prior approval in order for the period of absence to be treated as residence in Guernsey.
- 9.79 While the specific details in each of these circumstances have yet to be developed, it is proposed that in some cases – for example for those serving in HM Forces – time spent off-Island which is deemed to be continuous or unbroken residence in Guernsey will also apply to the spouse/partner and children of the individual who is subject to the agreed absence provisions. A large number of consultation respondents, including all of the organisations representing service personnel, suggested that the provisions proposed for those serving in HM Forces should be extended to their spouses/partners and children.

9.80 **Recommendations – Long Term Residency**

The Policy Council recommends the States:

Long Term Residency

To agree that:

- (a) individuals who have lived continuously and lawfully in Local Market property for 8 years will be issued with an Established Residence Permit, will acquire the right to continue living in the Island permanently if they so choose and will be defined as Established Residents.
- (b) individuals who have lived continuously and lawfully in Local Market property for 14 years will be issued with a Permanent Residence Permit, will acquire the right to continue living in the Island permanently if they so choose and will be defined as Permanent Residents.

Right to Return

To agree that:

- (a) once an individual becomes an Established Resident, if he or she then decides to move away from the Island, he or she will not have the automatic right to return to live in the Island at a later point.
- (b) once an individual becomes a Permanent Resident, if he or she then decides to move away from the Island, he or she will have the automatic right to return to live in the Island at a later point.
- (c) where an individual has acquired the automatic right to return to live in the Island, this right will be retained regardless of the length of time that the individual is away from the Island.

Existing Qualified Residents

To agree the requirement that any existing Qualified Resident who:

- (a) is not resident in the Island, but decides to return in the future, will be required to obtain a Permanent Residence Permit.
- (b) is resident in the Island and is, or wishes to be, employed in the Island, will be required to obtain a Permanent Residence Permit.
- (c) is resident in the Island and is not, and does not intend to be, in employment will not be required to obtain a Permanent Residence Permit.

To agree that in some specific circumstances, to be defined in policies agreed by the States, individuals may spend time off-Island, but still have their residence considered to be continuous residence in the Island.

SECTION 10 – EMPLOYMENT PERMITS

- 10.1 As discussed previously, there are a number of situations where it would be appropriate to allow an individual 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, and still are, filling skills shortages in the Island. These individuals include nurses, teachers as well as people working in our wealth creating businesses.
- 10.2 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 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 and experience to come to the Island to work.
- 10.3 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.
- 10.4 These Employment Permits will be issued for an individual to move to Guernsey to fill a post of employment where it has not proved possible to fill the post with an individual who is already a Qualified Resident or Residence Permit holder, and where the post falls into one of the three categories set out below:

10.5 LONG TERM EMPLOYMENT PERMITS

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,
- The skills required are also relatively scarce globally,
- It is highly unlikely that the skills shortage will be able to be met by Qualified Residents or Residence Permit holders in the foreseeable future, and
- 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.

Long Term Employment Permits may also be issued for posts where a strong case can be made that:

- The organisation or business will be seriously disadvantaged to such an extent that Guernsey would be unable to meet its social, economic or environmental objectives without continuity in the post in the longer term.

10.6 MEDIUM TERM EMPLOYMENT PERMITS

These Permits will be issued in two sets of circumstances.

10.7 The first scenario:

- A post requires specific skills which *are not* available in the Island, and
- That skills shortage *is* likely to be able to be met in the foreseeable future. (This might 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.)

10.8 The second scenario:

- A post requires specific skills which *are* available in the Island,
- The number of people resident in the Island with those skills is not sufficient to fill the number of posts requiring a similar or identical skill set, and

- 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 and Residence Permit holders available with those skills.

10.9 However, as distinct from Long Term Employment Permits, in both of the scenarios described above it will be possible, should the need arise, to source a replacement Employment Permit holder because the skills required are not in short supply globally.

10.10 **SHORT TERM EMPLOYMENT PERMITS**

These Permits will be issued to respond to manpower shortages where:

- Posts require limited specific skills or skills of a lower order than those eligible for Long Term or Medium Term Employment Permits, and
- There is a need for additional manpower over and above that which can be met by Qualified Residents and Residence Permit holders.

Other Conditions

10.11 There will be different conditions attached to the Permits issued for each of the three levels listed above, including conditions about which posts and individuals would be eligible to receive them and the maximum period of time for which such Permits will be issued. These conditions are explained below.

LONG TERM EMPLOYMENT PERMITS

10.12 Long Term Employment Permits will be issued for a period of 8 years.

10.13 As discussed previously in Section 9 – *Long Term Residency*, an Established Residence Permit will be acquired after an individual has been a lawful resident in Local Market property for a continuous period of 8 years. Therefore, if the circumstances of the Long Term Employment Permit holder do not change during the 8 year period of their Employment Permit, then they will have the right to continue living in the Island permanently. After the first 8 years of their employment, the Permit holder's ability to remain living in the Island will no longer be conditional upon their continued employment in a specific post.

Maximum Period of Continuous Residency

10.14 As described in Section 9 – *Long Term Residency*, a period of 8 years is proposed as the period after which an individual will be permitted to continue living in the Island permanently if they so choose. The duration of a Long Term

Employment Permit is intrinsically linked to that same period of time. Hence, an individual who obtains a Long Term Employment Permit will know from the outset that, unless their circumstances change significantly, they will be granted an Established Residence Permit after 8 years and will be able to continue living in the Island permanently if they so choose.

Family Members

- 10.15 The holder of a Long Term 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 11 – *Residence Permits – Family Connections*.

MEDIUM TERM EMPLOYMENT PERMITS

- 10.16 Medium Term Employment Permits will be issued for a period of up to 5 years.
- 10.17 During the consultation process some respondents, while supporting the general principles for the issuing of Medium Term Employment Permits, expressed the view that a duration of 4 years or less would cause considerable recruitment difficulties because it might not prove attractive enough for potential off-Island employees. Foreseeable increases in costs associated with increased staff turnover, particularly recruitment and training, were also highlighted.
- 10.18 At the end of the period for which the Employment Permit is issued, the postholder will be required to leave Local Market accommodation. 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 Medium Term 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 breaks in residence between Permits are set out later in this section in paragraphs 10.37 – 10.44.

Maximum Period of Continuous Residency

- 10.19 An individual obtaining a Medium Term Employment Permit for up to 5 years will 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 5 years.

Family Members

- 10.20 The holder of a Medium Term 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 11 – *Residence Permits – Family Connections*.

SHORT TERM EMPLOYMENT PERMITS

- 10.21 Short Term Employment Permits will be issued for a period of up to 1 year.
- 10.22 It is worth pointing out here that because a Short Term Employment Permit can be issued for a period of *up to* 1 year, a business or organisation can apply for a Short Term Employment Permit which is valid for a period of, for example, only 9 months. During the consultation process, some businesses, particularly those operating on a seasonal basis, wanted clarity that this flexibility would be included under the new regime.
- 10.23 At the end of the period for which the Short Term Employment Permit is issued, the postholder will be required to leave the Island. However, once the Short Term Employment Permit has expired, if the conditions that led to the issue of the Permit still apply, then the Short Term Employment Permit may be re-issued to the same individual for a further period of up to 1 year. This will be subject to a maximum period of continuous residence of 3 years.

Maximum Period of Continuous Residency

- 10.24 All Short Term Employment Permit holders will know from the outset that, if their circumstances do not significantly change, they will not be permitted to live in Local Market accommodation in Guernsey for any longer than a 3 year period of continuous residence.

Multiple Periods of Short Term Residency

- 10.25 A number of responses were received during the consultation process from businesses requesting clarification on whether or not they could continue to employ staff from off-Island on the basis of them working and living in the Island for short periods of time, followed by short breaks in residence, before returning to be employed for a further short period, and continuing that cycle over the long term.
- 10.26 The Policy Council proposes that issuing a Short Term 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. This principle applies for the issue of all Employment Permits and more details can be found later in this section in paragraphs 10.37 – 10.44.
- 10.27 In addition, in order to restrict a considerable build-up of separate periods of residence in the Island, the Policy Council also proposes that a Short Term

Employment Permit holder can only come and go under these arrangements until such time as they have built up an aggregate period of 5 years residence in total.

- 10.28 This is important because there is a risk that individuals who repeatedly spend short periods of time working in Guernsey, followed by short breaks away, are over the years potentially building up strong connections with the Island.
- 10.29 In Section 4 – *The Influence of Human Rights* it was explained that there comes a point after which an individual's connections with the Island are likely to have become so strong that to require them to leave Local Market property in Guernsey would be an unjustifiable infringement of their Human Rights. By including a restriction on the overall length of time that an individual can spend living and working in Guernsey for short periods, followed by short breaks away, the Policy Council hopes to ensure that such individuals 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 Local Market property in the Island might be considered to be an unjustifiable interference with their Article 8 Rights.
- 10.30 The Policy Council believes that these proposals will give employers a reasonable degree of flexibility and a good return on their investment in their employees who are eligible for a Short Term Employment Permit, but without compromising the new regime's overriding objective to manage the size and make-up of the Island's population.

Family Members

- 10.31 The holder of a Short Term Employment Permit will not be permitted to be accompanied by any family members.
- 10.32 Because the primary purpose of Short Term Employment Permits is to address manpower or lower order skill shortages, the Policy Council 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 the restriction that currently applies as part of the Housing Control Law.

ADMINISTRATION ARRANGEMENTS FOR EMPLOYMENT PERMITS

Flexibility

- 10.33 In the previous paragraphs, specific durations for each type of Employment Permit have been defined. However, the Policy Council recognises that in exceptional circumstances there may need to be some flexibility within those time periods.

- 10.34 The legislation should be sufficiently flexible to allow for an Employment Permit to be issued to suit the length of a specific project, for example a construction contract. It will also be necessary for an Employment Permit to be able to stipulate a maximum number of nights in, or visits to, Guernsey if this arrangement is best suited to a specific post, for example in the case of business consultants.
- 10.35 The Policy Council also recognises that the circumstances of the individual, the business, or the situation regarding skills shortages might well change for a given Permit during its lifespan.
- 10.36 The Policy Council therefore proposes that the new Law will include the ability for discretion to be exercised in respect of requests to adjust the time periods prescribed. However, it is expected that such discretion will be exercised sparingly and only in exceptional circumstances.

Breaks in Residence

- 10.37 In addition to the conditions relating specifically to the re-issue of Short Term Employment Permits described in paragraphs 10.21 – 10.30 above, there is the need for an overarching policy relating to breaks in residence which will prevent the build up of separate periods of residence in the Island.
- 10.38 Where an individual has been issued with a Residence or Employment Permit for a given period and has then left the Island upon or before its completion, they might subsequently wish to return to live in the Island under a further Employment Permit at a later point.
- 10.39 The Policy Council 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 period of time which is at least equal to the duration of their last period of residence in the Island.
- 10.40 For example, an individual who leaves the Island having lived here for 5 years by virtue of a Residence or Employment Permit will need to spend at least 5 continuous years away from the Island before they will be eligible to obtain an Employment Permit for a subsequent period of residence.
- 10.41 It has already been explained that Short Term Employment Permits can be re-issued to the same individual up to a maximum period of continuous residence of 3 years and to a maximum aggregate period of 5 years residence. As above, an individual who leaves the Island having lived here continuously for 3 years, will need to spend at least 3 years away from the Island before they will be eligible to obtain an Employment Permit for a subsequent period of residence.
- 10.42 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, only to those who meet the requirements to fill a post attracting a Long Term Employment Permit (as detailed in paragraph 10.5). It will therefore 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 apply to live in the Island permanently if they so choose.

- 10.43 Again, in Section 4 – The *Influence of Human Rights*, it was explained that there comes a point after which an individual's connections with the Island are likely to have become so strong that to require them to leave Local Market property in Guernsey would be an unjustifiable infringement of their Human Rights. By 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, the Policy Council hopes to ensure that such individuals 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 might be considered to be an unjustifiable interference with their Article 8 Rights.
- 10.44 To reiterate, the Policy Council believes that its proposals relating to breaks in residence 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 manage the size and make-up of the Island's population.

Issuing the Permit

- 10.45 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.
- 10.46 For those individuals requiring an Employment Permit, it is proposed that the Permit must be issued before the individual arrives in the Island. It will also be necessary for Employment Permit holders who are already resident to obtain a new Employment Permit *before* they change jobs with the same employer, or before they move to work for another employer. It will be an offence for them to undertake any work on the Island before the Permit is issued in respect of that role, or to undertake a role that is not the one stipulated on the Permit. Equally, it will be an offence for an employer to allow such an employee to commence or continue working without the appropriate Permit.

The Application Process

- 10.47 As discussed earlier in this report, 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 of 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 of an inability to attract people with the skills that are needed.

10.48 As noted above, the new regime will be transparent 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.

10.49 Before an Employment Permit is granted, 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 an individual who is a Qualified Resident or the holder of a Residence Permit, and
- Confirm that they have taken up references and carried out appropriate criminal records checks for the potential employee.

10.50 The potential employee will be required to provide the following information:

- A job offer from an employer,
- Details of their relevant qualifications and experience,
- Details of any criminal convictions for themselves or any person accompanying them,
- 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,
- For Long Term and Medium Term Employment Permits, details of any family members accompanying them, and

10.51 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.

10.52 More generally, as discussed in Section 7 – *Legislative and Policy Framework*, before any request for an Employment Permit can be considered, the employer

will be required to demonstrate that the business falls within an area of business where, as a result of the direction given by the States, inward migration will be permitted.

- 10.53 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 on the Employment Permit.

Changing Jobs

- 10.54 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 as one which will attract an Employment Permit.
- 10.55 This proposal recognises that businesses will change and develop over the period for which Employment Permits will be issued. It 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, within the life of their Employment Permit, an employee wants to change employer, or change jobs with the same employer, then it is likely that they will be able to do so, as long as the new post is identified as one which will attract an Employment Permit and as long as all of the relevant criteria for it to be issued can be met.
- 10.56 However, a Permit will only be issued to an individual for the balance of the original Permit duration i.e. if an individual moves from a post which attracts a 5 year Employment Permit after 2 years, to another post attracting the same length Permit, the new Permit will only be issued to that individual for 3 years. This is to ensure that an individual who does not meet the criteria for filling a post attracting a Long Term Employment Permit does not accrue a period of continuous residence of more than 5 years by stacking Permits of a shorter duration.
- 10.57 The employment and training opportunities available for Qualified Residents and Residence Permit holders will not be adversely affected under these proposals, as an Employment Permit holder will only be able to move to another post which will also attract an Employment Permit; and 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 an individual who is a Qualified Resident or Residence Permit holder.
- 10.58 These proposals will also 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 and holders of Residence Permits.

Additional Jobs

- 10.59 It is proposed that anyone who has been issued with an Employment Permit may hold more than one job.
- 10.60 This proposal reflects the current arrangements, and the Policy Council has not found any evidence to suggest that they are having a negative impact on the employment situation in the Island.
- 10.61 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.
- 10.62 The Policy Council believes that its proposal will give Employment Permit holders flexibility and choice, and will enable Guernsey to maximise the productivity of its available workforce.
- 10.63 **Recommendations – Employment Permits**

The Policy Council recommends the States:

Employment Permits

To agree that:

- (a) Long Term Employment Permits will be issued for a period of 8 years to address persistent and enduring skills shortages where it is unlikely that those skills will be easily sourced, either in the Island or globally, in the foreseeable future or where continuity in the post in the longer term is in the Island's interest.
- (b) Medium Term Employment Permits will be issued for a period of up to 5 years in circumstances where:
 - a post requires specific skills which are not available in the Island, but where that skills shortage is likely to be able to be met in the foreseeable future; or
 - the skills required are held by Qualified Residents and Residence Permit holders, but the number of people resident in the Island with those skills is insufficient to fill the total number of posts requiring a similar or identical skill set.
- (c) Short Term 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.

- (d) Short Term Employment Permits can be re-issued to the same individual subject to a maximum period of continuous residence of 3 years and a maximum aggregate period of 5 years residence.

To agree that an individual must have been away from the Island for a period of time which is at least equal to the duration of his or her last period of residence in the Island before that individual will be eligible to obtain an Employment Permit for a subsequent period of residence.

To agree that an Employment Permit must be issued before an individual arrives on the Island to work, or before an individual who is already resident in the Island changes jobs.

To agree that the holder of an Employment Permit will be able to apply to change job at any time during the life of his or her Permit, as long as the new post is also identified as one which will attract an Employment Permit.

To agree that anyone who has been issued with an Employment Permit may hold more than one job.

SECTION 11 – RESIDENCE PERMITS – FAMILY CONNECTIONS

- 11.1 As discussed previously, there are a number of situations where it would be appropriate to allow an individual to move to Guernsey to live for a period of time. It is recognised that people might want to live in Guernsey because they have strong family connections with an individual who is already permitted to live here. In these cases, it is proposed that these individuals, if they are an adult or a child intending to take up employment, will be required to obtain a Residence Permit before they are able to come to the Island to live in Local Market property.
- 11.2 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 some Licence holders. Since Short Term Licences were introduced in 1990 the holder of such a Licence has not been permitted to be accompanied by any members of his immediate family.
- 11.3 As described in Section 10 – *Employment Permits*, the Policy Council proposes that the holder of a Long Term or Medium Term Employment Permit *will* be able to accommodate certain immediate family members within their household.

In that Section, the Policy Council also proposes that the holder of a Short Term Employment Permit *will not* be permitted to be accompanied by any family members.

- 11.4 The Policy Council also proposes that Qualified Residents, Permanent Residents and the holders of Established Residence Permits will be able to accommodate certain immediate family members within their household.
- 11.5 Under the new Law, immediate family members will be defined as an individual's:
 - a) Spouse / Partner
 - b) Parents and Parents-in-law
 - c) Children
 - d) Grandchildren
- 11.6 The Policy Council 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.
- 11.7 The Policy Council also believes that this definition, which is the same as the provisions under the Housing Control Law, will not be considered unreasonable by the community or by those who might be looking to relocate to Guernsey for employment reasons.
- 11.8 Although the list of proposed immediate family members was questioned by a small minority of people during the consultation process, the Housing Department's 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.
- 11.9 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

- 11.10 The duration of a Residence Permit will be dependent on the relationship and the length of time which the individual with whom the Family Member has a close relationship is permitted to live in Guernsey.
- 11.11 The 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 individual and the continuation of that relationship.
- 11.12 The Family Member will also be required to live within the family home of the individual with whom they have a close family relationship.
- 11.13 The Residence Permit will enable the Family Member to work if they so wish, with no restrictions on the type of work they can undertake.

Long Term Residency

- 11.14 As discussed previously in Section 9 – *Long Term Residency*, an Established Residence Permit will be acquired after an individual has been a lawful resident in Local Market property for a continuous period of 8 years. If the Family Member described above lives continuously, and lawfully, in Local Market property for 8 years, then they will have the right to continue living in the Island permanently. They will know from the outset that they will be granted an Established Residence Permit after 8 years if their circumstances do not change. Once they reach the *second milestone* after 14 years, they will then be entitled to hold a Permanent Residence Permit and will be defined as a Permanent Resident.
- 11.15 The Policy Council 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 an Established Residence Permit. Once they become a Permanent Resident after a continuous period of residence of 14 years, they will have the right to live independently if they so choose.

Changes in Circumstances

- 11.16 Where there is an unforeseeable change in circumstances which affects the ability of a Family Member to remain living within the family home of the individual with whom they have a close relationship – for example the breakdown of that relationship – they might be entitled to obtain a Residence Permit in their own right. The circumstances in which this may apply are discussed later in Section 14 – *Unforeseeable Changes in Circumstances*.

Family Members – Existing Residents

- 11.17 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 any form of document unless they wish to be employed in the Island (in which case they are required to obtain a Right to Work document).
- 11.18 In order to be able to effectively manage the size and make-up of the Island’s population, the Policy Council proposes that every adult and any child in employment who is currently permitted to live in the Island under the existing provisions for “members of a household” will be required to obtain a Residence Permit under the new Law.
- 11.19 Although this is essentially an issue related to the transition from the Housing Control regime to the new population management regime, because a number of this group of people do not currently require any form of document (those who do not work), it is important to establish this principle early in the development process.

The Situation Today

- 11.20 The Housing Control Law allows Qualified Residents and the holders of essential and non-essential Licences to be accompanied by their spouse, children, grandchildren and their parents and parents-in-law, subject to them all living as part of his household, without the need for those family members to hold a Housing Licence.
- 11.21 There are no restrictions on the type of work they can undertake.
- 11.22 All can become Qualified Residents, although only the children and spouse/partner have an automatic route to qualification.
- 11.23 The holder of a short term Licence may not be accompanied by any dependents and/or members of his immediate family.

Other Options

- 11.24 In coming to the proposals relating to family members, the Policy Council also considered alternative approaches. These other options are not recommended for the reasons described below.
- 11.25 **Limiting family members to spouse / partner and children** – although this issue was raised by some during the consultation process, the Policy Council 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 Policy Council is also concerned that if the list was restricted in this way it might 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.

- 11.26 **Allowing Short Term Employment Permit holders to accommodate members of their immediate family** – the Policy Council concluded that as the primary purpose of Short Term 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, which is similar to the situation today under the current Housing Control regime.
- 11.27 **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 Policy Council 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.
- 11.28 Anecdotal evidence suggests that having this group of people available as part of the general workforce might well have contributed to the growth of some Island businesses, thereby creating increased job opportunities for the Island, not less.
- 11.29 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 Guernsey Group is examining this matter under its ‘Workforce Participation’ pillar and to restrict the employment options of some members of the available workforce further would seem to run contrary to that aim.
- 11.30 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 Policy Council has not found any evidence to suggest that this is likely to be the case.
- 11.31 **Recommendations – Residence Permits – Family Connections**

For those people who wish to reside in Guernsey because they have strong family connections with an individual who is already permitted to live in the Island, the Policy Council recommends the States:

- To agree that immediate family members will be defined as an individual’s:
- Spouse / Partner

- Parents and Parents-in-law
- Children
- Grandchildren

To agree that Qualified Residents, Permanent Residents and holders of Established Residence Permits will be able to accommodate immediate family members within their household.

To agree that holders of Long Term or Medium Term Employment Permits will be able to accommodate immediate family members within their household.

To agree that the holder of a Short Term Employment Permit will not be permitted to be accompanied by any family members.

To agree 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 Temporary Residence Permit and Established Residence Permit.

To agree that all adults and children in employment who are permitted to live in Local Market accommodation under the provisions for immediate family members will be required to obtain a Residence Permit.

SECTION 12 – RESIDENCE PERMITS – STATES CONTROLLED PROPERTIES

- 12.1 Currently, with few exceptions, under the Housing Control Law all properties in States control are exempt from any controls, in terms of who may occupy them. Properties falling within this exemption include, for example the Health and Social Services Department's (HSSD) staff accommodation. To illustrate the numbers involved – currently the HSSD employs around 250 nursing staff who occupy such accommodation; these individuals make up more than 25% of HSSD's total nursing staff.
- 12.2 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.
- 12.3 Because there is no requirement for an individual who lives in one of these properties to obtain a Housing Licence under the Housing Control Law, 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.)

- 12.4 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, in the main, Local Market properties, they would not otherwise be available for occupation by the general population of Qualified Residents and Licence holders, because there are other policies in place which restrict who can occupy them. In general terms, the properties therefore fall outside of the stock of Local Market housing which is the concern of the Housing Department.
- 12.5 However, from a population management perspective, the situation is different. Regardless of what type of accommodation an individual is living in, they still are part of the population of the Island at any given time. 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 Policy Council does not see any justification for individuals living in States controlled accommodation to be exempt from the requirement to obtain a Permit simply because of the type of accommodation they occupy.
- 12.6 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.
- 12.7 More importantly, given the proportion of, for example, nursing staff who are accommodated in such properties, it would not be unreasonable to assume that, under the new regime, many such "key workers" would be employed in posts that would attract an Employment Permit of at least 5 years duration. This would provide the option for them to live in Local Market property but would not preclude them from living in property provided directly by the States.
- 12.8 The Policy Council proposes that any individual living in States controlled property 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

- 12.9 The Policy Council 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 Policy Council believes has an impact on the management of the size and make-up of the population. A number of respondents during the consultation process were concerned that the States, as an employer and a landlord, should not be treated as a special case and should be subject to the same population management requirements as any other employer or landlord in the Island.

12.10 Recommendation – Residence Permits – States Controlled Properties

The Policy Council recommends the States:

To agree that any individual living in States controlled property should be subject to the same requirements as any other member of the community with regards to his or her requirement to obtain the relevant Permit.

SECTION 13 – THE OPEN MARKET

Open Market Residents within the New Population Management Regime

- 13.1 Approximately 5500 people, around 9% of the Island's population, are resident in the Open Market. These individuals live in properties which are listed on the Open Market Housing Register and which are exempt, to varying degrees, from controls in terms of who may occupy them. On April 15th 2013, there were 1690 properties on the Register, which is broken down into four Parts as listed below.

Part A – Private Houses and Flats (94.5% – 1597 properties)

Part B – Hotels and Guesthouses (3.4% – 57 properties)

Part C – Nursing and Residential Homes (0.6% – 10 properties)

Part D – Lodging Houses (1.5% – 26 properties)

- 13.2 Although there have been numerous States decisions which have shaped the Open Market as we know it today¹⁷, it has been in existence in some form or another for more than 50 years. In 1957 properties at the upper end of the housing market (defined as having a Rateable Value of over £50 at that time)

¹⁷ Further information is available in the Population Policy Group's previously published document entitled The Development of the Open Market. See www.gov.gg.

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 that was subject to Housing Control would not seriously affect the housing shortage which was a major concern for the Island at that time.

- 13.3 Because of continued concern about housing availability, the primary purpose of the current Housing Control Law has remained 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 by exercising controls on the occupation of Local Market properties only.
- 13.4 It was explained in the Policy Council’s consultation document that under the Housing Control Law the States has no ability to manage the size and make-up of much of the Open Market population. However, 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: what matters is simply that they do live here. Therefore, the Policy Council believes that some changes will be required to the conditions associated with living in the Open Market if the States is going to be able to effectively manage the size and make-up of the Island’s population in future.
- 13.5 The Policy Council believes that the Open Market should be retained as part of the new regime, largely in its current form. A number of States members have signalled a clear desire to not only see the Open Market retained in some form, but for some parts of it to be able to expand and develop in the future.
- 13.6 The majority of respondents to the earlier consultation process supported provision for the continuation of an Open Market to be included in the new regime to allow an individual to live in the Island for reasons other than being a Qualified / Permanent Resident, filling a skill or manpower shortage or having close family connections with the Island. Only a small number of respondents disagreed with this. Many expressed their concerns about the potential negative impacts for Guernsey and its economy of any significant changes to the current arrangements.
- 13.7 Many respondents to the consultation process, including many of the community, business and professional organisations, referred to the benefits that they believed Guernsey had gained, and continues to gain, through the existence of residents living in the Open Market. Responses included anecdotal evidence that some Open Market residents make significant contributions to the Island via the investment of capital and/or expertise in local businesses, their spending within the Island, the management of their wealth through the Island’s financial services sector, and their voluntary and charitable contribution in terms of time and/or funds.

- 13.8 The Policy Council proposes that an Open Market, largely in its current form, should be retained as part of the new population management regime to allow people to come to live in the Island who might not be Qualified or Permanent Residents, might not have strong family connections here and might not possess essential skills or fill manpower shortages.

Moving Between the Open and Local Markets

- 13.9 As described earlier in this report in Section 4 – *The Influence of Human Rights*, the Human Rights of every member of our 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 Local Market property simply because they wish to, regardless of the length of time that they have been resident in the Island.
- 13.10 Under the Housing Control Law, there are a number of routes to becoming a Qualified Resident but, with the exception of children who meet specific criteria, occupation of an Open Market property is not one of them.

Children of Open Market Residents

- 13.11 Under the Housing Control Law, the child of an Open Market resident is able to become a Qualified Resident after they have been resident in the Island for an aggregate period of 20 years in any 30 year period, as long as they were first resident in the Island before the age of 18 and as a member of the household of their Mother or Father.
- 13.12 Some might consider that a qualification period of 20 years is excessive. There is also a view, as expressed in Section 9 – *Long Term Residency*, that the point at which a child becomes a resident in Guernsey, the length of their stay and the property in which they live, will be entirely dependent on the decisions made by their parents. The period of time during which a child has lived in the Island might be a significant proportion of their lifetime and, for many, Guernsey might well be the only place that they really know. Their lifestyle choices, cultural views and influences, lifelong friendships and many aspects of their character might have been largely developed while they have been resident in the Island.
- 13.13 The sense of “belonging” and commitment to the Island of a child living in the Open Market are no more or less significant for them than those of a child living in Guernsey in Local Market property for the same period of time.
- 13.14 The Policy Council therefore proposes that the children of Open Market residents should become Permanent Residents after a period of continuous residence of 14 years, the same period after which it is proposed that all other children resident in the Island will become Permanent Residents. This will be the case as long as they were first resident in the Island before the age of 18 and as a member of the household of their Mother or Father.

Other Open Market Residents

- 13.15 In the main, Open Market residents who do not hold residential qualifications cannot live in Local Market property unless they are granted a Housing Licence under the current Housing Control regime¹⁸. There was very little dissatisfaction expressed about this current policy through the consultation process and the Policy Council cannot find any justification, from a population management perspective, for it to change.
- 13.16 The Policy Council therefore proposes that the general principle should remain that, with the exception of those children mentioned above, any Open Market resident without residential qualifications will not be permitted to live in Local Market property. Nonetheless, policies will need to be developed to allow for exceptional circumstances, which are likely to be similar to those described below.
- 13.17 Under a current 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 property 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, thereby increasing the Island's Local Market housing stock. Such applications are rare.
- 13.18 The only other means by which an Open Market resident who wishes to move into Local Market property can currently be permitted to do so, is if it can be demonstrated that there has been a 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 Local Market property, then they would have to leave Guernsey, resulting in an unjustifiable interference with their Human Rights under Article 8, as discussed earlier in this report.

Monitoring the Size of the Open Market Population

- 13.19 In earlier sections of this report, it was explained that the proposals for the new population management 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,

¹⁸ A Qualified Resident, or an individual who is entitled to hold a Housing Licence, who opts to live in the Open Market can retain or attain residential qualifications in the same way as if they had opted to live in Local Market property.

- Temporary Residence Permits will be issued for those people who move to the Island because they have a strong family connection with an individual who is already permitted to live here,
- Established Residence Permits will be issued after a period of continuous residence of 8 years for the two groups above, and
- Permanent Residence Permits will be issued to Permanent Residents.

13.20 Under the current Housing Control regime, which is only concerned with the availability of Local Market properties, the States has no requirement to monitor or manage the size and make-up of the Open Market population. Accordingly, for the majority of Open Market properties there is no requirement for the individuals living in them to obtain a document under the current Housing Control Law¹⁹, the downside being that there is very little information readily available to the States about who lives in the Open Market, or for how long.

13.21 Given that approximately 5500 people, around 9% of the Island's population, are resident in the Open Market it is clear that if this policy continues under the new population management regime, then the ability of the States to effectively monitor and manage the size and make-up of the Island's population in the future will be compromised. There would appear to be little justification for Open Market residents to fall outside of the provisions for monitoring within a new regime which is specifically aimed at population management. As already mentioned, an individual's impact on the population is the same regardless of the type of property in which they live. From a population management perspective, it does not matter *where* a person lives in the Island, what matters is simply that they do live here.

13.22 The Policy Council therefore proposes that a specific Permit to be held by residents of the Open Market will need to form part of the provisions for monitoring within the new population management regime. An Open Market Residence Permit will be issued to confirm that an individual is resident in the Island in the Open Market and will be used to improve the monitoring of the size and make-up of the population.

Criminal Conviction Checks

13.23 In Section 16 – *Criminal Convictions*, it is proposed that the new regime will include a system of criminal conviction checks. The full details of this proposal are contained in that later section and are therefore not repeated here, however it is important to point out here that the Policy Council proposes that all those applying for a Permit to move to the Island to live will be required to provide a

¹⁹ 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.

criminal conviction check as part of the application process. This will include those wishing to live within the Open Market.

- 13.24 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. However, this view was strongly opposed by many respondents during the consultation process. The Policy Council is also of the view that the potential risk that might be presented to the community is not 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 to move to the Island to live should be exempt from this provision.

The Size and Make-up of the Open Market Population

- 13.25 There is a view that there is still only limited demand for the type of property that is inscribed on the Housing Register from the population of Qualified Residents, those with strong family connections here and those filling skill or manpower shortages. If this perception is correct, it could be argued that from a housing availability perspective there is no reason to consider any significant changes to how the Open Market is managed in the future.
- 13.26 However, the new population management regime is not only concerned with the availability of housing, but also with the size and make-up of the population; from that perspective, an individual's impact on the population is the same regardless of the type of property in which they live.
- 13.27 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, except by resolution of the States), there is a self-limiting effect on the size of the population that can be accommodated within the Open Market, because there are only a limited number of properties available. However, any 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).
- 13.28 The Policy Council therefore believes that there is a need to introduce the means to ensure that the size and make-up of the Open Market population can be managed to some degree in the future.
- 13.29 As mentioned previously, there is very little information readily available to the States about who lives in the Open Market, or for how long. However, information is available regarding the total number of individuals living in various Parts of the Open Market²⁰. In the following paragraphs, the population

²⁰ Further information regarding the overall population of the Open Market is given in Appendix E.

- The Social Security Department's data for December 2009 has been used (significant resources are required to manually collect this information and for this reason, it has not been updated).
- Information provided has had all personal references removed and individuals cannot be identified.

of each of the four Parts of the Open Market Housing Register is examined. The risks from a population management perspective of making no changes to the existing provisions are also highlighted. Proposals are then made for some changes to the conditions associated with Open Market residence.

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

- 13.30 In December 2009, 3413 people were living in private houses and flats inscribed on Part A of the Housing Register. This was approximately 5% of the Island's total population.
- 13.31 The average household size for Part A properties was approximately 2.1 people at that time. 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 2011 Housing Needs Survey at 2.4 people and at the time of the last census in 2001, was 2.51 people.
- 13.32 38% of those living in Part A properties were working (1303 people), either employed or self-employed, and they accounted for approximately 4% of the Island's total workforce. This group are employed in various parts of the Island's economy across both the private and public sectors and, 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.

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

- 13.33 In December 2009, 556 people were living in Open Market lodging houses. This was approximately 1% of the Island's total population.
- 13.34 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.
- 13.35 67% of those living in Part D properties 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. In the main, those on an employment-related Housing Licence hold a Short Term Licence valid for between 9 months and 3 years.

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

Lack of Restrictions on Who May Occupy a Part A Property

- 13.36 Open Market Part A properties may be occupied by the owner or principal tenant²¹ 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 the Spouse, Parents, Children, Grandchildren and Parents-in-law of the “householder” only applies to Local Market properties.
- 13.37 Because the residents of Open Market Part A properties are able to lawfully accommodate individuals who are unrelated to them and who do not hold a Housing Licence, Part A properties are now being used for multiple occupation by unrelated adults. This is despite the introduction of Part D of the Housing Register to account for properties which are in use as lodging houses.
- 13.38 A property might be owned by a number of individuals, a single individual or a company. As 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.
- 13.39 Although such arrangements are lawful within the current Housing Control regime, it could be argued that they fall outside of the common understanding of the purpose of Part A of the Open Market, which is the Part of the Housing Register designated for private houses and flats.

Properties in Multiple Occupation by Unrelated Adults

- 13.40 Because there is no requirement for the Housing Department to hold the relevant information, it is difficult to establish what the rate of growth in the number of such properties has been over the long term. However, when the States first debated this issue in the early 1980’s, the then Housing Authority stated that it “*has for some time been concerned about the use of Open Market dwellings for accommodating numbers of persons other than the owner (or lessee) and his family. For example the Authority is aware of **at least two** Open Market houses which are used as lodging houses*”²². Attempts at that time to introduce measures to prevent groups of unrelated adults occupying Part A properties were unsuccessful.
- 13.41 Recent data collection shows that in August 2011, there were 115 Part A properties being occupied by groups of unrelated adults. 18 months later, in January 2013, this number had increased to 148 properties. Similarly, in August 2011, 726 individuals were living under these arrangements in such properties

²¹ 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.

²² Billet d’État XI 1984, States Housing Authority – Registered Dwellings in Multiple Occupation

and this number had increased to 977 individuals by January 2013. It is therefore obvious that there has been significant growth in the number of Open Market properties occupied by unrelated adults over the years.

- 13.42 Given that the primary purpose of the current Housing Control regime is to preserve a stock of Local Market housing for occupation by Qualified Residents and existing Housing Licence holders, it can be argued that a high level of occupancy of Open Market properties is a very efficient use of the Island's housing stock. However, the Policy Council believes that if the multiple occupation of Part A properties by unrelated adults is allowed to continue in an uncontrolled manner, this will run contrary to the primary objective of the new population management regime and will therefore hamper the States' ability to effectively manage the size and make-up of the Island's population in future.
- 13.43 The first concern is that there is currently no mechanism in place to manage the growth in the number of Part A properties that are being used for the multiple occupation of unrelated adults, and therefore no way to influence the number of people living in such properties, all of whom impact the size and make-up of the Island's population.
- 13.44 A secondary, but nonetheless relevant, concern in respect of the number of Part A properties being used in this way is that such properties are not available for occupation by family units which are arguably the very people that Part A of the Open Market was originally intended to attract. The benefits that residents of the Open Market have brought to the Island described in paragraph 13.7, whether fully evidenced or not, have almost always been attributed to family units. It follows that every Part A property that becomes unavailable to such families, because it is being used for the multiple occupation of unrelated adults, risks reducing the potential benefits generated by Open Market residents that many Islanders want to protect.
- 13.45 The final, and perhaps most significant concern is the number of people who are able to reside in Guernsey for long periods of time, potentially building up substantial connections and links with the Island, who are very unlikely to be able to support themselves in independent Open Market accommodation should the need, or desire, to do so arise later in their life.
- 13.46 The States is at risk of having to allow all such individuals to eventually occupy Local Market property because, as explained in Section 4 – *The Influence of Human Rights*, a refusal to do so might leave the individual concerned with no other option but to leave the Island, which could result in an unjustifiable interference with their Article 8 rights to respect for their private and family life.
- 13.47 The Policy Council is therefore conscious that the ability for such residents to build up significant periods of continuous residence needs to be managed. In addition, their ability to build up significant aggregate periods of residence also needs to be managed. This needs to be done in a way that 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 manage the size and make-up of the Island's population.

13.48 Having highlighted the major concerns above, the Policy Council is aware that there are also benefits that result from these living arrangements. Consultation conducted during the last few months (details of which can be found in Appendix F – *Summary of Consultation Comments*) indicate that businesses across many economic sectors, both public and private, employ people who live in multiple occupancy arrangements in Part A properties.

13.49 Those who are living under this type of arrangement are likely, among others, to be made up of some individuals who

- would probably be eligible for a Short Term Housing Licence²³ but who do not want to break their period of residence between Licences, or
- work for employers who do not want to go through the administrative process of applying for a Licence, or
- have previously been resident in the Island and have moved into this type of accommodation as a means to remain in the Island when their Housing Licence reached its expiry date, or ceased to be valid for some other reason (e.g. a change of jobs or relationship breakdown).

13.50 Whether an employer has consciously decided to house its employees in this way, or whether it is simply the personal choice of an employee, it is clear to the Policy Council from the consultation responses that Part A properties in use for the multiple occupation of unrelated adults provides a flexible mechanism for employers to meet some of their ever changing skills requirements without the need to apply for additional, or extended, Housing Licences.

13.51 Concerns have also been raised regarding the standards of accommodation provided in some instances, particularly where the number of occupants of a property is high. The Office of Environmental Health and Pollution Regulation has powers to undertake housing standards inspections and to require improvements to be made in order to comply with basic standards of housing that do not present detriment to health. While legislation exists, and is enforced, it is out of date and does not allow robust enough controls to ensure the provision of basic standards across the Island's housing stock.

13.52 Joint working (led by the Housing Department and Health and Social Services Department) is being progressed to review the appropriate legislation and a States Report will be forthcoming in due course. The Policy Council notes that it is intended that the Report will have been debated and the legislation will be in place by the time the new population management regime comes into force.

²³ An employment-related Licence of between 9 months and 3 years duration.

13.53 Two key objectives of this work include

- the provision of a robust and holistic housing fitness standard, and
- the provision of a registration scheme for all houses in multiple occupation.

13.54 The Policy Council is pleased to note that this workstream is well advanced and that such legislation will have a positive impact, not only on Open Market Part A properties in use for the multiple occupation of unrelated adults, but across the Island's housing stock.

13.55 The Policy Council is also aware that there are financial advantages for landlords and letting agents resulting from the growth in Part A multiple occupancy, as it is often the case that a higher overall rental income can be achieved by renting a Part A property for multiple occupation by unrelated adults than would be achieved if letting the same property to a family group. Agents operating for such individuals e.g. Estate Agents, Advocates etc. also benefit from such arrangements in terms of the ongoing management of the property and related tenancy arrangements.

13.56 Some of these groups have already been, and will continue to be, very vocal about their lack of support for any changes to such arrangements. What the Policy Council and the Island has had to consider however is whether Guernsey as a whole will benefit from the continuation of such arrangements.

13.57 Opinion expressed through the 2011 consultation process was evenly divided on whether restrictions should be placed on who can live in a Part A property. Some respondents who did not believe that any restrictions should be introduced referred to a perceived obligation to honour previous commitments of the States and felt that the lack of such restrictions has been, and should continue to be, a fundamental principle of the Open Market.

13.58 However, some respondents also expressed their concern that, without any restrictions on who can be accommodated within a Part A property, there is a risk of the Open Market population increasing significantly, particularly if the number of properties being occupied by groups of unrelated tenants was allowed to continue to increase.

Proposals Relating to Part A Properties in Use For The Multiple Occupation of Unrelated Adults and Part D Lodging Houses

13.59 Having considered the broader issues, including the benefits to the Island of the current arrangements, but remaining focussed on the primary rationale that underpins the new population management regime, the Policy Council proposes, by a significant majority, that safeguards need to be introduced such that the

escalation in the number of properties and, therefore, the number of people living in the Island via this route, and the length of their stay, is managed.

- 13.60 As explained in the preceding paragraphs, Part D of the Open Market Housing Register relates specifically to lodging houses, but, because of the lease agreement in place, Part A properties being used for the multiple occupation of unrelated adults are not defined as lodging houses under the Housing Control regime. As noted above, at the present time there are 148 Part A properties being used for the multiple occupation of unrelated adults, and there are 26 Part D lodging houses.
- 13.61 It is proposed that the new regime will redefine Part D of the Open Market Housing Register such that it incorporates all lodging houses and all Part A properties in use for the multiple occupation of unrelated adults. Under the new regime, a property inscribed in Part D of the Housing Register will be defined as a House in Multiple Occupation.
- 13.62 It is also proposed that the number of properties that can be inscribed in Part D will be capped, so that the overall number of people accommodated in such properties is not permitted to grow in an unregulated way.
- 13.63 It will be for the States to decide, having regard to the size and make-up of the Island's population at any given point in time, at what level the cap on the number of newly-defined Part D properties should be set. However, from the coming into force of the new regime, it is proposed that the cap will be set at the number of existing Part D Lodging Houses plus the number of Part A properties in established use for the multiple occupation of unrelated adults on the date of publication of this States Report.
- 13.64 The Policy Council, having regard to a particular property's established use, proposes that only those Part A properties that are in use for the multiple occupation of unrelated adults on the date of publication of this States Report will be given the option to transfer to the newly-defined Part D of the Open Market Housing Register, subject to meeting acceptable accommodation standards.
- 13.65 The Policy Council reserves the right to refuse permission for a Part A property to transfer to the newly-defined Part D of the Housing Register where that property is not established as being in use for the multiple occupation of unrelated adults on the date of publication of this States Report, but which comes into such use before the coming into force of the new regime.
- 13.66 It is also proposed that tenants of a Part D House in Multiple Occupation will be able to benefit from the Open Market status of the property and will be free to live in the Island, and to work in any employment, for a maximum period of 5 years' continuous residence in the Island.

- 13.67 Where an individual has been issued with a Residence or Employment Permit for a given period and has then left the Island upon or before its completion, they might subsequently wish to return to live in the Island under an Open Market Residence Permit at a later point. The Policy Council proposes that in these circumstances, issuing an Open Market Residence Permit for an individual to reside in a Part D property will only be considered where the individual concerned has lived 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.
- 13.68 It is also proposed that any Part D property in the new regime may, at the owner's request, be returned to Part A for occupation as a family home, regardless of whether it was originally used as a family home or not²⁴.

The Population of Part B and Part C Open Market Properties

- 13.69 In December 2009, 1339 people were living in Open Market hotels and guesthouses. This was approximately 2% of the Island's total population. Hotels and guesthouses with a valid Boarding Permit are listed on Part B of the Open Market Housing Register. The people who can occupy such properties 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 the owner, principal tenant or manager,
 - Full time staff of the hotel or guesthouse, provided they are not employed elsewhere, and
 - Bona fide tourists (subject to a maximum duration of stay).
- 13.70 60% of those living in Part B properties 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.
- 13.71 In December 2009, 252 people were living in Open Market nursing and residential homes. These properties are listed on Part C of the Housing Register.

²⁴ 5 out of the 26 properties currently inscribed in Part D of the Housing Register would not be permitted to move to Part A under the current Housing Control regime for reasons linked to their historical inscription and, if they ceased to be used as lodging houses, would become Local Market properties. This restriction would no longer apply.

The people who can occupy such a 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 the owner, principal tenant or manager, and
- Full time staff of the home, provided that they are not employed elsewhere.

13.72 The majority of people living in Part C properties are not employees of the residential or nursing home, but are living there to benefit from the health and social care services which are offered. Despite the fact that the homes are classified as Open Market, such individuals are required to either be Qualified Residents or to hold a Housing Licence permitting them to reside in that specific home.

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

Employees Living and Working in Part B Hotels & Guesthouses and Part C Nursing & Residential Homes

13.74 The current provisions regarding who can live within an Open Market Part B Hotel or Guesthouse were originally introduced in the early 1980s to enable the owners of such hotels to be able to convert existing parts of the hotel into self-contained managers' quarters and/or staff accommodation. Another objective was to ease the administrative burden associated with the increasing trend for hotels to be occupied and operated by persons without residential qualifications, because of the lack of residentially qualified people wishing to take on such roles.

13.75 However, while achieving the above objectives, the current arrangements have also led to some unintended consequences with regard to the long term residence of full-time staff living and working within the hotel or guesthouse. Such staff are currently able to reside in a Part B or C property for as long as they wish to work there, without any test of the Island's need for their skills and without the need for a time limited employment-related Housing Licence.

13.76 The same is true for staff living and working in Part C residential and nursing homes. It is worth noting here that there are also nursing and residential homes that are part of the Local Market. The difference in the conditions applying to

staff working in these homes leads to considerable frustration, particularly on behalf of the managers of Local Market nursing and residential homes, who are not able to offer live-in employment to off-Island staff without the necessary employment-related Housing Licence.

- 13.77 As stated earlier, the conditions attached to employment-related Housing Licences, and the proposed Employment Permits, are intended to acknowledge that the Island cannot expect to fill all of its skills and manpower requirements from within the existing population. However, they are also designed to ensure that only those who have skills which the Island needs for the long term are permitted to secure long term residency rights in Local Market property. Because those individuals living and working in Part B and Part C of the Open Market do not currently need to hold an employment-related Housing Licence, these conditions do not apply to them.
- 13.78 The primary concern, from a population management perspective, is the number of people who are able to reside in Guernsey living and working in Parts B and C of the Open Market for long periods of time, potentially building up substantial connections and links with the Island, who are very unlikely to be able to support themselves in independent Open Market accommodation should the need, or desire, to do so arise later in their life.
- 13.79 The States is at risk of having to allow such individuals to eventually occupy Local Market property because, as explained in Section 4 – *The Influence of Human Rights*, a refusal to do so might leave the individual concerned with no other option but to leave the Island, which could result in an unjustifiable interference in their Article 8 right to respect for their private and family life.
- 13.80 Under the proposals described in Section 10 – *Employment Permits*, Long Term Employment Permits will be available for those individuals who have skills which the Island needs for the long term. Such Permits can be applied for where an employer wants an employee to live and work in a Part B or C property, if they believe that their skills are of an appropriate level.
- 13.81 Having highlighted the major concerns above, the Policy Council is aware that there are also benefits that result from these living arrangements. In terms of preserving the Island's housing stock, the purpose of the Housing Control regime, the current arrangements have served the Island well. The Policy Council is also very aware that the businesses concerned will have organised their staffing and accommodation arrangements in line with the provisions of the current Housing Control regime.
- 13.82 Consultation conducted during the last few months (details of which can be found in Appendix F – *Summary of Consultation Comments*) has highlighted the benefits to such businesses of continuing the existing arrangements, primarily that they could continue to recruit off-Island staff for as long as they need such individuals, without the need for a Housing Licence or Permit. What the Policy

Council and the Island has to consider however is whether, from a population management perspective, Guernsey as a whole will benefit from the continuation of such arrangements.

- 13.83 Having considered the various concerns explained above, the Policy Council believes that there is little justification, from a population management perspective, for the continuation of the arrangements whereby all staff living and working in hotels, guesthouses and some nursing and residential homes can be permitted to reside in the Island for long periods of time. In addition, their ability to build up significant aggregate periods of residence also needs to be managed. However, in developing the proposals below, the Policy Council has attempted to balance the risks from a population management perspective against the need to ensure that the Island's tourism and hospitality sectors, and the Island's ability to care for its ageing population, are not adversely affected.
- 13.84 It is proposed that employees living and working in Part B and Part C properties will be able to benefit from the Open Market status of the property and will be free to live and work in the property for a maximum period of 5 years' continuous residence in the Island. This is the same maximum period of continuous residence that is proposed for those living in the newly-defined Part D Houses in Multiple Occupation.
- 13.85 Where an individual has been issued with a Residence or Employment Permit for a given period and has then left the Island upon or before its completion, they might subsequently wish to return to live in the Island to live and work in a Part B or C property at a later point. The Policy Council proposes that in these circumstances, issuing an Open Market Residence Permit for a live-in employee in a Part B or Part C property will only be considered where the individual concerned has lived 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.

Other Residents of Part B Hotels & Guesthouses and Part C Nursing & Residential Homes

- 13.86 In addition to the employees described above who live and work in Part B and Part C properties, consideration needs to be given to those people who wish to stay in Part B properties as guests and those who wish to live in Part C residential and nursing homes to benefit from the health and social care services which are offered.
- 13.87 Under the current Housing Control regime, genuine tourists and guests who are intending to reside in Part B properties for limited time periods are able to do so without the need for any form of licence. Limited time periods are imposed in order to prevent people from building up long periods of residence in the Island as a result of staying in hotels and guesthouses, which are not intended for such use. These arrangements have served the Island well and the Policy Council does

not believe that there is any justification to change them under the new population management regime.

- 13.88 It is therefore proposed that genuine tourists and guests will not be required to obtain a Permit to stay in a Part B hotel or guesthouse, as long as their length of stay is for less than 90 days per year.
- 13.89 With regard to those people who wish to live in Part C nursing and residential homes to benefit from the health and social care services which are offered, there are provisions under the current Housing Control regime that are designed to prevent a person with no connections to the Island from being able to move into a Part C property. These arrangements are in place because there is a risk that the availability of residential and nursing care in the Island will be insufficient to meet the needs of the Island's existing population.
- 13.90 Currently, if an individual wishes to live in such a property, they either need to be a Qualified Resident or the holder of a Housing Licence. Housing Licences are generally issued in these circumstances to individuals who have strong connections with the Island, for example they have been resident here themselves, or because they need to be near to family members who already live here. Again, the Policy Council believes that the current arrangements have served the Island well and proposes that similar arrangements are continued under the new population management regime.
- 13.91 It is therefore proposed that an individual who wishes to live in a Part C nursing or residential home to benefit from the health and social care services offered will be required to obtain a Permit to do so, unless they are a Qualified Resident, and such Permits will not be time-limited.
- 13.92 **Recommendations – The Open Market**

The Policy Council recommends the States:

To agree that an Open Market, largely in its current form, should be retained as part of the new population management regime to allow people to come to live in the Island who might not be Qualified or Permanent Residents, might not have strong family connections here and might not possess essential skills or fill manpower shortages.

To agree that the children of Open Market residents should become Permanent Residents after a period of continuous residence of 14 years. This will be the case as long as they were first resident in the Island before the age of 18 and as a member of the household of their Mother or Father.

To agree that the general policy should remain that, with the exception of those children mentioned in the previous recommendation, any Open

Market resident without residential qualifications will not be permitted to live in Local Market property.

To agree that adult Open Market residents, and any of their children who are in employment, will be required to hold an Open Market Residence Permit.

To agree to redefine Part D of the Open Market Housing Register such that it will incorporate all lodging houses and all Part A properties in use for the multiple occupation of unrelated adults and that such properties will be defined as Houses in Multiple Occupation.

To agree:

- (a) that the number of properties that can be inscribed in the Register in the newly-defined Part D of the Open Market will be capped and that the level of that cap should be decided by the States, having regard to the size and make-up of the Island's population at any given point in time.
- (b) that from the coming into force of the new regime, the cap will be set at the number of existing Part D Lodging Houses plus the number of Part A properties in established use for the multiple occupation of unrelated adults on the date of publication of this States Report.
- (c) that, having regard to a particular property's established use, only those Part A properties that are in use for the multiple occupation of unrelated adults on the date of publication of this States Report will be given the option to transfer to the newly-defined Part D of the Open Market Housing Register, subject to meeting acceptable accommodation standards.
- (d) To agree that any redefined Part D property may, at the owner's request, be returned to Part A for occupation as a family home.

To agree that tenants of a Part D House in Multiple Occupation will be able to benefit from the Open Market status of the property and will be free to live in the Island, and to work in any employment, for a maximum period of 5 years' continuous residence in the Island.

To agree that an individual must have been away from the Island for a period of time which is at least equal to the duration of his or her last period of residence in the Island, before that individual will be eligible to obtain an Open Market Residence Permit permitting him or her to live in a redefined Part D property.

To agree that employees living and working in Part B and Part C properties will be able to benefit from the Open Market status of the property and will be free to live and work in the property for a maximum period of 5 years' continuous residence in the Island.

To agree that an individual must have been away from the Island for a period of time which is at least equal to the duration of his or her last period of residence in the Island, before that individual will be eligible to obtain an Open Market Residence Permit permitting him or her to live and work in a Part B or Part C property.

To agree that genuine tourists and guests will not be required to obtain a Permit to stay in a Part B hotel or guesthouse, as long as their length of stay is for less than 90 days per year.

To agree that an individual who wishes to live in a Part C nursing or residential home to benefit from the health and social care services offered will be required to obtain a Permit to do so, unless he or she is a Qualified or Permanent Resident, and such Permits will not be time-limited.

SECTION 14 – UNFORESEEABLE CHANGES IN CIRCUMSTANCES

- 14.1 This section covers situations where a Permit holder finds that their circumstances have changed while they are resident in Local Market property 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.
- 14.2 These policies are very similar to those which are used within the current Housing Control regime, although those policies are not published. It is intended that, as part of the new population management regime, these policies will be open and transparent, something that many respondents during the consultation process felt was important.
- 14.3 There will be many other unforeseen changes in circumstances which arise and it is intended that these will be dealt with on a case by case basis.

Relationship Breakdown

- 14.4 An individual might have been issued with a Residence Permit to allow them to live with their spouse / partner who is permitted to live in the Island. As described earlier, this Residence Permit will be linked to their spouse / partner and will only allow the holder to live within the same household.

- 14.5 If this relationship breaks down, the Residence Permit holder will not be entitled to retain their Permit, because it was only issued on the condition that their relationship continues.
- 14.6 However, it is proposed that the 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
 - it is necessary to enable them to maintain contact with such children for so long as their spouse / partner and the children remain in Guernsey.

Bereavement

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

Serious Illness or Disability

- 14.9 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, it is proposed that they will be issued with a Residence Permit that is not linked to their employment. In other words, irrespective of whether or not they can continue to work, they will be able to remain living in Local Market property in Guernsey for the period of time for which the Employment Permit was originally issued.
- 14.10 An immediate family member might have been issued with a Residence Permit to allow them to live with the individual described above. It is proposed that they will be able to retain their Permit which allows them to live within the same household as their family member.

Victims of Abuse

- 14.11 An individual might have been issued with a Residence Permit to allow them to live as an immediate family member with an individual who is permitted to live here. As described earlier, this Residence Permit will be linked to the individual

with whom they have a close family relationship and will only allow them to live within the same household.

- 14.12 In the event that any individual becomes the victim of abuse, it is proposed that 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.
- 14.13 This policy would recognise the anecdotal evidence which suggests that people might 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. If the policy was adopted, 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 to remove themselves from an abusive situation.

SECTION 15 – RESTRICTING WHERE AN INDIVIDUAL CAN LIVE

Current Situation

- 15.1 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 Local Market housing to meet the needs of the existing population.
- 15.2 The Housing Department's approach is to attach standardised housing conditions to most essential 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 might wish to rent or purchase, or
 - Setting a maximum number of habitable rooms (i.e. excluding kitchen and bathrooms etc.) the property which they occupy can have.
- 15.3 These housing restrictions are calculated by looking at the Licence holder's salary package and, 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.
- 15.4 The Housing Department has advised the Policy Council that imposing housing controls based on the TRP or number of habitable rooms of a property is far from ideal for a number of reasons, the most significant of which are summarised below.

- Using the relationship between TRP and the licence holder's salary as the method of assigning their accommodation options is inexact and over simplifies the correlation between the size and purchase/rental price of a property.
- Accommodation options are based solely on the licence holder's income and have no regard for other factors that influence where a person might choose to live. These factors might include: their overall assets; the total household income and expenditure; the size of their family; and how they elect to live their lives, e.g. whether they have pets, need a garden for children to play in, etc.
- Supply and demand at different points in the purchase and rental markets are non-uniform and vary over time. As a result, requiring licence holders to occupy dwellings in certain parts of the market can contribute to inflated property prices both in those parts of the market, and overall.
- The open plan design of many homes means that calculating the number of habitable rooms in a property is often not straightforward.
- Moving house in any circumstance is stressful, but when undertaken in conjunction with a move to a different jurisdiction and all the changes that this brings for the whole family, the added pressure of having to find suitable accommodation within a relatively narrow field of choice is a further impediment. This can result in the person opting not to take up the offer of employment in the Island, even though it has been agreed that the Island needs their skills.
- Such conditions continue to apply throughout the duration of an Employment-related Licence and so require the holder to seek agreement before moving house. This creates an additional layer of administration.

15.5 In order to appreciate more fully the issues surrounding this subject, further detail of the issues raised above can be found in Appendix G – *Restricting Where an Individual Can Live – Current Situation*.

15.6 Some respondents during the consultation process cited their own difficulties in finding a suitable property when taking up essential employment in Guernsey and some employers gave examples of people who had not taken up offers of employment for the same reason. Some of the responses from community, business and professional organisations also referred to the difficulties their members had experienced when recruiting key staff, which were specifically linked to the application of controls on where an individual can live.

The New Regime

- 15.7 The Policy Council is conscious that the primary purpose of the new population management regime is managing the size and make-up of the population, rather than managing where an individual can live, albeit that the availability of Local Market housing will still be a consideration. 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.
- 15.8 The Policy Council 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 Local Market property 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 employment-related Licence holders are being directed to particular parts of the property market and so increasing demand in those areas.
- 15.9 The Policy Council proposes that restrictions on where the holder of a Short Term 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 be a householder in their own right. This means that they are only permitted to live in accommodation that is shared with others. The Policy Council believes that this restriction should be carried through into the new regime for the holders of Short Term Employment Permits.
- 15.10 The primary purpose of Short Term Employment Permits is to address short term or temporary manpower shortages, and the Policy Council 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, which is similar to the situation today under the Housing Control Law.
- 15.11 However, the Policy Council does propose that, as a general principle, there should be no restrictions on where an individual can live attached to Long Term and Medium Term Employment Permits. In reaching this conclusion, the Policy Council is mindful that the individual will have skills and / or experience which are in short supply within the Island and has therefore been identified as being essential to Guernsey's economy, so placing restrictions on where they live puts in place an unnecessary barrier to their relocation to the Island.
- 15.12 More significantly, the Housing Department's experience is that essential employment-related Licence holders, like the majority of people, look to rent or buy the property that best suits their needs rather than simply looking for their cheapest option. This experience was echoed in a large number of responses

during the consultation process. Based on this experience it is questionable whether government interference in restricting where a small percentage of the Island's population can live is having any positive influence on the property market.

- 15.13 In reaching these proposals, the majority of the Policy Council considers that the effectiveness of the current approach is open to question and notes that it is difficult and very time consuming to administer. However, the Policy Council 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. A significant proportion of respondents during the consultation process expressed the view that it could prove useful to be able to protect specific parts of the housing market.
- 15.14 The Policy Council therefore proposes that the new Law contain a provision to include such restrictions, to be exercised only where there is an identified and proven need to do so, to protect a specific part of the Island's housing stock, and as part of the conditions attached to Long Term and Medium Term Employment Permits.

Other Options

- 15.15 The Policy Council has considered a number of ways in which restrictions could be placed on where a Permit holder may live. These were detailed in the Policy Council's consultation document²⁵ and include:
- Price (the purchase or rental price),
 - Size (e.g. number of rooms),
 - Local Market House Price Index, and
 - Price per TRP Unit.
- 15.16 Although each of these alternative approaches offers a different method for determining such restrictions for Permit holders, none has a direct link to population management issues.
- 15.17 Furthermore, none of the options will overcome all of the difficulties associated with the current TRP-based approach described in Appendix G – *Restricting Where an Individual Can Live – Current Situation*. Some will not only recreate many of the existing problems but are likely to introduce additional problems. Most respondents during the consultation process agreed that the other options discussed in the Policy Council's consultation document did not have the potential to provide an improved approach.

²⁵ www.gov.gg

15.18 Recommendations – Restricting Where an Individual Can Live

The Policy Council recommends the States:

To agree that Short Term Employment Permit holders will not be permitted to be householders in their own right. This means that they will only be permitted to live in accommodation that is shared with others.

To agree that there should be no general restriction on where the holders of Long Term and Medium Term Employment Permits may live, other than where there is an identified and proven need to protect specific parts of the housing market.

SECTION 16 – CRIMINAL CONVICTIONS

- 16.1 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 the harm caused through serious offending can have much wider consequences than would be the case in a larger community.
- 16.2 In conjunction with the Home Department, the Policy Council believes that the introduction of a new population management regime could be used as an opportunity to meet the wider policy objectives of protecting the community from potential harm caused through serious offending and preventing criminal behaviour.
- 16.3 It is therefore proposed that the new regime will include a system of criminal conviction checks. The Policy Council proposes that everyone applying for a Permit to move to the Island to live will be required to provide a criminal conviction check as part of the application process. The Policy Council envisages that exemptions to this provision will be made in the case of children, depending on their age.
- 16.4 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. However, this view was strongly opposed by many respondents during the earlier consultation process. The Policy Council is also of the view that the potential risk that might be presented to the community is not 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 to move to the Island to live should be exempt from this provision.
- 16.5 The Policy Council believes that this approach will be beneficial because:

- It may in some cases allow government to prevent some of those convicted of the most serious crimes from being able to live in the Island,
- The very 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, and
- It will provide intelligence. Even if in a particular case the criminal conviction check does not provide sufficient justification for preventing an individual 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.

16.6 Requiring a criminal conviction check to be carried out on everybody who requires a Permit to move to Guernsey to live 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 the refusal of a Permit,
- Any information provided will be balanced against the reasons for the application, particularly the strength of any connections with Guernsey, and
- The applicant will have the right of appeal against any decision on whether or not to issue a Permit.

16.7 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 requirement to disclose criminal convictions 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 might present to the community. These factors may include, for example, consideration of the nature of the offence, whether there is any pattern of offending behaviour, how old the

offender was at the time of any conviction and how long it has been since the offences occurred.

- 16.8 The assessment of whether or not to issue a Permit is a balancing exercise and the decision must be proportionate to the likely risk of harm that the individual presents to the Island's community if a Permit is issued. The decision must also take into account the individual's Article 8 rights – their right to respect for their private and family life and home (these rights are explained in Section 4 – *The Influence of Human Rights*). Infringing these rights could only be justified on the basis that refusing a Permit was a reasonable and proportionate response in the interests of “public safety” or the “prevention of disorder or crime”.
- 16.9 Although the administrative details of the proposals have not been set out at this stage and there will be some practical difficulties which need to be understood and overcome, the principle is that everyone applying for a Permit to move to the Island to live will be required to provide their own criminal conviction disclosure document which they will obtain in their home area.
- 16.10 It is very common practice for people to have to provide criminal conviction checks for employment/immigration 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

- 16.11 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 H – *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

- 16.12 Within the current Housing Control regime, criminal conviction checks are part of the application process for anybody applying for an employment-related Housing Licence. 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 an individual on an employment-related Housing Licence,
 - The spouse / partner and other household members coming to live with a Qualified Resident,
 - Qualified Residents returning after a break in residence,

- Anybody living in Open Market accommodation, and
- Anybody living in States owned accommodation.

Other Options

16.13 In coming to the proposals above, the Policy Council 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, and
- 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.

16.14 Recommendation – Criminal Convictions

The Policy Council recommends the States:

To agree that criminal conviction checks will form part of the application process for everyone moving to the Island who is required to obtain a Permit.

SECTION 17 – OTHER CONDITIONS

17.1 The Policy Council has considered some other conditions that 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

17.2 Some jurisdictions apply a maximum age at which an individual 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 might want to draw upon as they themselves become older.

17.3 The disadvantages of doing so are that this provides an instant limitation on the size of the pool of available employees and this was one of the issues raised during the earlier consultation process by a few of the community, business and

professional organisations. Additionally, many of the posts which might attract a Permit associated with employment 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.

- 17.4 The Policy Council does not believe that there is enough evidence at this time to ensure that the advantages of any such measure would outweigh the disadvantages.
- 17.5 For this reason, the Policy Council proposes that a maximum age restriction for Employment Permit holders should be built into the new legislation 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 Access to Services

- 17.6 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. However, the Policy Council 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 those States departments responsible for such services themselves, through their own terms and conditions, and must be determined on the basis of need, not on the type of Permit that an individual holds.
- 17.7 The Legislative and Policy Framework described in Section 7 means that the new population management regime will be able to react to such measures if a particular States department implemented any such proposal in the future. The Policy Council believes that there is therefore no requirement for this condition to be directly included within the new regime.

17.8 Recommendations – Other Conditions

The Policy Council recommends the States:

To agree that 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 an identified and proven need to do so.

SECTION 18 – EXTENDING THE HOUSING CONTROL LAW

- 18.1 At the time of its commencement, the Housing (Control of Occupation) (Guernsey) Law, 1994, was due to expire on 30 June 2004. However, for various

reasons, detailed in Appendix I – *Reasons for Previous Extensions to the Housing Control Law*, the Law has been extended on five separate occasions²⁶. In April 2011 the States considered a Report from the Housing Department²⁷ which recommended the States to agree to the preparation of an Ordinance to enable the Housing Control Law to remain in force until 31 December 2013. An Ordinance was subsequently approved by the States in October 2011.

- 18.2 In approving that proposal the States noted that, having consulted with the Policy Council, the Housing Department anticipated that by the time the Housing Control Law expired at the end of 2013 a new population management regime would have been brought into effect along with new primary legislation.
- 18.3 The current Policy Council believes that the timetable for the introduction of a new regime was unduly ambitious, particularly given that a Report setting out broad proposals for a new population management regime was not presented to the States until January 2012 – the very end of the last political term. Furthermore, when that timetable was set there could have been no certainty that if there was a substantial change in the make-up of the Assembly, it would be content to automatically adopt an approach designed by its predecessors. In the event, a significant number of new Members were elected to the States and the make-up of the Policy Council also changed substantially.
- 18.4 The Policy Council therefore decided that it needed to carry out further work, including the production of this current States Report, in order to establish and secure the commitment of current States Members to the key components of the proposed regime before significant detailed work is progressed.
- 18.5 However, while this report is designed to secure the commitment of the current Assembly to detailed aspects of the new proposals, even if they are all agreed, taking forward this complex area with a need for clear and regular consultation with the public and special interest groups, translating those proposals into new primary legislation, planning and preparing to implement transitional arrangements between those who are subject to the existing legislation and the new regime and putting in place new arrangements for administration, creates a major project that will not be completed by the time the current Housing Control Law expires.
- 18.6 Unless a further extension is agreed, the consequences of the expiry of the Law would include the absence of any mechanism by which to control the occupation of the Island's housing stock and the inability to continue to administer the Right to Work Law (as these two pieces of legislation are intrinsically linked).

²⁶ Aside from these extensions, the provisions of the Housing (Control of Occupation) (Guernsey) Law, 1994 have been amended on a number of occasions since its introduction. Collectively, the Law and its amendments are referred to as the Housing (Control of Occupation) (Guernsey) Laws, 1994 to 2008.

²⁷ Billet d'État VI 2011

- 18.7 Given these circumstances, there is a need to further extend the Housing Control Law beyond 31 December 2013. In this respect the Policy Council recommends, given the amount of work still required, that the Law be extended to 2018 (the maximum period possible under the Law) or until such time as a new population management regime and related legislation is in place, whichever is the sooner.
- 18.8 Having said that, once the States has made resolutions in respect of each of the component parts of the new population management regime set out in this report, the Policy Council intends to implement the new regime well within this States Term i.e. before May 2016.
- 18.9 **Recommendations – Extending The Housing Control Law**

The Policy Council recommends the States:

To agree to the preparation of an Ordinance to enable the Housing (Control of Occupation) (Guernsey) Laws, 1994 to 2008, to remain in force until 31 December 2018 or until such time as a new population management regime and related legislation is in place, whichever is the sooner.

SECTION 19 – FURTHER DEVELOPMENT WORK

- 19.1 As mentioned in Section 1 of this report, the Policy Council has set out clear recommendations which, if agreed by the States, will provide a sound basis for detailed work, including the preparation of clear drafting instructions. Such work can then proceed with certainty, set in the context of clear States direction.
- 19.2 Given the complexity of this workstream, it is clear that there is still much work to do in order to:
- Develop the detailed proposals,
 - Consult with the public on those detailed proposals,
 - Establish the policies which will govern the day-to-day decision making,
 - Obtain various approvals of the States,
 - Draft and approve the necessary legislation, and
 - Establish the administrative arrangements to implement the new regime.
- 19.3 Once the States has given a clear signal on each of the component parts of the regime set out in this report, the Policy Council intends to implement the new

population management regime well within this States Term i.e. before May 2016.

- 19.4 It is important to reiterate that it will still be necessary to bring one or more further reports to the States which will focus on matters of detail, for example the scope of the responsibilities that a Statutory Body might have, as mentioned in Section 6, and it is for this reason that some of the recommendations in this report seek in principle agreement only at this stage.

Other Islands of the Bailiwick

- 19.5 The proposals contained in this report 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.
- 19.6 As part of the development process for the new population management regime, the Policy Council will continue to ascertain the views of those living in the other islands of the Bailiwick about how those other islands and their residents might be included within, or otherwise interrelate with, the new population management regime.

Resources and Legislation

- 19.7 In respect of developing the detailed proposals relating to the recommendations in this report, the Policy Council intends to fund the necessary resource requirements from its existing budget.
- 19.8 The Law Officers' Chambers is able to fund the necessary resource requirements from its existing budget to commence the drafting of legislation as proposed in this report. The Law Officers' Chambers will continue to be engaged in providing advice on what form the legislation might take, including any resource implications, as detailed proposals are developed.
- 19.9 In respect of implementing the new regime, as noted in paragraph 19.4 it will be necessary to bring one or more further reports to the States which will focus on matters of detail. Developing this detail, and therefore included within these further reports, will include analysing the relevant business cases regarding any resource implications. Any long term ongoing resource requirements will be subject to consideration as part of the States Strategic Plan process, or whichever process for the reprioritisation of funding is in place at that time. As this is not a new service development, these further reports will also detail any short term transitional costs associated with moving from the Housing Control regime to the new population management regime.

Principles of Good Governance

19.10 The contents of this States Report are in accordance with the Principles of Good Governance as outlined in Billet d'État IV 2011, particularly Principles 4, 5 and 6:

- Principle 4, taking informed, transparent decisions and managing risk,
- Principle 5, developing the capacity and capability of the governing body to be effective, and
- Principle 6, engaging stakeholders and making accountability real.

Managing Change

19.11 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.

19.12 At this early stage, it is not possible to predict what impact any future proposals might have on specific individuals. The detailed proposals, transitional arrangements and legislation will all be subject to debate in the States, and will therefore be made public before any decisions are made.

19.13 **The Policy Council wants to emphasise that these proposals are not intended to remove, or reduce, any pre-existing rights which an individual has acquired under the existing or previous laws.**

19.14 The Policy Council believes that there needs to be an acceptance that whatever regime 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 commitments in terms of 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.

19.15 These new proposals are intended to provide pragmatic solutions in the best interests of the Island, but it has to be accepted that different parts of the proposals might not be welcomed by some individuals.

19.16 **Recommendations – Further Development Work**

The Policy Council recommends the States:

To note the Policy Council's intention to return to the States with further

recommendations, as required, during the development of the new population management regime.

SECTION 20 – RECOMMENDATIONS

20.1 The Policy Council recommends the States:

Objectives of a New Regime

- 1 To agree the objectives which the new Population Management regime should aim to achieve, as described in paragraph 5.3.

Long Term Residency

- 2 To agree that:
 - (a) individuals who have lived continuously and lawfully in Local Market property for 8 years will be issued with an Established Residence Permit, will acquire the right to continue living in the Island permanently if they so choose and will be defined as Established Residents.
 - (b) individuals who have lived continuously and lawfully in Local Market property for 14 years will be issued with a Permanent Residence Permit, will acquire the right to continue living in the Island permanently if they so choose and will be defined as Permanent Residents.

Right to Return

- 3 To agree that once an individual becomes an Established Resident, if he or she then decides to move away from the Island, he or she will not have the automatic right to return to live in the Island at a later point.
- 4 To agree that once an individual becomes a Permanent Resident, if he or she then decides to move away from the Island, he or she will have the automatic right to return to live in the Island at a later point.
- 5 Where an individual has acquired the automatic right to return to live in the Island, this right will be retained regardless of the length of time that the individual is away from the Island.

Existing Qualified Residents

- 6 To agree the requirement that any existing Qualified Resident who:
 - (a) is not resident in the Island, but decides to return in the future, will be required to obtain a Permanent Residence Permit.
 - (b) is resident in the Island and is, or wishes to be, employed in the Island, will be required to obtain a Permanent Residence Permit.
 - (c) is resident in the Island and is not, and does not intend to be, in employment will not be required to obtain a Permanent Residence Permit.
- 7 To agree that in some specific circumstances, to be defined in policies agreed by the States, individuals may spend time off-Island, but still have their residence considered to be continuous residence in the Island.

Employment Permits

- 8 To agree that:
 - (a) Long Term Employment Permits will be issued for a period of 8 years to address persistent and enduring skills shortages where it is unlikely that those skills will be easily sourced, either in the Island or globally, in the foreseeable future or where continuity in the post in the longer term is in the Island's interest.
 - (b) Medium Term Employment Permits will be issued for a period of up to 5 years in circumstances where:
 - a post requires specific skills which are not available in the Island, but where that skills shortage is likely to be able to be met in the foreseeable future; or
 - the skills required are held by Qualified Residents and Residence Permit holders, but the number of people resident in the Island with those skills is insufficient to fill the total number of posts requiring a similar or identical skill set.
 - (c) Short Term 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.
 - (d) Short Term Employment Permits can be re-issued to the same individual, subject to a maximum period of continuous residence of 3 years and a maximum aggregate period of 5 years residence.

- 9 To agree that an individual must have been away from the Island for a period of time which is at least equal to the duration of his or her last period of residence in the Island before that individual will be eligible to obtain an Employment Permit for a subsequent period of residence.
- 10 To agree that an Employment Permit must be issued before an individual arrives on the Island to work, or before an individual who is already resident in the Island changes jobs.
- 11 To agree that the holder of an Employment Permit will be able to apply to change job at any time during the life of his or her Permit, as long as the new post is also identified as one which will attract an Employment Permit.
- 12 To agree that anyone who has been issued with an Employment Permit may hold more than one job.
- 13 To agree that 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 an identified and proven need to do so.

Residence Permits – Family Connections

- 14 To agree that immediate family members will be defined as an individual's:
 - Spouse / Partner
 - Parents and Parents-in-law
 - Children
 - Grandchildren
- 15 To agree that Qualified Residents, Permanent Residents and holders of Established Residence Permits will be able to accommodate immediate family members within their household.
- 16 To agree that holders of Long Term or Medium Term Employment Permits will be able to accommodate immediate family members within their household.
- 17 To agree that the holder of a Short Term Employment Permit will not be permitted to be accompanied by any family members.
- 18 To agree 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 Temporary Residence Permit and Established Residence Permit.

- 19 To agree that all adults and children in employment who are permitted to live in Local Market accommodation under the provisions for immediate family members will be required to obtain a Residence Permit.

The Open Market

- 20 To agree that an Open Market, largely in its current form, should be retained as part of the new population management regime to allow people to come to live in the Island who might not be Qualified or Permanent Residents, might not have strong family connections here and might not possess essential skills or fill manpower shortages.
- 21 To agree that the children of Open Market residents should become Permanent Residents after a period of continuous residence of 14 years. This will be the case as long as they were first resident in the Island before the age of 18 and as a member of the household of their Mother or Father.
- 22 To agree that the general policy should remain that, with the exception of those children mentioned in the previous recommendation, any Open Market resident without residential qualifications will not be permitted to live in Local Market property.
- 23 To agree that adult Open Market residents, and any of their children who are in employment, will be required to hold an Open Market Residence Permit.
- 24 To agree to redefine Part D of the Open Market Housing Register such that it will incorporate all lodging houses and all Part A properties in use for the multiple occupation of unrelated adults and that such properties will be defined as Houses in Multiple Occupation.
- 25 To agree:
 - (a) that the number of properties that can be inscribed in the Register in the newly-defined Part D of the Open Market will be capped and that the level of that cap should be decided by the States, having regard to the size and make-up of the Island's population at any given point in time.
 - (b) that from the coming into force of the new regime, the cap will be set at the number of existing Part D Lodging Houses plus the number of Part A properties in established use for the multiple occupation of unrelated adults on the date of publication of this States Report.
 - (c) that, having regard to a particular property's established use, only those Part A properties that are in use for the multiple occupation of unrelated adults on the date of publication of this States Report will be given the option to transfer to the newly-defined Part D of the Open Market Housing Register, subject to meeting acceptable accommodation standards.

- (d) To agree that any redefined Part D property may, at the owner's request, be returned to Part A for occupation as a family home.
- 26 To agree that tenants of a Part D House in Multiple Occupation will be able to benefit from the Open Market status of the property and will be free to live in the Island, and to work in any employment, for a maximum period of 5 years' continuous residence in the Island.
- 27 To agree that an individual must have been away from the Island for a period of time which is at least equal to the duration of his or her last period of residence in the Island, before that individual will be eligible to obtain an Open Market Residence Permit permitting him or her to live in a redefined Part D property.
- 28 To agree that employees living and working in Part B and Part C properties will be able to benefit from the Open Market status of the property and will be free to live and work in the property for a maximum period of 5 years' continuous residence in the Island.
- 29 To agree that an individual must have been away from the Island for a period of time which is at least equal to the duration of his or her last period of residence in the Island, before that individual will be eligible to obtain an Open Market Residence Permit permitting him or her to live and work in a Part B or Part C property.
- 30 To agree that genuine tourists and guests will not be required to obtain a Permit to stay in a Part B hotel or guesthouse, as long as their length of stay is for less than 90 days per year.
- 31 To agree that an individual who wishes to live in a Part C nursing or residential home to benefit from the health and social care services offered will be required to obtain a Permit to do so, unless he or she is a Qualified or Permanent Resident, and such Permits will not be time-limited.

States Controlled Properties

- 32 To agree that any individual living in States controlled property should be subject to the same requirements as any other member of the community with regards to his or her requirement to obtain the relevant Permit.

Restricting Where an Individual Can Live

- 33 To agree that Short Term Employment Permit holders will not be permitted to be householders in their own right. This means that they will only be permitted to live in accommodation that is shared with others.

- 34 To agree that there should be no general restriction on where the holders of Long Term and Medium Term Employment Permits may live, other than where there is an identified and proven need to protect specific parts of the housing market.

Criminal Convictions

- 35 To agree that criminal conviction checks will form part of the application process for everyone moving to the Island who is required to obtain a Permit.

Governance Arrangements and Responsibilities

- 36 To agree that the Policy Council will be responsible for overseeing the development of population management policies in accordance with the strategic objectives of the States, and for monitoring and publishing regular information on the size and make-up of the Island's population arising from their implementation.
- 37 To agree that under the political oversight of the Policy Council, a Statutory Body will be responsible for making day-to-day administrative decisions in accordance with policy directions from the States, the details of how such arrangements will work to be brought to the States for approval ahead of the new population management regime coming into force.
- 38 To agree to the establishment of an Advisory Panel to provide independent advice to the Policy Council in relation to population management policies.

Legislative and Policy Framework

- 39 To agree that the new regime will be driven by policies set by the States and that, wherever possible, those policies will be determined by reference to the strategic objectives of the States.
- 40 To agree that population management policies should be made public to ensure that the system is transparent.
- 41 To agree that the legislation will provide for an applicant to exercise a formal right of appeal against any decision taken under the Law.
- 42 To agree that the legislation will provide for both civil and criminal sanctions for proven offences.

Extension of the Housing Control Law

- 43 To agree to the preparation of an Ordinance to enable the Housing (Control of Occupation) (Guernsey) Laws, 1994 to 2008, to remain in force until 31

December 2018 or until such time as a new population management regime and related legislation is in place, whichever is the sooner.

Further Development Work

- 44 To note the Policy Council's intention to return to the States with further detailed recommendations during the development of the new population management regime.

Preparation of Legislation

- 45 To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

Yours faithfully

P A Harwood
Chief Minister

29th April 2013

Deputy J P Le Tocq
Deputy Chief Minister

Deputy G A St Pier
Deputy R Domaille
Deputy D B Jones

Deputy A H Langlois
Deputy K A Stewart
Deputy DH Dorey

Deputy R W Sillars
Deputy P A Luxon
Deputy M G O'Hara

APPENDIX A – STATES STRATEGIC PLAN – GENERAL OBJECTIVES

Summary sheet of the Fiscal & Economic, Social and Environmental Policy Plan Objectives and Themes

	Fiscal & Economic Policy Plan	Social Policy Plan	Environmental Policy Plan
Objectives	General Objectives <ul style="list-style-type: none"> • Appropriate size of the government and sustainable long term finances and programmes • Balanced, internationally competitive, high value economy • Skilled, sustainable and competitive workforce 	General Objectives <ul style="list-style-type: none"> • A social environment and culture where there is active and engaged citizenship • Equality of opportunity, social inclusion and social justice • Individuals taking personal responsibility and adopting healthy lifestyles 	General Objectives <ul style="list-style-type: none"> • Climate Change adaptation • Carbon footprint and energy consumption reduction • Land and marine spatial planning and management ensuring countryside, marine and wildlife protection
Themes	Themes <ul style="list-style-type: none"> • Enabling appropriate levels of future public services based on sustainable funding • Actively encouraging and supporting opportunities for competitive, high-value growth which benefits the Guernsey economy • Investing in people, infrastructure and assets 	Themes <ul style="list-style-type: none"> • Ensuring sustainability of provision in relation to funding, workforce and the social environment • Working with the third sector • Focusing on prevention rather than reactive crisis management 	Themes <ul style="list-style-type: none"> • Encouraging public engagement and third party participation • Appreciating the strategic and intrinsic value of environmental assets • Promoting a sustainable approach towards the environment
Strategies	Strategies To be contained within the Government Service Plan	Strategies To be contained within the Government Service Plan	Strategies To be contained within the Government Service Plan

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 an individual'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*²⁸ the Royal Court provided a clear statement of its preferred definition of “private life” by following the definition in *Human Rights Law and Practice*²⁹,

“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.’

THE MEANING OF “FAMILY LIFE”

The concept of “family life” is not the same as that of “family”. The Court of Appeal for England and Wales in *Singh v Entry Clearance Officer, New Delhi*³⁰ stated,

“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

²⁸ 2009 – 10 GLR 157

²⁹ 2nd edition edited by Lord Lester of Herne Hill QC and David Pannick QC

³⁰ [2004] EWCA Civ 1075

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”.*³¹

The Courts have allowed interferences under Article 8(2), except where it might 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.”*³²

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 an individual lives on a settled basis³³. The protection of “respect for home” implies a right of access and occupation³⁴.

The definition of “home” will depend on the individual circumstances, including his current home and anywhere else he might 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)*³⁵, the court held that the house in question was the applicants' home because although they had been absent from Guernsey for

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

³² *Huang -v- Secretary of State for the Home Department; Kashmiri -v- Secretary of State for the Home Department* [2007] UKHL 11

³³ *Murray v United Kingdom* [1994] 19 EHRR 193

³⁴ *Gillow v United Kingdom* [1986] 11 EHRR 335 and *Wiggins v United Kingdom* [1978] 13 DR 40

³⁵ 11 EHRR 335

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 Article 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 individual lives and not the community and place in a wider sense in which the individual is living.

Article 8 does not guarantee:

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

APPENDIX C – STATUTORY ROLES

There are many existing examples of statutory roles within Guernsey 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.

Chief Executive, Channel Islands Competition and Regulatory Authority

Powers under: The Competition and Regulatory Authority Ordinance, 2012 combining the statutory offices created under the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 and the Competition (Enabling Provisions) (Guernsey) Law, 2009.

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.

Legal Aid Administrator

Powers under: Legal Aid (Bailiwick of Guernsey) Law, 2003.

Registrar of Intellectual Property

Powers under: Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey), 2004.

APPENDIX D – 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.

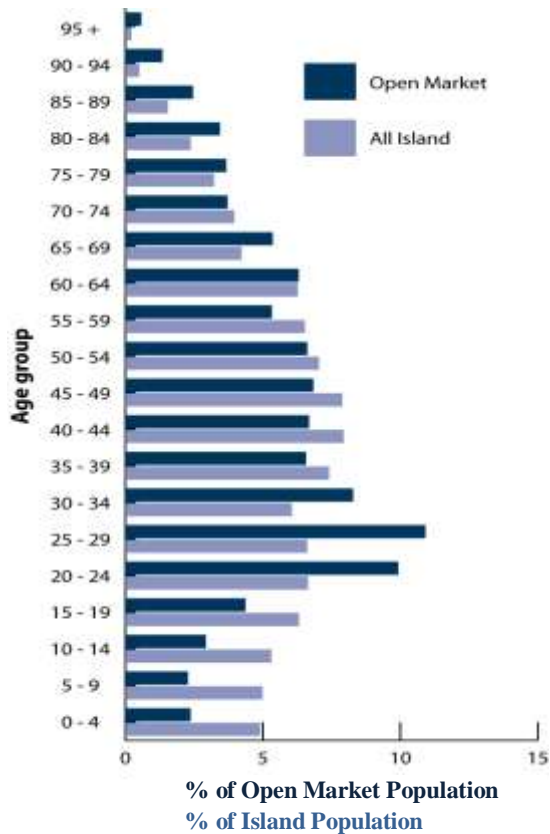
APPENDIX E – THE OVERALL POPULATION OF THE OPEN MARKET

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

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.

Chart 13.1 below shows the age distribution of the population living in Open Market properties compared with the age distribution of Guernsey's total population.

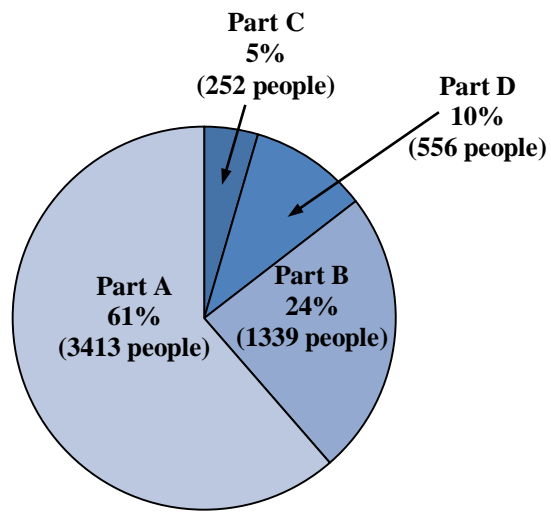
Chart 13.1 Age Distribution – 2010



This diagram, known as a population pyramid, gives a representation of the age 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.

Chart 13.2 below shows the number of people who were living in properties listed in each of the four Parts of the Open Market Housing Register.

Chart 13.2 Where the Open Market Population Live

APPENDIX F – SUMMARY OF CONSULTATION COMMENTS

This is a summary of the information supplied by interviewees in relation to Open Market Part A properties that are in use for the multiple occupation of unrelated adults. It summarises the information supplied to the Policy Council by a range of individuals and groups who were interviewed during 2012 – 2013. Please note that the information represents the views and understanding of the interviewees.

Those interviewed included:

- Representatives of commercial companies and business sectors who employ staff who live as part of unrelated households on the Open Market. The businesses which contributed included those involved in domestic and commercial cleaning, hospitality (hotels and restaurants), residential care homes and accountancy/financial services.
- Private Landlords offering these tenancies and the Guernsey Private Landlords Association.
- Estate Agents.
- Members of the Portuguese, Latvian and Polish communities living in Guernsey.

Who is living in these properties?

- A spectrum of people with different skills. Tenants include those:
 - With, or training to obtain, professional qualifications or management positions, e.g. Graduate trainee accountants.
 - In service provision or manual work in various sectors of local business, e.g. Hotel and hospitality staff and commercial and domestic cleaners.
- A large number of tenants in the sector are of Latvian, Polish or Madeiran nationality.
- Most, but not all, tenants are employed in the private sector.
- Many tenants are aged 20-40 years.
- Very few tenants have children living with them in Guernsey – it is not practical given the type and cost of accommodation available. Some may have children back in their home countries however, being looked after there by family and friends.
- It was stated by employers and landlords as well as those with knowledge of the overseas communities that most tenants view their stay in Guernsey as short-term only. The non-UK workers tend to be saving as much of their income as possible or sending money home to their families. If they could earn better incomes at home they would return there.
- The general opinion was that if access to jobs in Guernsey is restricted in future or if the economy weakens, the overseas workers living in this segment of the Open Market would look for other employment opportunities, not just in Europe but globally.

Employers' views

- Representatives of business sectors commented that professional staff, such as those in accountancy/finance, contribute to the local pool of important specialised skills to maintain the finance industry as the main driver of Guernsey's economy.
- Employers said that they value the flexibility of having their staff in Open Market accommodation because this enables them to plan their businesses effectively and, importantly, to invest in staff training knowing that a member of staff will not be required to leave when a Short-Term Housing Licence expires.
- They like the absence of bureaucracy because there is no need for them to apply to the States for Housing Licences on a recurring basis for staff to live in the Open Market.
- Open Market Part A housing in multiple occupation enables some continuity of employment and reduces the 'churn' of employees with its associated recruitment costs and disruption.
- In their view, the current system of Short-Term Housing Licences is based on periods of residency which are too short for their business needs. 9 month licences, for example, were designed for an era of seasonal working in horticulture and hospitality but they are no longer widely relevant today when most businesses operate throughout the year.
- The multiple occupation of Open Market property was described by employers as a form of 'pressure valve' which helps the Island's employee base to expand when the economy is growing and to contract when the economy slows.
- Employers of professional staff said that Guernsey simply does not have a large enough population base to supply sufficient specialist staff in key areas, e.g. trainee accountants, to meet their requirements.
- Employers of service and manual staff said that, in their experience, locally-qualified workers do not come forward to work for modest wages in jobs that often require long and unsocial hours.
- Employers said that their service and manual workers, who are living in multiple occupancy arrangements in Open Market accommodation, in general work exceptionally long hours (70 hours+ was stated as commonplace). They often have two jobs at a time e.g. chambermaid in a hotel and home or office cleaner.
- Some commented that local workers also currently lack the particular trade skills/training required to do certain jobs satisfactorily e.g. care work in residential and nursing homes.
- Employers generally commented that their overseas workers have a great work ethic and are valued accordingly. Employers commented that these skills tend to be underestimated by those outside the sectors concerned.

Owners' and Estate/Letting Agents' views

- Owners and Estate Agents commented that the multiple occupation of Open Market Part A properties fulfils a legitimate demand for unrestricted accommodation under the terms of the current Housing Control Law.

- Some commented that the number of properties in this category is perceived as small compared to the size of Part A as a whole.
- Owners in general said they would wish to retain the status quo enabling them to let property for multiple occupation. They were particularly concerned about the introduction of any retrospective regulation that would affect their property rights.
- The Estate Agents who specialise in Open Market family housing tend not to deal with property in multiple occupation with the exception of the relatively few landlords offering high quality accommodation of this kind.
- Rents for rooms and suites are acknowledged by all parties to be expensive.
- Quality of accommodation on the other hand, is acknowledged to be variable. Some landlords said that most of their tenants want basic standards at as low a cost as possible so that they can save/send home as much money as possible.
- Owners and Estate Agents said they were very concerned about current uncertainty about the future of the Open Market generally, and those with interests in multiple occupation were particularly concerned about this aspect of the market.
- Estate Agents said that they have not seen a rush of property owners wanting to convert single family houses or flats to multiple occupation. Many owners have apparently expressed concerns to agents about the possible adverse effect of multiple tenancies on the good maintenance and value of their properties.
- Some agents expressed the view that there should be better Government regulation of Open Market property in multiple occupation to ensure that decent housing standards are met in all cases.

Overseas Communities' views

- Comments from members of the various overseas communities provided/confirmed the information other groups had supplied about the type of people living in properties in multiple occupation.
- Individual interviews with Madeiran, Polish and Latvian nationals described different situations, but the picture that emerged was of exceptionally hard-working people who are generally in Guernsey on a short-term, temporary basis only.
- The comments made during the interviews were very pragmatic and uncomplaining. However, the high cost of accommodation, some of which is of a very poor standard, was highlighted as a real concern. Although it was acknowledged that tenants focus strongly on keeping costs as low as they can and put up with low standards.
- Some accommodation in the sector may be of a good standard providing shared living rooms as well as bedrooms; some accommodation offers cramped space and poor facilities.
- Members of the overseas communities said that migrant workers would like more clarity and certainty about their status. It was pointed out that they contribute a lot to the economy, including through taxes and social security contributions, but they did not believe that this contribution is sufficiently valued by the community in general.
- Seasonal and very Short-Term Housing Licences were felt to be disruptive and out of step with the nature of jobs on the Island.

APPENDIX G – RESTRICTING WHERE AN INDIVIDUAL CAN LIVE – CURRENT SITUATION

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 attempts to reflect the Law's primary purpose of ensuring that there is sufficient Local Market housing to meet the needs of Qualified Residents and current Housing Licence holders.

The Housing Department's approach is to attach standardised housing conditions to most essential 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 might wish to rent or purchase, or
- Setting a maximum number of habitable rooms (i.e. excluding kitchen and bathrooms etc.) the property which they occupy can have.

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.

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.

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.

The option based on a maximum number of habitable rooms is mainly aimed at single Licence holders or couples without children, who might prefer to rent or buy a smaller property rather than occupy a larger property which might be too big for their needs using their TRP option.

The Housing Department has advised the Policy Council 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, and
- The use of TRP or number of habitable rooms reduces the possibility of under-occupancy as a single individual with a high salary can be permitted to live in a smaller property rather than a larger one.

However, the Housing Department has also advised the Policy Council that the use of TRP-based housing controls is far from ideal for a number of reasons and these are listed below.

- a) The relationship between the cost of a property and its TRP is not as clear cut as it might 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) The housing needs and preferences of individuals vary – the number and age of any children, whether they have pets, their lifestyle and interests, etc – will all be factors that influence the type of accommodation an individual 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 individual 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.
- 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 employment-related 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.

It has already been mentioned that the current system is difficult and very 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.

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 of the information that 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.

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.

The Housing Department has advised the Policy Council 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 individual 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.

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 might lead to breaks in business or service continuity if the post remains unfilled for a protracted period. Some respondents during the consultation process cited their own difficulties in finding a suitable property when taking up essential employment in Guernsey and some employers gave examples of people who had not taken up offers of employment for similar reasons. Some of the responses from community, business and professional organisations also referred to the difficulties their members had experienced when recruiting key staff, which were specifically linked to the application of controls on where an individual can live.

APPENDIX H – OTHER CRIMINAL CONVICTION CHECK REGIMES

Immigration Regime

The Immigration Rules provide that an individual with an unspent³⁶ 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 Safeguarding Vulnerable Groups Act 2006 ('the SVGA') provides the legal framework for a new Vetting & Barring Scheme. The Scheme aims to provide a comprehensive, 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 SVGA makes it an offence for an employer to employ an individual without having made appropriate checks through the Scheme. In September 2009 the States approved the Home Department's proposals to facilitate the Bailiwick's access to this Scheme so as to ensure that the Bailiwick is not exploited by malicious individuals who seek to evade the legal rigours of one jurisdiction by removing to another (Billet XXIV 2009).

³⁶ **Spent Convictions** - A 'spent' conviction is one which the individual 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 an individual 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 an individual 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 individual must always disclose their conviction when asked about their criminal record.

Originally a Labour Government initiative, the Coalition Government has since reviewed the scope of this system and made amendments to its structure. The Home Department, in conjunction with its counterparts in Jersey and the Isle of Man, continues to liaise with the Home Office in relation to these reviews.

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.

APPENDIX I – REASONS FOR PREVIOUS EXTENSIONS TO THE HOUSING CONTROL LAW

The extension of 2004

In a report dated 12 December 2003³⁷, the then Housing Authority stated that it had completed a review of the Open Market elements of the Housing Control Law, which had been considered by the States at their meeting of 14 March 2001³⁸. Consequently, only the provisions of the Law relating to the occupation of Local Market dwellings remained to be reviewed.

The Authority went on to say that its full review of the remaining provisions of the Law had been well advanced, enabling a replacement to come into force upon the expiry of the existing Law; however, the Authority's timetable for reporting on the outcome of this review had been severely disrupted because of its previous undertaking to deal separately with the provisions relating to the checking of criminal convictions, and to make this element the subject of a special report to the States.

The Authority thus advised that, following consultations at political level, a staff level working party comprising representatives from all the interested parties had been established, under the chairmanship of the then HM Procureur, for the purpose of investigating this matter and making suitable recommendations for onward transmission to the States. However, because these inter-committee discussions were still at an early stage, it would not be possible to submit a report to the States in time for any resultant new Law to come into force in July 2004.

Accordingly, the Authority proposed – and the States agreed – to extend the Housing Control Law, 1994 for a period of one year, i.e. until 30 June 2005.

The extension of 2005

In a report dated 17 January 2005³⁹, the Housing Department explained that it would not be in a position to bring into being a new Housing Control Law by 30 June 2005. The two reasons given for this were that:

- i the working party established under the chairmanship of the then HM Procureur in order to investigate the issue of criminal conviction checks was not, at the time of writing, in a position to report its findings; and
- ii upon the advice of HM Procureur, the Housing Department had decided to take comprehensive advice from an expert UK Human Rights lawyer on all aspects of

³⁷ Billet d'État I 2004

³⁸ Billet d'État III 2001

³⁹ Billet d'État III 2005

the Law. His written opinion was in the process of being finalised and the Department wished to have the full benefit of his views before concluding its review of the Law.

Owing to the above, the Housing Department proposed – and the States agreed – to extend the Housing Control Law for a further period of two years, i.e. until 30 June 2007.

At that time it was expected that this would enable the Department to report to the States with recommendations on the checking of criminal convictions and also to complete its review of the Law with the benefit of additional expert legal advice to ensure its robustness.

The Department went on to say that a further unintended benefit of the delay would be the opportunity to consider the relationship between the new Housing Control Law and the new States' population objective, which was then being developed through the Policy Council's Strategic Population Review Group.

The extension of 2007

After considerable delay, the Policy Council came forward with a report on a new strategic population and migration policy, which was published in the Billet d'État for February 2007⁴⁰. This report was based on work undertaken by the Policy Council's Strategic Population Review Group which had assumed responsibility for all population policy matters.

This report was accompanied by a separate but related report, also from the Policy Council, the purpose of which was to determine whether it was necessary to introduce a new system of population management, or whether the Housing Control and Right to Work Laws should continue to be used for this purpose, with modifications where appropriate.

Although published in January 2007, the debate of both reports was further delayed until April 2007, as a result of the resignation of the Policy Council in the wake of the Welsh Audit Office inquiry into the development of the new Clinical Block at the Princess Elizabeth Hospital.

Then, immediately prior to the planned debate in April 2007, there was a high profile court case which raised a number of significant issues about the application of the Housing Control Law following the Human Rights (Guernsey) Law, 2000 coming into force in 2006. As a result, the report entitled "Controls on Housing/Population" was never considered by the States, as it was withdrawn while the ramifications of that court case were investigated. As a result, the States agreed in March 2007 that the Housing Control Law should be further extended by two years i.e. to expire on 30 June 2009.

⁴⁰ Billet d'État IV 2007

The extension of 2008

Following the 2008 General Election, the Policy Council established the Population Policy Group (PPG) to take forward work begun by the Labour Utilisation Strategy Group (LUSG)⁴¹. It was based on the advice of the PPG with regard to the likely timescale for the completion of its work that the Housing Department recommended – and the States agreed – a further extension of the Housing Control Law until 31 December 2011⁴².

The extension of 2011

By January 2011, the Policy Council had commenced an Island-wide consultation on proposals for a new population management regime as developed by the PPG. But with the Housing Control Law due to expire at year end, the Housing Department recommended – and the States agreed – a further extension of the Law until 31 December 2013.⁴³ This was based on the indicative timescales for the production of detailed proposals in respect of the new regime, provided by the Policy Council at the start of its consultation.

The outcome of that consultation was to inform the contents of the Policy Council's Report entitled 'Guiding principles for the development of a Population Management Regime', which was debated by the States in January 2012⁴⁴. This highlighted a number of areas where further detailed work and research needed to be undertaken.

⁴¹ In November 2007, the Policy Council created the LUSG as a successor to the Strategic Population Review Group. The PPG assumed many of the work streams in the LUSG's mandate.

⁴² Billet d'État XV 2008

⁴³ Billet d'État VI 2011

⁴⁴ Billet d'État I 2012

(N. B In accordance with its mandate, the Treasury and Resources Department is commenting on the resource implications of this States Report. The Department supports the sensible approach adopted by the Policy Council that seeks to gain States direction in respect of the high-level key components of the proposed new population management regime before scarce resources are used in developing detailed proposals.

It is noted that, in respect of implementing the new regime, the Policy Council will bring one or more further reports to the States which will focus on matters of detail including any resource implications both short-term transitional costs and long-term resource requirements which will be subject to consideration as part of the States Strategic Plan process, or whatever process for the reprioritisation of funding is in place at that time.

Whilst recognising that there may be a requirement for one-off additional funding for any short term transitional costs associated with moving from the existing Housing Control regime, the Department would expect that, where reasonably and practicably possible, the ongoing costs associated with the new population management regime will be met by charges made in accordance with the policy set out in the States Report entitled Fees and Charges (Billet d'Etat III, 2007) and the recent publication of further advice on its implementation from the Policy Council.)

The States are asked to decide:-

I.- Whether, after consideration of the Report dated 29th April, 2013, of the Policy Council, they are of the opinion:

Objectives of a New Regime

1. To agree the objectives which the new Population Management regime should aim to achieve, as described in paragraph 5.3.

Long Term Residency

2. To agree that:
 - (a) individuals who have lived continuously and lawfully in Local Market property for 8 years will be issued with an Established Residence Permit, will acquire the right to continue living in the Island permanently if they so choose and will be defined as Established Residents.
 - (b) individuals who have lived continuously and lawfully in Local Market property for 14 years will be issued with a Permanent Residence Permit, will acquire the right to continue living in the Island permanently if they so choose and will be defined as Permanent Residents.

Right to Return

3. To agree that once an individual becomes an Established Resident, if he or she then decides to move away from the Island, he or she will not have the automatic right to return to live in the Island at a later point.
4. To agree that once an individual becomes a Permanent Resident, if he or she then decides to move away from the Island, he or she will have the automatic right to return to live in the Island at a later point.
5. That where an individual has acquired the automatic right to return to live in the Island, this right will be retained regardless of the length of time that the individual is away from the Island.

Existing Qualified Residents

6. To agree the requirement that any existing Qualified Resident who:
 - (a) is not resident in the Island, but decides to return in the future, will be required to obtain a Permanent Residence Permit.
 - (b) is resident in the Island and is, or wishes to be, employed in the Island, will be required to obtain a Permanent Residence Permit.
 - (c) is resident in the Island and is not, and does not intend to be, in employment will not be required to obtain a Permanent Residence Permit.
7. To agree that in some specific circumstances, to be defined in policies agreed by the States, individuals may spend time off-Island, but still have their residence considered to be continuous residence in the Island.

Employment Permits

8. To agree that:
 - (a) Long Term Employment Permits will be issued for a period of 8 years to address persistent and enduring skills shortages where it is unlikely that those skills will be easily sourced, either in the Island or globally, in the foreseeable future or where continuity in the post in the longer term is in the Island's interest.
 - (b) Medium Term Employment Permits will be issued for a period of up to 5 years in circumstances where:
 - a post requires specific skills which are not available in the Island, but where that skills shortage is likely to be able to be met in the foreseeable future; or

- the skills required are held by Qualified Residents and Residence Permit holders, but the number of people resident in the Island with those skills is insufficient to fill the total number of posts requiring a similar or identical skill set.
- (c) Short Term 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.
 - (d) Short Term Employment Permits can be re-issued to the same individual, subject to a maximum period of continuous residence of 3 years and a maximum aggregate period of 5 years residence.
9. To agree that an individual must have been away from the Island for a period of time which is at least equal to the duration of his or her last period of residence in the Island before that individual will be eligible to obtain an Employment Permit for a subsequent period of residence.
 10. To agree that an Employment Permit must be issued before an individual arrives on the Island to work, or before an individual who is already resident in the Island changes jobs.
 11. To agree that the holder of an Employment Permit will be able to apply to change job at any time during the life of his or her Permit, as long as the new post is also identified as one which will attract an Employment Permit.
 12. To agree that anyone who has been issued with an Employment Permit may hold more than one job.
 13. To agree that 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 an identified and proven need to do so.

Residence Permits – Family Connections

14. To agree that immediate family members will be defined as an individual's:
 - Spouse / Partner
 - Parents and Parents-in-law
 - Children
 - Grandchildren.
15. To agree that Qualified Residents, Permanent Residents and holders of Established Residence Permits will be able to accommodate immediate family members within their household.

16. To agree that holders of Long Term or Medium Term Employment Permits will be able to accommodate immediate family members within their household.
17. To agree that the holder of a Short Term Employment Permit will not be permitted to be accompanied by any family members.
18. To agree 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 Temporary Residence Permit and Established Residence Permit.
19. To agree that all adults and children in employment who are permitted to live in Local Market accommodation under the provisions for immediate family members will be required to obtain a Residence Permit.

The Open Market

20. To agree that an Open Market, largely in its current form, should be retained as part of the new population management regime to allow people to come to live in the Island who might not be Qualified or Permanent Residents, might not have strong family connections here and might not possess essential skills or fill manpower shortages.
21. To agree that the children of Open Market residents should become Permanent Residents after a period of continuous residence of 14 years. This will be the case as long as they were first resident in the Island before the age of 18 and as a member of the household of their Mother or Father.
22. To agree that the general policy should remain that, with the exception of those children mentioned in the previous recommendation, any Open Market resident without residential qualifications will not be permitted to live in Local Market property.
23. To agree that adult Open Market residents, and any of their children who are in employment, will be required to hold an Open Market Residence Permit.
24. To agree to redefine Part D of the Open Market Housing Register such that it will incorporate all lodging houses and all Part A properties in use for the multiple occupation of unrelated adults and that such properties will be defined as Houses in Multiple Occupation.
25. To agree:
 - (a) that the number of properties that can be inscribed in the Register in the newly-defined Part D of the Open Market will be capped and that the level

of that cap should be decided by the States, having regard to the size and make-up of the Island's population at any given point in time.

- (b) that from the coming into force of the new regime, the cap will be set at the number of existing Part D Lodging Houses plus the number of Part A properties in established use for the multiple occupation of unrelated adults on the date of publication of this States Report.
 - (c) that, having regard to a particular property's established use, only those Part A properties that are in use for the multiple occupation of unrelated adults on the date of publication of this States Report will be given the option to transfer to the newly-defined Part D of the Open Market Housing Register, subject to meeting acceptable accommodation standards.
 - (d) To agree that any redefined Part D property may, at the owner's request, be returned to Part A for occupation as a family home.
26. To agree that tenants of a Part D House in Multiple Occupation will be able to benefit from the Open Market status of the property and will be free to live in the Island, and to work in any employment, for a maximum period of 5 years' continuous residence in the Island.
 27. To agree that an individual must have been away from the Island for a period of time which is at least equal to the duration of his or her last period of residence in the Island, before that individual will be eligible to obtain an Open Market Residence Permit permitting him or her to live in a redefined Part D property.
 28. To agree that employees living and working in Part B and Part C properties will be able to benefit from the Open Market status of the property and will be free to live and work in the property for a maximum period of 5 years' continuous residence in the Island.
 29. To agree that an individual must have been away from the Island for a period of time which is at least equal to the duration of his or her last period of residence in the Island, before that individual will be eligible to obtain an Open Market Residence Permit permitting him or her to live and work in a Part B or Part C property.
 30. To agree that genuine tourists and guests will not be required to obtain a Permit to stay in a Part B hotel or guesthouse, as long as their length of stay is for less than 90 days per year.
 31. To agree that an individual who wishes to live in a Part C nursing or residential home to benefit from the health and social care services offered will be required to obtain a Permit to do so, unless he or she is a Qualified or Permanent Resident, and such Permits will not be time-limited.

States Controlled Properties

32. To agree that any individual living in States controlled property should be subject to the same requirements as any other member of the community with regards to his or her requirement to obtain the relevant Permit.

Restricting Where an Individual Can Live

33. To agree that Short Term Employment Permit holders will not be permitted to be householders in their own right. This means that they will only be permitted to live in accommodation that is shared with others.
34. To agree that there should be no general restriction on where the holders of Long Term and Medium Term Employment Permits may live, other than where there is an identified and proven need to protect specific parts of the housing market.

Criminal Convictions

35. To agree that criminal conviction checks will form part of the application process for everyone moving to the Island who is required to obtain a Permit.

Governance Arrangements and Responsibilities

36. To agree that the Policy Council will be responsible for overseeing the development of population management policies in accordance with the strategic objectives of the States, and for monitoring and publishing regular information on the size and make-up of the Island's population arising from their implementation.
37. To agree that under the political oversight of the Policy Council, a Statutory Body will be responsible for making day-to-day administrative decisions in accordance with policy directions from the States, the details of how such arrangements will work to be brought to the States for approval ahead of the new population management regime coming into force.
38. To agree to the establishment of an Advisory Panel to provide independent advice to the Policy Council in relation to population management policies.

Legislative and Policy Framework

39. To agree that the new regime will be driven by policies set by the States and that, wherever possible, those policies will be determined by reference to the strategic objectives of the States.

- 40. To agree that population management policies should be made public to ensure that the system is transparent.
- 41. To agree that the legislation will provide for an applicant to exercise a formal right of appeal against any decision taken under the Law.
- 42. To agree that the legislation will provide for both civil and criminal sanctions for proven offences.

Extension of the Housing Control Law

- 43. To agree to the preparation of an Ordinance to enable the Housing (Control of Occupation) (Guernsey) Laws, 1994 to 2008, to remain in force until 31 December 2018 or until such time as a new population management regime and related legislation is in place, whichever is the sooner.

Further Development Work

- 44. To note the Policy Council's intention to return to the States with further detailed recommendations during the development of the new population management regime.

Preparation of legislation

- 45. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.