



## EMPLOYMENT

### Population Management Proposals – At a Glance

On 8 December 2011, the Policy Council published Billet D'Etat No.1 of 2012 ("the **Billet**"). The Billet sets out guiding principles for the development of a new population management regime aimed at influencing the size of Guernsey's population over the medium to long term. This article looks at the background to the proposed new regime and summarises the main population management proposals set out in the Billet.

### Background

In 2008, the Policy Council established the Population Policy Group ("PPG"). The PPG is chaired by Deputy Chief Minister Bernard Flouquet. Other political members of the PPG are Deputy Mark Dorey (Social Security Minister), Deputy Dave Jones (Housing Minister), Deputy Geoff Mahy (Home Minister) and Deputy Carla McNulty-Bauer (Commerce and Employment Minister). The PPG also includes senior advisers from the Policy Council, the Law Officers Chambers and the Departments listed above.

In January 2010 the PPG went public with its proposals for a comprehensive population management regime. A 14 week consultation period followed. Subsequent to the consultation, the PPG revisited its proposals, taking into account public feedback and its revised proposals now form the basis of the Billet.

The Policy Council's recommendation in the Billet is that the States "*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*".

If the recommendation is accepted, the Policy Council will return to the States with detailed proposals for debate. The main proposals are set out below.

### The new regime

There should be a population management regime in Guernsey aimed at influencing the size of Guernsey's population over the medium to long term. The States will have responsibility for setting population management policies which can be changed over time to take into account States' objectives and the Island's changing needs. The policies will be developed and implemented by a Sub-Committee of the Policy Council ("the **Sub-Committee**").

A Statutory Official will be responsible for administering the regime and will have day to day responsibility for decision-making (as is the case with other statutory roles such as Director of Income Tax or Registrar of Companies). There will be a right of appeal from any decision made by the Statutory Official, although the mechanism of appeal is still to be decided.

An independent Advisory Panel drawn from the business community will provide advice to the Sub Committee. Members would be required to draw on their personal experience to provide general advice and on their professional experience to provide regular monitoring of the Island's economy and labour market, in particular to give important feedback of where skill shortages lie. The role of the panel will be to make evidence-based recommendations and to test proposed new policies.

### Framework for the new regime

A new law will be introduced which will ultimately replace the existing Housing Control and Right to Work regime.

Transparency will be at the heart of the new regime.

Policies will be published and there will be consultation with the public and particular interest groups over policy making. The Billet refers in broad terms to a *“range of policy objectives as defined in the States Strategic Plan”* (9.5). The original consultation document gives more detail on what might be expected to be in the States Strategic Plan, stating *“The States would identify in its Strategic Plan the broad areas of employment which it wants to support and those which it may seek to discourage in order to meet its strategic social, economic and environmental policy objectives. Population management policies will then implement this strategic direction, by enabling inward migration in favoured areas and restricting inward migration in less favoured areas”*.

Civil sanctions will be introduced alongside criminal sanctions, with criminal sanctions being reserved for more serious breaches of the new law.

#### **A system of permits/certificates**

A system of permits and certificates based on residence and employment will be introduced. Human rights (in particular Article 8 – the right to respect private and family life, home and correspondence) and a desire to reduce the complexity of the current housing qualification regime are fundamental to the proposals.

The system envisages individuals building up rights of residence through time spent living on the Island (*“milestones”*).

A person who has lived continuously and lawfully in Guernsey for 8 years will reach the first milestone. At this stage, they will be issued with a Permanent Residence Permit (separate provisions apply to open market residents (see later)). The holder of a Permanent Residence Permit will be allowed to continue to live in Guernsey permanently if they so choose, but if they move away from the Island before reaching the second milestone, they will not have the right to return at a later stage.

A person who has lived continuously and lawfully in Guernsey for 14 years will reach the second milestone. At that time they will be defined as a Qualified Resident and will be issued with a Qualified Resident Certificate (again, separate provisions apply to open market residents).

Once a person has obtained a Qualified Resident Certificate, if they decide to move away from the Island, they will have the automatic right to return to live in Guernsey at any point, regardless of how long they have been away.

An existing Qualified Resident who does not currently live in Guernsey, but who wants to return, will have to obtain a Qualified Resident Certificate.

All existing Qualified Residents must obtain a Qualified Resident Certificate if they are employed, or wish to be employed, in Guernsey. There will be no requirement for a Qualified Resident who is not employed, and who does not intend to be employed, to obtain a Qualified Resident Certificate.

#### **Employment permits**

The new regime envisages three categories of employment permit: long term; medium term; and short term.

#### *LTEPs*

Long Term Employment Permits (*“LTEPs”*) will be issued for 8 years where:

- (i) there is a persistent and enduring skill shortage and it is unlikely that these skills will be easily sourced either on the Island or globally in the foreseeable future; or
- (ii) continuity in post in the longer term is in Guernsey’s interest.

After 8 years, provided the permit holder’s circumstances remain unchanged, an LTEP holder will be issued with a Permanent Residence Permit.

## MTEPs

Medium Term Employment Permits (“MTEPs”) will be issued for a period of up to 5 years either:

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

## STEPs

Short term employment permits (“STEPs”) will be issued for a period up to a year to deal with man-power shortages. STEPs can be reissued to the same person consecutively, subject to a maximum period of continuous residence of 3 years or a maximum period of aggregate residence of 5 years.

Under the new regime, only the LTEP holder will have the prospective right to gain long term residency rights. The MTEP and STEP holders will acquire no permanent residency rights.

In terms of practicalities, an employment permit must be issued before the permit holder moves to the Island to work or, if the permit holder is already resident in Guernsey and is changing jobs, before the new job starts.

Holders of employment permits will be able to apply to change jobs at any time during the life of their permit provided the new post is identified in the published policies as one which will attract an employment permit. Employment permit holders may hold more than one job.

## Family Connections

Immediate family members (i.e. spouse/partner, parent/parents-in-law, children and grandchildren) of Qualified Residents and employment permit holders will be entitled to live with the Qualified Resident/employment permit holder as members of their household. These family members will be issued with a Temporary Residence Permit. Once they have reached the first milestone (8 years), they will be issued with a Permanent Residence Permit. Once they reach the second milestone (14 years), they will become a Qualified Resident and they will have the right to live independently if they so choose.

## The Open Market

It is proposed that the Open Market will be retained as part of the new population management regime. However, there are proposals in the Billet to consult on:

- (i) reducing the qualification period (from 20 years to 14 years) for those children who came to Guernsey as minors and as a member of their parents’ household;
- (ii) limiting multiple occupation of Part A Open Market properties by unrelated adults;
- (iii) current arrangements which enable unlimited numbers of staff living and working in hotels, guesthouses and some nursing and residential homes to be permitted to reside in Guernsey in Part B, C and D Open Market Properties for unlimited periods of time.

The Policy Council confirms its commitment to retaining the Open Market as part of the new regime and it is noted that the PPG’s proposals will have little or no effect on the majority of Part A properties, in particular those used as family homes.

## Other matters

The PPG is proposing that there should generally be no restriction on where holders of LTEPs and MTEPs may live

(in other words, the current TRP restrictions will not be carried forward to the new regime). However, if the proposals are accepted, there will be provision for the Statutory Official to restrict where holders of LTEPs and MTEPs can live where there is an identified and proven need to protect specific parts of the housing market for those Qualified Residents and existing permit holders who most need them.

Provision will be made for residence to be considered continuous in certain specific circumstances where a person spends time off-island.

Criminal conviction checks will form part of the application process for all those moving to Guernsey who are required to obtain a permit or certificate.

There will be a 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.

*This article is intended to be a summary of the main proposals set out in Billet d'Etat No. 1 of 2012 with a focus on the proposals which affect, or are likely to affect, employers. It is not meant to be a comprehensive analysis of the proposals. Anyone who wishes to have a comprehensive understanding of the proposals is invited to follow the link in the Red Letter to the Billet where the proposals are set out in full.*

*This Red Line is only intended to give a brief summary and general overview of this area of law. It is not intended to be, nor does it constitute, legal advice and should not be relied upon as doing so. If you would like legal advice or more information in relation to the matters covered in this Red Line or generally in relation to an employment issue, please contact our employment team on +44 (0)1481 723723, or by email at [employment@aohall.com](mailto:employment@aohall.com). Members of our employment team, together with their contact details, are listed on our website at [www.aohall.com](http://www.aohall.com).*

© AO Hall 2011

