

THE DEVELOPMENT OF THE OPEN MARKET

A Supplementary Document to

Managing Guernsey's Population

A Consultation Document

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STATES OF GUERNSEY

Population Policy Group

Introduction

While the majority of States debates regarding the Housing Control Law have centred on preserving an adequate stock of Local Market properties, there have been numerous debates regarding the development, size, structure and regulation of the Open Market.

This supplementary document provides an overview of the principal States resolution from those debates which have shaped the Open Market as it exists today.

1948 to 1966

In February 1948, the Housing Authority advised the States that:

“the increasingly grave housing situation ... is such as to justify ... taking of measures of control more far-reaching than those which can be exercised by powers of requisitioning premises.”¹

The States approved the Housing Authority’s proposals for the introduction of legislation, the Housing Control (Emergency Provisions) (Guernsey) Law, 1948, requiring anybody who was not ordinarily resident in Guernsey to apply for a licence before occupying any dwelling house on the Island.

The primary purpose of this piece of legislation was to “protect” the Island’s very limited housing stock in the immediate post-war years.

In 1952, a report from the Housing Authority on the Island’s housing situation gave the first clear reference to what has become known as the Open Market,

“Regarding well-to-do people who wish to settle in the Island, the Housing Authority fully realises the value of such people to the community, and every possible encouragement is given, short of releasing rent controlled dwellings.”²

The report also noted that houses built since 1945 with a rateable value above £75 per annum were of “little value” in solving the housing shortage and that licences were being granted to anybody who wished to purchase such a dwelling.

In April 1957, the States approved an amendment to the 1948 Law to exempt houses with a rateable value above £50 per annum from housing controls. The Housing Authority advised the States that the proposals were based on evidence that, whilst

¹ Billet d’État of 4 February 1948

² Appendix to Billet d’État XXV of 1952

demand for small houses remained high, demand for larger properties was considerably lower,

“... it is no longer necessary to control houses having a rateable value in excess of £50 per annum. The loss of such dwellings would not seriously affect the housing shortage and it is not anticipated that any consequential loss would be great.”³

In 1961, the Housing Authority advised the States that demand for housing for smaller family homes continued to outstrip supply. It was concerned that some property owners were improving their properties to secure a rateable value above the £50 threshold and so become exempt from housing controls, and if this practice continued, there may be a serious deterioration in the housing situation⁴.

In order to curtail this practice, the Housing Authority proposed an amendment to the 1948 Law to only exempt a property where the rateable value had been assessed at over £50 per annum on or before 31 December 1962.

The States approved this amendment.

The Development of Fort George

In December 1958, the States agreed to purchase Fort George from the War Department and established a committee - the Fort George Development Committee - to prepare plans for its development⁵.

In March 1960, the States agreed that a large part of Fort George should be sold for development as a *“high standard residential estate”*⁶.

In March 1961, the Fort George Development Committee recommended the sale of the parts of the Fort designated for development and to allow between 130 and 145 high standard, residential properties to be built. Despite significant opposition from within the States and the general public, the proposals were approved. However in May 1961, the States considered a Requête asking it to rescind its resolution of March 1961 and direct the Fort George Development Committee to prepare revised plans excluding the Fort (Belvedere) Field and the Citadel from the areas designated for development.

The Requête did not seek to revisit the type of development but simply questioned the extent of the areas for development. Some 10,023 people⁷ signed a petition

³ Billet d'État III of 1957

⁴ Billet d'État XVIII of 1961

⁵ Billet d'État XXIV of 1958

⁶ Billet d'État IV of 1961

⁷ This figure represented 21% of the Island's total population (1961 Census)

supporting the Requête. The petition raised concerns about the impact the development would have on the Island as a whole,

- “(c) There is a widespread feeling that it is undesirable to bring so many English families into the Island and lodge them in a small, closed community where they will be cut off from contact with the people of Guernsey.*
- (d) It is ridiculous to suppose that any millionaire will choose to live in close proximity to one another in the 130 dwellings Messrs Rush and Tompkins have been permitted to build.*
- (f) In giving permission to Messrs Rush and Tompkins to erect houses on the coastline the States of Guernsey have discriminated against their own people. It is an injustice to have one law for Guernsey and a different law for English immigrants.*
- (m) The proposal to sell the Fort George property to an English firm was presented to the States on the eve of a General Election and passed by the States with a narrow majority so that the public was presented with a “fait accompli” and no time was allowed for opinion to crystallise on the matter. The plans were only available for public scrutiny for a few days.*
- (n) In view of the serious housing shortage in Guernsey it is a studied insult to the people of Guernsey to invite 130 outside families to take up residence in the Island at this time.”⁸*

The Advisory and Finance Committee sought to allay these concerns,

“The States are very much alive to the fact that in the years ahead heavy annual expenditure will have to be faced for the social services generally... the Members have known full well that these improvements have meant and will continue to mean heavy expenditure which will have to be met year in and year out, in bad times as well as good.

... The Committee deprecates the references which are constantly being made to “millionaires” in regard to Fort George. A person does not have to be a “millionaire” to live in a house worth £10,000 or more... Fully developed, it could make an important contribution to Guernsey’s potential as a residential resort and consequently to that strengthening of her economy which is certain to be needed in the future.”

⁸ Billet d’État IX of 1961

The Requête was heavily defeated⁹. If the Requête had been successful the number of houses to be built would have fallen by over half to just 60 dwellings.

1966 to 1971

In 1966, the Housing Authority reported that the combination of high levels of inflation in the construction industry, rapidly rising house prices and higher housing standards meant the Island's housing situation was worsening. It considered that the £50 rateable value threshold was no longer an accurate reflection of where demand for housing by locally Qualified Residents was being focused.

The Housing Authority proposed increasing the rateable value threshold for exempt properties because,

*"... the present wave of construction of dwellings with a rateable value in excess of £50 per annum is having a serious inflationary effect... The Housing Authority is most reluctant to recommend measures which will have the effect of deterring newcomers from sharing our way of life but is forced to the conclusion that unless the present wave of development for newcomers is reduced to reasonable proportions, the cost of site development and construction will continue to rise to the detriment of housing generally."*¹⁰

The States approved the Housing Authority's proposals and, in September 1966, the rateable value threshold for exempt properties was raised to £85 per annum¹¹.

In 1967, the Housing Authority proposed repealing the 1948 Law and replacing it with a new law maintaining a housing control-based regime but strengthening the provisions for dealing with any breaches and closing a loophole for exempt properties.

In particular, the Housing Authority was concerned about the number of properties being combined to create a single one with a rateable value above the £85 threshold,

*"It is not possible to provide a firm indication of the loss of dwellings/building sites which would result from the removal of this form of control but the Housing Authority believes that it would not be unreasonable to suggest that a minimum of 1100 dwellings/sites would have been so lost to Island residents during the twelve months ending 31 May 1967."*¹²

⁹ 40 votes to 9 votes

¹⁰ Billet d'État XI of 1966

¹¹ Housing Control (Rateable Value) Ordinance, 1966

¹² Billet d'État XI of 1967

The Housing Authority proposed that where:

- Two or more dwellings are combined into a single dwelling the rateable value of the new property will be calculated as an average of the two original properties; i.e. unless the average rateable value is above the threshold the property will not be exempt from housing controls.
- An exempt dwelling is sub-divided, it shall no longer be exempt; i.e. following sub-division the properties would not be available for occupation by non-Islanders unless they held a licence.

The States approved the Housing Authority's proposals and the Housing Control (Guernsey) Law, 1967 was enacted.

In July 1968, the Housing Authority informed the States that it was concerned by an increase in the proportion of new homes being built with a rateable value above £85,

*"... an increase in the number of dwellings constructed for newcomers to the Island with a rateable value in excess of £85 per annum has made unduly heavy demands on the resources of the building industry and allied trades."*¹³

In order to address these concerns, the Housing Authority sought to repeal the 1967 Law and replace it with a new law which retained many of the existing controls but which included the following additional provisions:

- Only persons holding residential qualifications to be exempt from requiring a Housing Licence, i.e. to repeal the exemptions based on a property's rateable value
- To issue Licences to newcomers who will occupy dwellings with a rateable value of over £85 and properties within the Fort George development
- To remove dwellings with a rateable value above £50 but under £85 from the "Open Market"
- To require anybody seeking to carry out building work (construction or alterations) exceeding £10,000 to obtain a licence to do so.

The Housing Authority expressed concerns that it was becoming increasingly difficult for local families to find affordable accommodation. It believed that any significant

¹³ Billet d'État XIII of 1968

emigration amongst young working families would reduce the available workforce and so worsen an already difficult situation,

“The immediate effect of this present wave of inflation in construction, house purchase and site costs is to discourage the young working people required to maintain the Island’s principal industries from remaining in Guernsey while encouraging newcomers to settle here, the majority of whom are retired or approaching retirement age. ... the present situation can not be allowed to continue not only because of the social and economic problems but also because of the harmful long term effect on the community.”¹⁴

However, the Advisory and Finance Committee did not support the proposals. It believed that the Housing Authority’s proposals would be difficult to enforce and questioned whether they would achieve the desired objective – to reduce the rate at which building costs were increasing.

“The States are aware that we depend heavily on the general growth in our economy to help us to meet our constantly rising commitments and that, although the necessity to increase taxation may be inescapable from time to time, any such increase brings nearer the point where further increases might become self-defeating... a proposal which might have the effect of restricting growth in the economy should be accepted only after the most careful consideration.”¹⁵

In particular, the Advisory and Finance Committee was concerned that the proposals may be self-defeating for the following reasons:

- If properties with a rateable value above £50 but under £85 were removed from the list of exempt properties this would have a negative impact on the Island’s economy - *“This sector of the economy will not simply cease to grow but it will to some extent decline.”*
- The analysis was flawed as the Housing Authority had only looked at the Open Market since May 1966 - *“A reasonable date might well be 1 January 1960, the year in which the States reduced the standard rate of income tax to 4/0d [£0.20] and made it clear that they were anxious to create the right fiscal climate to attract capital, not only in financial and commercial enterprises, but also through new residents.”*

¹⁴ Billet d’État XI of 1967

¹⁵ Billet d’État XIII of 1968

The States deferred consideration of the Housing Authority's proposals and appointed a special committee - the States Housing Investigation Committee – to report on the housing problem and its relationship to the wider aspects of the Island's economy¹⁶.

The States Housing Investigation Committee was established under the chairmanship of Deputy H C Henchman¹⁷.

In January 1969, the States Housing Investigation Committee presented its Report to the States¹⁸.

The report noted that the States had “... *deliberately placed dwellings over £50 rateable value outside of control in 1957 and on the 'Open Market'*” and that it “... *had been the policy of the States to create the right fiscal climate for capital to come here and to encourage people to come and live here*”.

The report concluded that insofar as people without residential qualifications who had responded to this “*encouragement*” were concerned, the States “... *could not honourably go back on that decision, at a time when it might be desired to tighten the Housing Control Laws.*”

In its Report, the States Housing Investigation Committee presented the findings from its discussions with Islanders and representative groups and noted that the Chamber of Commerce and many bankers saw the Housing Authority's proposals as a, “*breach of faith with those who had taken up residence at the invitation of the States*”.

It should be noted that, although the States Housing Investigation Committee referred to a “*policy of the States to create the right fiscal climate for capital to come here and to encourage people to come and live here*”, there was no reference to the creation of such a policy in the 1957 States Report¹⁹ - seeking to exempt some properties from housing controls, the 1958 States Report²⁰ from the Advisory and Finance Committee - seeking in principle approval for a policy to reduce the standard rate of income tax and increase other indirect taxes, or the 1959 Budget²¹ which successfully proposed lowering the standard rate from 5/2d to 4/0d.

The 1958 States Report was predicted on concerns that 49% of Guernsey's tax revenue was derived from income tax and this left the Island's finances vulnerable should income tax returns fall. The Advisory and Finance Committee questioned whether this proportion was too high, especially as Guernsey's economy was based on two main industries - tourism and growing. It proposed reducing the standard rate of income tax

¹⁶ Resolutions to Billet d'État XIII of 1968

¹⁷ Conseiller A N Grut and Deputies A F Mackay, S M Robin and R O Symons as the other members

¹⁸ Billet d'État I of 1969

¹⁹ Billet d'État III of 1957

²⁰ Billet d'État XI of 1958

²¹ Billet d'État XII of 1959

and increasing the rates of a number of indirect taxes, including corporation tax, tax on the rateable value of real property, stamp duty, duty on goods and impôts, to maintain Guernsey's overall tax revenue.

The proposals were defeated when proposed in the 1958 Budget but approved a year later in the 1959 Budget²².

Further, there was no direct reference to encouraging immigration of wealthy residents until 1972. In its first 5-year Economic Development Plan for Guernsey, the Advisory and Finance Committee stated that,

"... the wealthy resident attracted by the Island's fiscal advantages, plays a worthwhile role in providing States' revenue by way of his income tax contribution and in giving a continual economic stimulus by way of his expenditure on goods and services. The continuing immigration of rentiers²³ to the Island should be encouraged and it [the Advisory and Finance Committee] is actively exploring ways to facilitate this inflow."²⁴

The States Housing Investigation Committee recognised that the demand for land for housing development was increasing and there was a need to balance these demands against the general well-being of the community and environment,

"It may be as well for the States to decide that they cannot permit any further substantial addition to the number of persons occupying dwellings in the Island without residential qualifications, except for those whose employment is, by reason of their qualifications, skill or experience, essential to the community and except for those who may wish to construct or buy a dwelling on Fort George."

The States Housing Investigation Committee stated,

"... no matter what method the States may adopt to halt further substantial addition to the number of persons without residential qualifications, the 1966 precedent, in regard to the "Open Market" dwellings, should be upheld... Nothing should interfere with the implementation of the spirit and terms of the agreement entered into between the States and the Fort George Development Committee."

The States Housing Investigation Committee made the following recommendations in respect of the Housing Control Law's Open Market provisions:

- To create a register of properties exempt from Housing Controls.

²² In April 1959 the UK had lowered its standard rate of income tax from 42.5% to 38.75%

²³ Defined as a person who derives the principal part of his income from unearned sources including investments and pensions

²⁴ Billet d'État XI of 1972

- To allow the following properties to be inscribed on the Housing Register:
 - built, or to be built, at Fort George
 - built after 19 July 1968 with a rateable value in excess of £85
 - with a rateable value of between £50 and £85, provided it had been built or bought by a person not possessing residential qualifications before 26 January 1966.

- To restrict the right of somebody possessing residential qualifications having sold a property inscribed on the Housing Register to occupy a controlled (Local Market) property if he was occupying the inscribed property on 23 December 1968.

- To allow the Housing Authority, by Ordinance, to inscribe and attach conditions to an inscription on the Housing Register or de-register any property which has been inscribed.

The States Housing Investigation Committee believed that by restricting which newly built houses could be added to the Housing Register to properties within Fort George would mitigate the concerns raised by the Housing Authority in their 1968 Report²⁵. It believed that this limitation would,

“... completely eliminate the demands made by newcomers for the land on which to erect dwellings. To that extent those factors that have had an influence in the rising cost of housing would henceforth cease to do so.”²⁶

The States Housing Investigation Committee concluded,

“We think it may be advisable for the States to decide that for the time being there shall not be any further addition to the number of people without residential qualifications, who are occupying dwellings in the Island, except for those whose skill etc is essential to the community.

...

No such other dwellings would be able to be occupied by a person without the residential qualification except with a licence granted by the Housing Authority.

...

We would expect our proposals would have the effect of largely eliminating competition from that quarter [i.e. new residents without residential qualifications or a Housing Licence] to buy dwellings of a low rateable value not

²⁵ Billet d’État XIII of 1968

²⁶ Billet d’État I of 1969

on the Housing Register... Dwellings in the private sector might become more readily available to those with moderate incomes.”²⁷

The States Housing Investigation Committee’s recommendations were approved without amendment and the Housing Control (Guernsey) Law, 1969 was enacted.

1971 to 1980

In March 1971, a Requête was debated by the States which raised concerns about the provisions of the 1969 Law and its implementation and, in particular, how the Housing Authority was interpreting its discretionary powers, under the Law.

The States accepted the Requête and set up a further special committee – the Housing Control Law Investigation Committee²⁸ – to consider:

- The effectiveness and operation of the 1969 Law
- Whether the provisions for somebody to attain residential qualifications were too restrictive
- Whether the Housing Register was working effectively.

In February 1973, the States considered the Housing Control Law Investigation Committee’s Report and the Housing Authority’s response to it²⁹.

The Housing Control Law Investigation Committee’s Report noted that, when the Housing Register had been established, it was anticipated that most owners of properties eligible for inscription would have placed them on the Housing Register soon after the Law came into force. However, by November 1972, only 950 of the estimated 2,200 properties eligible for inscription had been inscribed. This number rose to 1,011 by the time of the States debate in February 1973.

The States approved the Housing Control Law Investigation Committee’s recommendations which included adopting a more robust approach to enforcing the 1969 Law, altering the qualifying periods and requiring the Housing Authority to give reasons whenever it refused to grant a request for a Housing Licence.

In addition, the States approved a number of recommendations relating to the Open Market. It agreed to allow a property inscribed on the Housing Register to remain

²⁷ Billet d’État I of 1969

²⁸ Deputy W G Wheadon was appointed to chair the committee and Deputies E Ferbrache and R J Falla and Jurat R A Kinnersley and Mr R T Short were appointed as the other members

²⁹ Billet d’État I of 1973

inscribed after it had been subdivided provided that in doing so one or more new units of accommodation were made available for persons holding residential qualifications or a Housing Licence. It also allowed for Qualified Residents who had “lost” their right to occupy a controlled (Local Market) property without a Housing Licence to do so provided they deregistered an inscribed property.

Finally, the States approved a number of more technical amendments to the 1969 Law to allow the Housing Authority to amend or correct errors on the Housing Register.

The recommendations of the Housing Authority and Housing Control Law Investigation Committee were approved but they did not take effect until the Housing Control (Guernsey) Law, 1975 was enacted³⁰.

In March 1975, the Housing Authority asked the States to rescind one of its 1973 resolutions, namely to allow certain previously subdivided properties to be inscribed on the Housing Register. It was concerned that by allowing such re-inscription the provision could result in the size of the Open Market increasing by over 100 properties.

The States approved this request and the 1975 Law was approved.

During 1973 there were a series of States debates focusing on ways of limiting property speculation. These debates stemmed from one of the 36 recommendations which were proposed in the earlier reports of the Housing Authority and the Housing Control Law Investigation Committee, namely:

“The Advisory and Finance Committee shall examine the problem of speculation in property and report to the States as a matter of urgency with recommendations including recommendations, where appropriate, that such measures as may be proposed shall, if approved by the States, have retrospective effect to the date of the publication of the Billet d’État containing the report of the States Housing Authority.”³¹

In July 1973, the States accepted a Requête which supported the introduction of controls on the ownership of Local Market properties³².

In October 1973, the Advisory and Finance Committee presented a wide-ranging report focusing on all aspects of property ownership and speculation in Guernsey.

Both the Requête and the Advisory and Finance Committee’s report reflected a period of rapid house price inflation. In the previous five years, the average price of properties had risen by 170% in the Open Market (i.e. those dwelling exempt from housing

³⁰ Billet d’État VI of 1975

³¹ Billet d’État II of 1973

³² Billet d’État XII of 1973

controls) and by 90% in the Local Market (i.e. those dwelling subject to housing controls).

The Advisory and Finance Committee's report set out recommendations which went significantly further than those of the earlier Requête. Its additional proposals included measures to restrict property ownership in both the Local and Open Markets in an attempt to curtail property speculation and so slow house and land price inflation.

The Advisory and Finance Committee recommended two routes to control this type of speculation – first, by controlling the ownership of property and second, through taxing any profits from the sale of dwellings.

The Advisory and Finance Committee's recommendations in regards the ownership of property were to prevent anybody without residential qualifications or a company from owning or leasing a property unless they had been granted a licence to do so by the Housing Authority. Further, it proposed that nobody should be able to own or lease more than one Open Market property at any one time.

The States approved the Advisory and Finance Committee's proposition but legislation to this effect was never brought into force.

The taxation-based recommendations proposed a 100% tax on all the profits from the sale of owner-occupied houses where owned for less than one year and other properties where owned for less than five years.

The States approved the recommendations and the Dwelling Profits Tax (Guernsey) Law, 1975 came into force³³.

In September 1974, the States considered the Advisory and Finance Committee's proposals for a 10 year Economic Development Policy³⁴.

This report looked closely at the relationship between the Island's population and economic growth rates. It noted that controlling population was difficult as the Housing Control regime only controlled certain groups of residents, i.e. those people without residential qualification living in a controlled dwelling (Local Market dwelling).

In particular, the report noted that whilst migrants could move freely into Open Market properties "*... the limited number of such properties prevents any significant expansion of the population from this source*".

³³ The operation of the provisions of this Law were suspended in March 2009 by the Dwellings Profits Tax (Suspension of Law) (Guernsey) Ordinance, 2009

³⁴ Billet d'État XIV of 1974

Since publication of the 1972 Economic Development Plan³⁵, demand for Open Market properties had remained buoyant and the report concluded that there was,

“... no reason to change its opinion that the rentier³⁶ population makes a valuable contribution to the economy ... the Island should not fear for further increases in population from this source in view of the limited number of houses available ... the increased rentier wealth and tax contributions obviates the need at this moment to ensure their value by imposing other financial restrictions on entry.”³⁷

This conclusion came in the same year that Jersey amended its Housing Regulations for wealthy migrants to restrict the number of 1(1)(k) licences to 15 per year, and to raise the minimum annual tax contribution requirement from £4,000 to £10,000 per annum³⁸.

1980 to 1990

In January 1980, the Housing Authority presented proposals for revisions to the 1975 Law³⁹. It recommended retaining the Housing Control regime subject to a number of amendments which included the following changes to the provisions relating to the Open Market.

Closing the Housing Register

When the Housing Register was established in 1969 it was envisaged that all eligible property would be inscribed within a relatively short period. This had not happened. Over 10 years later, the Housing Authority was finding it increasingly difficult to determine the status of the property (e.g. its rateable value when built, the residential status of the owner prior to 26 January 1966, etc) at the point it first became an exempt dwelling. For this reason the Housing Authority proposed that the Housing Register should be closed with effect from the date of the commencement of the new Housing Control Law, i.e. 1 November 1982⁴⁰.

In addition, the Housing Authority had granted a number of concessions to developers and individuals who were building houses or had had plans approved⁴¹. Here again, a

³⁵ Billet d'État XI of 1972

³⁶ Defined as a person who derives the principal part of his income from unearned sources including investments and pensions

³⁷ Billet d'État XIV of 1974

³⁸ Powell, C [2010] *History of the 1(1)(k) Policy* (States of Jersey)

³⁹ Billet d'État II of 1980

⁴⁰ Housing (Control of Occupation) (Commencement) Ordinance, 1982

⁴¹ A concession was an agreement by the Housing Authority for certain newly-built properties to be eligible for inscription on the Housing Register if the rateable value was assessed as being above the £85 threshold.

number of these concessions remained outstanding⁴² and the Housing Authority proposed that a similar cut-off date should apply to the inscription of these properties.

The States approved these proposals.

Amendments to the Housing Register

The Housing Authority also advised the States that a number of hoteliers had experienced difficulties in providing en-suite guest accommodation or self-contained staff accommodation because of the way the 1975 Law was drafted,

“... while the inscription of a dwelling used as a hotel enables it to be occupied and operated by persons without residential qualification without a licence, the natural development of the industry is being hampered by the provisions of the 1975 Law which render a dwelling ineligible for inscription if it is used as more than one dwelling. The result is that the owners of such hotels are not able to convert existing parts of the hotel into self-contained managers quarters, staff quarters, tourist units or en-suite units without destroying the eligibility of the hotel to remain inscribed on the Housing Register.”⁴³

The Housing Authority recommended creating a new section within the Housing Register specifically for hotels and guesthouses. It sought to overcome the difficulties highlighted above by allowing hoteliers to provide en-suite guest accommodation and separate self-contained staff accommodation.

However, the Housing Authority also sought to restrict who could be accommodated in a hotel or guesthouse, so as to prevent any abuse of this concession. It proposed that only the following groups of people could live in an hotel or guesthouse inscribed on the Housing Register without the need for residential qualifications or a Housing Licence to:

- Qualified Residents
- The owner or, if the property is let, the principal tenant
- The immediate family of either the owner or principal tenant⁴⁴
- Full time staff of the hotel or guesthouse, provided they are not employed elsewhere
- Bona fide tourists (for up to 90 days in any period of 12 consecutive months).

⁴² 109 developer concessions and 70 individual concessions

⁴³ Billet d'État II of 1980

⁴⁴ The exemption for the manager, where he is solely working in the hotel or guesthouse, and his immediate family was not added until 2001 (see below for further details)

The States approved the dividing the Housing Register into two sections and agreed that private dwellings should be inscribed on Part A of the Register and hotels and guesthouses on Part B.

Children of Open Market residents

Under the 1975 Law, unless born in Guernsey, the child of an Open Market resident could never become a Qualified Resident, regardless of how long they may have lived in the Island.

The Housing Authority recognised that many Open Market children had moved to Guernsey as part of their parents' household and proposed that,

*"... the children [of Open Market residents] should be exempt from the need of a licence after at least 20 consecutive years provided that throughout that period such a person has occupied accommodation as the child of the occupier of an Open Market dwelling where that child was brought to the Island as a minor to live with his parents as a member of their household."*⁴⁵

The States approved the Housing Authority's proposals to allow the child of the occupier of an Open Market dwelling to become a Qualified Resident where that child came to the Island as a minor and had lived in Guernsey, as a member of his parent's household, for 20 consecutive years.

Long-term Open Market residents

The Housing Authority also considered the position of those who had come to Guernsey to work in the hospitality industry or as employees for Open Market residents and had lived as tenants in Open Market accommodation owned by the employers for many years. It noted that,

"At present when such persons have to vacate their present dwellings or come to retirement age they have to look for other Open Market accommodation in order to stay in Guernsey, but if they cannot afford such accommodation they may well be faced with having to leave the Island."

The Housing Authority advised the States that, after careful consideration, it had decided not to recommend any special provision for this group as to do so would have required "*excessively complex legislative provisions to avoid abuse*". However, it undertook to deal with such cases sympathetically and exercise its discretion compassionately, especially where the person had lived in Guernsey for 20 years or more.

⁴⁵ Billet d'État II of 1980

The Housing Authority's report also reaffirmed the principle that Open Market residents should be prevented from occupying Local Market properties,

"... any person without residential qualifications who has resided in an Open Market dwelling shall be barred from occupying a controlled dwelling, in any circumstances whatsoever, except under a licence."

The Housing Authority's proposals were approved and the Housing (Control of Occupation) (Guernsey) Law, 1982 was enacted.

In September 1984, the States approved proposals to amend the 1982 Law by further sub-dividing the Housing Register and created two further sections – Parts C and D:

Part C

The Housing Authority advised the States that concerns had been raised about the number of hotels on Part B of the Housing Register applying for planning permission to become residential and nursing homes. In these circumstances, if the Open Market inscription remained in place without any additional controls,

"... persons who at present have no connection whatsoever with Guernsey may be induced to retire to this Island to live in a home for elderly persons."

The Housing Authority recommended that non-Qualified Residents wanting to live in these homes should have to have a Housing Licence. It also set out its policy when considering such licence applications,

"...if satisfied that the person was of such age or state of health that it would be reasonable for that person to be accommodated in a residential or nursing home and had prior to the proposed date of occupation been ordinarily resident in the Island for at least ten years."⁴⁶

The Housing Authority proposed restricting who could live in a Part C property to,

- Qualified Residents
- The owner or, if the property is let, the principal tenant
- The immediate family of either the owner or principal tenant⁴⁷.

⁴⁶ Billet d'État XII of 1984

⁴⁷ The exemption for the manager, where he is solely working in the residential or nursing home, and his immediate family, and for staff solely working in the nursing or residential home was not added until 2001 (see below for further details)

The States approved the creation of a third section to the Housing Register - Part C - for Open Market properties, including former hotels on Part B of the Housing Register, which were converted into nursing and residential homes, subject to the proposed restrictions on who could occupy such properties without the need for a Housing Licence.

Part D

The Housing Authority advised the States of its concerns that some Part A properties were being used as lodging houses rather than private dwellings. It sought to balance the need to ensure that the exemption from housing controls for properties on Part A of the Housing Register was not abused with the general policy to allow Open Market owners a freedom to accommodate whoever they wished,

“The mere fact that a dwelling is in multiple occupation does not mean that it is being used as two or more dwellings... The Housing Authority does not wish to place any restrictions on registered dwellings which are used by the occupier as a private dwelling but considers it is necessary to place some control on registered dwellings being used for long-stay residents on a board and lodging or similar basis whether or not the person only had the use of a room (or rooms) or had meals and/or services provided in addition to the use of that accommodation.”⁴⁸

The Housing Authority proposed establishing a fourth section under the Housing Register specifically for private dwellings which were being used as lodging houses.

Here again, it sought to restrict who could live in such properties, namely to the owner and his immediate family or, if the property is let, the principal tenant and his immediate family. Anybody else wanting to live in such a lodging house would have to hold a Housing Licence or be residentially qualified.

The States approved the creation of a fourth section to the Housing Register - Part D - for Open Market properties which were being used as lodging houses rather than private homes or hotels, subject to the proposed restrictions on who could occupy such properties without the need for a Housing Licence.

The 1982 Law was amended to reflect these changes to the Housing Register⁴⁹.

1990 to Present

In September 1990, ahead of the expiry of the 1982 Law, the Housing Authority presented a report to the States recommending that the Housing Control regime

⁴⁸ Billet d'État XII of 1984, page 463, para 10

⁴⁹ The Housing (Control of Occupation) (Amendment) (Guernsey) Law, 1988

should be retained largely in its present form and sought approval of the States to review all qualifying periods.

The States agreed to these proposals and directed the Housing Authority to include in its review:

“... an examination of the desirability of controlling the occupation of dwellings inscribed on the Housing Register and a detailed examination of what form such controls should take and how they could be implemented, such an examination to include whether or not unrestricted occupation of dwellings inscribed in the Housing Register should be limited to the principal householder and members of his household.”⁵⁰

In October 1992, the Housing Authority presented its detailed proposals to the States. It recommended that, subject to certain amendments, the Housing Control regime should be retained. It recommended that the Open Market should also be retained but, in response to the States resolution of September 1990, it proposed limiting who an Open Market resident should be able to accommodate in his household⁵¹.

The Housing Authority recommended that the current unrestricted approach should be changed and recommended limiting, by relationship to the householder, who could live as part of his household.

The Housing Authority reminded the States that, under the provisions in the 1982 Law, the occupier of a Local Market property could only accommodate his spouse, father, mother, father-in-law, mother-in-law, child or grandchild without needing to seek the permission of the Housing Authority.

The Housing Authority proposed that similar restrictions to those introduced for the Local Market, should also apply to Part A of the Open Market⁵² because,

“The lack of controls on these [Part A] private dwellings means that an Open Market householder can accommodate persons unconnected with his family. Unless the property is being used as more than one dwelling, the only safeguard is that where appropriate the Housing Authority could deem the dwelling to be a lodging house and move it to Part D so that everybody other than the householder and his family would require licences.

While this proposal will enable the Housing Authority to control any misuse of the Open Market sector, it will have no effect on the majority of Open Market dwellings, where the householder will continue to accommodate his family and

⁵⁰ Billet d'État XVI, 1990

⁵¹ Billet d'État XVIII of 1992

⁵² Housing Control Law Investigation Committee's

*any domestic staff without hindrance. Consequently, these measures should not diminish the attraction of the Open Market to rentiers, whose contribution to the Island is well appreciated.”*⁵³

In its letter of comment on the Housing Authority’s proposals, the Advisory and Finance Committee stated:

“... this policy is in line with the current strategic objectives confirmed by the States that the growth in population should be limited to as low a level as possible.”

This proposal became the subject of considerable debate, both within the States and across the wider community, and it was rejected. In other words, the status quo was retained and no restrictions were placed on who the occupier of a property on Part A of the Housing Register could accommodate within his household.

The Housing Authority’s other recommendations were approved and the Housing (Control of Occupation) (Guernsey) Law, 1994 was enacted.

The 1994 Law also re-enacted the previous provisions for the Housing Register, the division of dwellings, the transfer of properties between the various Parts of the Housing Register, and adding new properties to the Housing Register.

In its 1993 Policy, Planning Economic and Financial Report⁵⁴, the Advisory and Finance Committee identified the development of the Open Market as a “*possible long-term consideration*” and established a staff-level working group - the Open Market Working Party - to investigate options for such development.

In the 1994 Policy, Planning Economic and Financial Report⁵⁵, the Advisory and Finance Committee stated that, “*efforts need to be concentrated on seeking means of attracting additional wealthy persons to take up residence*” but it ruled out increasing the size of the Open Market preferring to consider amendments to the income tax regulations as a way of attracting wealthy people to reside in the Island.

In the 1995 Policy, Planning Economic and Financial Report⁵⁶, the Advisory and Finance Committee advised the States that it believed that using income tax regulations as a way of attracting wealthy people to reside in the Island may be seen as divisive. It was therefore not proposing any changes to either the Island’s tax or Housing Control regimes to attract additional wealthy residents.

⁵³ Billet d’État XVIII of 1992

⁵⁴ Billet d’État XI of 1993

⁵⁵ Billet d’État XII of 1994

⁵⁶ Billet d’État XV of 1995

In March 2001⁵⁷, the Housing Authority presented the most recent review of the Open Market. This report was primarily prepared in response to an earlier direction from the States for the Housing Authority to prepare a policy for how Open Market inscriptions may be included as part of prestigious new developments⁵⁸.

The report began by considering the size of the Open Market. It noted that under the current provisions regarding Open Market registrations the size of the Open Market would diminish gradually overtime as owners, for whatever reason, chose to de-register their property.

The Housing Authority considered whether the Open Market should be expanded but concluded that there were no housing-related grounds for doing so but added that any expansion of the Open Market would have to be justified on some other strategic grounds and so would fall outside the Housing Authority's mandate and the purpose of the Housing Control regime.

The Housing Authority also considered whether the size of the Open Market should be contracted and noted that, although such a move would increase the number of Local Market houses, it did not believe it was possible to legislate to remove Open Market designation from existing registered properties.

The Housing Authority proposed the following policy in respect of how Open Market inscriptions may be included as part of prestigious new developments:

- The policy would only apply to Mixed Use Redevelopment Areas (MURA) where the number of new dwellings is likely to be in excess of 100; and/or other developments where there were other Strategic issues; i.e. the policy would not apply to small one-off sites or single dwellings
- For each dwelling to be inscribed, one existing dwelling must be deleted from Part A of the Housing Register
- The dwelling to be deleted must be unoccupied or occupied by a Qualified Resident⁵⁹
- The number of dwellings which can be inscribed on a one to one exchange basis be limited to one third of the total number of dwellings in the development or a maximum of 8 dwellings whichever is the lesser.

⁵⁷ Billet d'État III of 2001

⁵⁸ In July 2000 the States had agreed to the transfer of no more than eight inscriptions to the former Savoy Hotel site but had directed the Housing Authority to prepare a policy statement for dealing with future applications.

⁵⁹ The Housing Authority did not believe that just because a dwelling is the subject of an application for the deletion under this policy this should justify the grant of a housing licence to an occupier or former occupier.

The States approved the Housing Authority's proposals for the MURA policy and noted its comments regarding the future size of the Open Market.

The States also approved a number of recommendations in respect of the Housing Register. Most of the recommendations were technical in nature and related to the day-to-day administration of the Housing Register, but the following either changed or clarified existing provisions about the structure or regulation of the Open Market:

- To prevent hotels added to Part B of the Housing Register between 1982 and 1994 from becoming Part A properties when they ceased to be used as hotels⁶⁰.
- To allow such Part B properties to become Part C nursing or residential homes, subject to planning approval, and so retain the limited exemptions from housing controls for the owner and certain staff.
- To allow purpose built staff accommodation within the curtilage of a hotel inscribed on Part B of the Housing Register to form part of the inscription and so allow the hotel to accommodate its staff within that accommodation without the need for a Housing Licence.
- To include the manager of a Part B hotel or Part C nursing or residential home, and members of his immediate family, on the list of those who could be lawfully accommodated without the need for a Housing Licence so long as the manager was employed full-time in that hotel or home and did not work anywhere else.

This document is available to download from the States of Guernsey website at www.gov.gg/population.

⁶⁰ Following the creation of Part B for hotels and guesthouses, the States had agreed to allow certain Crown-graded hotels to be inscribed on Part B of the Housing Register despite them not having originally been inscribed on the Housing Register (see Billet d'État III of 1998).