



# BILLET D'ÉTAT

WEDNESDAY, 28th JULY, 2004

XII  
2004

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# ***BILLET D'ÉTAT***

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## **TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY**

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I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE, on WEDNESDAY, the 28th JULY, 2004,** at 9.30 a.m.

## **PROJET DE LOI**

entitled

### **THE INCOME TAX (GUERNSEY TAX TRIBUNAL) (AMENDMENT) LAW, 2004**

The States are asked to decide:-

I.- Whether they are of the opinion to approve the Projet de Loi entitled “The Income Tax (Guernsey Tax Tribunal) (Amendment) Law, 2004”, and to authorise the Bailiff to present a most humble Petition to Her Majesty in Council praying for Her Royal Sanction thereto.

## **SOCIAL SECURITY DEPARTMENT**

### **ST PETER PORT PAROCHIAL OUTDOOR ASSISTANCE BOARD**

#### **NEW MEMBER**

The States are asked:-

II.- To elect a Member of the St Peter Port Parochial Outdoor Assistance Board to complete the unexpired portion of the term of Mr S Wood who has ceased to be a Douzenier, namely, to the 31<sup>st</sup> May, 2007.

*(NB Only a sitting member of the States or a Jurat, Rector or Douzenier resident in St Peter Port is eligible for election)*

## POLICY COUNCIL

### OVERSEAS AID COMMISSION – ELECTION OF MEMBERS

At the meeting on 11 March 2004 the States agreed to establish an Overseas Aid Commission, to operate under the new machinery of government, comprising

- a Chairman who shall be a member of the Policy Council - appointed by the Policy Council
- six ordinary members who need not be sitting members of the States - elected by the States on the recommendation of the Policy Council

(all serving for a period of four years).

At its meeting held on 24 May 2004 the Policy Council appointed Deputy P J Roffey as Chairman of the Overseas Aid Commission.

The Policy Council subsequently considered its recommendations to the States for the ordinary members of the Commission.

The Policy Council concluded that it would not propose any sitting members of the States as ordinary members of the Commission simply on the basis that this would enable the Commission to operate at arms length from the States.

The Policy Council considered that there would be considerable benefit, in terms of continuity, if the two non-States members of the former Overseas Aid Committee at its dissolution – Mr M J Dene MBE and Mrs J L Day – were to serve on the Commission. Mr Dene served on the Overseas Aid Committee as a States Member from 1994 to 2000 and as a non-States Member from 2001 and Mrs Day served as a non-States Member from 1993.

The Policy Council also considered that there would be considerable benefit if individuals, who were involved in development charities, were to serve on the Commission, as they would be knowledgeable and motivated in this area of work, and that by recommending that each of the four remaining members are so involved any suggestion that a particular agency was being favoured would be avoided. The Council has accordingly agreed to recommend the following individuals to the States

Glyn Allen has lived in Guernsey (his wife's parental home) since 1992 and has been semi-retired since 2000. He is a self-employed research and development consultant to the pharmaceutical industry. Glyn has been an ActionAid supporter for 25 years and has been Chairman of the Guernsey Support Group since 1997. Since 1999 Glyn has also been Secretary of Hope for Guernsey (a sub-group of the Wessex Medical Trust, which supports clinical research at Southampton's Hospitals and the University Medical School).



Paul Chambers is the current Chairman of the Christian Aid Committee in Guernsey, and has been involved in the work of this committee for a number of years now. Two years ago he spent some time in Ghana, West Africa with Christian Aid visiting Partners and projects so as to see first hand how the money sent had been working for the projects being supported. This experience has been of great value in so much as Paul now has a clear understanding as to how aid can be most effectively used in the developing world. Paul lectures widely on issues such as fair-trade and drop the debt and is currently Centre Manager at Les Cotils Christian Retreat and Conference Centre.

Ian MacRae is a retired civil servant, who from 1989 to 1994 served as secretary of the Overseas Aid Committee. He is currently a Senior Partner with Ozanne, MacRae & Associates, a small Public Relations Company. Ian is a Director/Trustee of the London based agency International Childcare Trust and, in this role, has travelled to India and Sri Lanka on a number of occasions. Ian was a non-States Member of the former Heritage Committee at its dissolution.

Jenny Tasker is the local Branch Chairman of the Save the Children Fund and is also actively involved in Childline, Earthwatch, the Ghurka Welfare Association and Soroptomists International. Jenny is a retired head teacher and is currently Junior Constable of St Peter Port and a Member of the Public Accounts Committee. Jenny was a non-States Member of the former Island Development Committee at its dissolution.

### **Recommendation**

The Policy Council recommends the States to elect Mike Dene MBE, José Day, Glyn Allen, Paul Chambers, Ian MacRae and Jenny Tasker as ordinary members of the Overseas Aid Commission.

L C Morgan  
Chief Minister

15 June 2004

The States are asked to decide:-

III.- Whether, after consideration of the Report dated June 2004, of the Policy Council:-

To elect Mike Dene MBE, José Day, Glyn Allen, Paul Chambers, Ian MacRae and Jenny Tasker as ordinary members of the Overseas Aid Commission

## POLICY COUNCIL

### THE COURT OF CHIEF PLEAS

Her Majesty's Procureur has written to the Policy Council in the following terms:

*“The Court of Chief Pleas is an ancient institution, whose origins can be traced back to the earliest times during which the English Crown sought to assert its authority throughout the Bailiwick by the establishment of royal, as opposed to feudal, courts. The Court nowadays ordinarily sits three times a year; on the first Mondays after Michaelmas (September 29<sup>th</sup>); January 15<sup>th</sup>, and Easter. It may also sit extraordinarily for ceremonial occasions, such as when the Sovereign visits Guernsey. Attendance at the Court of Chief Pleas is not confined to the Bailiff and Jurats; by custom, the Law Officers and members of the Bar are required to attend, as are the Constables. Relevantly the Seigneurs or Dames of certain Fiefs also appear, to do homage to the Crown, represented by the Bailiff.*

*In recent years, both before, but specially after the Occupation, as the result of the post war reforms in Guernsey's constitution, the Court has come to lose many of its functions. It no longer has any legislative function. Furthermore, and by way of example, the Court of Chief Pleas at Michaelmas by then had lost its important function of assessing the money value of corn rentes (“l’affeurement des rentes”) in 1927, when these became fixed by statute. In truth, apart from certain functions either specified by law, or carried out by tradition (see below), the Court is now primarily ceremonial.*

*As regards its sittings, of more practical consequence is the great increase in advocates, which makes their attendance almost impracticable, except by sitting in the public gallery with the Constables, and in the dock! For that reason, the Bar and the Constables have, for some years, been excused attendance at the January and Easter sittings.*

*There is certain business that is required to be, or is otherwise routinely, transacted at the sittings of the Court as follows:*

#### ***Michaelmas Chief Pleas***

- (a) *to receive the reports of the Constables on the adequacy of the fencing of the quarries in their respective Parishes, pursuant to the Ordonnance ayant rapport à l’Inspection des Carrières, 1932;*
- (b) *to renew ‘salle publique’ licences, pursuant to the Loi ayant rapport aux Licences pour les Salles Publiques, 1914;*

- (c) *to receive the annual report of the Inspector of Explosives in accordance with the Loi relative aux Explosifs, 1905, as amended. (This could, under the legislation, be dealt with by the Royal Court sitting as a Full Court, but is routinely dealt with at this Court of Chief Pleas.)*

### ***January Chief Pleas***

- (a) *to receive the annual report of the Public Services Department [as successor to the Public Thoroughfares Committee, itself successor to the Central Streams Committee] on controlled streams, pursuant to the Loi relative aux Douits 1936, as amended;*
- (b) *to renew the aerodrome licences in respect of Guernsey and Alderney Airports, pursuant to the Air Navigation Orders 1980, as amended and extended to the Bailiwick (Whilst these licences are routinely renewed at January Chief Pleas, they might also be dealt with by the Royal Court sitting as a Full Court).*

### ***Easter Chief Pleas***

*There is no formal business for this sitting.*

*Of the three sittings of Chief Pleas, that at Michaelmas is the most attended with formality, in that it is the only sitting which continues to require the attendance of the Bar, en corps, and the Constables. The Lieutenant Governor also attends occasionally. It is followed by a service to mark the beginning of the legal year held at the Town Church. There is also an annual dinner, hosted by H.M. Receiver General on behalf of the Crown, for certain attendees, which has been held for as long as the Court has assembled. However, the Seigneurs and Dames do attend all three sittings, and an Order in Council would be required to dispense with their attendance, and to relieve both the Court and the Seigneurs and Dames of their respective rights and obligations in this regard.*

*The Bailiff, after consultation with the Jurats, has recommended that the January and Easter Courts of Chief Pleas should cease to be held, though without removing the ability, should occasion require, of their being convened. The business that would otherwise be dealt with at the January Chief Pleas would be transferred to the nearest convenient sitting of the Royal Court. Of the items mentioned above, only the report of the Public Services Department under the Loi relative aux Douits formally refers to the report being considered at the Court of Chief Pleas in January, and so legislation would be required to give effect to this proposal if the States were minded to accede. It is to be stressed that the Court is not being abolished, and in any event it will continue to sit as hitherto at Michaelmas. All that is proposed is that the customary requirement to hold the Court in*

*January and at Easter, and to require the Seigneurs and Dames to there do homage, is being removed.*

*Whilst the Royal Court is reluctant to dispense with those traditional features of the calendar, in circumstances in which (a) such business as is conducted at the January Chief Pleas could conveniently be conducted at another sitting of the Royal Court sitting as a Full Court, and (b) there is no business for the Easter Chief Pleas, it is believed that no advantage is to be gained by their formal retention.*

*Accordingly I propose that legislation be enacted by which, without affecting the holding in future of any ordinary or extraordinary sitting of the Court of Chief Pleas, and to the intent that the Michaelmas Court of Chief Pleas should continue to sit as hitherto, the January and Easter Courts of Chief Pleas need not be held, and that the Seigneurs and Dames should be excused their requirement to there do homage.”.*

The Policy Council concurs with the view expressed by H. M. Procureur and recommends the States to direct that legislation be enacted on the lines set out in this report.

L.C. Morgan  
Chief Minister

15 June 2004

The States are asked to decide:-

IV.- Whether, after consideration of the Report dated June 2004, of the Policy Council, they are of the opinion:-

1. That, without affecting the holding in future of any ordinary or extraordinary sitting of the Court of Chief Pleas, and to the intent that the Michaelmas Court of Chief Pleas shall sit as hitherto, the January and Easter Courts of Chief Pleas need not be held, and that the Seigneurs and Dames shall be excused their requirement to there do homage.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

## **POLICY COUNCIL**

### **POLICY & RESOURCE PLANNING ARRANGEMENTS FOR 2004 AND THE PRESENTATION OF THE SUSTAINABLE GUERNSEY MONITORING REPORT 2004**

#### **1. Introduction**

Each year for more than a decade the States have convened for a special meeting in the middle of July to consider the annual Policy & Resource Planning Report. In recent years, this has involved the presentation of the Policy & Resource Plan and, as a supplement, the Sustainable Guernsey Monitoring Report. 2004, however, is a transitional year as the States move from the long-standing committee system to the new, larger States Departments and this has required a break with the established timetable.

This report explains the arrangements being put in place to manage the transition process.

#### **2. A New Timetable**

During 2003, the former Advisory and Finance Committee recognised that the timing of the States elections in May would make it impossible for the incoming Policy Council to take ownership of a Policy & Resource Plan to which it could have had no meaningful input. To meet a July publication date the Plan would have to have reached final proof stage before the Policy Council could even meet to ratify it and the process would, therefore, have amounted to the virtual rubber-stamping of a finished document.

The Committee considered how best to overcome this difficulty and concluded that it would be possible to reorganise the policy planning timetable in a way that would actually derive benefit from the process of transition. It was agreed that the Policy & Resource Plan (for 2005) should be presented to the December 2004 States meeting enabling it to be considered in association with the annual Budget Report. In this way the relationship between these two important documents would be strengthened.

The Advisory and Finance Committee also decided that the Sustainable Guernsey Monitoring Report could be detached from the Policy & Resource Plan and presented to the States at the end of the July meeting alongside an interim financial report by the Treasury & Resources Minister and an update on the Corporate Housing Programme by the Housing Minister.

#### **3. The Sustainable Guernsey Report 2004 – Monitoring Economic, Social & Environmental Trends**

A copy of the Sustainable Guernsey Monitoring Report 2004 is appended to this Report for consideration under the terms of Rule (12) 4 of the States Rules of Procedure. As such, it is being offered for debate without amendment on the basis that the Policy

Council undertakes to take into consideration any substantial matters raised by Members during the debate in the subsequent preparation of the Policy & Resource Plan.

Detaching the Sustainable Guernsey Report for consideration well in advance of the December Policy Planning and Budget debate is intended to provide Members with the opportunity to raise any concerns they have about the trends that have been identified across the spectrum of Strategic and Headline Indicators, or about the monitoring process itself.

These concerns will then be considered by the Policy Council and responses provided through the Policy & Resource Plan where any consequential proposed changes to the monitoring process or to current policies can be presented for States' approval. This will enhance the value of the monitoring process by bringing the issues it raises firmly into the political arena.

#### **4. Summary and Recommendations**

This report explains the arrangements for the consideration of the appended Sustainable Guernsey Monitoring Report 2004. It is one of a suite of reports dealing with policy and resource planning matters that also includes a Financial Report (Treasury & Resources Department) and an update on the Corporate Housing Programme (Housing Department).

#### **It is recommended that the States direct the Policy Council:**

To report back to the States in December 2004, as part of the 2005 Policy & Resource Plan, on any substantial matters raised by States Members during the debate on the Sustainable Guernsey Monitoring Report 2004.

L C Morgan  
Chief Minister

7 June 2004

**(NB The Sustainable Guernsey Monitoring Report 2004, which is appended to this Report, is published separately)**

The States are asked to decide:-

V.- Whether, after consideration of the Report dated 7<sup>th</sup> June, 2004, of the Policy Council, they are of the opinion:-

To direct the Policy Council to report back to the States in December 2004, as part of the 2005 Policy & Resource Plan, on any substantial matters raised by States Members during the debate on the Sustainable Guernsey Monitoring Report 2004.

## **TREASURY AND RESOURCES DEPARTMENT**

### **INTERIM FINANCIAL REPORT**

The Chief Minister  
Policy Council  
Sir Charles Frossard House  
La Charroterie  
St Peter Port

8 June 2004

Dear Sir

I enclose a copy of the above Report which I should be grateful if you would lay before the States with the appropriate propositions.

Yours faithfully

L S Trott  
Minister  
Treasury and Resources Department

**(NB The Interim Financial Report, which is appended to this Report, is published separately)**

**(NB The Policy Council has no comment on the Report)**

The States are asked to decide:-

VI.- Whether, after consideration of the Report dated 8<sup>th</sup> June, 2004, of the Treasury and Resources Department, they are of the opinion:-

To note that Report



## **HOUSING DEPARTMENT**

### **CORPORATE HOUSING PROGRAMME - PROGRESS AGAINST THE 2003/2004 ACTION PLANS AND DEVELOPMENT OF THE 2004/2005 ACTION PLANS**

The Chief Minister  
Policy Council  
Sir Charles Frossard House  
La Charroterie  
St Peter Port

24<sup>th</sup> May 2004

Dear Sir

#### **EXECUTIVE SUMMARY**

This policy letter gives an update on the progress made against the objectives of the Corporate Housing Programme (CHP). Detailed Action Plans for the balance of 2004 and an indication of the scope of work for 2005 are also included.

Obtaining full ownership, accountability and responsibility for the 2004/2005 Action Plans and their associated implementation plans – which will be a commitment spanning some 18 months - is a critical factor in the ongoing success of the programme. Accordingly, given the importance of securing commitment to the programme so early in the life of the new machinery of government, the policy letter is submitted for debate under Rule 12(4) of the Rules of Procedure.

The concept of resourcing corporate programmes, as opposed to resourcing individual States departments, has been piloted through the CHP. This has been evaluated during the first year of the CHP, and the merits and challenges presented by this concept are discussed in the context of ensuring that sound resourcing plans are built into the 2005 Policy and Resource Plan.

#### **SECTION 1**

##### **INTRODUCTION**

- 1 In a joint policy letter submitted to the February 2003 States meeting, the Advisory and Finance Committee and the Housing Authority outlined their proposal to develop a Corporate Housing Programme (CHP)<sup>1</sup>.

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<sup>1</sup> The Development of a Housing Strategy and Corporate Housing Programme – Billet d'État II 2003.

- 2 In this policy letter, the CHP was defined as: “...*the implementation arm of the Housing Strategy; the means of moving towards the stated objectives on a year on year basis.*”
- 3 The purpose of the CHP was explained thus: “...*to provide a practical framework for coordinated action by States Committees, agencies such as Housing Associations, non-government organisations, voluntary groups and the private sector to fulfil the Housing Strategy.*”
- 4 Subsequently, as part of its consideration of the July 2003 Policy and Resource Planning Report, the States agreed the 2003/2004 Action Plans for the six Action Areas within the CHP<sup>2</sup>.
- 5 The CHP is intended to take a long-term approach to meeting the housing needs of the Island, with annual Action Plans reflecting the current goals and priorities of the States in fulfilment of the States Housing Strategy (Appendix I). This annual approach has been adopted to ensure that progress can be regularly monitored and to enable the overall direction of each action area to be reviewed as circumstances change.
- 6 The Advisory and Finance Committee and the Housing Authority made a commitment to report back on the progress of the CHP and to give details of the 2004/2005 Action Plans in July 2004. However, the various States’ elections and the subsequent formation of the new States’ departments took place in May of this year, directly coinciding with the period during which this policy letter was drafted.
- 7 As a result, in terms of political responsibility, it would not have been reasonable for the Policy Council, the Treasury and Resources Department, the Housing Department, and the Environment Department to take responsibility for a series of Action Plans during their first month of office into which they had had no significant input. The same is true for realigning the administrative responsibilities of those departments involved, which need to ensure that their priorities and resources are planned in line with the States’ commitment to the CHP Action Plans and not as a consequence of them. **Obtaining full ownership, accountability and responsibility for the 2004/2005 Action Plans and their associated implementation plans – which will be a commitment spanning some 18 months - is a critical factor that cannot be undervalued.**
- 8 However, any delay in reporting back to the States on the progress of the CHP thus far could have served to undermine significantly its value (and that of any other existing or future corporate programmes). It is of equal importance that momentum is maintained consistently through the life of the Programme and any delay in publishing updated Action Plans would prove counterproductive to this aim. **The Housing Department, therefore, determined it essential that progress to date be reviewed now and that momentum be maintained through the balance of 2004.**

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<sup>2</sup> Corporate Housing Programme Action Plans for 2003/4 – Billet d’État XIV 2003 Policy and Resource Plan (Appendix III).

- 9 In light of the points raised in paragraphs 5-8 above, this policy letter contains a full update on the progress that has been made against the 2003/2004 Action Plans as per the commitment made by the Advisory and Finance Committee and the Housing Authority in July 2003. The Action Plans for the second half of 2004 are also detailed in full.
- 10 However, it is intended that full details of the Action Plans for 2005 will be debated in December 2004 as part of the Policy and Resource Planning Report, to enable them to be considered alongside the overall resource requirements of the States.
- 11 The purpose of this policy letter is, therefore:
  - To provide an update on the progress that has been made against the 2003/2004 Action Plans;
  - To specify the Action Plans for the period July 2004 – December 2004;
  - To give an overview of the scope of the Action Plans for 2005;
  - To outline the merits and challenges presented during the first year of the CHP in the context of its being the first programme of its type to be adopted by the States.

## SECTION 2

### CORPORATE WORKING

- 12 The CHP is the first corporate programme adopted by the States: it fully recognises the need for a coordinated approach to housing issues involving all States' departments, non-governmental organisations and the private sector.
- 13 Each of the six action areas within the CHP has at least one States' department, known as the Lead Department, responsible for its implementation. The role of the Lead Department is to define the specific Action Plans within the action area and to ensure that progress is being made as required.
- 14 The Housing Department has responsibility for the overall coordination of each of the action areas, its role being to recommend, establish and communicate the overall direction of the Programme; to manage the priorities within it; and to assist those other groups involved in each action area to achieve their stated objectives. **It is, however, the States that is ultimately responsible for ensuring that the desired outcomes of the Programme are achieved.**
- 15 The majority of the current Action Plans involve *at least* one other group - either a private sector company, housing agency, voluntary organisation or States' working

group. To emphasise the number of groups which were significantly involved in the 2003/2004 CHP Action Plans, they are listed below:

Housing Authority	Advisory and Finance Committee
Island Development Committee	Cadastre Committee
Board of Health	Children Board
Guernsey Technical Services	Police
Law Officers of the Crown	Resource Coordination Working Group
Social Policy Working Group	Economic Policy Working Group
Housing Task Force	Construction Industry Forum
Guernsey Housing Association	Rosaire Sheltered Housing Limited
States Tenants Action Group	Housing 21
National Children's Home	R G Falla Limited

**16 The significant level of commitment demonstrated by each of these groups since the inception of the CHP has been one of its most fundamental successes.**

This is the first time that such a diverse range of groups has been brought together under one policy initiative, all with the aim of achieving one specific set of strategic objectives.

- 17 The effective communication of progress (and difficulties being encountered) within each Action Plan has been a significant challenge. Most of the groups within the CHP acknowledge the importance of regular updates and improvements have been seen as the programme has developed. Where good communication has been in place, this has led to the successful resolution of problems when they have arisen. Where a full appreciation of the challenges faced within a specific Action Plan exists, the ability, and desire, for relevant groups to work through those problems to a successful conclusion has been much higher. The Housing Department, in conjunction with the other Lead departments, will be exploring further innovative methods to enable effective communication across the range of groups involved in the CHP as part of its preparation for the 2005 Action Plans.

### **SECTION 3**

#### **UPDATE ON PROGRESS AND ACTION PLANS**

- 18 As discussed in paragraph 11 above, this section is designed to give an update on progress that has been made against the 2003/2004 Action Plans as per the commitment made by the Advisory and Finance Committee and the Housing Authority in July 2003. The Action Plans for the second half of 2004 are detailed here in full and a summary of these can be found in Appendix II. The intended scope of the 2005 Action Plans is also outlined below.

## 19 ACTION AREA A – FISCAL POLICY

### Lead Committee – Advisory and Finance Committee

#### Objective:

To present the States with a comprehensive review of the fiscal policy options available to support the objectives of the Housing Strategy.

## 20 2003/2004 Action Plan:

To establish the review of fiscal policies affecting housing as one of the areas to be considered by the new advisory Economic Policy Working Group.

#### Progress:

The Economic Policy Working Group was formed at the end of September 2003 comprising senior staff from the Income Tax Authority, Board of Industry and the Advisory and Finance Committee. The aim of the Group is to consider strategic policy which primarily concerns economic matters, in particular the economic sustainability of the Island. The review of fiscal policy options which impact on the housing market has been the key area of focus for the Group thus far.

#### Action Plan July 2004 – Dec 2004:

- Continue to review the fiscal policies affecting housing as a priority focus for the Group.

#### Scope of 2005 Action Plan:

The Action Plan for 2005 will focus on investigating the linkages between fiscal policy options for housing and wider corporate and strategic policies.

## 21 2003/2004 Action Plan:

To review the options for action including those identified in the report on “The Operation of the Guernsey Housing Market” 2002.

#### Progress:

This review has focused on the research undertaken by LECG in 2002 into the Guernsey housing market<sup>3</sup> and has paid particular regard to both the supply *and*

<sup>3</sup> The Operation of the Guernsey Housing Market - Billet d'État II 2003.

demand sides of the market. The approach adopted has been to review fiscal policy based on the premise of market equity (government intervention i.e. financial subsidy, to ensure that housing is available to all, regardless of income).

The implementation of the following policies are being reviewed, and work continues in order to assess their potential impact on the housing market and on the wider economy:

- Overall management of the economy and fiscal policy.
- Mortgage Interest Tax Relief (MITR).
- Document Duty.
- Property related taxes such as TRV and occupiers' rates.
- States Home Loans.
- States gross rent levels and the rent rebate scheme.
- Partial Ownership and Assisted Purchase schemes.

**Action Plan July 2004 – Dec 2004:**

- Complete the review of these options for action and incorporate recommendations into the 2005 Policy and Resource Planning Report.

**Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on implementation of the package of options approved during the Policy and Resource Planning debate in December 2004.

**22 2003/2004 Action Plan:**

To include specifically the review of States Home Loans and the fiscal implications of partial-ownership schemes in meeting the needs of the Intermediate Housing Market.

**Progress:**

In a policy letter presented to the States in March 2004<sup>4</sup>, the Housing Authority presented initial proposals for an Assisted Purchase scheme. The States agreed that the significant links between the proposed Assisted Purchase scheme and the

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<sup>4</sup> Schemes for the Provision of Affordable Housing: Operational and Funding Arrangements - Billet d'État III 2004.

existing States Home Loan scheme needed to be fully explored before a full review of the latter scheme can be completed. This work has commenced.

The policy letter presented to the States in March was primarily focused on presenting the operational and funding arrangements associated with the proposed Partial Ownership scheme. This scheme will come into effect later this year. The proposals were fully examined by the Economic Policy Working Group which was satisfied that the controls contained in the proposals had been drawn up taking account of the effects on the housing market.

(Further details on the Partial Ownership scheme can be found in paragraph 35 under Action Area C of the CHP.)

**Action Plan July 2004 – Dec 2004:**

- Work with the Guernsey Housing Association to finalise the detailed administrative rules for the Partial Ownership scheme.
- Continue the formal review of the States Home Loans and Assisted Purchase schemes.

**Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on ensuring that the fiscal implications of all schemes designed to meet the needs of the Intermediate Housing Market (those who are not eligible for States' accommodation but who are unable to afford to enter the owner/occupied market) are fully understood, integrated and compatible with the objectives of the States Housing Strategy.

**23 2003/2004 Action Plan:**

To present firm proposals for a new rents and rebates scheme to the States for implementation in 2004.

**Progress:**

The Economic Policy Working Group reviewed outline proposals for the new rent and rebate scheme. The detailed proposals will be reviewed prior to their presentation to the States later this year. Full details on the progress of the rent and rebate review can be found under Action Area D (see paragraph 43 below).

**Action Plan July 2004 – Dec 2004:**

- Review the final rent and rebate proposals prior to their presentation to the States.

**Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on monitoring the effectiveness of the new rent and rebate scheme once implemented.

**24 2003/2004 Action Plan:**

To present a progress report on the overall review of fiscal issues to the States in the 2004 Policy and Resource Plan.

**Progress:**

The report will be presented to the States in December 2004 as part of the Policy and Resource Planning debate and will focus on the outcome of the reviews of those policy considerations discussed in paragraphs 20 to 23 above.

**Action Plan July 2004 – Dec 2004:**

- Build the overall review of fiscal issues affecting the housing market into the December 2004 Policy and Resource Plan discussions ensuring compatibility with the wider corporate and strategic plan.

**Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on implementation of the package of options approved during the Policy and Resource Planning debate in December 2004.

**25 ACTION AREA B – STRATEGIC LAND USE POLICY****Lead Committee – Housing Authority and Island Development Committee Objective:**

To integrate land use planning policies which provide for sufficient housing to be created to meet strategic targets, with a range of measures to ensure that those housing opportunities are translated into development which meets the profile of local needs.



## 26 2003/2004 Action Plan:

To complete technical studies at Belgrave Vinery Housing Target Area as a matter of priority to enable the IDC to prepare and publish an Outline Planning Brief by July 2004.

### **Progress:**

Work on completing the technical studies for the Belgrave Vinery area has progressed well with a significant advantage being gained through the commitment to a “corporate approach” being demonstrated by all Committees involved. All technical studies are complete and the various recommendations will inform the proposals in the draft Outline Planning Brief. The studies completed earlier this year are outlined below:

*Traffic and Access Strategy* – The focus of this study is the provision of a safe and attractive network of residential roads and footpaths, which will allow pedestrians and cyclists to move freely about the site whilst reducing vehicle speeds and ensuring that the site is not dominated by vehicle movements and parking.

*Geotechnical and Land Contamination* – This study evaluates the potential environmental remediation of the land. Following invasive site investigations and chemical analysis of soil and waters from across the site, evaluations were made against specific guidelines derived using current UK accepted practice.

*Flood Prevention Strategy* – The study examines the latest scenarios for climate change and recommends appropriate flood alleviation designs for the site.

*Land Ownership and Covenants* – This study has identified the priorities for boundary rationalisation of the site through land exchange, purchase or disposal.

Urban Design consultants were appointed in April and the draft Outline Planning Brief for the site is due to be published in August. The Outline Planning Brief will present a coherent urban design strategy reflecting the interplay of landscape structure, development character, density and route hierarchy for the area.

**Action Plan July 2004 – Dec 2004:**

- Publish the Outline Planning Brief for consultation and facilitate a Public Inquiry.
- Develop an Implementation Plan for the site including the ongoing management and interim use of the site.

**Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on the recommendations of the Implementation Plan for the site, particularly the prioritisation of enabling works to facilitate the first phases of development.

**27 2003/2004 Action Plan:**

The new Strategic Housing Policy 6(A) being introduced in the Strategic Land Use Plan will enable the IDC to introduce policies enabling the provision of social housing in its review of the Rural Area Plan (RAP). The RAP will be published during summer 2003.

**Progress:**

A policy to enable the provision of social housing, supported by the Housing Authority, was incorporated into the draft RAP, which was published in July 2003. The Planning Inquiry is currently in progress and is likely to run through the summer.

**Action Plan July 2004 – Dec 2004:**

- Following receipt of the Inspector's report, incorporate the policy in the policy letter to be presented to the States by the Environment Department. (NB The precise timing will be dependent on receipt of Inspector's report.)

**Scope of 2005 Action Plan:**

If the policy is approved by the States following the Planning Inquiry, the 2005 Action Plan will focus on assessing, identifying, and planning suitable sites for social housing development.

**28 2003/2004 Action Plan:**

To complete work necessary for the enactment of the new Planning Law.

**Progress:**

The Projet de Loi has been drafted and it is anticipated that it will be presented to the States by the new Environment Department in the second half of this year.

Detailed instructions for the initial package of Ordinances which it is anticipated will be introduced as part of the enactment of the Law are nearing completion. (In respect of Planning Covenants, see paragraph 29 below.)

**Action Plan July 2004 – Dec 2004:**

- Take supplementary policy letter to the States with the Projet de Loi.
- Drafting of Ordinances to be completed.

**Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on any further steps required to ensure the introduction of the new Law.

**29 2003/2004 Action Plan:**

The new Planning Law makes provision for the use of Planning Covenants that it may be possible, amongst other things, to use to require developers to provide a proportion of affordable homes as part of a private housing scheme. This is, however, a complex area where the Housing Authority and IDC consider that jointly commissioned research is needed to investigate a practical means of delivering a system which will work for Guernsey. This study will be commissioned during 2003 under the auspices of the CHP.

**Progress:**

When the new Planning Law comes into force, it will be possible for the new Environment Department to enter into legally binding Planning Covenants with developers.

Planning Agreements, or Covenants, have been used for many years in the UK to help achieve essential planning objectives. They have been used to good effect to increase the provision of social housing, through imposing positive obligations on landowners, developers and public authorities, although recent research<sup>5</sup> has highlighted the pitfalls associated with their use. The complex mechanisms employed in the UK will not necessarily be appropriate to Guernsey's unique environment and the study aims to consider these, and other mechanisms, and their potential effectiveness within the Guernsey context.

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<sup>5</sup> Review of (UK) Housing Supply – Securing our Future Housing Needs. Kate Barker. March 2004.

More than 60 companies expressed an interest in tendering for this study, resulting in 25 tender documents being received. Following selection interviews, consultants will be appointed to conduct the study, which is being jointly funded by the Environment Department and the Housing Department. It is anticipated that this study will take six to nine months to complete due to the nature and breadth of research required.

**Action Plan July 2004 – Dec 2004:**

- Complete the study.

**Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on the recommendations made in the study which is expected to be completed during the first quarter of 2005. The findings will be presented to the States and the resultant action plan drawn up, including setting out any legislative changes required.

**30 ACTION AREA C – HOUSING AGENCIES**

**Lead Committee – Housing Authority**

**Objective:**

To support the development of agencies to provide for the varied needs of the Intermediate Housing Market and to work with those agencies to ensure that there is sufficient provision of affordable social housing to meet the reasonable needs of that sector.

**31 2003/2004 Action Plan:**

Completion of the GHA development at Delancey (34 homes) in 2004.

**Progress:**

The Delancey Court development was opened at the end of June 2004. The 34 apartments are the first units of accommodation completed by the Guernsey Housing Association with grant funding from the Housing Authority (£4.1 million).

The development consists of 22 one bedroomed and 12 two bedroomed apartments. Each of the apartments has been designed to a high specification with good-sized rooms, double-glazing and modern thermal insulation providing high levels of energy efficiency. Underground parking and two internal courtyards are integral to the overall design of the development, providing high quality amenity space and

adding to the sense of community for residents. Traditional Guernsey architectural styling is clearly evident throughout the development.

Of the 34 apartments, 75% (25) have been allocated for rental to tenants who are eligible for States' accommodation, nominated by the Housing Department. This is in line with the original proposals on the establishment of housing associations in Guernsey approved by the States in 2001<sup>6</sup>.

The remaining apartments will be rented by Islanders within the Intermediate Housing Market – those who are not eligible for States' accommodation, but who are unable to afford to enter the owner/occupied market.

**Action Plan July 2004 – Dec 2004:**

- Facilitate the smooth transfer of tenants into the development.

**32 2003/2004 Action Plan:**

To commence the GHA development at Rue des Marais/Rue des Lierres (80+ units) in 2003/4.

**Progress:**

The development and regeneration of the old Rue des Marais/Rue des Lierres site in the Bouet is the largest of the Island's current social housing developments. The Guernsey Housing Association is developing the site with grant funding from the Housing Department (£8.1 million). A total of 82 high specification dwellings will be constructed, replacing 47 States properties (12 at Rue des Marais built in the 1940s, and 35 at Rue des Lierres built in the 1970s) that had come to the end of their useful life.

The first phase of the development, providing 48 dwellings, is on schedule to be completed at the end of 2004. At the time of writing, foundations are in place and more than half of the development has block-work in place up to first floor window level. 9 one-bedroomed apartments; 11 two-bedroomed apartments; 18 two-bedroomed houses; 8 three-bedroomed houses; and 2 four-bedroomed houses will be provided in this first phase.

The second phase of the development, providing 34 dwellings, is now underway and, at the time of writing, demolition of the existing buildings is about to commence. This phase, which will provide 10 one-bedroomed apartments; 2 one-bedroomed houses; 10 two-bedroomed apartments; 9 two-bedroomed houses; and 3 three-bedroomed houses; will be completed during the second half of 2005.

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<sup>6</sup> Housing Associations in Guernsey: Funding and Regulatory Issues - Billet d'État XIX 2001.

**Action Plan July 2004 – Dec 2004:**

- Completion of the first 48 units
- Progress the second phase of the development.

**Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on the allocation of the first 48 units and on the completion of the second phase of the development of 34 units.

**33 2003/2004 Action Plan:**

The establishment of a joint Housing Authority/GHA waiting list.

**Progress:**

The Housing Department has nomination rights in respect of 75% of Guernsey Housing Association properties (for which grant funding has been provided). The establishment of the joint waiting list for social rented housing will enable the Housing Department and the Association to consider applications for both States-owned and Association properties quickly and fairly.

At the time of writing, details were being finalised on the criteria for acceptance on to the joint waiting list, the procedures for the assessment and prioritisation of applications, and the processes for establishing and maintaining the list. A common application form was also under development that will be used for people wishing to go on to the joint waiting list.

All applicants on the current waiting list, together with all existing States' house tenants who have applied for transfer to another States-owned property, have been contacted to inform them of the new arrangements and to give them the opportunity to be placed on the joint waiting list.

A selection panel comprising representatives of both the Housing Department and the Guernsey Housing Association will make the decisions on allocation of properties.

The joint waiting list came into effect for the first time in respect of the properties at Delancey Court, which became available for allocation in July 2004.

**Action Plan July 2004 – Dec 2004:**

- The waiting list will be fully operational at this point; therefore no further action plan within the CHP is envisaged.

### 34 2003/2004 Action Plan:

To finalise the contractual arrangements for the funding and management of the Guernsey NCH Youth Housing Project and to oversee the conversion of 17 Havilland Street into training bedsits. (Housing Authority and Children Board.)

#### **Progress:**

The Project has recently moved into its new base at 1 St. James Street, where it has re-established its important advice service for young people. Work on the conversion of 17 Havilland Street into seven training bedsits is on schedule for completion at the end of July 2004. The renovation and redevelopment is being managed by the NCH, with capital finding from the Housing Department of £450,000. The property will be managed by the NCH in close partnership with the Health and Social Services Department (Services for Young People and Children) and will provide accommodation, as well as life skills, for young Islanders in need.

Legal advisors for both the Housing Department and the NCH are finalising the contractual arrangements in respect of the funding and management of the Youth Housing Project. Signing of these contracts and the subsequent release of Housing Department revenue grant funding, of up to £300,000 per annum, is expected in June 2004.

#### **Action Plan July 2004 – Dec 2004:**

- Finalise the contractual arrangements for the Project.
- Accept first residents at 17 Havilland Street.

### 35 2003/2004 Action Plan:

To report to the States with details of a partial ownership scheme during 2003, including necessary legislative changes.

#### **Progress:**

The Housing Authority's first policy letter, on the legislative requirements for a range of schemes for the provision of affordable housing was approved by the States at their meeting in September 2003<sup>7</sup>. This report considered schemes for Partial Ownership, Assisted Purchase, Self Build and Leasehold.

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<sup>7</sup> Schemes for the Provision of Affordable Housing: Legislative Requirements - Billet d'État XXI 2003.

The report identified the extent of development and reform of legislation to be extremely significant. The Housing Department is currently working closely with the Law Officers to develop the enabling legislation and the initial package of Ordinances required. It is expected that the enabling legislation, allowing the first Partial Ownership properties to be sold, will be enacted later this year.

The States approved the second policy letter on the affordable housing schemes mentioned above in March 2004<sup>8</sup>. This report outlined the operational and funding arrangements that were being developed for the schemes. The arrangements for a Partial Ownership scheme were detailed in full. The policy letter was approved, including an amendment directing the Housing Department to report back to the States on the feasibility of a Self Build scheme no later than March 2005.

The detailed rules for the Partial Ownership scheme, which will initially be operated by the Guernsey Housing Association, are in the process of being finalised.

Work on progressing the details of an Assisted Purchase scheme has been delayed as the States resolved to give priority to the development of a Self Build scheme, which is currently under investigation.

**Action Plan July 2004 – Dec 2004:**

- Finalise the required enabling legislation and associated ordinances for the Partial Ownership scheme.
- Work with the Guernsey Housing Association to finalise the detailed administrative rules for the Partial Ownership scheme.
- Continue investigations and produce a report on the feasibility of a Self Build scheme.

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<sup>8</sup> Schemes for the Provision of Affordable Housing: Operational and Funding Arrangements - Billet d'État III 2004.



**Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on the legislative, operational and funding requirements of the Assisted Purchase, Self Build and Leasehold schemes.

**36 2003/2004 Action Plan:**

To commence building 86 mixed tenure units of predominantly affordable sheltered housing at Rosaire Avenue during 2003. The development will be managed by a UK Specialist Housing Association, Housing 21.

**Progress:**

Demolition of the former Girls' Grammar School at Rosaire Avenue has been completed and outline plans have been approved for the development of 85 units of sheltered accommodation<sup>9</sup>. The project is a partnership between the Housing Department, the Health and Social Services Department, Rosaire Sheltered Housing Ltd. and Housing 21 Guernsey (a subsidiary of the specialist housing association Housing 21, which owns and operates more than 15,000 units of sheltered accommodation in the UK).

The scheme will comprise one- and two-bedroomed apartments providing 50 units for affordable rental, 9 units for affordable lifetime lease, and 26 units for sale at market prices. Care facilities will be provided on-site, funded by the Health and Social Services Department, allowing those people with care needs to receive them in their own home. A restaurant, shop and hairdressers will also be incorporated, promoting a sense of community within the development.

The development, which is receiving a grant of £5.6 million from the Housing Department, is due to be completed in 2006.

**Action Plan July 2004 – Dec 2004:**

- Continue the development of the site.

**Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on progressing the development, on the establishment of a care services package, and on policies and procedures for the allocation of units etc.

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<sup>9</sup> Development of Sheltered Housing at Rosaire Avenue – Billet d'État VIII 2001

**37 2003/2004 Action Plan:**

Housing Authority and the Board of Health to present a joint policy letter to the States during 2003. The policy letter will propose the development of 'Key Worker' housing on specific sites as pilot projects to be managed by an experienced specialist Housing Association.

**Progress:**

Discussions are ongoing between the Housing Department, the Health and Social Services Department and the Environment Department on a draft development brief for the Priaulx Garage site. This development brief will form part of an expressions of interest pack to be offered to potential developers/operators of key worker housing.

The drafting of a joint policy letter is in abeyance pending the resolution of issues relating to the sites to be offered as pilot projects (of which the Priaulx Garage site is one) and pending the outcome of the expressions of interest exercise.

<b>Action Plan July 2004 – Dec 2004:</b>
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- |  |
|--|
| <ul style="list-style-type: none"> <li>▪ Progress the development brief and expressions of interest pack.</li> </ul> |
|--|

**Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on resolving the outstanding issues and on the drafting of the joint policy letter.

**38 2003/2004 Action Plan:**

To establish a development programme for new States houses to complement and supplement the GHA's development programme.

**Progress:**

The Housing Department is working with the Environment Department to review the planning implications of 15 potential sites, as part of the development of an overall programme of new Housing Department accommodation. A substantial part of this review concerns the opportunity for infill development on existing States-owned sites, with some privately-owned sites also being reviewed.

The Housing Department recognises that the Urban Area must remain the principal location for its housing development programme. However, sites within the Rural Area – complying with the proposed social housing policy in the draft Rural Area

Plan - are also being examined where there is a need to provide dwellings for local, social needs.

The development brief for the first of the proposed sites is currently being finalised and the Housing Department is inviting tenders from local architectural practices. Tender invitations from building contractors to support the proposals will follow.

Detailed discussions with the Treasury and Resources Department regarding the availability of funds to support this social housing development programme are ongoing.

**Action Plan July 2004 – Dec 2004:**

- Secure funding provision to support the development programme.
- Develop detailed site specific proposals for development.

**Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on the implementation of the development programme.

**39 2003/2004 Action Plan:**

To explore options for providing temporary accommodation should occupiers need to be re-housed during renovation and redevelopment work by Housing Associations or by the Housing Authority.

**Progress:**

Investigations into the option of using temporary accommodation have been ongoing. So far, the Housing Department has not established a need for such provision; however, in light of the social housing development plans currently under discussion, 2005 may present an opportunity to make effective use of such accommodation.

**Action Plan July 2004 – Dec 2004:**

- Continue to assess the need for temporary accommodation.

### **Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on identifying a suitable solution should there be a need for the provision of temporary accommodation.

## **40 ACTION AREA D – STATES OWNED STOCK**

### **Lead Committee – Housing Authority**

#### **Objective:**

To maintain and improve the quality of States owned housing stock, and to provide high quality tenancy services to the occupiers of those dwellings in order to foster communities that are pleasant and safe to live in.

## **41 2003/2004 Action Plan:**

To appoint formally a private sector contractor as a ‘partner’ to carry out the estate refurbishment programme during Autumn 2003.

#### **Progress:**

RG Falla are currently working on four of the Housing Department’s estates as part of the pilot “partnering” programme.

At the time of writing, 27 properties have been completed and the current rate of completions will provide for 35 properties to be renovated each year.

Work on the family properties on the Rougeval Estate is due to be completed in October 2004. The extent of the renovation works has been significant. The properties at Rougeval have been given new roofs; central heating has been installed; the properties have been given improved insulation and energy efficiency; layout of the rooms has been changed to make better use of space; they have been completely redecorated; and parking areas at the front of the properties have been created.

Similar work is ongoing at Collings Road, La Rue Flere and Braye Road.

The pilot “partnering” programme is in the final stages of assessment, with the agreements due to be formalised later this year.

An electrical rewiring and upgrading scheme has also been introduced, with the target of two properties per week being exceeded. Where appropriate, the opportunity has been taken to improve heating facilities as the essential electrical upgrading work has taken place.

Work is also progressing on the Housing Department's estate enhancement programme. This work is aimed at improving access to emergency and service vehicles, whilst easing congestion. Millbrook, Rue au Prêtre and Le Valnord Estate have already benefited from this programme and work is now starting at Sous les Hougues and Rue de la Croix.

**Action Plan July 2004 – Dec 2004:**

- Complete the assessment of the pilot “partnering” programme.
- Finalise the formal contractual arrangements.
- Continue the Estate Enhancement Programme.

**Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on continuing to assess the funding requirements and viability of the partnering programme, and on extending the programme to other estates.

42 **2003/2004 Action Plan:**

To bring forward a package of proposals to improve tenancy services during 2003/4. The Housing Authority intends:

- To present a suite of policies and procedures to the States covering the allocation of States Houses and the management of tenancies, in order to comply with Human Rights legislation.
- To introduce a new Tenancy Agreement.
- To present a consultation document to other agencies, and subsequently to the States, in respect of an antisocial behaviour strategy for its estates.
- To develop and maintain, closer communications with tenants through a variety of means, e.g. tenant meetings, newsletters, tenants' handbook and information leaflets.

**Progress:**

**New Policies and Procedures:**

Work on the suite of new policies and procedures is progressing. There is a total of 23 new policies and procedures, either already introduced or in draft form, ranging from those related to pets and vehicles to those in relation to eviction and under-occupancy. Policies will also cover both the criteria and eligibility for States house

tenancies. Consideration is being given as to whether the existing criteria should be changed in view of the additional social housing becoming available through the establishment of the Guernsey Housing Association.

#### New Tenancy Agreement:

A new tenancy agreement is in draft form at the time of writing. This agreement will replace the existing agreement, which has been in place for more than 50 years, thereby bringing the contract between the Housing Department and its tenants up to date.

#### Antisocial Behaviour:

The Housing Department is working in close co-operation with the Police on the issue of antisocial behaviour. Serious incidents on Housing Department estates are infrequent but do justify a clear policy and resources to manage the issue when it arises. A consultative document is in the process of being drafted. Further consultation will be undertaken at this stage with all interested agencies including the Health and Social Services Department (Services for Children and Young People), the Home Department (Police and Probation Services) and the Education Department.

#### Tenant Communication:

The Housing Authority has been developing communications with its tenants throughout 2004 in various ways. In April of 2004, the Authority was able to recognise formally the States Tenants Action group (STAG) as a consultative body on issues affecting States house tenants.

#### **Action Plan July 2004 – Dec 2004:**

- Introduce new policies and procedures.
- Complete the new tenancy agreement and carry out a comprehensive programme of tenant communication prior to implementation.
- Enter into further consultation with interested agencies and complete the work necessary for the development of an antisocial behaviour strategy.
- Continue to support the development of STAG as an effective representative body for States' tenants.

### **Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on implementation of the new Tenancy Agreement, on translating the completed antisocial behaviour strategy into a manageable policy, and on the continuous improvement of communications with tenants.

### **43 2003/2004 Action Plan:**

To introduce a new rents and rebates scheme for States and nominated Housing Association tenants.

### **Progress:**

The Housing Authority took a policy letter outlining the new rent and rebate proposals to the States in March 2003<sup>10</sup>. This took the form of a “Green Paper” which outlined the main principles of the review. Prior to gaining approval of the proposals in the States, the Authority entered into an extensive consultative period involving all of its tenants and all States Members.

The review is made up of three main components:

- devising a robust formula for establishing the level of rent that reflects the value of the property and which is sustainable for the long term;
- designing a rebate scheme that ensures that no tenant pays more than they can reasonably afford; and
- setting up the administrative systems and procedures that are required to ensure that rents and rebates can be adjusted swiftly as tenants’ circumstances change.

At the time of writing, work is focused on completing the finer points of the rent setting formula, with particular regard to the reinstatement building costs and the impact thereon of the recently published findings of the report on the increasing costs of construction in the Island. Streamlined administrative systems and procedures are under development.

At the March 2004 States meeting, the President of the Housing Authority made a statement outlining current progress and giving a commitment that the completed review would be presented to the States in a second policy letter later this year, taking account of all the comments made by tenants and others during the consultation period.

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<sup>10</sup> Review of the Rent and Rebate Scheme – Billet d’État IV 2003.

**Action Plan July 2004 – Dec 2004:**

- Present final proposals to the States in the autumn.

**Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on implementing the new rent and rebate proposals at the start of 2005.

**44 2003/2004 Action Plan:**

To investigate the options for a replacement Housing Management System to support the revised tenancy and rents policies.

**Progress:**

In March 2003, the Housing Authority took its first policy letter outlining the new rent and rebate proposals to the States (see paragraph 43 above for detail). At that time, it was envisaged that the existing software package (HIMS) could not be sufficiently enhanced to provide the necessary level of support demanded by the new proposals.

Subsequent investigations revealed that a realistic timetable for replacement of the whole HIMS software system would far exceed the scheduled implementation date for the rent and rebate proposals. Accordingly, the Housing Authority and States Information Services Department commissioned a pilot study to examine the feasibility of enhancing HIMS as a temporary measure.

As a result of the success of the pilot study, a detailed specification was produced and subsequently a project, designed to automate rebate assessment, was initiated. The improved software is expected to go live in October 2004.

The enhancements have extended the shelf life of the existing HIMS software system to such an extent that moves to replace it completely will not commence until 2005, with an expected implementation date in 2006/2007.

**Action Plan July 2004 – Dec 2004:**

- Implement the enhanced software package for rents and rebates, including training and maintenance.



### **Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on monitoring the effectiveness of the new software enhancements and on continuing investigations into a replacement software system.

## **45 ACTION AREA E – PRIVATE RENTED SECTOR**

### **Lead Committee – Housing Authority and Cadastre Committee**

#### **Objective:**

To identify effective measures to improve the quality of private rented housing without reducing the size of the sector or raising rentals above the means of those on modest incomes and to do so in the context of promoting a wider programme of urban renewal.

## **46 2003/2004 Action Plan:**

To undertake a study into the private rental sector in order to identify the range of measures that may be used to meet CHP objectives.

#### **Progress:**

In July 2003, a tendering process attracted five tenders to carry out this study. Following shortlisting and panel interviews, Mike Parr<sup>11</sup> was appointed.

In line with the Housing Strategy, the broad aims of the study were to carry out an analysis of the operation of the private rented sector in Guernsey and, based on those findings, to identify and assess the potential impact of measures, legislative and otherwise, that could be taken to influence the sector:

- to improve housing quality; and
- to make rents affordable;

in a manner that would maintain, or increase, the number of dwellings available within that sector.

Significant consultation with a large number of organisations and individuals was undertaken as part of the study, including with representatives from both within, and outside of, the States. The study was completed in April of this year and was presented to the Housing Authority and the Cadastre Committee.

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<sup>11</sup> Mike Parr - Author of 'The Operation of the Guernsey Housing Market' Billet d'État II 2003.

The study makes 29 recommendations, giving a range of options that can be used to form a package of measures that will support the overall objective of Action Area E. These recommendations are detailed in full in the Housing Department's policy letter – Improving the Quality and Affordability of Private Rented Accommodation in Guernsey – due to be considered by the States in July 2004.

**Action Plan July 2004 – Dec 2004:**

- As detailed in paragraphs 47 and 48 below.

**Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on the recommendations made in the study and approved by the States.

**47 2003/2004 Action Plan:**

To present a policy letter on the findings of the study to the States in the first half of 2004.

**Progress:**

The Housing Department will present a policy letter in the form of a 'Green Paper' to the July 2004 States meeting. This policy letter will inform the initial debate on measures to address this important sector of the housing market.

**Action Plan July 2004 – Dec 2004:**

- Review the recommendations made in the study in the context of the wider CHP Action Plans, taking into account the comments made in the July 2004 States debate.
- Develop the recommendations made and form a viable Action Plan, incorporating that Action Plan into Action Area E of the 2005 CHP.

**Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on the recommendations made in the study and approved by the States.

48 **2003/2004 Action Plan:**

To identify specific proposals for action in the next review of the CHP in the 2004 Policy and Resource Plan.

**Progress:**

The specific proposals for action will be presented to the States in December 2004 as part of the Policy and Resource Planning debate and will focus on the outcome of the review of those recommendations made in the study discussed in paragraph 46 above.

**Action Plan July 2004 – Dec 2004:**

- Build the specific proposals for action into the December 2004 Policy and Resource Plan ensuring compatibility with the wider corporate and strategic plan.

49 **ACTION AREA F – INFORMATION**

**Lead Committee – Advisory and Finance Committee**

**Objective:**

To establish an authoritative system for collating information about housing in order to monitor and review the effectiveness of the Corporate Housing Programme against strategic objectives.

50 **2003/2004 Action Plan:**

To identify the key variables – a corporate ‘shopping list’ of factors - that need to be measured by States committees.

**Progress:**

The Policy Council (Policy and Research Unit) has been working closely with the Housing Department and the Environment Department to develop a list of variables that will be necessary to inform and monitor the overall effectiveness of the CHP. Work has been focused on building on the outline framework presented in the 2003 Sustainable Guernsey monitoring report<sup>12</sup>.

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<sup>12</sup> Supplement to the 2003 Policy and Resource Plan - Billet d’État XIV 2003.

The measures required have been prioritised and the monitoring framework has been based on four key measures:

- Availability
- Affordability
- Quality
- Environmental Impact

The detail of the monitoring framework has not yet been finalised and work is currently focused on finalising the list of core data measures (e.g. property tenure, size of property and location) that underpin each of the four overarching themes. These will be published in the Sustainable Guernsey monitoring report in July 2004.

**Action Plan July 2004 – Dec 2004:**

- As detailed in paragraph 51 below.

**Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on the outcome of the project plan as discussed in paragraph 51 below.

**51 2003/2004 Action Plan:**

To secure commitment to the process of cross-committee data sharing and to agree a project plan to tackle the barriers to implementation. The 2004 Action Plan will then be based on the tasks identified in the Project Plan.

**Progress:**

The monitoring framework discussed in paragraph 50 will use data that is currently available within existing data collection systems, as well as new data which is not currently collected. Development of the project plan has been focused on five key areas:

- Sources of currently available data
- Compatibility of existing data collection systems
- Quality of existing data
- Identification and prioritisation of data gaps

- Human and I.T. resources required to ensure sustainable data accessibility

The project plan will contain a standard set of criteria which will be used by States' departments in order to maintain consistency and sustainability in data collection. The plan will also detail the roles and responsibilities of States' departments, the methodology for data collection, data storage, analysis and reporting.

**Action Plan July 2004 – Dec 2004:**

- Develop cross-departmental commitment to the project plan.
- Collect and report on core data measures.
- Build the required actions into Action Area F of the 2005 Action Plans.

**Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on the availability and analysis of data.

52 **2003/2004 Action Plan:**

To implement the establishment of an “affordable” Housing Roll to supplement waiting lists for States/Housing Association accommodation and States Home Loans.

**Progress:**

Development of a Housing Roll to include all affordable housing schemes has not yet commenced as work to establish a joint waiting list for social rented housing (see paragraph 33 above) has taken priority.

However, all individuals who have expressed a formal interest in the Partial Ownership scheme have been registered.

As the details on the criteria for acceptance on to each of the affordable housing schemes and the assessment and prioritisation of applications are finalised during 2005, the Housing Roll will be developed.

**Action Plan July 2004 – Dec 2004:**

- Continue to register formal expressions of interest in the available affordable housing schemes.

### **Scope of 2005 Action Plan:**

The Action Plan for 2005 will focus on developing the processes for establishing and maintaining the Housing Roll.

In addition, in order to monitor and inform the strategic direction of future CHP Action Plans, it will be necessary to conduct a second Housing Needs Survey.

The Housing Authority had recommended, and the States had agreed, that this should take place in 2004<sup>13</sup> but, given the volume of other housing projects currently underway, this will not be possible. It is now proposed to conduct this survey in 2005.

## **SECTION 4**

### **RESOURCING THE CORPORATE HOUSING PROGRAMME**

- 53 As part of the States' commitment to the implementation of policy initiatives and the associated use of resources, the Resource Coordination Working Group (RCWG) was established in late 2002 with the main purpose of assessing requests for resources in terms of corporate priorities and making progress towards a more integrated and corporate way of thinking about resourcing across the States. This group has provided a useful forum for considering the resourcing of the CHP and has encouraged discussion of the more flexible approach to resourcing that is required if corporate programmes are to be resourced adequately. This reflects the fact that the importance of resourcing the CHP adequately was highlighted in both of the policy letters mentioned in paragraphs 1 and 4 above.
- 54 The concept of resourcing a corporate programme, as opposed to resourcing individual States' departments, has been piloted through the CHP. However, one of the main barriers to the success of this approach has been one of changing existing mindsets.
- 55 It has been traditional within States' departments that their own human resources, budgets, land and IT resources be protected vehemently and devoted to the achievement of that department's own political priorities. This is an approach that is inevitable in light of the pressures on public funds and particularly on human resources. However, it is a culture and practice that has run contrary to the achievement of strategic objectives and which the evolution of corporate programmes, and the new machinery of government, are designed to address.

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<sup>13</sup> Survey of Guernsey's Housing Needs – Billet d'État IX 2002.

- 56 During the CHP's first year, it has proven difficult for departments to realign their priorities to the achievement of strategic objectives and to resource themselves accordingly. Not only has the concept of corporate programmes been new, it has also been alien to traditional ways of working. Latterly, there have been signs that the benefits of corporate working are showing through, leading to a greater willingness to think corporately rather than departmentally.
- 57 However, nowhere has the traditional way of thinking been more evident than in providing resources to support the CHP: it is here that the most fundamental cultural shifts must occur if the full benefits of the CHP are to be realised, as is discussed more fully in the paragraphs that follow.
- 58 When considering **financial resources**, work is currently underway to establish a CHP budget. A significant proportion of this budget would be made up of the already existing States Houses Fund, States Housing Association Fund and Housing Development and Loans Fund. A separate portion of the budget will be dedicated to funding other areas of the CHP that are not currently covered by those funds mentioned above. These may include funding of consultants, research, IT and temporary staff specific to particular Action Plans. Provision for this is presently being discussed by the Lead departments. **Establishment of this CHP budget will be fundamental to the complete success of the programme.**
- 59 The provision of appropriate **human resources** to support the Action Plans within the 2003/2004 CHP has presented a most significant, albeit expected, challenge. This has resulted from increased expectations by the general public on the operational elements of many States' departments' mandates, coupled with an ever-increasing need to focus on the policy aspects of those mandates. All of the major departments involved in the CHP have been, and still are, presented with the significant challenge of applying limited staff resources to priorities that are generally considered to be mutually exclusive – operational versus strategic, departmental versus corporate – the result being a diffusion of effort across an ever-widening number of workstreams.
- 60 Furthermore, States' departments have been required to work within the Staff Number Limitation Policy (SNLP) for more than 15 years; and in the July 2003 Policy and Resource Planning debate, the Advisory and Finance Committee and the Civil Service Board reaffirmed the States' commitment to the SNLP in the context of the achievement of corporate objectives.
- 61 The ability of the major departments involved and, ultimately, of the States to ensure that human resource requirements are made available to meet the obligations contained in the CHP, whilst upholding the SNLP, remains a complex issue. The Housing Department intends to continue discussions with the Treasury and Resources Department on resolving this issue in the second half of this year, prior to the December 2004 Policy and Resource Planning debate, as **the ability to ensure that human resource requirements are made available to meet the obligations contained in the CHP is fundamental to the complete success of the programme.**

- 62 The level of input required by the Law Officers to draft **legislation** and provide **legal advice** to support the various projects within the CHP has been significant during the first year, exceeding all prior expectations. For a number of projects, the level of legislative change required had not been fully appreciated during the initial planning stage. Resolution of this issue has already begun through increased consultation with the Law Officers at an early stage when initial project plans are formed. For other projects, the sheer volume of work currently being faced by the Law Officers across a wide range of other initiatives has prevented progress on the drafting of legislation for specific projects.
- 63 The Law Officers have made considerable efforts during this year to improve their service delivery. This has resulted in the allocation of specific legal support to each States' department in order to assist in the coordination and prioritisation of policy related work streams across the States but, **the provision of an adequate level of legal support is fundamental to the complete success of the programme.**
- 64 Several specific projects within the 2003/2004 Action Plans have highlighted an increasing need for **IT support** and, in particular, for better integrated **IT systems**. The majority of existing IT systems that require interrogation for the purposes of the CHP have been in use for a number of years and have been developed and/or updated in-house during that period to collect and provide specific information related exclusively to the mandate of their commissioning department.
- 65 However, one of the basic requirements of the CHP, and indeed of any corporate programme, is the ability to share information. When considering the Island's housing market, a number of departments produce independent information that is relied upon:
- a) to inform the direction that the CHP action areas need to take; and
  - a) to monitor the success of the CHP as a whole.
- 66 The major departments involved in the 2003/2004 CHP Action Plans are pleased to note the intentions of the Treasury and Resources Department to establish a new platform for delivering IT services across States' departments. The proposed structure and responsibilities indicate that the combination of a strong and effective Information Technology Unit and IT resources will, amongst other aims, enable the coordination of systems development and information sharing. This approach to corporate projects will be facilitated through the Services and Strategy Development Section. **The ability to develop and manage corporate information systems is, however, fundamental to the complete success of the programme.**
- 67 **Having discussed with the Policy Council the aforementioned issues regarding the provision of resources to carry out States' Corporate Programmes, the Housing Department is pleased that the Council has agreed to address them as**



**part of the overall development of an effective, corporate approach to government.**

## **SECTION 5**

### **CONCLUSION**

- 68 This policy letter outlines the substantial progress that has been made in addressing Guernsey's housing issues through the CHP initiative. That so much has been achieved in so short a time is a testament to the hard work and commitment of all parties involved.
- 69 Nevertheless, as explained above, there remains much to do in realigning the priorities and resources of individual States' departments to the attainment of corporate objectives. This will continue to present a significant challenge but one that the recent reform of government is designed to assist not frustrate. **Ultimately, however, it will be the decisions made by the States that will determine the priority to be afforded the Corporate Housing Programme and thus its relative success or otherwise.**

## **SECTION 6**

### **RECOMMENDATIONS**

The Housing Department recommends the States as follows:

- i) to note the progress made against the Corporate Housing Programme Action Plans for 2003/2004, as set out in this report;
- ii) to approve the Action Plans for the period July 2004 – December 2004, as set out in this report;
- iii) to note that the allocation of adequate resources is necessary to the successful operation of the Corporate Housing Programme and, accordingly, to direct the Treasury and Resources Department to work with all States' departments involved to fulfil this requirement;
- iv) to direct all States' departments to contribute to the development of the 2005 Corporate Housing Programme Action Plans where their assistance is required;

- v) to direct all States departments to make appropriate budgetary, staffing and other resource provision for their Corporate Housing Programme commitments in their policy and resource planning submissions for the 2005 Policy and Resource Plan;
- v) to note that the Housing Needs Survey due to be carried out in 2004 will now be conducted in 2005 and, thereafter, at intervals of not more than five years.

Yours faithfully

David Jones  
Minister  
Housing Department

## **APPENDIX I**

### **STATES HOUSING STRATEGY**

- To ensure that all persons legally resident in Guernsey have access to housing accommodation to meet their reasonable needs.
- To meet housing needs in a sustainable manner in the long-term interests of the community as a whole, making prudent use of all resources and recognising that investment in housing must be prioritised and compatible with strategic policies and the wider programme of public expenditure approved by the States.
- To ensure that there are measures in place to limit any growth in population through immigration in order to manage housing demand in accordance with the principles of sustainability.
- To provide the community with a range of housing options, acknowledging that while home ownership has historically been the preferred means of meeting housing needs, good quality, fairly priced housing may be provided across the housing market by other means and through a variety or mix of agencies – public, private and voluntary.
- To enable housing to be provided for those financially unable to enter the private housing market, either to purchase or rent, through a range of housing measures attuned to meeting their specific housing needs including social rented housing, partial ownership schemes etc.
- To enable the provision of supported accommodation for persons with special needs including accommodation for older persons, young people, people with a learning disability, persons with a mental illness, ex-offenders etc.
- To maintain and improve the quality of housing in Guernsey across all sectors bearing in mind the impact of housing conditions on the health and well-being of the community.

## **APPENDIX II**

### **SUMMARY OF JULY 2004 – DECEMBER 2004 ACTION PLANS**

This Appendix provides a summary of the Action Plans for the period July 2004 – December 2004.

#### **ACTION AREA A – FISCAL POLICY**

**Lead Department – Policy Council (Policy and Research Unit)**

**Objective:**

To present the States with a comprehensive review of the fiscal policy options available to support the objectives of the Housing Strategy.

**Action Plan July 2004 – Dec 2004:**

- Continue to review the fiscal policies affecting housing as a priority focus for the Economic Policy Working Group.
- Complete the review of these options for action and incorporate any recommendations into the Policy and Resource Planning debate in December 2004.
- Work with the Guernsey Housing Association to finalise the detailed administrative rules for the Partial Ownership scheme.
- Continue the formal review of the States Home Loans and Assisted Purchase schemes.
- Review the final rent and rebate proposals prior to their presentation to the States.
- Build the overall review of fiscal issues affecting the housing market into the December 2004 Policy and Resource Plan discussions ensuring compatibility with the wider corporate and strategic plan.

#### **ACTION AREA B – STRATEGIC LAND USE POLICY**

**Lead Department – Housing Department and Environment Department**

**Objective:**

To integrate land use planning policies which provide for sufficient housing to be created to meet strategic targets, with a range of measures to ensure that those housing opportunities are translated into development which meets the profile of local needs.

**Action Plan July 2004 – Dec 2004:**

- Publish the Belgrave Vinery Outline Planning Brief for consultation and facilitate a Public Inquiry.
- Develop an Implementation Plan for the Belgrave Vinery site including the ongoing management and interim use of the site.
- Following receipt of the Inspector's report, incorporate the policy in the RAP policy letter to be presented to the States by the Environment Department. (NB The precise timing will be dependent on receipt of Inspector's report.)
- Take supplementary policy letter on the new Planning Law to the States with the Projet de Loi.
- Drafting of Ordinances for the new Planning Law to be completed.
- Complete the study into Planning Covenants and similar mechanisms.

**ACTION AREA C – HOUSING AGENCIES****Lead Committee – Housing Department****Objective:**

To support the development of agencies to provide for the varied needs of the Intermediate Housing Market and to work with those agencies to ensure that there is sufficient provision of affordable social housing to meet the reasonable needs of that sector.

**Action Plan July 2004 – Dec 2004:**

- Facilitate the smooth transfer of tenants into the Delancey Court development.
- Completion of the first 48 units at Rue des Marais/Rue des Lierres.
- Progress the second phase of the development at Rue des Marais/Rue des Lierres.
- Finalise the contractual arrangements for the Youth Housing Project.
- Accept first residents at 17 Havilland Street.
- Finalise the required enabling legislation and associated ordinances for the Partial Ownership scheme.

- Work with the Guernsey Housing Association to finalise the detailed administrative rules for the Partial Ownership scheme.
- Continue investigations and produce a report on the feasibility of a Self Build scheme.
- Continue the development of sheltered housing at the Rosaire Avenue site.
- Progress the development brief and expressions of interest pack for the pilot key worker scheme.
- Secure funding provision to support the development programme for States houses.
- Develop detailed site specific proposals for the development of States houses.
- Continue to assess the need for temporary accommodation for re-housing during renovation and redevelopment work.

#### **ACTION AREA D – STATES OWNED STOCK**

##### **Lead Committee – Housing Department**

##### **Objective:**

To maintain and improve the quality of States owned housing stock, and to provide high quality tenancy services to the occupiers of those dwellings in order to foster communities that are pleasant and safe to live in.

##### **Action Plan July 2004 – Dec 2004:**

- Complete the assessment of the pilot “partnering” programme.
- Finalise the formal contractual arrangements for the partnering programme.
- Continue the Estate Enhancement Programme.
- Introduce the new States tenancy policies and procedures.
- Complete the new States tenancy agreement and carry out a comprehensive programme of tenant communication prior to implementation.
- Enter into further consultation with interested agencies and complete the work necessary for the development of an antisocial behaviour strategy for States estates.

- Continue to support the development of STAG and issue the first States tenants newsletter.
- Present final proposals on the rent and rebate review to the States in the autumn.
- Implement the enhanced HIMS software package for rents and rebates, including training and maintenance.
- Monitor and improve the effectiveness of the enhanced HIMS software package.

## **ACTION AREA E – PRIVATE RENTED SECTOR**

### **Lead Department – Housing Department**

#### **Objective:**

To identify effective measures to improve the quality of private rented housing without reducing the size of the sector or raising rentals above the means of those on modest incomes and to do so in the context of promoting a wider programme of urban renewal.

#### **Action Plan July 2004 – Dec 2004:**

- Review the recommendations made in the study into the private rental sector in the context of the wider CHP Action Plans, taking into account the comments made in the July 2004 States debate.
- Develop the recommendations made in the study into the private rental sector and form a viable Action Plan, incorporating that Action Plan into Action Area E of the 2005 CHP.
- Build the specific proposals for action on improving the quality and affordability of private rented accommodation into the December 2004 Policy and Resource Plan ensuring compatibility with the wider corporate and strategic plan.

**ACTION AREA F – INFORMATION****Lead Department – Policy Council (Policy and Research Unit)****Objective:**

To establish an authoritative system for collating information about housing in order to monitor and review the effectiveness of the Corporate Housing Programme against strategic objectives.

**Action Plan July 2004 – Dec 2004:**

- Develop cross-departmental commitment to the project plan for cross-committee data sharing to facilitate monitoring of the CHP.
- Collect and report on core data measures required to monitor the CHP.
- Build the required actions to progress the monitoring of the CHP into Action Area F of the 2005 Action Plans.
- Continue to register formal expressions of interest in the available affordable housing schemes.



**(NB The Policy Council supports the proposals)**

**(NB The Treasury and Resources Department supports the proposals)**

The States are asked to decide:-

VII.- Whether, after consideration of the Report dated 24<sup>th</sup> May 2004, of the Housing Department, they are of the opinion:-

1. To note the progress made against the Corporate Housing Programme Action Plans for 2003/2004, as set out in that Report.
2. To approve the Action Plans for the period July 2004 – December 2004, as set out in that Report.
3. To note that the allocation of adequate resources is necessary to the successful operation of the Corporate Housing Programme and, accordingly, to direct the Treasury and Resources Department to work with all States' departments involved to fulfil this requirement.
4. To direct all States' Departments to contribute to the development of the 2005 Corporate Housing Programme Action Plans where their assistance is required.
5. To direct all States departments to make appropriate budgetary, staffing and other resource provision for their Corporate Housing Programme commitments in their policy and resource planning submissions for the 2005 Policy and Resource Plan.
6. To note that the Housing Needs Survey due to be carried out in 2004 will now be conducted in 2005 and, thereafter, at intervals of not more than five years.

## HOUSING DEPARTMENT

### IMPROVING THE QUALITY AND AFFORDABILITY OF PRIVATE RENTED ACCOMMODATION IN GUERNSEY

The Chief Minister  
Policy Council  
Sir Charles Frossard House  
La Charroterie  
St Peter Port  
Guernsey

27<sup>th</sup> May 2004

Dear Sir

#### INTRODUCTION

- 1 This policy letter takes the form of a “green paper”, which the Housing Department is submitting for debate under Rule 12 (4) of the Rules of Procedure.
- 2 The Housing Department has decided to submit this policy letter so that the States is aware of the key findings of a recently completed report – Improving the Quality and Affordability of Private Rented Accommodation in Guernsey – prior to the Housing Department, and other States’ departments, formulating specific recommendations and forming a viable action plan to address the issues surrounding the operation of the private rented sector.

#### BACKGROUND AND REASON FOR A REPORT

- 3 In a joint policy letter submitted to the February 2003 States meeting, the Advisory and Finance Committee and the Housing Authority outlined their proposal to develop a Housing Strategy and a Corporate Housing Programme (CHP)<sup>1</sup>. The overarching principle of the CHP is to address housing issues, in a coordinated manner, across *all* sectors of Guernsey’s housing market.
- 4 Subsequently, in the July 2003 Policy and Resource Planning debate, the States agreed the objectives and the 2003/2004 Action Plans for the six Action Areas within the CHP<sup>2</sup>. One of the objectives relating specifically to the private rented sector is “...to identify effective measures to improve the quality of private rented housing without reducing the size of the sector or raising rentals above the means of

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<sup>1</sup> The Development of a Housing Strategy and Corporate Housing Programme – Billet d’État II 2003.

<sup>2</sup> Corporate Housing Programme Action Plans for 2003 / 4 – Billet d’État XIV 2003 Policy and Resource Plan.

*those on modest incomes and to do so in the context of promoting a wider programme of urban renewal.”*

- 5 The appended report was commissioned by the Housing Authority and the Cadastre Committee in order to provide factual evidence upon which to identify and recommend such measures.
- 6 This recognised that **a good quality, fairly priced, private rented sector is essential to the overall operation of the Guernsey housing market.** This sector should provide a desirable alternative to the historic preference for owner occupation in meeting housing need, and thereby reduce the demand for social housing alternatives.
- 7 However, there have been concerns over a number of years regarding the price and quality of accommodation provided in this sector, which accommodates 17% of Guernsey households comprising nearly 8,000 people.
- 8 Concerns regarding quality of accommodation have been brought to the fore in recent years, as various studies have revealed the true state of this sector of the market. The Survey of Guernsey Living Standards<sup>3</sup> found that 68% of tenants in the private rented sector had at least one problem with their accommodation. The 2000/1 Housing Needs Survey<sup>4</sup> found that 42% of households reporting serious space problems were in the private rented sector, whilst nearly half of those with serious damp problems were also tenants in the private sector.
- 9 Private rents have increased at a greater rate than house prices over the past 15 years and of particular concern is the high proportion of household income being expended by many private sector tenants, significant numbers of whom are on low or moderate incomes. In 2001<sup>5</sup> the average rent in the private sector was £644 per month, although this disguised considerable variation in price and/or quality in the sector as a whole. However, the Rent Control Law is the only measure used to control rental levels, but this currently applies to only 61 properties (2% of the Island’s private rented stock).
- 10 Against this background, in July 2003, as part of Action Area E of the CHP, a study was commissioned, the broad aims of which were:

*“...to carry out an analysis of the operation of the private rented sector in Guernsey and, based on those findings, to identify and assess the potential impact of measures, legislative and otherwise, that can be taken to influence the sector:*

- *to improve housing quality; and*
- *to make rents affordable;*

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<sup>3</sup> Survey of Guernsey Living Standards – Various Reports 2001/2/3.

<sup>4</sup> Survey of Guernsey’s Housing Needs – Billet d’État IX 2002.

<sup>5</sup> 2001 Guernsey Census – Report on the Census of Population and Households – August 2002.

*in a manner that will maintain, or increase, the number of dwellings available within that sector.”*

## **REPORT FINDINGS AND NEXT STEPS**

- 11 A copy of the final report is appended to this policy letter. The report makes 29 specific recommendations, the majority of which cannot be considered in isolation but should be considered as elements of a multi-faceted package of measures directed at one or more aspects of the sector. The report highlights 11 of those recommendations for early implementation (set out, for ease of reference, in table 45 on page 152 of the report).
- 12 In April 2004, the full report was presented to the Housing Authority and the Cadastre Committee. The recommendations - which range from the abolition of the Rent Control Law, through various tax reforms, to the establishment of a Private Landlord Forum - were largely accepted by those Committees as being those required to generate the desired improvements across this sector to fulfil the CHP objectives.
- 13 However, prior to developing firm proposals for action, the Housing Department intends to enter into a significant consultation process with all interested parties – including other States’ departments, the private sector and non-governmental bodies – in order to investigate specific solutions.
- 14 The Housing Department also intends, through debate of this policy letter, to gauge the level of States’ support for the measures identified, with a view to a firm Action Plan being drawn up for Action Area E (Private Rented Sector) of the 2005 CHP, which will be presented to the States in December 2004 as part of the 2005 Policy and Resource Plan.

## **RECOMMENDATIONS**

Accordingly, the Housing Department recommends the States:

To direct the Housing Department to report back to the States in December 2004, as part of the 2005 Corporate Housing Programme proposals, with a firm Action Plan based on this report, taking into account the views expressed by the States, together with the views expressed during consultations undertaken with interested parties.

Yours faithfully

David Jones  
Minister  
Housing Department

**Improving the Quality and Affordability of Private-  
Rented Accommodation in Guernsey**

**A Report to:**

**The States of Guernsey Housing Authority and  
The States of Guernsey Cadastre Committee**

**By Michael Parr**

**24 March 2004**

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## Executive Summary

1. It is now widely recognised that a healthy private rented sector is an important, if not essential, part of any housing market. It can provide more flexibility than other housing tenures and thus assist those who need to change their housing arrangements at short notice. It can so help; those entering the housing market for the first time, job movers, those whose relationships have broken down (and who may need to move especially quickly) and those living in an area for a short time. It provides an important middle way for those not ready, willing or able to enter owner occupation or social housing. A healthy private rented sector is perhaps especially important in Guernsey given the importance to the economy of temporary workers on licence.
2. The private rented sector in Guernsey shares many characteristics with the private rented sector in other countries;
  - it has been in decline for a long time, largely as owner occupation has grown - the local market private rented sector now houses just 17% of Guernsey households and even less in the actual numbers of people housed.
  - it is widely believed to have some of the lowest quality housing on the Island.
  - it lags rather than leads quality trends (though there may be good reasons for this).
  - where social housing is limited in availability, affordability and market access to the private rented sector for low income households are often problematic.
  - the sector houses a number of distinct and very different household groups- from the affluent young, whose stay in the tenure may be quite limited, to the impoverished old, who may have been in the tenure for most of their adult life.
  - there is an absence of corporate commercial involvement in the sector - landlords mostly operate at small scale.
3. Some specific features of the private rented sector in Guernsey are;
  - unfurnished accommodation is much more common than furnished accommodation- there are three times as many unfurnished units as furnished ones.
  - the sector is concentrated in the urban corridor- 65% of all private rented sector households are to be found in the two parishes of St Peter Port and St Sampsons.
  - small, 1 and 2 person, households are the dominant form of those living in the sector- 77% of privately renting households are of this type
  - the sector is largely lived in by the young - 60% of the population in the sector are under 40.
  - there is a high economic activity rate and high average income per head of those living in the sector- both above the Guernsey average.

4. Addressing the research's core issues of housing quality, affordability and increasing the stock of private rented property has revealed a number of gaps in data availability. Several recommendations have been put forward to address these gaps and so to bring forth evidence on which to base policy. This has led to a staged approach to policy development being recommended as the best way forward. If policy is to be evidence based, as it surely must be, then clear evidence needs to be collected and available.
5. Notwithstanding this difficulty, I have recommended a package of measures which are desirable now. These recommendations can be implemented within the Corporate Housing Programme and over the short to medium term, i.e., by the end of 2008. By that point a number of planned surveys and recommended new data collection exercises should enable further policies to be developed and existing ones to be refined.
6. The package of measures immediately proposed is to be found in full in Table 45 on page 148. There are four main measures which are justifiable now and necessary to improve the private rented sector's performance;
  - rebalancing of the subsidies currently given in the housing market, which are predominantly given to other tenures
  - implementation of the consumer law already agreed by the States
  - development of a home energy efficiency scheme
  - abolition of rent control
7. Private renting will always be a relatively unattractive option so long as significant sums go to subsidise house purchase and social housing is, by definition, available at below market prices. The combined subsidy to owner occupation and social housing was around £25m in 2001. A more tenure neutral approach should be followed, whilst recognising the equity case for the support of the needy, irrespective of the tenure they live in.
8. The consumer law proposals were contained in the Board of Industry's Policy Letter of January 2000. They covered the sale of goods and services and unfair contract terms. They are now with the Law Officers and need a higher priority for drafting, and making law, as soon as possible. The unfair contract terms element should help address some of the concerns about tenants being unprotected.
9. Energy inefficiency is the single most common reason for failure to meet the housing quality target set in the UK. The same seems likely in Guernsey. It can be rectified relatively cheaply. I estimate it would cost around £2.5m to bring all the private rented sector up to the current UK standard. The benefits of such a measure are; efficiency of fuel use improves with less waste and wider environmental benefits; households can afford to spend less on heating and/or improve heating (with consequent effects on any remaining problems of damp and condensation); and greater thermal comfort year round.
10. The abolition of rent control will be controversial. It has been in use in Guernsey for a very long time and is widely thought to be a measure that ensures that rented property is available at affordable prices. But this is only true for those tenants in



situ and in the short term. In the longer term rent control, like any form of price control (except that dealing with monopoly), has undesirable effects. It can lead to deteriorating housing quality if landlord investment is curtailed because of inadequate returns. It can also lead to loss of stock as more profitable opportunities are followed and stock sold off to owner occupation. Then, paradoxically, rental prices are higher than they would otherwise be and poorer households have even more difficulty in accessing the market. Rent control means that future tenants lose as a result of present tenants being protected. Even present tenants may experience falling quality standards. The long term effects are wholly adverse.

11. Although rent control is only currently applied to a small number of properties this has not been so in the past. It is a disincentive to landlords as there is a risk that it may be applied more stringently. Permanently removing this price control risk would bring Guernsey into line with a number of other countries and provide a signal to investment in the sector.

12. The full list of recommendations, including those for the longer term, are;

Recommendation 1 - PRU should examine the private rents element in the RPI calculation and consider establishing new sampling procedures to ensure it is both more representative and more robust. Alternatively, if the RPI survey is unchanged, data on private rents needs to be surveyed in some other way so as to measure the level of rent paid in the PRS more accurately.

Recommendation 2 - Arising from recommendation 1, PRU should consider constructing and reporting an affordability index for private renting. This would necessitate comparing accurate rental price data with an average income measure, either for the whole population, or better still, an average household income measure for the PRS population.

Recommendation 3 - there should be a periodic housing condition survey. This would resolve disagreement and uncertainty about housing conditions and provide baseline data for the monitoring of policy. It should cover all the housing stock, not just the PRS.

Recommendation 4 - any house condition survey should adopt the decent home standard used in the UK.

Recommendation 5 - numbers meeting the decent home standard should replace the existing quality measure, which is based on closure notices, used in States' monitoring reports.

Recommendation 6 - PRU need to examine the possibility of collecting regular individual and household income data, including its distribution across tenures, on a more regular basis than currently exists.

Recommendation 7 - I recommend an incremental approach to policy development for the PRS is followed. This recognises the present uncertainties in some key areas.

Recommendation 8 - Implement the pending consumer legislation on sale of goods and unfair contract terms, as already agreed by the States, as soon as is practicable.

Recommendation 9 - As argued in the ESHM, housing subsidy policy should be tenure neutral.

Recommendation 10 - The ITA should reconsider its policy on the automaticity of the SRA allowance.

Recommendation 11 - the forthcoming IDC/Housing Authority external study into Planning Covenants, to be commissioned in 2004, should include the use of such arrangements to bring forth more affordable housing for rent.

Recommendation 12 - EHD should consider providing more concrete guidance on environmental standards, and, in the longer term, updating of the environmental health laws .

Recommendation 13 - Rent control should be abolished.

Recommendation 14 - Consideration should be given to having an amount of rental income exempt from income tax for new small landlords.

Recommendation 15 - Consideration should be given to widening the definition of repair and maintenance spending for offset against rental income to include some or all improvement spending. Safeguards might be needed to prevent exploitation of this new wider allowance.

Recommendation 16 - Income tax relief on private rental costs is attractive only as part of a rebalancing of demand side subsidies. It needs to be considered only after more analysis of the scale and nature of affordability issues in the PRS. Nevertheless at that point it is worthy of consideration.

Recommendation 17 - Monitor UK proposals on PIFs.

Recommendation 18 - Study the Barker Review final report and follow the subsequent policy debate.

Recommendation 19 - The EHD should consider how best to update its practices to accommodate the HFS and, potentially, the HHSRS. This might require legislation.

Recommendation 20 - The EHD should consider, if the housing condition survey shows this, a more proactive approach to dealing with sub-standard property failing environmental standards.

Recommendation 21 - Fire regulations may need tightening once data is available on housing conditions.

Recommendation 22 - The case for licensing can be visited once a housing condition survey is done and once the unfair contract terms law has had chance to operate for some time.

Recommendation 23 - Amalgamate SB and PA

Recommendation 24 - Once there is a fix on the nature and scale of income need within the PRS household population, then measures such as SB benefit variations, HB or tax relief or other income support, can be compared in their meeting the target groups' needs.

Recommendation 25 - The HA should try to kick start a landlord's association through establishing a Private Landlords Forum.

Recommendation 26 - The HA can take the lead in organising a series of leaflets relevant to the problems and issues in the PRS, though responsibility for production and distribution might best lie with some other body.

Recommendation 27 - The HA should work with the new Environment Department to design and implement a HEES.

Recommendation 28 - Grants and loans be considered after further information on the PRS quality gap is collected. A small pilot loan scheme for landlords, capped and subject to eligibility criteria, might be introduced first to gauge reaction and help later formulation of a more substantial package (if needed).

Recommendation 29 - The forthcoming HNS and HES need to collect PRS household income and expenditure data so a disaggregate analysis of PRS households can be done.

## 1. Introduction

1. This report has been commissioned jointly by the Housing Authority and the Cadastre Committee of the States of Guernsey. This is on behalf of all States Committees with an interest in the operation of the private rented sector <sup>1</sup>. The report was commissioned at the end of July 2003 and is thought to be the first thorough study of the operation of the Island's private rented sector. Annex 1 gives the terms of reference for the study, which was competitively tendered. Subsequent discussion has confirmed the terms of reference in the tender, save for the clarification that the study is to focus on privately rented accommodation in the local market only. Open market rented property is to be excluded from the study <sup>2</sup>.
2. The study has been commissioned as part of the development of the Corporate Housing Programme (CHP) <sup>3</sup>. It forms one of the core components of the CHP, namely Action Area E, and supports the seventh objective of the overall Housing Strategy. That objective is to maintain and improve the quality of housing in Guernsey across all sectors, bearing in mind the impact of housing conditions on the health and well being of the community <sup>4</sup>.
3. Although concern about housing conditions in the private rented sector has come more to the fore in recent years, partly as a result of a number of other studies, concern about rented housing is of long standing. The States, for example, has already put in place a long term programme aimed at raising the quality of its own social housing <sup>5</sup>. It may be that a comparable programme is needed for privately rented property. Similarly, concern about housing affordability is far from new and such concerns have been expressed about housing costs in all parts of the housing market. This suggests

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<sup>1</sup> For biographical details of the author see the web-site [www.lecg.com](http://www.lecg.com), where he is featured as an Affiliate of LECG (Law and Economics Consulting Group).

<sup>2</sup> On the grounds that relatively few open market properties are rented out; that the number of such properties cannot be increased (given the restrictions on the total numbers of open market properties); that they are not much occupied by those with residential qualification; that they are considerably more expensive to rent than local market properties and, consequently, are unlikely to pose substantial quality and affordability problems for the local population. Analysis of the 2001 Census database reveals that; just 344 households rent in the open market; just 12.6% of these are residentially qualified in their own right (with the bulk of the remainder being pure open market households); and that average open market rents were almost double average local market rents.

<sup>3</sup> Agreed by the States in February 2003.

<sup>4</sup> See *Billet d'Etat II, February 2003*, and para. 3.2.2-on, of Advisory & Finance Committee, *2003 Policy and Resources Plan (July 2003)*, *Billet d'Etat XIV*, for the objectives of the Housing Strategy.

<sup>5</sup> Following the research by chartered surveyors David Adamson & Partners, *Stock Condition and Valuation Survey (Phase 1)*, January 2001, this forms part of Action Area D of the CHP.

that any concerns about quality and affordability in the private rented sector need to be understood and analysed not in isolation but in the context of the whole housing market.

4. The present study has wide terms of reference and covers a large number of issues; economic, financial, legal, regulatory and administrative. As with an earlier report written by the author for the States, the approach adopted is to try to examine these issues from a long term, primarily economic and financial, perspective<sup>6</sup>. Such a perspective is needed because the effects of housing policies, and reaction to them, take some time to work through. Halting, and then reversing, the decline of the private rented sector, and indeed creating a new renting culture (if that is desired), will take sustained effort. Similarly, raising the quality of the housing stock, if it is to be done at a reasonable annual cost, will take many years<sup>7</sup>. In considering options for change, a long term perspective is essential.
5. Where comparisons with other countries are made, Guernsey's privately rented housing experience is contrasted mainly with that of the UK and of Jersey. These countries are the most appropriate countries to look to, for the same reasons put forward in the earlier report. However, the experience of European Union countries is also drawn upon. As always, the report has benefited from the helpful comments made by many people<sup>8</sup>, though the views in it are entirely those of its author.
6. The report has six further sections ;
  - Background
  - Preliminary Analysis
  - States' Policies towards the Private Rented Sector
  - Consultation Undertaken
  - Further Analysis and Identification of Policy Options
  - Conclusions and Recommendations
7. The first section sets out the background "facts" about the local market private rented sector. This section is largely statistical. The second section sets out some preliminary analysis, which distinguishes between problems of market operation and problems of poverty. This reflects the policy distinction on the Island between the CHP and the Corporate Anti-Poverty Programme (CAPP). The section addresses the basic interaction of quality, quantity and price issues and sets out the analytical approach

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<sup>6</sup> Michael Parr, *The Operation of the Housing Market in Guernsey*, November 2002.

<sup>7</sup> The programme to improve the quality of the States' social housing has a 30 year timescale.

<sup>8</sup> In particular the States' officials; Andrew Birnie, Mike Burton, Ken Forman, Gareth Jones, Natasha Killner, Dr. Stephen Langford, Andrew Le Lievre, Adrian Nicolle, Jim Roberts and Tony Rowe, who have commented and/or provided me with data. I am also grateful to the many other people and organisations who have contributed to my understanding of Guernsey's privately rented sector, both through the consultation phase and the provision of data. These individuals are listed at Annex 2. Thanks also to Lisa Bougourd for arranging much of the consultation.

used in the report. The third section then sets out existing public policies which impact on the sector. The fourth section reports on the consultation that has taken place. A large number of interested parties have, most helpfully, given information and views to the author. This information and discussion is summarised there. The next section brings together all that has gone before, extending the analysis, developing policy options and recommending a way forward. The final section draws conclusions and brings the recommendations together. A number of specialised and/or technical issues are dealt with in annexes.

## 2. Background

8. A number of secondary data sources exist which bear on the local market private rented sector (PRS) in Guernsey<sup>9</sup>. The main recent ones are; the Census, held every five years with the last Census being in 2001; the 2000/2001 Housing Needs Survey (HNS); the 2000/2001 Survey of Guernsey Living Standards (SGLS) and the 2002 Economic Study of the Housing Market (ESHM). The first three of these involved surveys of the whole population (though with quite different sample sizes and methodologies) and I have been able to interrogate the database of material collected for each of them. This has enabled me to go beyond the previously published results from these studies. A reasonably clear picture of many aspects of the PRS has so been drawn up.
9. Each of these sources is now covered in turn.

### (i) The 2001 Census

10. The Census carried out by the States every five years is the single most authoritative source of information on the PRS. It is an official exercise and covers the whole population, and all households, on the Island. That is its very purpose- to count all individuals and households on Census night. It is a complete survey with a rigorous procedure for distributing, collecting and checking census questionnaires<sup>10</sup>. There is a legal obligation on the part of households to complete their Census questionnaire. Although there is a small degree of non-response, spoiled returns and uncertainty arising from ambiguous responses the information arising from the Census is the most

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<sup>9</sup> Hereafter, and unless otherwise stated, PRS will be taken to refer to the local market PRS only, as in the revised terms of reference.

<sup>10</sup> See Appendix 1 : Administration of the 2001 Census, in, Advisory & Finance Committee, *2001 Guernsey Census - Report on the census of population and households (August 2002)*.



well founded statistical source available <sup>11</sup>. It forms the baseline against which other smaller surveys measure, and indeed adjust, themselves <sup>12</sup>.

11. I am particularly grateful to both the Economics Section of the Cardiff Business School and Gareth Jones of the States' Policy and Research Unit (PRU), who, at my request, have performed numerous cross tabulations from the 2001 Census database <sup>13</sup>.
12. The Census classification makes an important distinction between communal and private households <sup>14</sup>. Over 3000 people were resident in communal households at the time of the last Census. They were housed in such communal households as; hotels and guest houses, self catering accommodation and lodging houses as well as more obvious communal "households" such as hospitals, residential homes, nursing homes and sheltered accommodation. It must be understood that many individuals and families with residential qualification may be resident for long periods in communal households and pay rent for that accommodation. For example, some self catering accommodation is known to be let, especially during the winter season, on long lets. When individuals and families find it difficult, for whatever reason, to live as a private household in conventional rented property, they may resort to this type of communal accommodation. When pressure is high on normal private rented accommodation, demand may spill over into these other communal forms of accommodation, perhaps especially hotels and guest houses, self catering accommodation and lodging houses. Hereafter in this report, however, the PRS is interpreted as comprising only those in private households, as defined by the Census, and not those living in communal households. This is a limitation on the study, but exploring the composition of communal households, especially through the full year, and the dynamic flows between communal and private households in the PRS is beyond the scope of this

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<sup>11</sup> Though it must be realised that the Census itself will not be exact. Considerable controversy has arisen in the UK about the accuracy of its 2001 Census, especially in counting the numbers of people and households in inner cities, where there are large transient and migrant populations. The Statistics Commission has recently issued a critical report on the work of the Office of National Statistics (ONS) and recommended that population counts in several locations be revisited. See, Statistics Commission, *The 2001 Census in Westminster : Interim Report (October 2003)*. The error in the Guernsey Census result is most unlikely to be of the order of magnitude reported by the Statistics Commission in examining Westminster, but may be 1-2%.

<sup>12</sup> Through adjusting, or weighting, their raw results into final reported results. This is normal statistical practice, though the methods used, and adjustments made, do vary. The difference between unweighted and weighted results can be large.

<sup>13</sup> This data relates to last census night, which was 29 April 2001.

<sup>14</sup> For full definitions of private and communal households see Appendix 2 : Explanatory Notes, p.79, and Appendix 4 : The Census Form, in, *2001 Guernsey Census, op cit.*



commission, as well as the terms of reference, though it raises many issues that the States may wish to examine further<sup>15</sup>.

13. Successive Censuses in Guernsey reveal that the PRS has been in decline for several decades, as Table 1 below shows. Although it is only since 1991 that data on the PRS has been broken down into its constituent open and local market parts, it seems clear that the absolute size of the PRS has been, at best, stagnant, and, more likely, falling, for some time. It housed some 3,904 households at the last census, 17.2% of the 22,664 private households on the Island. In terms of population, it housed 7,474 people, or just 12.5%, of the total Island population of 59,807.

**Table 1 : Tenure of private households in Guernsey, 1971- 2001.**

<i>Year</i>	<i>Owner Occupied</i>		<i>Private Let</i>		<i>States' Let</i>	<i>All</i>		<i>Total number of households</i>
	<i>Local</i>	<i>Open</i>	<i>Local</i>	<i>Open</i>	<i>Total</i>	<i>Local</i>	<i>Open</i>	
1971	9926		4935		1585			16446
1976	11518		4768		1841			18127
1981	12280		4455		1972			18707
1986	12229	1377	4072		1982			19660
1991	13230	1286	4002	489	2208	19440	1775	21215
1996	13974	1231	4095	421	2141	21210	1652	21862
2001	14849	1426	3904	344	2141	21894	1770	22664

*Source* : Table 7.3, of, Advisory & Finance Committee, 2003 *Guernsey Facts and Figures* (2003).

<sup>15</sup> The problems of such communal accommodation has featured a lot in discussions with a number of agencies, such as the Guernsey Social Security Authority and Public Assistance Authority. This is because it is often a housing choice of last resort and so acts as a safety valve for those excluded, for whatever reason, from the "normal" PRS. It can also fit for some with a more impermanent and transient lifestyle. I note that Jersey has recategorised households living as independent units in lodging houses and staff accommodation as private households for the first time in its 2001 Census, in line with international definitions. See, Etat Civil Committee, *Report on the 2001 Census: Jersey (October 2002)* p.37. Guernsey might consider the same.

14. Although the fall in the absolute number of households in the PRS, which is labelled *private let* in Table 1 above, is not that large, the share of the total housing market taken by the PRS has dropped much more. This is because the total population size and the numbers of households have grown so much in the last 30 years. The bulk of this growth has been in owner-occupation. The share that the PRS takes, of the total number of private households, has fallen from around 30% in 1971, the figure then covering both the local and open PRS, to just over 17% in 2001.
15. The shift away from private renting and towards owner-occupation over the last 30 years is not particular to Guernsey. It has happened in most other developed countries. In Jersey, for example, the PRS housed 40% of private households in 1971, but by 1981 this had fallen to 30%. In 1991 it was lower still at 28% and in 2001 the PRS housed 23% of private households. In the UK, the PRS's share of the total housing market was already low by 1971, so that since that date it has not fallen as much as in Guernsey and Jersey. A little earlier in the UK, in 1951, the PRS housed 52% of households, but by 1971 this had already fallen to 20% and in 2001 to just 10%<sup>16</sup>. Across the EU similar trends are apparent. These changes, and the reasons for them, will be examined further in the next section of the report.
16. Census data also shows that the PRS is not a uniform block but exhibits considerable variation within it. A major distinction is whether the accommodation is offered by landlords on a furnished or unfurnished basis<sup>17</sup>. Of the 3877 PRS households indicating which type of accommodation they had, in completing the 2001 Census questionnaire, 932 were reported as furnished and 2945 were unfurnished<sup>18</sup>. This is a ratio of 1:3 of furnished to unfurnished properties. Unfurnished accommodation is much the larger part of the sector. This is as might be expected as households "age" and accumulate their own possessions. Census data also shows a very wide spread of rents charged in the PRS, indicating substantial variations in location, size and quality of accommodation<sup>19</sup>.
17. The geographic distribution of PRS households across the Island is also very uneven, as Table 2 shows.

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<sup>16</sup> In fact it fell to a low point of under 9% in the mid 1980s, but has increased a little since.

<sup>17</sup> These terms blur into each other. Completely unfurnished property might be defined to exclude curtains, floor coverings, kitchen appliances and other fittings, but many "unfurnished" rental properties do include these.

<sup>18</sup> Table 27, Census report, *op cit*.

<sup>19</sup> *Ibid*.



Table 2 : PRS and Guernsey private households and dwellings, by Parish, 2001

<i>Parish</i>	<i>PRS Households- number and %</i>		<i>PRS Dwellings- number and %</i>		<i>Guernsey Households- number and %</i>		<i>Guernsey Dwellings- number and %</i>	
Castel	323	8.2	292	10.1	3190	14.1	3068	14.8
Forest	63	1.6	56	1.9	536	2.4	515	2.5
St. Andrew	83	2.1	79	2.7	855	3.8	824	4.0
St. Martin	250	6.4	225	7.8	2254	9.9	2170	10.5
St. Peter Port	2005	51.4	1193	41.1	6767	29.9	5513	26.6
St. Pierre du Bois	108	2.8	99	3.4	786	3.5	752	3.6
St. Sampson	517	13.2	462	15.9	3313	14.6	3151	15.2
St. Saviour	110	2.8	81	2.8	1020	4.5	950	4.6
Torteval	33	0.8	29	1.0	366	1.6	343	1.7
Vale	412	10.6	387	13.3	3559	15.7	3352	16.6
Total	3904	100.0	2903	100.0	22664	100.0	20721	100.0

Source : New calculations and Table 4.3, 2001 Census, *op cit*.

Note: 1. Herm and Jethou have been excluded in reporting the parishes.

18. As already noted, the PRS houses 17% of private households, but PRS dwellings comprise just 14% of the housing stock. This means that some PRS dwellings are multi-occupied, i.e. several households live in the same dwelling. As regards the numbers of households, the PRS is underrepresented, compared to the total distribution of households, in every Parish except St Peter Port. This is where over 51% of all PRS households are to be found. A similar pattern is to be found as regards dwellings (in which households live), where PRS dwellings are underrepresented, compared to the distribution of all dwellings, in every Parish except St Peter Port and St Sampson.

19. This urban corridor, of St Peter Port and St Sampson, has nearly 65% of the total number of PRS households. This is where the PRS is concentrated. This would be expected if PRS households need to locate near work and facilities. It also fits with wider European evidence that private renting is more common in urban centres and cities, and especially the capital city, than in a country as a whole. In St Peter Port, the PRS has its highest share of housing as a whole and makes up over 26% of the total number of private households there. In contrast, the PRS household share falls, for example, to under 10% in Torteval. Renting is much less common there.

20. In aggregate, there are 1.09 households per dwelling across Guernsey as a whole, but there are 1.34 households per dwelling in the PRS. PRS tenants more frequently live in dwellings that are subdivided into several accommodation units. This is especially the case in St Peter Port where there are 1.68 households per PRS dwelling. There the split up of dwellings for PRS flats, apartments, bedsits, etc. is at its highest.
21. The Census also allows the distribution of PRS household size to be compared to Guernsey as a whole. This is done in Table 3 below.

**Table 3 : Distribution of household numbers for the PRS and Guernsey populations, 2001**

<i>Number of persons in the household</i>	<i>PRS households by number and %</i>		<i>Guernsey households by number and %</i>	
1	1610	41.2	5427	23.9
2	1378	35.3	8198	36.2
3	517	13.2	3790	16.7
4	280	7.2	3428	15.1
5	76	1.9	1267	5.5
6 +	43	1.1	554	2.4
Total	3904	100.0	22664	100.0

Source : New calculations and Table 4.7, 2001 Census, *op cit*.

22. The PRS contains substantially more one person households, and substantially less four plus person households, proportionately, than Guernsey as a whole. Within the PRS, 77% of the households are one or two person households. In Guernsey as a whole the figure is 60%. In consequence of this the average number of persons per household in the PRS is lower, being 1.9, compared to the Guernsey average of more than 2.5. The PRS is a tenure of small sized households.
23. Examining the age and sex distribution of PRS tenants, compared to the Guernsey population as a whole, is done in Table 4 below.



Table 4 : Age and sex distribution of PRS and Guernsey populations, 2001

Age group	PRS- numbers of males and females		PRS- total number and %		Guernsey- numbers of males and females		Guernsey- total number and %	
0-9	379	391	770	10.3	3428	3200	6628	11.1
10-19	306	287	593	7.9	3697	3519	7216	12.1
20-29	762	857	1619	21.7	3761	3913	7674	12.8
30-39	811	703	1514	20.2	4571	4854	9425	15.8
40-49	507	458	965	12.9	4254	4280	8534	14.3
50-59	423	363	786	10.5	3959	3952	7911	13.2
60-69	270	265	535	7.2	2796	2848	5644	9.4
70-79	163	273	437	5.8	1848	2421	4269	7.1
80+	76	179	255	3.4	824	1682	2506	4.2
Total	3697	3777	7474	100.0	29138	30669	59807	100.0

Source : New calculations and Table 2.5, 2001 Census, *op cit*.

24. As regards the gender split summed over all age bands, the ratio of males to females in Guernsey as a whole is 48.7 to 51.3%. The PRS is not much different at 49.5 to 50.5%. However, by each age band there is more of a difference. In Guernsey as a whole the male/female ratio is almost 50/50 until the age of 70+ when the greater longevity of females causes females to progressively outnumber males. For PRS tenants there is more variability, with males rather less numerous than females in the 20-29 age band, 47.1 to 52.9%, but rather more numerous in the 30-39 age band, 53.6 to 46.4%. However, such differences are relatively minor.

25. There are more noticeable differences when comparing the two age distributions. In Guernsey as a whole there is a gentle bulge in the population upto the peak percentage in the 30-39 age band, which has 15.8% of the population in it. All ten year age bands upto the age of 60 each have 10% or more of the total population. However, in the PRS population, the distribution is much more uneven with a pronounced bulge in the 20-39 age group. Both before and after this age band, there are less individuals in the PRS, proportionately, compared to Guernsey as a whole. The PRS is a housing tenure chosen, or lived in, more by young adults aged 20-39.

26. Table 3 has already shown the dominance of one and two person households in the PRS. Table 5 below, which breaks down households by type, shows this in more detail.

**Table 5 : Occupied private households and persons, for the PRS and Guernsey populations, 2001.**

<i>Household type</i>	<i>PRS - numbers and selected % (in brackets)</i>		<i>Guernsey - numbers and selected % (in brackets)</i>	
	Households	Persons	Households	Persons
One person aged under 65	1141 (29.2)	1141 (15.3)	2905 (12.8)	2905 (5.1)
One person aged 65 plus	469 (12.0)	469 (6.6)	2522 (11.1)	2522 (4.4)
Married couple living alone	571 (14.6)	1142 (15.2)	5448 (24.0)	10896 (19.2)
Married couple with sons/daughters	467 (12.0)	1508 (20.2)	6262 (27.6)	24148 (42.5)
Married couple with sons/daughters and other relatives	19	91	326	1633
Married couple with sons/daughters, relatives and unrelated	6	38	44	278
Married couple with sons/daughters and unrelated	14	71	145	739
Married couple with relatives	19	64	200	641
Married couple with unrelated	5	18	52	191
Married couple with relatives and unrelated	0	0	9	38
Cohabiting couple living alone	526 (13.5)	1052 (14.1)	1389 (6.1)	2778 (4.9)
Cohabiting couple with sons/daughters	182 (4.7)	611 (8.2)	706 (3.1)	2566 (4.5)
Cohabiting couple with sons/daughters and other relatives	5	25	30	152
Cohabiting couple with sons/daughters, relatives and unrelated	0	0	2	11



Cohabiting couple with sons/daughters and unrelated	7		34		44		214	
Cohabiting couple with relatives	8		27		23		74	
Cohabiting couple with unrelated	0		0		6		30	
Cohabiting couple with relatives and unrelated	30		104		126		440	
Single person with sons/daughters	200	(5.1)	474	(6.3)	1459	(6.4)	3763	(6.6)
Single person with sons/daughters and other relatives	21		79		151		607	
Single person with sons/daughters, relatives and unrelated	1		4		15		71	
Single person with sons/daughters and unrelated	7		25		98		357	
Single person with relatives	43		91		278		631	
Single person with unrelated	4		13		407		1033	
Single person with relatives and unrelated	159		393		17		57	
Total	3904	100.0	7474	100.0	22664	100.0	56775	100.0

Source : New calculations and Table 21, 2001 Census, *op cit*.

27. The first two rows of the table show the relative importance of one person households. Although there is little difference in the proportions of OAP households, there are significantly more non-OAP one person households in the PRS than in Guernsey as a whole.

28. Considering the first two rows of each of the next two blocks of household types-married couple and cohabiting couple based households, there is again a big difference between the PRS and Guernsey as a whole. Married couples, both with and without sons and daughters, are less numerous, proportionately, in the PRS. Conversely, cohabiting couples, again both with and without sons and daughters, are much more numerous, proportionately, in the PRS. The social reasons for this difference will be complex, but there may be something in the view that the PRS (which is arguably less of a financial commitment than house ownership) allows more fluid relationships to exist.
29. There is little difference between the PRS and Guernsey as a whole as regards single persons with sons/daughters.
30. Considering just the one and two person households arising from; single persons below and above 65, married couples living alone and cohabiting couples living alone, we find that 69% of PRS households are of this type, compared to 54% in Guernsey as a whole. In terms of persons these households account for 51% and 34% of each population respectively<sup>20</sup>. The PRS is predominantly an adult tenure. Children are less present than in other tenures.
31. Given the rather younger age profile, shown in Table 4, it is not perhaps surprising that economic activity of PRS households is higher than in the Guernsey population as a whole. This is true if we examine all those of working age. It is also true for both males and females, as Table 6 shows.

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<sup>20</sup> It should be noted that there is a small inconsistency with the results of Table 3 here. Although both are based on the same questionnaire reports, the Table 5 data on household types does not result in the same result as that of Table 3 for the proportion of one and two person households. The margin, however, is small and probably results from miscompletion of question 7 of the Census.



**Table 6 : Percentage of males and females economically active in the 15-64 age group in the PRS and Guernsey populations, 2001.**

<i>15-64 age group</i>	<i>PRS group</i>	<i>All Guernsey group</i>
Males	91.9	85.9
Females	81.7	70.7
Total	86.9	78.3

Source : New calculations and Table 3.6, 2001 Census, *op cit*.

32. The 2001 Census also collected information about the numbers of rooms, bedrooms and bathrooms the household had for its own use. It collected information about how many bedrooms were normally slept in and how many of these were shared. However, there appears to have been some confusion about answering this latter question so only the core data on the numbers of rooms is presented below <sup>21</sup>.

<sup>21</sup> See para 4.37 of the Census report.

**Table 7 : Number and percentage of private households by number of rooms, PRS and Guernsey populations, 2001**

	<i>PRS households</i>			<i>All Guernsey households</i>		
	Rooms	Bedrooms	Bathrooms	Rooms	Bedrooms	Bathrooms
0			52 1.3			102 0.5
1	197 5.0	1791 45.9	3511 89.9	269 1.2	3411 15.1	16493 72.8
2	459 11.8	1322 33.9	274 7.0	689 3.0	6160 27.2	4447 19.6
3	919 23.5	600 15.4	49 1.3	1883 8.3	8823 38.9	1119 4.9
4	991 25.4	155 4.0	13 0.3	2976 13.1	3038 13.4	331 1.5
5	669 17.1	18 0.5	4 0.1	4643 20.5	856 3.8	107 0.5
6	329 8.4	10 0.3		4417 19.5	263 1.2	33 0.1
7	155 4.0	2		3103 13.7	59 0.3	19 0.1
8	104 2.7	4 0.1		1901 8.4	23 0.1	5
9	45 1.2	2		1137 5.0	15 0.1	7
10	18 0.5			750 3.3	5	1
11+	18 0.5			896 4.0	11 0.1	
Total	3004 100.0	3004 100.0	3004 100.0	22664 100.0	22664 100.0	22664 100.0

**Source :** New calculations and Table 16, 2001 Census, *op cit*.

**Note:** 1. The rooms column includes bedrooms and kitchens (if at least 2 metres wide) <sup>22</sup>.

33. In line with the smaller household sizes in the PRS, found previously, the accommodation actually rented and lived in is also smaller, as compared to Guernsey as a whole. This is entirely as one would expect. It shows the housing market at work. The distribution profile of rooms, bedrooms and bathrooms above all show this. The PRS has 66% of households with 4 rooms or less, whereas Guernsey as a whole has just 26% of households in this size of accommodation. The PRS has 80% of households with 2 bedrooms or less, whereas Guernsey as a whole has 42%. The PRS

<sup>22</sup> For precise definitions see Appendix 2, 2001 Census, *op cit*.

has 91% of households with 1 bathroom or less<sup>23</sup>, whereas Guernsey as a whole has 73%.

34. The modal form of accommodation in the PRS is 4 room, including 1 bedroom, and 1 bathroom, whereas the modal form of accommodation across the Island is 5 room, including 3 bedrooms, and 1 bathroom. The smaller household size in the PRS is reflected in smaller housing space actually lived in.
35. Finally, the 2001 Census collected weekly rent information for both furnished and unfurnished accommodation. This was reported in Table 27 of the Census Report and is not reproduced here. Its main finding, which has been calculated from the Census returns, is that at the time of the Census the average weekly PRS furnished rent was £136, whereas the average weekly PRS unfurnished rent was £169<sup>24</sup>. The weighted average rent in the PRS was £161 per week.
36. Thus the broad picture that emerges from examining the aggregate results for the PRS in the 2001 Census, and which is likely to remain substantially the same today, 2004, is that; *the PRS, which is taken to exclude all those in communal households, housed some 3904 private households, comprising 7704 people; it is concentrated in the urban corridor and especially St Peter Port (which has 51% of all PRS households); is made up of subdivided dwellings more than the average in Guernsey (and especially in St Peter Port); that the tenants of the PRS are disproportionately young (with 60% of tenants under 40); that 1 and 2 person households dominate (76% of PRS households are of this type with the average PRS household having 1.9 persons, compared to over 2.5 across all Guernsey households); that within this it is one person households under 65 and cohabiting couples with and without children that are more frequent than across the whole population; married couple households are less frequent; that PRS tenants as a whole are more economically active than the rest of the population (87% of PRS adults of working age are active); and that the smaller household sizes are reflected in smaller housing units, as measured by the numbers of rooms, bedrooms and bathrooms available.*
37. This broad picture is for the PRS in aggregate. I have also available the same data as presented and analysed above for the two main component parts of the PRS - its furnished and unfurnished elements. As already noted, these two parts house some 937

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<sup>23</sup> Presumably a zero response for bathroom refers to where a bathroom is shared between households.

<sup>24</sup> There is a small difference between the results from Table 27 and from direct computation of the Census returns. This is probably due to coding errors. Notwithstanding this, the finding that average unfurnished rents were higher than average furnished rents is at first sight surprising. It is explained by the relative size and quality of properties concerned. The average unfurnished property is larger, and may be of higher quality, than the average furnished property- see later in this section.

and 2967 households respectively, which represents 24 and 76% of the total number of PRS households. The full data and analysis of these two sub-parts of the PRS is not reproduced here in full to save space, but a number of differences do exist between the (smaller) furnished and the (larger) unfurnished parts which are worth reporting.

38. Firstly, Table 3 has already shown that the PRS in aggregate has smaller sized private households than Guernsey as a whole. Within the PRS, the size of households in furnished accommodation tends to be even smaller, as Table 8 below shows.

**Table 8 : Percentage breakdown of household size for the furnished and unfurnished parts of the PRS, 2001.**

<i>Number of persons</i>	<i>Furnished</i>	<i>Unfurnished</i>	<i>Total PRS</i>
1	48.5	39.0	41.2
2	33.5	35.9	35.3
3	11.5	13.6	13.2
4	4.6	8.0	7.2
5	1.2	2.2	1.9
6+	0.8	1.2	1.1

Source : New calculations from Census data.

39. It can be seen that almost 50% of households in furnished accommodation are single person households. Households in unfurnished accommodation are larger, though still smaller than the Guernsey average. There are on average 1.8 persons per furnished household, compared to the Guernsey average of 2.5.

40. As found before in Table 7, these differences in household size are reflected in equivalent differences in the size of accommodation actually rented, as measured by the numbers of rooms.



**Table 9 : Percentage of furnished and unfurnished private households in the PRS by number of rooms, 2001**

<i>Number of rooms</i>	<i>Furnished</i>	<i>Unfurnished</i>	<i>Total PRS</i>
1	12.7	2.7	5.1
2	13.9	11.3	16.0
3	26.6	22.7	23.6
4	20.7	27.0	25.5
5	13.3	18.4	17.2
6	6.2	9.2	8.5
7+	6.5	8.8	8.3

Source : New calculations.

Note: 1. The rooms column includes bedrooms and kitchens (if at least 2 metres wide) <sup>25</sup>.

41. Over 63% of households in furnished accommodation live in 3 rooms or less. This is compared to 37% of those in unfurnished accommodation. One room accommodation, i.e. a bedsit, is much more likely to be found in the furnished part of the PRS.

42. The type of household living in furnished accommodation is also somewhat different. It is smaller, but it is also disproportionately male. Whilst the male/female split in the PRS as a whole is 49.5 to 50.5%, as shown in Table 4, in the furnished part of the PRS there are 53.8% of males compared to 46.2% of females. Furthermore, the age distribution of people in the two sub-parts of the PRS is different. The PRS as a whole has already been found to be weighted towards young adults, under 40, but those in the furnished part of the sector are on average even younger. The modal male age is 25-29 and the modal female age is 20-24 in the furnished part. There are also fewer older people in the furnished part of the PRS, with only 105 individuals of OAP age—presumably because this age group is eligible for States housing if it is wanted. This is just 6% of the furnished PRS population. In contrast there are significant numbers of OAP individuals, some 748 or 14% of the PRS total, in the unfurnished part of the PRS. One might reasonably conclude that this is consistent with furnished accommodation being the choice of the young before they have accumulated possessions. It will thus be relatively rare for OAPs with few possessions to live in furnished accommodation, and it is. For both them and those OAPs in unfurnished

<sup>25</sup> For precise definitions see Appendix 2, 2001 Census, *op cit*.

rented accommodation it may be that they are more content with their private tenure, even if supported by the States, than in moving to States' accommodation.

43. Economic activity has already been shown to be higher in the PRS, at 87%, than in Guernsey as a whole- see Table 6. However it is higher still in the furnished part of the PRS, being 90% of those in the 20-64 age group.
44. The geographic distribution of the furnished and unfurnished parts of the PRS also shows some differences. Furnished accommodation is even more prevalent in St Peter Port than for the PRS as a whole. Over 54% of furnished PRS households are located there.
45. This analysis of furnished and unfurnished accommodation adds to the picture of the PRS painted in paragraph 36. It shows that; *the furnished part of the PRS is much smaller, in number, than the unfurnished part, housing just 24% of PRS households; it is cheaper to rent on average; but it is made up of smaller households (some 82% of those living in it are 1 or 2 person households); these households live in smaller accommodation (over 63% is 3 room or less and this probably explains the cheaper rent paid); the households are more male than female (nearly 54% to 46%); and are on average even younger than for the PRS as a whole (the modal male age is 25-29 and the modal female age is 20-24); the economic activity rate of those in the furnished sector is higher than in the PRS as a whole; and the furnished part is more concentrated in St Peter Port (with over 54% of furnished accommodation there).*
46. Interpreting these findings, it would seem likely that a substantial number of those in furnished accommodation chose it as a first tenure, after leaving home or coming to the Island. 45% of those in furnished accommodation in the PRS are under 30 with only 6% over 65. In unfurnished accommodation the comparable figures are 35% and 14%. It would also seem likely that that as the young age, and have more income and accumulate possessions, the majority either move from furnished to unfurnished accommodation or to other tenures.

## (ii) The Housing Needs Survey

47. The HNS was commissioned in 2000 and awarded to Opinion Research Services (ORS) of the University of Wales, Swansea<sup>26</sup>. Its main purpose was to identify the future housing need on the Island. It so informed the strategic house build target, which is currently 300 new homes a year. A follow-up HNS is to be carried out this year, 2004.

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<sup>26</sup> For a summary of the HNS see *Billet d'Etat IX, 2002*.

48. ORS circulated a survey questionnaire, by post, to all households in December 2000 and early 2001, the addresses being drawn from the rateable value tax register. This list had 22,765 households on it. The questionnaire had 20 main questions, with sub-parts to some of the questions. To maximise the response, an extensive publicity campaign was undertaken through local radio and other media. 10,113 questionnaires were returned, giving a gross response rate of over 44% <sup>27</sup>.
49. Not all questions were responded to by households returning the questionnaire. Some, such as reporting individual and household income levels, seem to have been more sensitive and the gross response rate for some questions fell to 35%. Nevertheless the overall response rate was the highest that ORS had received for a survey of this type.
50. To take account of non-response and self selection bias, ORS analysed the characteristics of respondents and non-respondents by comparing the unweighted survey data with the 1996 Census data <sup>28</sup>. The unweighted returns were slightly under-representative of households in St Peter Port and slightly over-representative of households in most other Parishes. Additionally, the sample was over-representative of households owning their properties and under-representative of households that rented, either privately or from the States. Only 800 returns were received from PRS households, an unweighted response rate of just over 20% of the PRS population, compared to a 44% response overall. Reweighting then occurred by Parish and tenure so that the profile of achieved weighted returns matched that of Census data. Because of the high overall response rate and the reweighting carried out, the HNS results should be quite robust in aggregate, but rather less so for the PRS population alone. Where equivalent HNS data to that collected in the 2001 Census is available, comparisons of results are made below.
51. The HNS database, of weighted returns, has been broken down by housing tenure and the responses of those in the PRS to some of the key questions asked are now presented. The number of valid weighted replies from households in the PRS is divided by the total number of households in the PRS, as measured by the 2001 Census, to calculate a response rate, R, for each question <sup>29</sup>. This is reported in the Table headings.
52. The first question concerned the geographic location of the household.

<sup>27</sup> The Census in April found there were only 22,664 private households, rather than the 22,765 on the rateable value tax register, so the response rate was, in fact, a little higher.

<sup>28</sup> That being the latest Census data available at the time.

<sup>29</sup> Note that this is for weighted results. The unweighted response is approximately half that reported in the tables. The response rate should not be interpreted the same for all questions as some questions do not relate to the whole household population of the PRS, but to a subpart of it, e.g. of those wanting to move in the immediate future. Nevertheless, it is still instructive to know the percentage of the total PRS household population on which the weighted questionnaire findings are based.

**Table 10 : Q01a- In which of Guernsey's parishes is your home? Percentage of PRS households responding, by parish. [R= 45.8%]**

<i>Parish</i>	<i>HNS response</i>	<i>2001 Census result</i>
Castel	8	8.2
Forest	2	1.6
St. Andrew	3	2.1
St. Martin	8	6.4
St. Peter Port	52	51.4
St. Pierre du Bois	2	2.8
St. Sampson	13	13.2
St. Saviour	2	2.8
Torteval	1	0.8
Vale	10	10.6
Total	100	100.0

53. Given the reweighting of the HNS raw returns, based on tenure patterns in the 1996 Census, there is naturally a very good fit between the HNS weighted response and the true distribution of PRS households across the Island (taking the 2001 Census result as the true distribution at the time of the HNS). The next result, however, is new.

**Table 11 : Q01bi- How long have you lived in your current home? All Guernsey and PRS responses, as a percentage [ R= 45.2%]**

	<i>All Guernsey, %</i>	<i>PRS, %</i>
Less than 2 years	16	36
2 to 4 years	15	26
5 to 9 years	17	15
10 years or more	52	22
Total	100	100



54. The results of the question reported in Table 11 are significant as they suggest that PRS tenants are much less settled and permanent in their accommodation choice than are households generally. It appears as if attachment to any particular PRS property, and perhaps to the tenure, is low. PRS tenancies are comparatively transient. 62% of PRS tenants have moved within the last 4 years. Examining the profile of the length of stay in the Table suggests that around 20% of PRS tenants move within one year of taking up residence. This would fit with the fact that the standard lease term, where contracts exist, rarely appears to be more than one year. This is a high rate of turnover, meaning nearly 800 PRS moves occur each year. (20% of 3904 households). This transience is also characteristic of the PRS in the UK.
55. The transience, for many, of PRS tenure has a number of implications. It may mean that the longer term features and characteristics of a property (such as its structural condition, maintenance and repair) are lower on the tenant's list of priorities, compared to someone intending to live in accommodation for longer. Because the tenure is short term the housing priorities may be short term. Long term aspects of housing quality may then, quite rationally, be less important for a PRS tenant than for the average Guernseyman or woman. Equally, it may be that if PRS housing quality is poor, then this might be causing the high rate of moving as tenants try to find better quality accommodation. In considering policy towards the sector, it will be important to distinguish between these two possibilities.
56. The next relevant HNS question shows that the current PRS accommodation is much less the first home for PRS tenants than in the household population at large.

**Table 12 : Q01c- Is this your first independent home? All Guernsey and PRS responses, as a % [ R= 41.7%]**

	<i>All Guernsey</i>	<i>PRS</i>
Yes	34	19
No	66	81

57. The results of Table 12 require explanation. They do not necessarily mean that tenants have lived in other tenures. They probably also reflect the results of Table 11- that many in the PRS move frequently, so the PRS may well have been the tenure for the first independent home. The HNS did not ask what was the first tenure inhabited so the results will remain ambiguous on this. The answers to the later question, reported in Table 15 which notes that 22% of PRS tenants were in residence only because of a licence and were almost certainly from off the Island where they might still have property are also relevant here.

**Table 13 : Q02a- In what type of home do you and your household currently live? All Guernsey and PRS responses, as a % [ R= 45.4%]**

	<i>All Guernsey</i>	<i>PRS</i>
House or chalet	60	36
Bungalow	23	10
Flat or maisonette	16	52
Granny flat	1	2
Total	100	100

58. This is consistent with the 2001 Census result about the numbers of households and dwellings in the PRS. The HNS finds that, whereas 83% of all Guernsey households live in independent dwellings- a house, bungalow or chalet, only 46% of PRS tenants do <sup>30</sup>. The majority live in flats, maisonettes or bedsits. The HNS result can be combined with the Census result of Table 2 to yield some speculative conclusions about the subdivision of PRS dwellings.

59. From the table above some 54% of PRS households live in a flat or maisonette. If we assume this HNS result is true, this must represent 2100 households, based on the 2001 Census count of households. The other 46% of households, some 1800, live in independent dwellings (houses, chalets or bungalows). As the 2001 Census found that PRS households as a whole occupy 2900 dwellings, this implies that those 2100 PRS households in a flat or maisonette share just 1100 properties. This implies a share ratio of 1.9 : 1. By definition a share ratio has to be above 2, so it further implies that some dwellings must have the owner living in a separate flat or maisonette within the dwelling, or that part of the dwelling is in some non-residential use (such as a business premise, perhaps typically a retail unit <sup>31</sup>). It further shows that the average PRS tenant shares a dwelling with only one other PRS tenant. Although some properties may be subdivided into many units (called houses in multiple occupation- HMOs) this is not the average experience of PRS tenants.

<sup>30</sup> Of course if PRS tenants were compared simply to the rest of the Guernsey population, excluding themselves, the comparison would be even more stark.

<sup>31</sup> An examination of two streets in St Peter Port by the Town Centre Partnership showed that many business premises had single flats above them. See TCP, *Urban Regeneration- Mill Street/Mansell Street*.

60. The number of bedrooms in PRS accommodation, as revealed by the HNS in Table 14 below, squares quite well with the 2001 Census result. If those living in bedsits had responded to the Census questionnaire by answering one bedroom, the two surveys give very similar results. This confirms the general robustness of the HNS results.

**Table 14 : Q02bi - How many rooms does your home have that are currently used as bedrooms?  
HNS and 2001 Census results as a % [R= 44.8%]**

<i>Numbers of bedrooms</i>	<i>HNS PRS result</i>	<i>2001 Census result (from Table 7)</i>
1	42	45.9
2	35	33.9
3	15	15.4
4 or more	6	4.9
No rooms (bedsit)	2	n/a
Total	100	100

61. The next two questions asked in the HNS are particularly important as they bear on the quality of PRS accommodation (though the question prescribes just four problems for the responses).

**Table 15 : Q03 I - Which of the following problems, if any, does your home have? [R= 46.9%]**

<i>Problem</i>	<i>All Guernsey</i>	<i>PRS</i>
Damp penetration or condensation	26	45
Poor heating or the home being cold	16	37
Poor sound insulation	12	30
Insufficient space for your household	12	23
None of the above stated	60	33

62. The results above, for the four specified problems, show quite a high level of complaint, for Guernsey and especially within the PRS, with 40% and 67% respectively reporting one or more of the problems suggested. On average, and for just those with a problem, all Guernsey households reported 1.65 problems, with PRS households reporting 2.0 problems.

63. The dissatisfaction fell considerably when asked if the problems were “serious”.

Table 16 : Q03 i - Which of the following problems does your home have which are serious? [ R= 46.9%]		
<i>Problem</i>	<i>All Guernsey</i>	<i>PRS</i>
Damp penetration or condensation	5	13
Poor heating or the home being cold	4	11
Poor sound insulation	3	9
Insufficient space for your household	3	7
None of the above stated	90	77

64. Now, 90% of the household population as a whole have no serious problems, with those that do reporting 1.5 problems on average. For the PRS, 77% of households have no serious problems, at least none of those suggested, with those that do reporting 1.7 on average.

65. At first sight these results appear rather worrying for the quality of PRS housing. However, interpreting these statistics is fraught with difficulty. A number of points need to be made.

66. First, the change between the two Tables is not even. Whereas for all Guernsey households, those reporting no problem rises from 60 to 90%, it more than doubles from 33 to 77% for those in the PRS. The decline in the reporting of each problem when rated from simply being a problem to being serious, falls by three quarters or more in the whole Guernsey result but only by two thirds for the PRS. This may be because the problems are objectively different, and worse in the PRS, but it may also

be because the groups are not interpreting the meaning of “serious” in the same way. There may be a difference in the propensity to call something serious<sup>32</sup>.

67. Second, two of these problems- poor sound insulation and insufficient space- will be affected by the type of property that is typically inhabited. Results already presented show that Guernsey households as a whole live, on average and compared to PRS households, in larger properties and in individual dwellings. As such, problems of noise and space should be less. To a degree, PRS tenants being smaller households and with many sharing dwellings, and also being predominantly in St Peter Port, will perhaps inevitably experience relatively more sound and space problems. Higher density living causes this. Of course this does not mitigate the problem or the adverse experience of those in that situation. However, on the basis of the HNS and Census statistics, it is not possible to say, for example, that overcrowding is more of a problem in the PRS.
68. Third, cross tabulations of the reporting of serious problems with other characteristics reveals that the situation of single parents with dependent children and younger respondents (upto age 35) also report above 20% of properties with one or more serious defects. There is also evidence that problems are more likely the lower the household income. Clearly problems with heating a property and condensation are partly a matter of income, and the willingness, and ability, of a household to spend more of its budget on heating and devices such as dehumidifiers. Census data shows that PRS tenure is predominantly for the young. This may partly explain the problem levels reported. All this warns against any simple conclusion that housing tenure alone is the cause of the reported quality problems. It may be that other characteristics of tenants, properties and their location also partly explains the results of Tables 15 and 16, as well as tenure per se.
69. I have examined whether there is any relationship in the HNS data between the cost of the rented property in the PRS and the responses of the households to problems in the accommodation. This is because cheaper PRS property might be expected, a priori, to be of lower quality. The weighted results are reported in the two Tables below.

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<sup>32</sup> Responses to this question also show that States’ tenants find as many serious problems with their accommodation as PRS tenants. Only 76% of States’ tenants find no serious problems with their accommodation. As both PRS and States’ tenants rent from a landlord, who has some maintenance and repair responsibilities, there may be a difference in the propensity to call problems serious, compared to owner-occupiers. This is considered further later.



**Table 17 : Percentage of respondents in the PRS reporting a problem, by weekly (£) rent band, weighted data.**

<i>Rent</i>	<i>Damp penetration or condensation</i>	<i>Poor heating or the home being cold</i>	<i>Poor sound insulation</i>	<i>Insufficient space for the household</i>	<i>None of these</i>
Nil rent	13	20	20	13	73
Less than 75	50	50	29	19	27
75-99	50	48	39	29	27
100-149	46	40	34	23	28
150-199	49	27	24	23	36
200-299	38	19	18	22	41
300+	42	35	26	22	39

**Table 18 : Percentage of respondents in the PRS reporting a "serious" problem, by weekly (£) rent band, weighted data.**

<i>Rent</i>	<i>Damp penetration or condensation</i>	<i>Poor heating or the home being cold</i>	<i>Poor sound insulation</i>	<i>Insufficient space for the household</i>	<i>None of these</i>
Nil rent	0	0	0	0	100
Less than 75	16	12	7	9	78
75-99	15	15	15	10	73
100-149	12	14	10	7	75
150-199	18	7	9	9	72
200-299	10	6	6	2	84
300+	16	10	9	5	79

70. Examining the results shows that there is a weak relationship between the cost of property and the reporting of problems. This is apparent if we simplify the information in the two tables and compare rented properties costing under £100 per week (and so group together two bands in the table but exclude nil rent properties of which there are very few<sup>33</sup>) with properties costing more than £200 per week (and so group another two bands together). In all cases respondents in the lower price band report more problems than those in the upper band. This is true both for the simple reporting of problems and for the reporting of serious problems.
71. I would expect the relationship to be weak as each rental price band will contain a mix of size and type of properties. Thus, the band under £100 per week will probably contain both furnished bedsits (which, perhaps, “ought” to have been of satisfactory standard at that price in 2001) and unfurnished one and two bedroom flats which might be of lower standard. This makes the relationship between price and quality in the Tables less clear, as other factors are intervening. The data is not for a standardised housing unit. But such a relationship does appear to be there, as would be expected.
72. Nevertheless, on the basis of this self reporting there is a clear minority of PRS tenants, 23% in total across the whole tenure, that feel dissatisfied with their accommodation, believing it to have a serious problem. Because self reporting is subjective, it is unclear on an objective basis how serious the problem(s) reported actually are. I will return to this.
73. The responses to the next question reinforce the possibility that some PRS tenants have a shorter time horizon on housing matters than others, and particularly owner occupiers, on the Island. Those with a time limited housing licence may not be as concerned about housing quality if their stay is limited. Whether they actually are, or should be, are different matters. But it is reasonable to suppose that short term license holders will have short term horizons about housing, especially if they are returning to their country of origin. As previously suggested this may also be true of those with residential qualification who are transiently in the PRS.

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<sup>33</sup> The numbers of properties responding in each rent band were, respectively; 8, 104, 127, 298, 142, 86 and 39.

**Table 19 : Q04b - Does your household live in the local market through residential qualification or through a housing licence? [R=43.1%]**

	<i>All Guernsey</i>	<i>PRS</i>
Residential qualification	91	78
Housing Licence	9	22

74. Question 05d of the HNS asked about the weekly rent paid by the household. From the data collected I have calculated the average rent in the PRS to be £138 at the time of the HNS. This compares with the average PRS rent of £161 per week from the Census questionnaire, taken some 4 months later at the end of April 2001. Even though there will have been some small price inflation in the period, there remains a large discrepancy between the HNS result of £138 per week and the Census result of £161 per week. Assuming that the Census result is the true average rent, as it surveyed all the PRS and not just a sample, this suggests a margin of error of 17% in the HNS result. This is bigger than found when the bedroom numbers were compared between the two surveys.

75. Question 07a bears on the household's permanence of stay in their present accommodation. Coincidentally, the PRS response is the exact reverse of the all Guernsey result.

**Table 20 : Qo7a - If it were possible, would you and your household like to move to another home? [R=44.0%]**

	<i>All Guernsey</i>	<i>PRS</i>
Yes	35	65
No	65	35

76. A later HNS question, reported out of order here, bears on where PRS tenants would like to move to.



**Table 21 : Q12ai - (If you were to move) which of the following options would you prefer if it were possible? [R= 30.1%]**

	<i>All Guernsey</i>	<i>PRS</i>
Buying a home	82	76
Renting from a private landlord	5	8
Renting from the States	13	16

77. This is a revealing question as it can be seen that the strong preference of PRS tenants, like the Guernsey population at large, is for owner-occupation. Very few, just 8%, wish to remain in the PRS. There is no strong renting culture on the Island. A number of possible reasons for wanting to move, to owner occupied or States housing, were put to households in a further question. The results are given in the Table below. However, some rather more obvious, and arguably much more powerful, reasons for moving, such as the perceived financial attractions of home owning (given recent rising real house prices), the subsidies given to home owners (through general tax relief on mortgage interest and the States Home Loans Scheme), the low States' rents, the lack of a rent rebate scheme for PRS tenants equivalent to that given to States' tenants, etc., were not on the list of possible reasons for moving. If housing choice has a financial aspect to it, as it surely does, then these should have figured in the list.

78. Nevertheless, the results are instructive. Guernsey households as a whole had 1.5 reasons for moving. PRS households had 1.6. Both groups had the same most quoted reason- the current home is too small. This might be expected on a densely populated island. The next reason for PRS tenants was a wish to own their own home. Then, in third place, came the fact that their home was in a poor state of repair, cited by 20% of respondents. This confirms the previous result about a minority dissatisfaction with the quality of PRS housing. However, note that all Guernsey households also cited this in 10% of cases and that PRS households only cited noise (one of the previously "serious" housing problems cited) in 1% of cases (compared to 9% saying that inadequate sound insulation was a serious problem earlier in question 03ii, reported in Table 14). This inconsistency in response within the same survey suggests the term "serious" may be quite context dependent.

Table 22 : Q07b - What are your main reasons for wanting to move? [R=28.7%]

	<i>All Guernsey</i>	<i>PRS</i>
Other	16	12
Change in lifestyle	22	17
For care or support	5	5
End of tenancy	6	14
Forced to move	3	5
Home too small	37	42
Home too large	15	3
Home in poor repair	10	20
Cost of upkeep	11	14
Garden	5	3
Parking	3	2
Noise	1	1
To own home	10	24
Traffic	0	0
Privacy	1	0
Neighbours	1	1

79. Answers to the next HNS question confirm the earlier finding that the typical tenant is very transient in their stay in the PRS.

**Table 23 : Q08 i and ii - How likely, or unlikely, are you to move from your current home within the next 2 years/within the next 5 years? [R=41.4% and 39.7% respectively].**

	<i>All Guernsey- within next 2 years</i>	<i>All Guernsey- within next 5 years</i>	<i>PRS- within the next 2 years</i>	<i>PRS- within the next 5 years</i>
Very likely	11	19	33	53
Fairly likely	8	16	18	21
Fairly unlikely	15	18	19	9
Very unlikely	66	46	30	17
Total	100	100	100	100

80. The contrast between the answers given by the household population as a whole and the answers of those in the PRS is quite stark. Over 50% of PRS tenants say they plan to move home in the next 2 years, with 74% planning to move in the next 5 years (grouping the two likely categories together). Only a quarter claim to be unlikely to move in the next 5 years.

81. Table 22 has already reported that the vast majority of PRS tenants would prefer to move to owner occupation. However, this was not a feasible proposition for many. Table 24 below shows where PRS tenants would most likely move to in practice. It is unknown whether it is financial, personal or other reasons which lie behind the majority staying in the PRS. It is probably a mixture.

**Table 24 : Q12a1 - Which of the following options (for moving) are you most likely to choose in your present circumstances? [R=24.7%]**

	<i>All Guernsey</i>	<i>PRS</i>
Buying a home	58	29
Renting from a private landlord	31	61
Renting from the States	10	10

82. The next Table gives interesting results as it combines two questions about rents in the PRS.

**Table 25 : Q05d- If you currently rent your home, what is the household's weekly rent? [R = 44.1%]  
Q13d- In your current financial and family circumstances, what is the maximum weekly payment you could make towards rent, including any service charges? [R= 23.3%]**

	<i>PRS actual rent</i>	<i>PRS maximum affordable rent</i>
Nothing	1	0
Less than £75	13	14
£75-99	16	20
£100-149	39	34
£150-199	17	17
£200-299	10	11
£300 or more	4	4
Total	100	100

83. There are numerous interpretations of the responses above. First, it is clear that a reasonable number of PRS tenants can, and do, pay a substantial amount of rent per week. 14% paid over £200 per week at the time of the survey and a further 1% say they could afford this. At lower rent levels, below £100 per week, 34% claim this is the maximum they can afford yet only 30% are actually paying this. It is unclear if this desire for lower rents represents an aspiration or present financial hardship. Overall it looks as if most respondents are claiming that their present level of rent is the maximum they are able to pay. Given the well publicised nature of the HNS exercise, it is probably unwise to conclude too much from responses about how much tenants say they could afford. They might be hoping to influence public policy.

84. The HNS, like the Census, also asked about economic activity.

**Table 26 : Q18aa and 18ab- Are you (and your partner, where applicable) working? [R= 41.3% and 24.7% respectively]**

<i>Employment status</i>	<i>Main respondent in PRS household</i>	<i>Partner</i>
Working full time	72	69
Working part-time	10	13
Not currently in paid work	18	18
<b>Total</b>	<b>100</b>	<b>100</b>

85. The HNS did not distinguish between males and females, but, fortuitously, the Table above shows that the level of activity (adding full and part-time work together) for the main respondent and their partner is the same at 82%. The 2001 Census result for men and women combined showed an economic activity rate of 87% in the PRS population and 78% in the general population<sup>34</sup>. Table 26 confirms the above average level of economic activity of PRS households. It also shows the HNS result is again not too far distant from the 2001 Census result.

86. Finally, various questions were asked in the HNS about individual and household income. These are reported below.

<sup>34</sup> See Table 6 earlier.

**Table 27 : Q18ca and 18cb - What is your (and your partners, if applicable) annual gross income ?**  
**Percentage response [R = 35.6% and 19.6% respectively]**

<i>Annual income, £</i>	<i>All Guernsey- main respondent</i>	<i>All Guernsey- partner</i>	<i>PRS-main respondent</i>	<i>PRS- partner</i>
Up to 6000	8	17	6	10
6000-11999	16	22	19	20
12000-17999	21	22	27	32
18000-23999	18	17	22	21
24000-29999	12	10	15	11
30000-49999	14	8	8	4
50000+	10	4	4	2
Total	100	100	100	100

87. PRS respondents, both the main respondent and their partner, if any, have fewer high incomes than the Guernsey population at large. 24% of all Guernsey main respondents earn over £30000 per annum, whereas only 12% of main PRS respondents do. 12% of all Guernsey partners earn over this amount, whereas only 6% of PRS partners do. The position is more similar when looking at low incomes. 24% of all Guernsey main respondents earn below £12000, whereas 25% of main PRS respondents do. However, 39% of all Guernsey partners earn below this amount, whereas only 30% of PRS partners do.

88. In the three middle income bands, covering £12000-30000, there are more PRS respondents and partners than in Guernsey as a whole. Given the variation in household composition and activity rates, the HNS household income figures are probably more revealing.



**Table 28 : Gross Household Income, PRS and all Guernsey households, percentage response.**

<i>Annual income, £</i>	<i>All Guernsey</i>	<i>PRS</i>
Up to 10000	15	17
10000-20000	18	20
20000-30000	18	20
30000-40000	14	16
40000-60000	20	20
60000+	16	7
<b>Total</b>	<b>100</b>	<b>100</b>

89. The distribution of gross household incomes are rather similar to the distribution of individual incomes. As household income is simply individual incomes added together this is hardly surprising. There are, or rather were in 2001, far fewer PRS households with the top level of household income, £60000+, and slightly more PRS households earning below £20000. But below the £60000+ bracket, the distribution of PRS households is very similar to the all Guernsey result. There are no substantive differences. PRS households are not substantially poorer in income terms than the Guernsey population at large<sup>35</sup>. What differences as exist are caused by the (relative) lack of very high income households in the PRS. My calculations from the above find that the average gross all Guernsey HNS household income is, or was, £35700 with the average PRS household income being £30100 per annum<sup>36</sup>. However, the average Guernsey household has 2.5 persons in it and the average PRS household has only 1.9 persons in it<sup>37</sup>, so, on a per head basis, the figures become £14,300 and £15,800 respectively for the average Guernsey and PRS households. Allowing for the slightly lower percentage of children in the PRS compared to Guernsey as a whole<sup>38</sup>, still

<sup>35</sup> Though they do have to be more economically active to achieve this.

<sup>36</sup> Excluding the top household incomes of £60,000+ would mean the average were almost the same.

<sup>37</sup> See para 21.

<sup>38</sup> See Table 4 earlier, which shows that 18.2% of individuals in PRS households are under 20, compared to 23.2% in the population at large.

leaves PRS income per adult head higher than in Guernsey as a whole<sup>39</sup>. This is an unexpected result.

90. The HNS adds considerably to understanding the circumstances of PRS tenants. One can have reasonable confidence in the HNS results because they are based on a reasonably large sample of the whole household population. Comparing selected HNS results with the equivalent ones from the Census also shows a fair degree of correspondence (particularly in the findings on numbers of bedrooms and economic activity rates). This further enhances confidence in the broad results of the HNS.
91. The key features revealed by the HNS, which are additional to the Census findings of the following year, are; *that PRS tenancy is much less permanent than in other tenures- substantial numbers of PRS tenants have moved in the last year and intend to move in the coming 2 years; nearly half of PRS tenants live in separate dwellings, with the remainder, on average, sharing with 1 other PRS household only; the vast majority of PRS tenants, 77%, report they have none of a set list of serious housing problems; however, the remainder, 23%, do report one or more serious problems with the accommodation; there is a relationship between problems and the cost of renting- lower priced properties are reported as having more problems; the bulk of PRS households, 76%, aspire to owner-occupation, but only a minority, 29%, see this as the most likely option in their current circumstances; there are fewer very high income PRS individuals and households, but the average PRS gross household income is over £30,000 per annum; and on a per head basis, either including or excluding children, average PRS gross income per head is actually higher than in Guernsey as a whole (at the end of 2000).*

### (iii) The Survey of Guernsey Living Standards

92. The SGLS was commissioned in 2000 and awarded to the Townsend Centre for International Poverty Research at the University of Bristol. The main purpose of the work was to identify and measure the amount of relative poverty on Guernsey. However, in the course of the work a small amount of data on housing was collected and a number of conclusions were drawn about housing, including PRS issues<sup>40</sup>.

<sup>39</sup> At £19,315 compared to £18,619. A more complex method, not possible, with the data available would be to calculate equivalised income measures. To this might also be added consideration of a life cycle model of income. The younger age profile of PRS tenants would suggest, ceteris paribus, lower incomes than the average. As the income per adult head is higher in the PRS, this suggests the type of job followed by PRS tenants is, on average, better paid than elsewhere.

<sup>40</sup> Four SGLS reports have been published. In chronological order they are; D.Gordon, P.Heslop, C.Pantazis, D.Patsios, *The Survey of Guernsey Living Standards; Report on Phase One : The Necessities of Life* (June 2001); D.Gordon et al., *The Survey of Guernsey Living Standards; Report on Phase One: The Views of the People* (August 2001); D.Gordon et al., *The Survey of Guernsey Living Standards; Report on Phase Two : Poverty and Standard of Living in Guernsey* (January 2002); and, D.Gordon et al., *Anti-Poverty Policies - A Range of Possible Options for Guernsey* (November 2002). For convenience they will hereafter be referred to as reports 1,2,3 and 4.



93. The SGLS proceeded in two stages. Stage one sought to identify the necessities of life, as they were perceived by the Guernsey population itself and identified as such by more than 50% of the respondents. This was dealt with in reports 1 and 2. Stage two sought, primarily, to then measure the numbers on Guernsey failing to reach this level of standard of living. This was report 3. After this, the Townsend Centre were asked to consider possible policy options to ameliorate the situation found. This was report 4.
94. Stage one was carried out in November 2000 and used a postal questionnaire to establish, from a random sample of 856 individuals, items and services that everyone ought to be able to afford and nobody should go without due to lack of income. The sample size represented 1.9% of the adult population of the Island. As with the HNS, the actual sample achieved was over-representative of owner occupiers and under-representative of those renting in either the PRS or from the States<sup>41</sup>. In fact the response bias was much worse in the SGLS. Just 41 replies were received from individuals living in the PRS, a response rate of 0.7% of the PRS population. The HNS received 800 PRS replies. The SGLS was reweighted, using the 1996 Census as the baseline, to take account of age/gender and household type differences, but not housing tenure.
95. Stage two was carried out in March and April 2001 and interviewed 306 randomly selected households in more depth about their circumstances. To this was added a booster sample of the "known poor", comprising 127 households from the Guernsey Social Security Authority client list, giving a total of 433 households interviewed. This is a sampling rate of 1.9% of the total Guernsey household population. 68 replies came from PRS households, a response rate of 1.7% of the PRS household population. The SGLS results were again reweighted, using the 1996 Census as the baseline, to take account of age/gender and household type differences, but not tenure. The oversampling of the known poor was also allowed for.
96. The much smaller sample sizes, compared to the HNS, lower confidence in the accuracy of the SGLS results (technically they increase the standard error size), although the Townsend team believe their work to be reasonably robust in aggregate. However, the conclusions on specific sub-groups of the population, such as those living in the PRS, will inevitably have higher error sizes compared to the results overall. This is because reweighting applies at the aggregate level not at sub-group level. When the actual numbers surveyed from the PRS, in Stages one and two, are just 41 and 68 individuals and households respectively there is clearly scope for greater error, than if larger samples had been obtained. For this reason, what follows, when dealing with sub-groups, such as the PRS, must be treated with due caution.

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<sup>41</sup> The 856 responses broke down into 88% owner occupied, 5% PRS and 7% States' rental, compared to an actual population distribution, according to the 2001 Census, of 75%, 13% and 12%.

97. The first report of the SGLS is interesting for two reasons. First, the population of Guernsey identified a number of housing related items as necessary (when defined as more than 50% of the population so identifying them). These were; heating to warm living areas of the home if it's cold (96% of the weighted sample rated this necessary); a damp free home (95%); enough money to keep your home in a decent state of repair (95%); and, enough money to keep your home in a decent state of decoration (70%). PRS tenants alone, based on the replies received, rated these similarly at 95%, 98%, 88% and 73%. The main difference is in the penultimate necessity- keeping one's home in a decent state of repair, where PRS tenants gave this a lower score. This might be because they do not think it as important, being transient, or because they might legitimately believe that repairs are not their responsibility, but are the responsibility of the landlord.
98. Second, although the Townsend team claim there is a high degree of consensus amongst different groups in their perceptions of necessities, so that the consensual method can reasonably be used to identify necessities, and hence poverty, there is a considerable difference between the scorings of different housing tenure groups. In particular, PRS tenants seem to consistently rate more items and activities as necessary than the population at large. The table below shows how PRS tenants and the general population compare in the percentages rating items as necessary.

**Table 29 : Differences in rating between the PRS and the general population responses to the questions in stage one of the SGLS**

<i>Item/Activity ranked</i>	<i>Number of cases where the PRS ranking is higher than the general population</i>	<i>Number of cases where the general population ranking is higher than the PRS</i>	<i>Found from comparing Tables in Townsend first report</i>
Adult item considered necessary	25	15	1 and A3
Adult activity considered necessary	8	3	2 and A9
Children's item considered necessary	14	7	3 and A15
Children's activity considered necessary	5	1	4 and A15
Local service deemed essential	15	15	5 and A21
Total	67	41	

99. Not too much should be made of this, given the small overall sample size and the even smaller numbers of PRS respondents, but it does suggest that PRS tenants have higher standards and expectations of life. If views were more homogeneous, i.e. PRS tenants were just like the general population, the pattern above would not exist. There would be a more equal split when comparing ratings. The reasons for this difference in the ratings of necessities are unclear. It might be because PRS tenants are disproportionately young, compared to the Guernsey population as a whole. There might be a generational difference in ratings and expectations. The young might expect more.
100. This heterogeneity might mean that in responding to other surveys PRS tenants are more discriminating than the average. If they have higher expectations they would, by extension, express greater dissatisfaction than the average with an exactly equivalent situation. Their self assessment of their own housing condition, as in the SGLS and the HNS, would then give a worse picture than would have occurred if the assessment had been by the average Guernseyman or woman. This is, in my view, a distinct possibility.
101. However, I would stress that this is all quite speculative. But if PRS tenants do have a greater propensity for reporting dissatisfaction this needs to be taken account of in interpreting survey results. At a minimum it urges caution in interpreting the results of self reporting surveys, which are at heart subjective exercises. It reinforces the case for a more objective assessment of housing conditions.
102. The second report of the Townsend team illustrates that there is a widespread view that there is a substantial "housing problem" on Guernsey and that it particularly affects the less well off. Whilst just 12% of respondents mentioned housing when asked to identify one of the things that could be done to improve their own quality of life, three times as many, 36%, mentioned it as one of the things that could be done to improve the quality of life of others, and in particular less well off islanders <sup>42</sup>.
103. The third report of the Townsend team was primarily concerned with reporting the results of a 69 item questionnaire which formed the centrepiece of the Stage two face to face interviews <sup>43</sup>. The results of this were used, in conjunction with the Stage one findings and an additional statistical procedure <sup>44</sup>, to measure relative poverty, as defined by the Townsend team, in Guernsey.

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<sup>42</sup> See pages 7 and 11, second report, *op cit*.

<sup>43</sup> The questionnaire is reproduced as Appendix II, pages 109-141, of the third report, *op cit*.

<sup>44</sup> Alluded to on page 26, *ibid.*, but not fully reported. Details of this have subsequently been made available to me by the Townsend team.

104. Questions 13-20 of the 69 item questionnaire concerned housing and the results of this, and various pieces of sub-group analysis, were reported in Chapter 3 of the third report and Chapter 6 of the fourth report. The authors were very critical of the general housing situation on Guernsey and even more so of the PRS. In assessing the validity of the Townsend team's views, especially on the PRS, it is helpful to go through the key questionnaire results carefully. The weighted results are presented below.

105. Question 16 asked about satisfaction with the accommodation the household was in. A five point scale, ranging from very satisfied to very dissatisfied, was given to the respondent for the answer. The weighted results by tenure group are given below. It should be read horizontally, by row.

<i>Tenure group</i>	<i>Very satisfied.</i>	<i>Fairly satisfied</i>	<i>Neither satisfied nor dissatisfied</i>	<i>Slightly dissatisfied</i>	<i>Very dissatisfied</i>	<i>Total</i>
Owned outright	111 88.1	12 9.5	2 1.6	1 0.8	0 0	126 100.0
Owned with a mortgage or loan	116 69.0	41 24.4	5 3.0	5 3.0	1 0.6	168 100.0
Rented from a landlord	38 51.4	25 33.8	5 6.8	0 0	6 8.1	74 100.0
Rented from the States	30 58.8	18 35.3	2 3.9	0 0	1 2.0	51 100.0
Tied accommodation with job	7 100.0	0 0	0 0	0 0	0 0	7 100.0
Total	302 70.9	96 22.5	14 3.3	6 1.4	8 1.9	426 100.0

106. Excluding those that are neutral about their accommodation, and are neither satisfied nor dissatisfied, the Table shows that in Guernsey as a whole 93% of the household population are satisfied with their accommodation. The satisfaction is highest in those who own their property outright. It is lowest in the PRS, but even then 85% are satisfied. In fact just 6 out of 74 PRS respondents express dissatisfaction, whether fairly or very, which is 8% of that tenure group. This is not a high degree of dissatisfaction.

107. The next question asked about the state of repair of the accommodation. Again the table is easiest to grasp if read row by row.

**Table 31 : Q 17- Would you describe the state of repair of your home as good, adequate or poor?  
Responses, count number and percentage, by household tenure group.**

<i>Tenure group</i>	<i>Good state of repair</i>		<i>Adequate state of repair</i>		<i>Poor state of repair</i>		<i>Total</i>	
Owned outright	105	84.0	17	13.6	3	2.4	125	100.0
Owned with a mortgage or loan	133	79.6	30	18.0	4	2.4	167	100.0
Rented from a landlord	34	45.9	30	40.5	10	13.5	74	100.0
Rented from the States	37	72.5	11	21.6	3	5.9	51	100.0
Tied accommodation with job	6	85.7	1	14.3	0	0	7	100.0
Total	315	74.3	89	21.0	20	4.7	424	100.0

108. Interpreting these results depends much on what meaning is ascribed to the three points, good, adequate and poor, on the three point scale given for the replies. Overall, 94% of the Guernsey population describes their accommodation as good or adequate. As before, the highest score is given by those who own their property outright. The lowest score is in the PRS, where 86% rate their accommodation as good or adequate. 10 out of 74 PRS respondents, or 14%, describe their accommodation as poor. This is a larger percentage than those in the PRS expressing dissatisfaction with their accommodation, but is still a relatively small minority.

109. The final SGLS housing question sought information on the problems the respondent thought the accommodation had. A prescribed ten point list was given. The first table below shows the result for Guernsey overall. It should be read vertically, by column.



**Table 32 : Q 18- Do you have any of the following problems with your accommodation?  
Count and percentage breakdown of responses from 430 replies, all Guernsey result.**

<i>Problem</i>	<i>Count</i>	<i>Percentage of problems reported</i>	<i>Percentage of all households with problem</i>
Shortage of space	71	16.2	16.5 (12, 3)
Too dark, not enough light	19	4.3	4.4
Lack of adequate heating	44	10.0	10.2 (16, 4)
Leaky roof	40	9.1	9.3
Damp walls, floors, foundations	104	23.7	24.2 (26, 5)
Rot in window frames or floors	46	10.5	10.7
Mould	53	12.1	12.3
No place to sit outside	37	8.4	8.6
Other	24	5.5	5.6
None of these problems	209		[48.6]
Total	648	100.0	100.0

110. 209 out of the 430 household respondents, or 49% of all households, reported no problems at all. The remainder, 51% of households, had one or more problems. These 221 households reported 439 problems, 648 minus the 209, or an average of 2.0 each. The central column shows the percentage breakdown of these problems. The top three were; damp walls, floors or foundations (24%), shortage of space (16%) and mould (12%). The right hand column shows the percentage of all households that reported one of the problems. The comparable two HNS results, for the three common problems asked about in the two surveys, is in the same column in italics and a bracket.

111. The right hand column is very surprising as the SGLS result appears to show a large number of problem areas, for example, nearly 25% of all households reported a problem with damp walls, floors or foundations. On the face of it, this is not consistent with the responses to the two previous questions asked in the SGLS questionnaire. Those two questions, questions 16 and 17, found that 93% of all households are very or fairly satisfied with their accommodation and 94% judge it to be in a good or

adequate state of repair. Unless the households are being inconsistent in replying <sup>45</sup>, the explanation for the difference with the two earlier results may be that households felt obliged to report a problem, whether minor or occasional, in question 18. The question prompted a response.

112. This seems the most likely explanation as referring back to Tables 15 and 16, which reported the HNS findings on problems in accommodation, shows that very similar initial negative response rates were found when asked there about problems with damp, adequate heating and space. However, when asked if these were “serious” problems the numbers responding adversely dropped considerably; from 26 to 5%, 16 to 4% and 12 to 3%. Because of this I am not inclined to put too much weight on the high SGLS question 18 findings. It seems to me that the Townsend group have put undue, and unwarranted, emphasis on the responses to this one question, both in their reports 3 and 4, when even the results from previous questions of their own are at odds with this single question 18 result.
113. However, for completeness, I have broken down the responses to this question 18 by tenure group and this is reported in the table below. This table has a slightly smaller number of total responses to that in Table 34, but the difference is trivial and is because of the way Townsend cleaned and coded the data. It is again best read by looking at each column.

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<sup>45</sup>

And this is not impossible.

**Table 33 : Q 18- Do you have any of the following problems with your accommodation?  
Count of responses, by tenure, from 423 household replies.**

<i>Problem</i>	<i>Owned outright</i>	<i>Owned with a mortgage</i>	<i>Rented privately</i>	<i>Rented from the States</i>	<i>Tied accommodation</i>	<i>Total</i>
Shortage of space	9	38	17	3	1	68
Too dark, not enough light	4	4	7	3	0	17
Lack of adequate heating	5	3	19	14	0	41
Leaky roof	7	16	12	1	0	37
Damp walls, floors, foundations	21	39	24	13	1	99
Rot in window frames or floors	7	17	17	2	0	43
Mould	6	21	16	7	0	49
No place to sit outside	0	10	16	5	6	37
Other	3	16	3	0	0	23
None of these problems	86 (68.8%)	77 (46.3%)	24 (32.4%)	22 (43.1%)	0 (0.0%)	208 (49.2%)
Total households	125	166	74	51	7	423

114. As before in Table 32, almost half the households in total have no problems. Here it is 208 in 423, or 49% of the total number of households. The remainder do have one or more problems. Within the PRS, 24 in 74, or 32%, report no problems with the remainder, 50 in 74, or 68%, report problems. Per complainant, those in owner occupation owned outright had 1.6 problems, those in owner occupation with a mortgage had 1.8 problems, those in the PRS had 2.6 problems and those in States housing had 1.7 problems.



115. The reason why great emphasis should not be placed on these results can be seen by considering the responses of just those in owner occupation which is owned outright- the extreme left hand column- and restating the argument made previously in paragraphs 113-114. In answering the SGLS's previous question 16, almost all of this particular tenure group, the owner occupied owned outright, 98% of it, claimed to be very or fairly satisfied with their accommodation. In answering question 17, exactly the same percentage, 98%, of this group claimed the state of repair of the property was good or adequate (84% said it was good). Yet in answering question 18 only 69% said the accommodation had no problems, and the remainder, 31%, reported 1.6 problems each on average. The gap between the answers of this tenure group to the three questions is stark. The only sensible reconciliation, given the HNS findings, is to interpret the results of the SGLS's question 18 as covering minor and occasional problems as well as more serious and permanent problems. Distinguishing between the two, as the HNS explicitly did, is impossible with the SGLS. The suspicion must be, given the analysis above of the responses by the owner occupier owned outright group, that the minor predominate over the major. Whether this interpretation is true for all tenures is unknown but it would be a reasonable supposition.
116. The fourth report of the Townsend team identified a range of possible policy options across all policy areas, including housing, health, crime and the environment<sup>46</sup>. The report places housing high on the list of policy areas that need to be tackled in order to eradicate poverty. For example;
- "There is a wide consensus that housing is one of the major areas, if not the major area, which needs to be tackled... The high cost of both buying and renting from the private sector are major sources of concern. Housing quality across all tenures... is also an important issue"*<sup>47</sup>, and,
- "The housing market in Guernsey is showing signs of being unable to provide a sufficient supply of affordable housing.... the quality of accommodation is relatively low being comparable with Portugal or Greece"*<sup>48</sup>
117. I have previously analysed the operation of the Guernsey housing market in a separate report for the States and I will not comment on these claims here<sup>49</sup>. The issue of housing quality in Guernsey is addressed later, in section 6 and Annex 3. As regards the PRS the Townsend team also argue;

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<sup>46</sup> Chapter 6, pp.65-79, of the fourth report, *op cit.*, dealt with housing.

<sup>47</sup> *Ibid.*, p.65.

<sup>48</sup> *Ibid.*, p.121.

<sup>49</sup> Parr, 2002, *op cit.*

*“ The UK private (rented) housing sector “has the worst reputation for quality and exploitation of tenants, especially at the cheaper end of the market”... This appears to be also true of the situation in Guernsey”*<sup>50</sup>

118. Clearly these are important claims about affordability and quality. The Townsend team then went on to identify policy options across all housing tenures. Measures suggested which were solely or partly for the PRS were<sup>51</sup>;

- introduce rent control across all the PRS
- increase the benefit limitation and set housing-related expenditure at 40% of total Supplementary Benefit
- Introduce a housing allowance/benefit scheme
- Introduce a bond scheme to help with rental deposits
- Introduce home improvement grants to landlords
- Introduce a Home Energy Efficiency Scheme (HEES)
- Introduce a Fuel Poverty Strategy
- Improve tenancy rights of private sector renters by introducing tenant/landlord legislation

119. Some of these possible policies will be examined later in section 6 after existing States' policy is set out.

120. The findings on the PRS, which I believe to be revealed by the SGLS, which are additional to the Census and HNS findings, are that; *there is a high degree of general satisfaction with accommodation that is being privately rented (over 85% are very or fairly satisfied); the state of repair of PRS property is reasonable (86% report it as good or adequate, but only 46% rate it good); when asked, PRS property is deemed to have a number of problems, on a par with the HNS initial finding, but it seems unlikely that the problems found in the SGLS should all be considered serious; nevertheless, there are a minority of PRS tenants that are dissatisfied and their ranking of the quality of their accommodation is below that in every other tenure.*

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<sup>50</sup> Fourth report, *op cit.*, p.67.

<sup>51</sup> *Ibid.*, p.74-77.

#### (iv) The Economic Study of the Housing Market

121. This study was commissioned and completed in 2002<sup>52</sup>. It was a broad based review of the operation of the whole Guernsey local housing market and covered all tenures: owner occupied, States' and privately rented housing. It considered, inter alia, long run questions of price trends and cycles, market efficiency, affordability, the construction of the House Price Index (HPI), the relationship between the local and open markets, and policy across all tenures. For the purposes of this narrower investigation into the PRS alone, two main points can be drawn out.
122. First, the ESHM set out and costed existing States' housing policies<sup>53</sup>. The main States' policies are subsidies directed at owner occupiers and States' tenants. The former were in receipt of interest tax relief, costing £9m per annum in 2000, and subsidy via the States Home Loan scheme, costing £1.3m per annum in 2001. The latter were in receipt of subsidy as States' rents are below market levels, costing £10.3m in 2002, and rent rebate, costing £2.2m in 2002. No such obvious sums were identified as being received by either tenants or landlords in the PRS. It will be argued later in this report that this annual subsidy of £25m inevitably biases housing tenure choice and has worked over time against the PRS. It may need, at a minimum, to be rebalanced if the PRS is to be rejuvenated.
123. Second, the ESHM set out data on private rents since 1989. This was, and remains, the only time series information on private rents found to be available. This was provided by the then Economics and Statistics Unit (ESU) of the Advisory and Finance Committee. The data is routinely collected as part of the quarterly RPI calculation, but had never before been separately identified and published. For convenience the data has been annualised from the quarterly figures. It is updated below.

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<sup>52</sup> Parr, 2002, *op cit.*

<sup>53</sup> *Ibid.*, Chapter 4 and Table 21 on p.69.

Table 34 : PRS monthly rents, 1989-2003.

<i>Year</i>	<i>Average monthly rent, £</i>	<i>Index, 1989=100</i>
1989	146	100
1990	165	113
1991	211	145
1992	243	166
1993	267	183
1994	320	219
1995	339	232
1996	356	245
1997	371	254
1998	392	268
1999	413	282
2000	426	294
2001	446	305
2002	476	326
2003 first half year	504	345

Source: ESU and PRU.

124. This is the only time series of PRS rental information. However, snap shots of PRS rents have been produced intermittently. The HNS survey, taken at the end of 2000, and reported earlier, found that average PRS rents were then £138 per week, or £600 per calendar month. The 2001 Census, taken just a little later at the end of April 2001, also asked about rents. It found that the average PRS rent was £161 per week, or £700 per month. Both of these monthly rent estimates are well above the official estimate for those two dates in the Table above. The Census estimate is some 60% above the relevant quarterly RPI figure. This raises serious doubts about the validity of the RPI rental price series in giving an accurate measure of the level of rents at any point. Despite this, the RPI might be reasonably accurate in charting movements in rents and so calculating the amount of inflation in rents. However, the Census result on the level of rents should be very accurate, given it surveyed all households in the PRS and not just a sample of them.

125. In addition, the ESHM found the surprising result, based on the Table above, that rents had increased faster over the 1989-2002 period than local market house prices. No simple explanation existed for that. One possibility then put forward in the report was that the small number of observations collected for the RPI dataset meant that it was inaccurate as regards rent levels <sup>54</sup>.
126. Further investigation of how private rent information is collected and calculated for the RPI reveals that this is much the most likely explanation. In trying to measure rents for the RPI, the quinquennial Household Expenditure Survey, last carried out in 1998/99, is used to identify a number of willing PRS participants to disclose their rent paid <sup>55</sup>. In 1998/99 some 46 tenants were so identified. This sample is around 1% of the total number of PRS tenants. The RPI practice is to then send a letter to each household just before the end of each quarter asking them to detail the current rent being paid. Not all respond. Irrespective of bias in the initial selection and subsequent non-response, however, the transience of stay of tenants in the PRS, as found in the HNS and reported earlier, means that the number of rental properties surveyed diminishes through time, as people move from their original address <sup>56</sup>.
127. PRU have thus supplemented the original 1998/99 list of 46 properties with “extra” PRS properties they have added since. These have come from two estate/letting agents. 10 properties managed by Lovells were added first. 8 properties managed by Swoffers were added later. The result is that the base used for the rental series has been changing and is almost certainly not representative of the mix of PRS properties, in terms of local/open market, furnished/unfurnished, location (the Parish distribution), size and quality. In these circumstances it is unlikely that the RPI time series will be very reliable for the purposes of establishing the level of average rent, though it may succeed in picking up changes in rents.
128. As already argued, the 2001 Census result, which is substantially different from the equivalent RPI result, is almost certain to be reasonably accurate on the level of rent as it surveyed almost all, 100%, of PRS properties. The RPI series, in contrast, surveys under 1% of the PRS household population. The conclusion must be that information on the level of private rents, as revealed by the RPI data, is not reliable.
129. The RPI methodology followed by PRU has been reviewed recently by the UK’s ONS and no criticism made of the private rents calculation, so it may be that for the

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<sup>54</sup> *Ibid.* p. 32.

<sup>55</sup> Advisory & Finance Committee, *Household Spending : A Report on the 1998/99 Household Spending Survey, August 2000*.

<sup>56</sup> If, as the HNS implied, 20% of tenants move each year then the whole sample could, in a worst case scenario, disappear in 5 years before the next Household Expenditure Survey.

purposes of charting inflation, little needs to be done. However, it is not satisfactory for charting the level of rents. This leads me to a first recommendation;

**Recommendation 1 - PRU should examine the private rents element in the RPI calculation and consider establishing new sampling procedures to ensure it is both more representative and more robust. Alternatively, if the RPI survey is unchanged, data on private rents needs to be surveyed in some other way so as to measure the level of rent paid in the PRS more accurately.**

130. The need for this is clear. PRU already collect and publish accurate house price information. Transaction details of house purchases and sales are collected quarterly direct, and in full, from the Greffe. PRS rents should be an equivalent price series to that on house prices. PRU should also make this rental information publicly available. Indeed it would be sensible for average States rents to be calculated and reported in tandem with house price and private rent data<sup>57</sup>. States rents information is held by the Housing Authority. If this were done the prices of all three main housing tenures would have their price information collected, known centrally and made public. This would add to transparency and understanding of the housing market, including the PRS, and so aid analysis, debate and policy formation. As it is key information on parts of the housing market is not well known or co-ordinated.
131. If PRS rent information is to be collected more rigorously, so as to measure the average level of rents, similar technical issues will need to be addressed by PRU as in the construction of the average house price series and index. These were reported on in the ESHM. The data on PRS rents collected in the 2001 Census shows that the distribution of PRS rents is not normal<sup>58</sup>. Furnished rents have a long upper price tail. Unfurnished rents, which make up 76% of the total number of PRS tenancies, are if anything bimodal. This raises a number of technical issues in calculating an “average” rent. The solutions to these issues are likely to be similar to the recommendations made in the ESHM on house prices.
132. Given these uncertainties and the lack of a reliable rental price series it is not possible, in this report, to examine and come to clear quantitative conclusions about trends in the affordability of property in the PRS. In contrast the ESHM was able to report on house price affordability and the measure constructed and used now forms

<sup>57</sup> This should be average gross States rents, though it might be useful to publish average net States rents after rebate as well.

<sup>58</sup> Based on Table 27, 2001 Census, *op cit*.



one of the key housing indicators reported on annually by the States <sup>59</sup>. This leads to a second recommendation;

**Recommendation 2 - Arising from recommendation 1, PRU should consider constructing and reporting an affordability index for private renting. This would necessitate comparing accurate average rental price data with an average income measure, either for the whole population, or better still, an average household income measure for the PRS population.**

133. This conclusion is disappointing but without a well founded rental price series for the PRS, as existed with house prices in the ESHM report, any calculations, on for example affordability trends, risk being both spuriously accurate and potentially very misleading. Basing policy decisions on that would be unwise. However, if only on a priori grounds, it seems almost certain that PRS rents have, at least, moved up broadly in line with house prices over the last 15 years.

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<sup>59</sup> In; Advisory & Finance Committee, *2003 Sustainable Guernsey: Monitoring Social, Economic and Environmental Trends (2003)*.



### 3. Preliminary Analysis

134. This section sets out some initial observations on the project and sets the scene for the later sections. In particular it sets out key parts of the analytical framework within which the questions posed in the research brief will be addressed. It is preliminary analysis and additional analysis is given in section six.

135. The following seven issues are considered here; market provision of housing; the justification for market intervention; the separation of market and poverty problems; the financial decisions of the tenant and landlord; the PRS in the context of the whole market; comparative PRS housing experience; and, finally, the research brief reconsidered.

#### (i) Market provision of housing

136. It is important to understand how an unconstrained competitive market, in principle, provides goods and services, before applying this to housing.

137. The first point to make is that such a market will frequently, and quite naturally, produce a variety of qualities of the good or service in question. Except where the product is absolutely standard, such as commodities like metals, chemicals and some agricultural products<sup>60</sup>, markets tend to produce products which are not identical. This so called product differentiation will include both low and high qualities.

138. The general reason for this is not that the producers are, in some sense, manipulating the market but that they are responding to consumer tastes and preferences (and more importantly spending power). If there is competition producers are forced to do this. Different consumers may have quite different preferences about a product, including its quality. The quality of a product can be thought of as being made up of several, perhaps many, dimensions or characteristics and consumers will not value these all the same. For example, in the case of a mobile phone it may have voice, data and services capabilities (such as internet connectivity or sending photographic images). Individual consumers will value these three capabilities differently and choose a mobile phone corresponding to their preferences. In addition consumers will vary in the incomes they have. This will condition their preferences, as in a much broader way all products compete for spending.

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<sup>60</sup> Where the product of one producer is indistinguishable from another, the product is said to be homogeneous. One ton of pure copper is the same irrespective of which mining company produced it.

139. A market will respond to this range of consumer preferences and, invariably, produce a range of qualities of the same category of product. Some examples should make this clear.
140. In the case of motor cars, all cars perform broadly the same function and fulfil the same need, but a car has many facets- speed, acceleration, performance in different driving conditions, capital and running costs, safety, styling, comfort, engineering quality, motoring feel, accessories (paint finish, alloy wheels, power assisted steering, traction control, deadlocks, CD player, etc.). In consequence, even with the same model from the same manufacturer, a car is frequently produced in different levels of specification. Between manufacturers, there can be even more variation in quality- ranging from low end manufacturers such as Daewoo, Kia and Proton, through mid market manufacturers such as Renault, Ford and VW, to up market manufacturers such as Audi, BMW, Lexus and Mercedes.
141. Even in apparently more simple products, such as shoes, quality variation is evident. Low end shoes are often made of composite material, are less durable, of simpler design and less well made. Mid range shoes are of better materials, such as leather, better machined and last longer. Top end shoes may be hand made or finished and of more complex, and fashionable, design. Exactly the same sort of quality variations are evident in products as diverse, for example, as restaurants, holidays, food, clothing, carpets and new houses. Deliberate quality variations are apparent in all. There may even be a formal system of quality grading, such as Michelin stars or rosettes for restaurants, or Tourist Board crowns for hotels. This is aimed at helping consumers chose the quality they want.
142. The exact amount of product and quality differentiation a market produces in any one case will depend on the costs of such variations and the strength of the consumer's willingness to pay, or more technically, conditions on both the supply and demand sides of the market <sup>61</sup>. The essential point, however, is that product differentiation and quality variation are pervasive features of modern economies. They are the norm. One would expect this to be true of housing.
143. The second main point is that higher quality will normally involve higher costs and, hence, higher prices. In the short term it may be that one producer can offer a higher quality product than its rivals, but at the same price. It will then win market share. However, in the longer term all will adopt the same methods of production and then higher quality can only be obtained at higher cost. If higher quality also involves smaller production runs, this will accentuate the cost difference, as economies of scale may be lost.

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<sup>61</sup> There is a large economic and marketing literature on product differentiation. See, for example, Ch.6. Models of Product Differentiation, in, M. Waterson, *Economic Theory of the Industry* (Cambridge University Press, 1984) and M. Waterson, Ch.6. Models of Product Differentiation, in, J. Cable (ed.), *Current Issues in Industrial Economics* (Macmillan, 1994).

144. Referring back to cars, it should be self evident that cars that are engineered to higher tolerances, have superior performance, and better durability, safety, security and other “kit” features, will cost more than those that have less of these characteristics. Similarly, carpets made predominantly of more expensive fibres and with a high number of tufts per square inch cost more than those made of cheaper fibres and with a lower density and length of fibre.

145. The third main point is that this differentiation and quality variation is in general welfare enhancing. The sum of all consumer satisfaction (welfare) is higher if each consumer can get their individual preferences met as far as possible, bearing in mind their income constraint. This will occur when quality, and the associated price, variations exist. As Scherer puts it;

*“More generally, society is usually better off when consumers enjoy a wide range of choices between high-quality, high-priced and low-quality, low-priced opportunities than when they face a severely restricted choice set.”*<sup>62</sup>

146. Not everyone wants a single quality to be on offer. Diversity in quality is valued. Cars again provide a good example. As households become more wealthy multiple ownership of cars has become the norm. But typically two car families do not have two identical cars. One car is usually lower quality than the other. It may, for example, be older than the other. Yet even the lower quality car enhances family welfare because it increases mobility of a second family member. More generally the availability of low-quality and low-price consumer durables<sup>63</sup> means that more people can afford them, compared to a situation where they are only available in a high-quality and high-price form.

147. This welfare increasing effect of quality variations is readily apparent if we consider consumption in less developed countries. The availability of basic low-quality but functional goods, such as fridges, foodstuffs and previous generation medicines, can be vastly welfare improving compared to a situation where only high-quality and high-price products are available. Perhaps even more importantly, nation-wide electricity and water/waste water systems and supplies, whose quality may be below the high Western standards of reliability, purity and customer service, can make a huge difference to social welfare in those countries. Quality variation in a market can be a good thing.

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<sup>62</sup> F. M. Scherer, D. Ross, *Industrial Market Structure and Economic Performance* (Houghton Mifflin, 3<sup>rd</sup> edition, 1990) p.602. Although some commentators argue that product differentiation and quality variation can go too far in modern economies and raise issues of consumer overload and information acquisition and management.

<sup>63</sup> Such as computers, TVs, videos, DVD players, cookers, microwaves, washers, dryers, fridges, freezers, mobile phones, etc.

148. The fourth main point is quite technical, but it is that even when a market is not fully competitive, but is monopolised, there is no reason to suppose that the market will only produce low quality products. There should be no presumption that monopolists have an interest in lowering product quality <sup>64</sup>. Indeed it can be shown that in some circumstances a monopolist will produce exactly the same quality range as a fully competitive market.
149. A competitive and unconstrained market will thus quite frequently and naturally produce, even within one product category, a range of qualities and associated prices. This range will enhance individual and social welfare. In the context of rented housing, it is not a matter of reproach that a wide spread of prices and qualities may exist- that may be entirely consistent with social welfare being maximised. Low quality accommodation may allow some to consume housing, as independent households, who would otherwise not be able to do so <sup>65</sup>.

## (ii) The justification for market intervention

150. Of course, markets do not in practice work unconstrained. There can be very good reasons for intervening and regulating their economic working. Market freedom and product variety may not always be good things.
151. The technical reasons for intervention were set out in the ESHM report and they are not repeated in detail here <sup>66</sup>. It is presumed that readers are familiar with the three main types of market failure outlined there- imperfect competition or monopoly, information asymmetries and externalities.
152. Essentially, monopoly concerns arise when the supply side of the market does not have sufficient rivalry. In extremis only one firm may exist or those that do exist may fail to compete. Information asymmetries refer to failures, principally on the demand side, where consumers are not sufficiently well informed to play their part in distinguishing good value products from bad value products. Externalities refers to where social welfare is not simply the sum of individual choices and welfare.

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<sup>64</sup> *Ibid*, p.610.

<sup>65</sup> Fewer independent households would exist. For example, young people would live longer with their family before leaving the parental home.

<sup>66</sup> Parr, *op cit.*, Section 5. See also, I Ramsay, *Rationales for Intervention in the Consumer Marketplace* (OFT, 1984).

153. Each of these market failures, in principle, gives grounds for intervention in the market's provision of a product. The critical question, in practice, is whether such market failures exist and/or are sufficiently serious to justify intervention. Regulation has costs and it is important that it is proportionate to the problem. There is a reasonable degree of technical level agreement about the steps necessary to establish market failures of the above types <sup>67</sup>.
154. When a market becomes monopolised the self policing aspect of its behaviour, arising from the rivalry of competing firms, is lost. In such circumstances, the monopolist can exploit his position by raising prices generally or engaging in price discrimination. This is welfare reducing. For this situation to persist there would have to be some barrier which prevented other firms from setting up in business to rival the monopolist. Without such barriers, the monopolist's position is temporary and will be competed away.
155. In the context of rented housing, it is perfectly conceivable that some landlord, or group of landlords, comes, or has come, to dominate the PRS part of the market through buying up property and building up an extensive property portfolio. The possibility of market dominance, in EU competition terms, is normally thought to arise only when someone has individually, or if acting in concert, 40% or more of the market. Only then does price fixing power and/or the ability to fix product quality become a possibility. Critical questions thus become;
- are there any large landlords in Guernsey?
  - what size of portfolios do they hold?
  - is there any evidence of collusion between them?
  - what percentage of the whole PRS do they hold?
  - is the whole PRS the relevant market to consider?
  - is there evidence of excessive profits and exclusionary behaviour on the part of the alleged monopoly landlord(s)?
  - what barriers to new landlords setting up in business are there?
  - is entry easy or difficult?
  - has there been entry of new landlords?

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<sup>67</sup> Competition bodies, such as the Office of Fair Trading and Competition Commission in the UK, undertake market investigations which deal with monopoly and information asymmetry issues. See, for example, on the technical aspect of such investigations; Office of Fair Trading, *Overview of the Enterprise Act : The Competition and Consumer Provisions (OFT, 2002)*; and, Office of Fair Trading, *Market Investigation References : A Consultation Paper (OFT, 2002)*. Externalities are more a matter for wider public policy debate and are the responsibility of government Ministries or Departments. For a technical introduction see, W K Viscusi, JM Vernon, JE Harrington, Jr., *Economics of Regulation and Antitrust* (London, MIT Press, 2/e, 1995) especially Section 3 - Health, Safety and Environmental Regulation.



156. It should be noted that the existence of apparently high market prices does not, per se, provide any evidence that monopolies exist or that the market is failing to work properly. High prices can simply be the market clearing itself. Market prices adjust so that demand and supply equate. Prices rise to freeze some buyers out of the market and to encourage greater supply. That is the market, or price mechanism, in action.
157. Where monopoly exists and is permanent then control and regulation of that situation is needed. The conventional competition policy solutions to monopoly are structural separation and break-up, or behavioural controls, on, for example, prices or profits. This is the justification for Guernsey's Office of Utility Regulation (OUR) in its oversight of the postal, electricity and telecommunications companies.
158. When a market has information asymmetry problems one side of the market is better informed than the other and it is difficult, and expensive, for that to be rectified. This leads to decisions that do not allow competition to work effectively. Typically, consumers are worse informed than producers and cannot play their proper role in choosing the best value products. In consequence, poor value producers may be able to continue in business.
159. Historically, this argument has been used to justify regulation in a wide number of areas across the EU, such as financial services and the professions. Increasingly this regulation is statutorily based but it has often been self regulation, where entry requirements and restrictions, such as professional qualification existed. In this way a minimum standard of service can be guaranteed. However, information problems lie at the heart of many other products and services where consumer dissatisfaction is high, for example, building and holiday companies.
160. In the context of rented housing, it is conceivable that prospective tenants are not sufficiently well informed to distinguish good properties from bad, or to understand the nature of the agreements they are entering into (especially where long contracts drawn up by lawyers are involved), or to understand the sensitivity and reputation of the landlord they are dealing with. Critical questions thus become;
- do prospective tenants view properties and ask questions?
  - do prospective tenants make enquiries of the landlord?
  - does bargaining power enter the equation and, if so, how?
  - are contracts read and understood?
  - are contracts overcomplex?
  - do tenants understand their position regarding the law, such as eviction procedures?
  - have tenants thought about issues obtaining at the end of their initial tenancy, such as the refund of any deposit and renegotiation of the lease?
  - do tenants move often?
  - are there reasons why tenants don't move and potentially become "captured consumers" or have restricted choices?

161. However, it should be recognised that not all tenants need to be fully informed for the market to function effectively. It should also be noted that the role of bargaining power is frequently misunderstood. Consumers are generally individuals who deal with companies, which are larger and better informed. In extremis individuals deal with multinational companies. What matters is whether competition between companies is effective and, if appropriate, whether consumers are willing and able to negotiate with the seller. This negotiation can, and does, occur for many when consumers buy new houses or new and second hand cars. This is obviously easier when market conditions and arrangements allow negotiation on the prices sought<sup>68</sup> and when consumers can recognise if the prices sought are above true market levels. However, even in a seller's market it is important that consumers attempt to establish whether the price sought is above market levels and, if necessary, to negotiate it down.
162. Where information problems exist in a market, such as housing, prospective solutions include; educating consumers to seek more information before committing to a purchase; educating and empowering consumers to bargain; requiring the disclosure of more information; encouraging more self regulation, via trade bodies; formally licensing operators to ensure they are reputable ; regulating supplier behaviour; changing the legal framework (either generally through competition, consumer and/or contract law, or more narrowly through property law, on conditions of tenancy, security of tenure, eviction procedures, etc.); and standardising contracts.
163. When a market has externality problems the production or consumption of the product has effects which are not confined to those producing or consuming it. Thus, driving cars or taking aeroplane flights results in engine emissions which have environmental impacts. Because of this, social welfare is, in this case, adversely affected because of individuals only take private decisions and do not have to take account of the adverse effects on others. Rising greenhouse gas levels will have, and may already be having, global effects. The externality in the market has external or spillover consequences.
164. Historically, externality type arguments have been used to justify public health, safety and environmental legislation<sup>69</sup>. Public health concerns have been intimately connected to housing legislation<sup>70</sup>. More controversially such arguments have been used in justifying social policies. Again taking cars, it should be readily apparent that legislation on road traffic and driving rules, maximum driving speeds, the wearing of

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<sup>68</sup> Normal retailing arrangements do not allow much negotiation at the till!

<sup>69</sup> Though 19<sup>th</sup> century public health legislation in the UK never used the term.

<sup>70</sup> See for the UK, Ch.4, Historical Background-The Development of Housing Policy, in, M.Egan, *Housing (Canterbury : CIB Publishing, 3/e, 1999)*.



seat belts, engine emission standards, crash impact standards and so on are all concerned with externalities<sup>71</sup>.

165. In the context of rented housing, it is conceivable that such housing might initially be built without regard for the environmental, health, safety and fire impacts on its occupants or near neighbours. Similarly for housing converted to such use, the same range of concerns would exist both for occupants of that housing and near neighbours. These are negative externalities<sup>72</sup>. Because some of these impacts are difficult to know for tenants, externalities can interact with information type problems. Critical questions thus become;

- what externalities does rented housing have?
- are there new building regulations?
- at what level are these set?
- is this an appropriate level to deal with the externality?
- are there environmental health and safety regulations for rented property?
- at what level are they set?
- is this an appropriate level to deal with the externality?
- are these monitored and how?
- what sanctions for failure to comply exist?

166. The conventional policy responses to externalities include; outright prohibition or prescription of activities; the setting and monitoring of minimum standards; taxation and subsidies to “internalise the externalities”, so that market prices reflect the full social effects; and the creation of property rights (which may be tradable).

### **(iii) The separation of market and poverty problems**

167. It is important to restate and extend a point made in the paragraphs above about “high” prices. The absolute level of market price is not necessarily a symptom of the market failing to work properly. In contrast it is frequently a sign that it, the price mechanism, is working extremely well. This point is commonly much misunderstood.

168. Prices need to go up and down to provide a signal to consumers and producers to change their behaviour. Rising prices should encourage lower consumption and greater supply. In the context of rented housing, rising market prices should encourage people to economise on consumption and, for some, to seek smaller and cheaper housing space. Not all will downsize, but some will, once the finances start to bite. In the PRS in

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<sup>71</sup> In the early days of motoring very little legislation at all existed.

<sup>72</sup> I will be considering positive externalities, which are linked to the case for improvement expenditure and area regeneration spending, later.

Guernsey there is a high degree of movement, with some 20% of tenants changing properties each year, so trading up and down does occur. Such up and downsizing means that the efficiency of usage of the housing stock is then improved. Rising prices should also encourage landlords to expand supply in the long term, either through new build or the conversion of property<sup>73</sup>.

169. What is often being objected to in complaints about “high” prices and “unaffordable” prices is that the product is simply expensive, or has become expensive, compared to incomes. This expensiveness might be in relation to average incomes, or to the income of some target group. It is this which underlies most of the comment about the affordability of housing. It is the price of housing in relation to individual and family incomes. This leads me to the critical distinction for this report between problems of the market and problems of poverty.
170. Market problems arise when the market is working inefficiently. This allows higher prices to exist than need be the case if the market imperfections were removed. Market prices might be higher than they need be because of monopoly or informational problems, for example. However, even when these imperfections were removed (if they existed) and the market is working efficiently it might still be that the product price is absolutely high in relation to incomes. Though all a matter of degree, and the reader’s own income, high quality new cars are expensive, as are exotic foreign holidays, as are antiques, such as original Old Master and Impressionist paintings, as are comprehensive pension plans.
171. The expensive nature of some products leads to problems of access to the market. Being unable to afford to access the market is a problem of a lack of income in relation to the market price of the product concerned. This phenomenon is not new, nor is it confined to housing. Whenever a society has unequal incomes, and wealth, there is unequal access to markets. Only the rich can afford to buy luxury yachts or second homes or top end designer goods. Only the moderately well off can afford to buy long haul foreign holidays. The least well off have problems in meeting all their basic consumption needs- food, clothing, heating and housing. Housing just happens to be the major purchase in the household budget. Low quality low price products then serve a vital role for them. But their problem is primarily one of low income, or poverty<sup>74</sup>,

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<sup>73</sup> All this may take some time and there can be problems associated with construction lags, perverse incentives of lenders and the absence of short selling. Many believe that prices can overshoot and price “bubbles” can form in property markets based on irrational expectations. This is a contentious area. What is without question is that prices do move up and down. See the data in Parr, *op cit*. Even when supply is forthcoming it may take some years to have an appreciable impact. Guernsey’s current annual housing target build is just a little over 1% of the existing stock. For UK evidence on supply responsiveness see, G Bramley, M Satsangi, G Pryce, *The Supply Responsiveness of Private Rented Housing : An International Comparison (DETR Research Report no 97, 1999)*.

<sup>74</sup> Defining poverty in its simplest way as low, and inadequate, income.

not primarily one of market prices. All market prices seem high to the poor, not just housing.

172. I am aware that this distinction will not be accepted by some, because they do not view housing as something that should be subject to market provision. Some do not see it as a market commodity. Instead they view it as a “need” that ought to be met, or as a social requirement. Many judge a market on the ability to pay of consumers. If housing spending takes more than a set percentage of household income (often 25% - 30% is quoted in discussion) then, according to this view, the market is failing. However, if that view is taken the logical way to meet such needs is through the States arranging for the provision of housing at subsidised prices, and not by expecting a market to perform a social function. That is to misunderstand what a market can, and cannot, do. As an example of such misunderstanding, take the following;

*“An effective housing market should provide a choice of an adequate supply of homes, at costs people can afford, where jobs are available and where people want to live”<sup>75</sup>.*

173. This is to completely misunderstand how a market works. No-one can seriously expect or suggest that all products should be cheap and at prices that can be afforded. Not all products can be afforded, especially in a high quality version. People may be able to afford to run a car, but not a new car. Nor that all products should be available at locations where people might like them to be. Not all retail distribution is at locations with no travel involved. Housing is no different, though many would like it to be so. Housing is not equally accessible. Some people and households are poor and cannot access the market. It is then a judgement about whether they need directly subsidising, through income support, and/or whether social housing needs to be provided.
174. Whilst the States might provide social housing directly, it might also use third parties to provide such housing. In Guernsey the newly active Housing Association is being used in this way. In principle private landlords and the market itself could be used to ease access to the market, but this can only be done by working with the market and not against it. Such an approach would necessitate subsidising landlords to lower market prices and/or raise market qualities for some or all tenants. Alternatively, the States might chose to ease and enable access to the market by supporting the incomes of those it deems ought to have better access. But these possibilities are all measures which are aimed at dealing with a problem of insufficient income to have market access- a poverty problem, not measures aimed at dealing with, what most analysts would call, a market problem.

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<sup>75</sup> C Holmes, *Housing, Equality and Choice* ( London : Institute for Public Policy Research, 2003) p.27.

175. It may be thought that this is just a terminological or definitional point and that the distinction has no great significance. But it is not just splitting hairs and the distinction is important. Addressing market problems is less controversial than addressing poverty problems. Few would defend market imperfections, such as monopoly, and most would agree with policies aimed at their removal, so as to enable a market to function more competitively and effectively. That is ultimately in the consumer's long term interest. However, deciding to support, and how much to support, the poor is much more controversial. It is essentially a matter of social and political judgement as it involves a definition of need and a distinction between those that deserve support and those that do not. Setting such dividing lines, such as setting the criteria for those that are eligible for social housing, is almost always contentious. This will become clearer in the sixth part of this section.

176. The distinction made here is not a new one. As one eminent writer put it some time ago;

*“Most housing problems are really problems of unemployment, poverty and inequality....The first concern of anyone engaged in housing must be with jobs and opportunities for earning money; and next with child benefits, pensions and other provisions of the social security and fiscal systems which redistribute money”*<sup>76</sup>.

#### **(iv) The financial decisions of the landlord and tenant**

177. It is helpful to set out some of the financial considerations that landlords and tenants make, either explicitly or implicitly. This is so that the impact of potential policy change can be assessed later. Without an understanding of the prime motives of landlords and tenants the effects of policy change cannot be determined.

178. Although some landlords and tenants will not behave as modelled here, perhaps because of ignorance or because they do not view property ownership simply in financial terms, many will. Furthermore it is hard to see how financial considerations will not enter, to some degree, even for more altruistic landlords. When pressed even those that claim to operate in a non-commercial manner recognise that financial considerations do enter the equation at some point. Thus residential property ownership can be considered to be ultimately driven by the same factors as influence commercial and industrial property ownership, from which the financial analysis derives, namely earning profit from the activity. Indeed, it seems apparent that the number of property companies and individuals viewing residential property

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<sup>76</sup> D Donnison, C Ungarson, *Housing Policy* (Penguin, 1982) p.287.

ownership, through buy to let, as purely a financial investment has grown in recent years, even in Guernsey<sup>77</sup>.

179. Landlords and their advisers will be concerned about the returns, or profit, from investing, or maintaining their investment, in residential property. The gross yield from ownership is simply the annual income in rent, before the costs associated with letting, as a percentage of the current market price of the property<sup>78</sup>.

$$G = R/M \quad \dots\dots (1)$$

180. Here the gross yield, G, is the rental income, R, divided by the market value, M. For example, if a property is bought for, and is currently worth, £200,000 and the rental income is £10,000 a year, the gross yield is 5%.

181. However, a landlord must also take account of the expenses associated with owning and renting the property. These will be both running and management costs. Running costs will include; property taxes on rateable value, water charges, buildings insurance, repairs and maintenance expenditure<sup>79</sup>. There may also be periods when the property is not occupied and earning rental income, so called void periods. Management costs will include; letting and management fees and any rental arrears<sup>80</sup>. To this should also be added any depreciation of the property, such as roof replacement and fittings deterioration (including furniture and consumer durables in furnished property). Taking account of these gives the net yield.

$$N = (R-C)/M \quad \dots\dots(2)$$

182. The net yield, N, is the rental income net of all these costs, C, divided by the market value, M. If the annual costs were £3,000 in the example used previously, the net income would be £7,000 and the net yield on the property would fall to 3.5%.

183. This calculation might be further refined by considering the net of tax yield. The tax system may make allowances for certain expenditure incurred by a landlord, but tax the remaining rental income. National tax systems vary in the details and the Guernsey

<sup>77</sup> According to the Council of Mortgage Lenders (CML) in the UK, 6.4% of loans made in the first half of 2003 were buy to let loans.

<sup>78</sup> It is the market price that is the appropriate value, not the rebuilding or insurance value, as the landlord can liquidate his holding at the market price. The opportunity cost of tying up capital in property is the return on the property's market value, nothing else.

<sup>79</sup> Some of these may be paid by the tenant and so not enter the landlord's calculation.

<sup>80</sup> Even if a management company is not employed, the landlord will still have to devote time, to which there is a value, to do the same tasks- collecting rent, dealing with tenant problems, and so on.



system will be outlined later. Having taken account of tax, the net of tax yield would then be given by;

$$N = (R - C - T)/M \quad \dots\dots\dots(3)$$

184. In the example previously used if the tax payable, net of allowances, was £1,000 the annual net of tax rental income would fall to £6,000 and the net of tax yield would then fall to 3.0%. These yield figures are in money, or nominal, terms. The real yields, taking account of inflation, would be lower still. If the annual nominal net of tax yield were 3.0% and the inflation rate was, say, 4.3%, as it was in Guernsey at June 2003<sup>81</sup>, the real yield would actually be negative, at minus 1.3%.

185. The importance of the net nominal yield is that it is a cash flow measure and will be particularly significant if the landlord has financed the property by borrowing. Then comparing the net yield with the cost of borrowing, B, will show whether the operation is cash flow positive or negative. If the net yield were 3.5%, but the property had been financed with a 100% loan at 5%, the landlord would be losing money, considering just the income from rental. Outgoings would be greater than income coming in<sup>82</sup>. The activity would be cash flow negative. The cash flow position is particularly important for new investors in rented property who have financed by borrowing. For those owning renting property with no mortgage, they may not appreciate the cash flow effect.

186. However, the total return from owning and renting property is not just from the rental income. It must also take account of any changes in the capital value of the property. When property values are rising, as they have been in many locations over the last decade, this means that the total return from the property must also add in any capital appreciation. Then;

$$T = N + K \quad \dots\dots\dots(4)$$

187. The annual total return, T, is now higher than the annual net yield so long as the capital appreciation, K, continues. If the annual increase in property values was 8.0%, then the total nominal net of tax return would become, continuing our previous numerical example, 11.0%<sup>83</sup>. It is the total return, net of tax, that a property investor will be interested in. This is because property is just one possible investment amongst many. The main alternatives are the conventional ones of cash, equities and bonds.

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<sup>81</sup> PRU Press Release, 15 July 2003.

<sup>82</sup> For a discussion of the current rental markets in a number of countries see *The Economist*, Property prices: shaky foundations, 29<sup>th</sup> November 2003, p.111, which argues that renting has turned cash flow negative in a number of countries.

<sup>83</sup> Ignoring any capital gain taxes and the impact of the higher property value, M, on the yield calculations.



These are the main investment asset classes. Over time, as the total return from owning and renting property becomes more or less attractive compared to these alternatives, one would expect landlords to expand or contract, or indeed give up, their portfolios.

188. Setting up and owning renting property is not a short term proposition. This is because there are additional costs to those already considered above. Buying property incurs transactions costs- taxes and legal fees<sup>84</sup>. Making a property ready for rent may also incur one-off costs- decoration, purchase of consumer durables, etc.<sup>85</sup>. These will all need recouping. However, consideration of the returns being made will operate in the longer term. Indeed, for some property investors once the activity turns cash flow negative, they may be unable or unwilling to rely on the paper profit of capital appreciation<sup>86</sup>.
189. In an era of rising property values the capital appreciation element in the total return can outweigh the rental element. In Guernsey since the early 1990s this has been the case, so the total return from owning rental property has been high. However, in the very long term, when capital appreciation may also have periods of capital depreciation (when property prices stagnate or fall), the total return will be lower. As shown in the EHSM report, property prices in Guernsey are cyclical and do fall on occasion.
190. Historically, in the UK it has been estimated that the total real net of tax real return to investors in property for rent has been just 3.9% a year since 1930<sup>87</sup>. The main element in this has been the capital appreciation. In that period house prices have risen by 2.6% a year on average in real terms. Of late in both the UK and Guernsey prices have been rising very much faster than this.
191. Looking ahead, the total return from rented property is much dependent on the prospect for continuing house price rises. Whilst rising property values lower the gross and net income yields, they add to the total return. It is not part of this research to forecast property price movements or rental returns in Guernsey, but a number of such forecasts have been made for the UK. It is fair to say that there is a wide spread of views, but most commentators believe price rises have peaked and that price increases

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<sup>84</sup> For details of Guernsey fees, see Parr, *op cit*.

<sup>85</sup> Even unfurnished property is typically fitted out with some kitchen appliances- fridge, freezer, cooker, washing machine, dishwasher, microwave, etc.

<sup>86</sup> The significance of this should not be underestimated here. As the Bank of England is expected to continue raising base rates in 2004, it will not be long before some buy to let investors with heavy mortgage payments will come under pressure. Property may cease to be self financing and turn cash flow negative. This may be true in Guernsey as well as the UK.

<sup>87</sup> Capital Economics estimate, quoted in, K Burgess, Investors remain keen on bricks and mortar, *Financial Times*, p.M28, 31 May/June 1 2003.

will moderate in 2004 and 2005. Some expect prices to start falling in real terms in the next few years.

192. As regards UK residential property returns in the short term, Morley Fund Management remain positive and forecast a total net of tax return of 5.8% in 2003 rising to 8.5% by 2007 <sup>88</sup>. Capital Economics are much more pessimistic about property prices and forecast landlord losses of 2.9% in 2004 and 3.8% in 2005 <sup>89</sup>. In the longer term, Stephen Bell, chief economist at Deutsche Bank, forecasts 5% net real returns on residential property <sup>90</sup>. Richard Donnell, head of residential research at FPD Savills, an estate agent, also expects property investors to receive 5.5% real <sup>91</sup>.
193. The precise numerical forecasts are not important for our purpose, except to show that this sort of analysis will condition investment in rental property and that the returns from rental property are best viewed in the very long term, away from periods when capital appreciation or depreciation is exceptionally high. Then they become more normal and equivalent to the competing returns from equities, gilts and cash. Recent experience of high total returns to property has been atypical. Some would liken it to the high stock market (equity) returns of the 1990s, especially in the “bubble” technology, telecomms and media stocks, which have been reversed this decade.
194. The analysis also highlights the need for landlords to control costs in order to increase returns. In turn this demonstrates the importance to landlords of tenant selection. The type of tenant, whether good or bad, impacts greatly on the profitability of renting. An undue emphasis on cost control would, in principle, affect the quality of accommodation on offer and the price chargeable in the market. Tenant selection is important here.
195. Firstly, it is important that tenants do not get into arrears and fail to pay the due rent. This would lower the annual return to the landlord.
196. Secondly, it is generally desirable that the tenant is retained at the end of the initial lease period. This means there is no gap in renting and rental income. Voids can be expensive. A one month gap in renting each year will lower the gross return by a twelfth, from, for example, 5% to 4.6%. If there are additional costs of finding a new tenant, as there may be, the gross return would fall further. If a letting agent charged 10% of the annual gross rent to find a new tenant, as most do on Guernsey, the gross

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<sup>88</sup> *Ibid.*

<sup>89</sup> Quoted in, A. Joliffe, Landlord Costs Outstrip Income, *Financial Times*, p.M26, 25/26 October 2003.

<sup>90</sup> *Burgess, op cit.*

<sup>91</sup> Quoted in, A Joliffe, Beware of Yield Subsidence, *Financial Times*, p.M25, 20/21 September 2003.

return would fall still further, in that example, to 4.1%. Losing a good tenant can have a big impact on returns. For this reason landlords may well be flexible about changes to the rent when a lease comes up for renegotiation. It would be unwise to be too rigid in seeking the maximum rent possible if it lead a tenant to leave.

197. Thirdly, the type of tenant and the care with which they treat the property can impact on maintenance costs. Good tenants will give rise to lower maintenance costs than bad ones. Bad tenants may also cause other good tenants in a property to leave at the end of their tenancy. There is a premium on good tenants. Conversely bad tenants can expect to be charged more and to have difficulty accessing well maintained properties. This is why tenants with pets and children have difficulty in finding accommodation in all market conditions. Pets and children generally increase maintenance and/or insurance costs in a property.
198. The possibility of bad tenants also explains the requirement that deposits are often required by a landlord at the start of the tenancy. The return of the money to the tenant is conditional on the state of the property at the end of the lease. Not requiring a deposit would open the landlord to extra risk. Without a deposit system, one would expect there to be a higher rental price and/or lower rental quality, compared to when a deposit is charged. Deposits are perfectly normal in other lines of rental business, e.g. car and equipment hire, for exactly the same reasons.
199. From the viewpoint of intending tenants, renting a property is a significant financial transaction, both absolutely and as a proportion of household income. Housing typically is the largest item in household budgets and one would expect a degree of normal consumer behaviour to be exhibited when choosing where to rent. If the average monthly rent is £600, not atypical in Guernsey, renting for a year amounts to a commitment to spend over £7000 in that year. This is equivalent to the purchase of a reasonably priced second hand car. Furthermore it is a level of spending repeated each and every year.
200. There are additional costs to this expenditure. Locating a property to rent incurs time and search costs as well as the cost of removal, just as with buying a property. Once found there are then other time costs, including costs associated with notifying relevant authorities, typically the utilities, of change of address and arranging new supply.
201. Because of size of expenditure involved and these transaction costs, one would expect some consumers, at least, to engage in some market search to find the accommodation that is most suited to their needs, and which trades off location, facilities, cost, quality and other factors, depending on their preferences. There are a number of books aimed at helping consumers take informed renting decisions, though

many do not equip themselves in this way<sup>92</sup>. Once in a rented property most consumers should realise that it is in their long term financial interests to be a good tenant. This will repay itself when the lease is up for renewal, or if they need, or want, to move elsewhere. Tenant references will then be good and any deposit refunded in full.

202. For tenants who see renting as short term and a temporary tenure choice these incentives will be weakened, as they have no incentive to develop a reputation. Tenants then bear some responsibility for the housing situation they may find themselves in.

#### **(v) The PRS in the context of the whole market**

203. There is a close connection between the PRS and other forms of tenure. Although the PRS can be examined and analysed in isolation, this is an unduly narrow, and potentially misleading, approach. The PRS is best considered as forming part of the, loosely defined, wider housing market.
204. Material already presented in this report demonstrates this. Tables 20 and 21 show that current PRS tenants wish, and some are planning, to move to other tenures. 76% wish to move to owner-occupation and 16% wish to move to States housing. These are the aspirations of PRS tenants.
205. But beyond this there is a more fundamental interconnection between the two market tenures of owner-occupation and private renting. Some of this has also already been set out. As the price of owner-occupied houses rises, this lowers the gross and net yields on rented property, but increases the total return. As the price of owner-occupied houses rises so the demand for rented accommodation will tend to increase as some existing and newly forming households are priced, or choose to stay (if they believe prices have risen too far), out of buying. Consequently the price of rented accommodation will itself tend to rise.
206. In economic terms, owner-occupation and rented accommodation are substitutes as market commodities. They both meet the same need and can be thought of as being in the same market. Whether they are sufficiently close substitutes to be considered part of the same market for, say, competition policy purposes need not concern us here. That will depend on certain technical tests being met<sup>93</sup>. But my judgement is that they

<sup>92</sup> Such as, N Chesworth, *A Practical Guide to Buying and Renting Your First Home* (London : Kogan Page, 2/e, 1999), which goes through all aspects of renting, including finding a property, rental agreements and deposits, legal aspects, maintenance and problems.

<sup>93</sup> In particular the SSNIP test for product and geographic market definition. See, for example, OFT, *The role of market definition in monopoly and dominance inquiries* (London: OFT, 2001)

would meet, or be close to meeting, that test if such an investigation had to be carried out.

207. That is certainly the presumption of many commentators on housing matters. It is widely recognised that policy in one part of the housing market impacts, sometimes strongly, on others. More particularly, policy on owner-occupation impacts on the PRS. Some examples will make this clear. In commenting on the supply of and demand for private rented property, MacLennan says;

*“ Obviously policies for the other tenure sectors will influence rental demand, for instance the measures to stimulate owner-occupation...may reduce rental demand and also rental supply with net sales of existing rental units to owner-occupation. ”*<sup>94</sup>.

208. The present UK government also takes this view;

*“ The withdrawal of mortgage interest tax relief will improve the functioning of the housing market and make renting more attractive ”*<sup>95</sup>.

209. On reflection, it would be very surprising if policy measures aimed at one form of tenure did not have implications for, and an impact on, the other housing tenures. Many households are able to make tenure choices. Government spending on one tenure will make it more desirable. Indeed, this is the whole rationale for a Corporate Housing Programme, which can take a more integrated approach to housing recognising the inter-connections.

210. It is instructive to consider what have been the main drivers of change in PRS prices in the last decade in Guernsey. Although there is some uncertainty as to the exact rise in PRS rents over the period, which has been discussed earlier, most housing participants believe that rents have risen in a similar way to house prices. Only a robust time series of rental price data would show whether this was in fact true, but analysis shows that the cause of any rise in average rents, whatever the precise number, is almost certainly not just changes in the rental market alone.

211. The table below shows changes in the numbers of households in the local market owner-occupied sector and the local market PRS between the last two Censuses. This was a period when average nominal house prices in Guernsey rose from £100,000 to £226,000, a real term rise of 55%<sup>96</sup>. Although not perhaps reliable on the exact level

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<sup>94</sup> D MacLennan, *Housing Economics* (London : Longman, 1982) p.209.

<sup>95</sup> DETR, *Quality and Choice : A decent home for all- The Housing Green Paper* (2000) p.48.

<sup>96</sup> See Parr, *op cit.* p.9.



of average PRS rents, the RPI rent calculations show average PRS rents increasing from £211 per week to £446 per week, a similar real term rise.

**Table 35 : Household numbers in owner-occupation and the PRS, 1991 and 2001.**

<i>Date</i>	<i>Number of households in local market owner-occupation</i>	<i>Number of households in local market PRS</i>
1991	13230	4002
2001	14849	3904
Net change	+ 1619	- 98

Source: Advisory & Finance (2003), *op cit*.

212. It can be seen that realised demand, in terms of the numbers of households in each tenure, has fallen in the PRS but risen in owner-occupation. Falling demand would normally, and in isolation, mean falling real prices, not rising ones. On its own one would expect rents to be falling, at least in relative terms. The relative sizes of the two sectors, in weight of money terms, is also significant. The PRS has an annual turnover, or rental expenditure, of just over £20m<sup>97</sup>. The owner-occupied sector has an annual turnover, of the value of houses bought and sold, of over £225m<sup>98</sup>, more than ten times as much. The relative sizes of these sectors makes it difficult to maintain that the PRS can be viewed in isolation.

213. It seems clear that the buoyant owner-occupied sector will have spilled over into the PRS in the last decade, but especially since 1995. There has been a general tightness in housing availability leading to rising prices in all sectors. The reasons for the growth of house prices in the period have been covered previously in the ESHM<sup>99</sup>, but include; “cheap money” (low real post-tax mortgage interest rates), low unemployment and unemployment risk and rising total employment. This has lead to increasing income multiples being lent by lenders and an increasing number of new households being formed. The rate of new house construction in the period was insufficient to hold prices steady. More recently the changes in document duty and treizieme have exacerbated the situation.

<sup>97</sup> 3904 households at £446 per month in 2001.

<sup>98</sup> Approximately 1000 local market transactions at £226,000 in 2001. Including open market transactions raises the size to £275m.

<sup>99</sup> Parr, *op cit*.



## (vi) Comparative PRS housing experience

214. The changes in the PRS in Guernsey can be put into an even wider context by looking at the experience of other countries. Guernsey's experience is not out of the ordinary.

215. The size of the PRS in other countries varies considerably. Table 36 below shows housing tenure in selected European countries. The different organisation and legal forms of property in the countries make precise classification and quantification difficult so cross country comparisons are somewhat fraught with difficulty. Owner occupation is a relatively clear cut concept, but the distinction between social and private renting is sometimes less precise. Social renting is normally thought of as housing owned and provided by central and local government, housing corporations, housing associations, co-operatives and trusts in a not for profit way. Private renting is normally thought of as housing owned and provided by individuals and property companies in a for profit way. However, private renting landlords and tenants are frequently subsidised by government so that market rents are not being paid by tenants. Depending on the way national statistical bodies classify these arrangements the housing may fall into either of the categories of social or private renting. There is therefore some ambiguity in the statistics.

216. This is especially true for Germany where it is said that;

*“Social housing means something different from elsewhere, as it does not refer to a specific set of non-profit providers with special relationships to central and local government, but rather to specific subsidy systems, including those that support low income home ownership”*<sup>100</sup>

217. The figures for Germany are not, therefore, on a like for like basis.

218. That said there are only a few countries with a PRS much larger than that of Guernsey. Overall, owner occupation is by far the dominant tenure, housing over two thirds of households in EU countries, and the long term trend has been for owner-occupation to grow at the expense of private renting.

219. Even in countries that have historically had a reasonably large PRS, its size has shrunk considerably in the last few decades. The long term trend is one of decline<sup>101</sup>.

<sup>100</sup> M Ball, *RICS European Housing Review 2003* (London : RICS, 2003) p.55.

<sup>101</sup> This echoes the conclusion of J Doling, *Comparative Housing Policy : Government and Housing in Advanced Industrial Countries* (London ; Macmillan, 1997) p.197. Though private renting remains disproportionately more significant in large urban areas and capital cities.

Only Germany, and from outside the table Switzerland, still have a large PRS <sup>102</sup>. Even within Germany the overall figures are somewhat misleading not just because of the different classification system used but also because the former East Germany has a very different tenure pattern, with more renting, than is the case in the former West Germany. Other European countries in or about to join the EU, mainly from Eastern Europe, have housing tenures that are in transition.

**Table 36 : Housing tenure in selected European countries, circa 2000.**

<i>Country</i>	<i>Owner-occupation</i>	<i>Social renting</i>	<i>Private sector renting</i>
Guernsey	72	9	19
Jersey	57	16	23
UK	69	21	10
Austria	60	21	18
Belgium	74	6	17
Denmark	53	19	20
Finland	58	14	11
France	56	18	20
Germany	41	15	43
Greece	78	0	25
Ireland	76	9	7
Italy	80	5	7
Luxembourg	71	2	26
Netherlands	53	36	10
Portugal	67	4	28
Spain	82	2	15
Sweden	60	20	20

<sup>102</sup> In 1990 the PRS in Switzerland was 60%. See, P Balchin, ed., *Housing Policy in Europe* (London: Routledge, 1996).

Source : Various, mainly Ball, *op cit.*

Note :

1. The Guernsey figures above are for the combined local and open market in the 2001 Census.
2. The Jersey figures are for the residentially qualified population alone in 2001. Including the non-residentially qualified lowers all the numbers somewhat as that group reside primarily in lodging houses. See Report on the Jersey 2001 Census, *op cit.*
3. Totals do not always sum to 100% because of rounding and the existence of other categories.
4. The statistics are not always on the same basis. e.g. in their treatment of second homes and work related residences.
5. The country data mainly refer to 1999-2001.
6. EU statistics in *Housing Statistics in the European Union 2002* are similar to the above for most countries, though they refer to earlier periods in the main

220. Despite differences in tenure patterns the avowed aims of housing policy in these countries are much alike. According to a survey undertaken by the European Parliament;

*"In every Union country, with two exceptions, there is an over-riding policy objective that adequate, affordable housing should be available to all"*<sup>103</sup>.

221. That paper adds that, not surprisingly, almost every European government fails to achieve that objective. Furthermore, it and other comparative studies on housing<sup>104</sup>, emphasise that accessibility, affordability and quality have been at the core of European housing policies and that they remain important concerns, whilst recognising that they may be mutually exclusive objectives.

222. The spectrum of PRS policy measures adopted across the EU has been very wide. Historically, rent controls have been common, but seem to be declining in importance as countries that have traditionally used them as a policy instrument now partially or fully liberalise the rental market. The UK, Finland and Austria now have no controls in place and all tenants pay market rates. This policy shift reflects a growing consensus that rent control is counter-productive in achieving policy objectives.

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<sup>103</sup> Directorate General for Research Working Document, Social Affairs Series, *Housing Policy in EU Member States* (No. W14, 1996) p.1.

<sup>104</sup> Such as Balchin, *op cit.* and G McGrone, M Stephens, *Housing Policy in Britain and Europe* (London : University College Press, 1995).

*“There is now extensive evidence that Europe’s long run attempts to solve affordability problems through controlled rents have resulted in deteriorated housing quality and entry/access difficulties for the low income households that such policies were intended to benefit”<sup>105</sup>.*

223. The case for and against rent control will be considered in more detail later in the report. Two main other policies exist to address the affordability goal in the PRS. These are; allowing tax relief on rent and giving a housing allowance or benefit to PRS tenants. Both are subsidies to PRS households.

224. Historically, PRS housing quality has been addressed in EU countries by slum clearance programmes and the provision of social housing, where, in principle, quality and affordability concerns can be directly addressed. More recently, more positive approaches have been tried through housing rehabilitation. In some countries, such as Denmark, the Netherlands and the UK, area regeneration has involved not for profit purchasing and improving poor quality lets. In other countries, such as France and Germany, grants and tax aid have been directed at poor quality PRS housing. Many countries have developed fiscal support for private landlord investment.

225. One important conclusion that comes out of comparative studies is that the PRS has a number of distinct types of household within it. Some, such as younger households, often single persons or people sharing and/or cohabiting, have jobs and incomes and live in better quality rental property. In due course they may become home-owners. Their stay in the PRS is temporary. However, there are other household types that can raise more, primarily poverty, concerns. These include;

- poor households, often with families, who are unable to afford owner-occupation and who are unable to gain access to social housing
- younger households, often single persons, who live in low quality, multiple person accommodation and who have low incomes or are unemployed or have had to leave violent or dissolving parental homes. There may sometimes be other social problems of low level criminality, drugs and other anti-social behaviour.
- elderly households who entered the sector in the 1950s and 1960s, who have low incomes.

#### **(vii) The project brief reconsidered**

226. The terms of reference for this project outline a very similar set of concerns to those of other European countries regarding their own PRS. This is not surprising as the

<sup>105</sup>

Directorate General for Research Working Document, *op.cit.*,p.10.

housing problems seem to be quite similar in EU countries. Three policy goals are identified in the project brief;

- to improve housing (PRS) quality
- to improve affordability
- and to maintain or expand the size of the sector

227. These aims are set out at various points in the brief, most clearly in the passage;

*“..to identify..... measures that can be taken to influence the sector:*

- *to improve housing quality; and*
- *to make rents affordable;*

*in a manner that will maintain, or increase, the number of dwellings available within that sector.”<sup>106</sup>*

228. Unfortunately, as noted before in briefly examining other countries’ experience, there is a tension, if not a direct conflict, between these three goals. This can be appreciated if they are considered individually.

229. Increasing housing quality can only come about, within the existing stock, by expending money on improvements. Even new build and conversion involve expenditure on quality. Higher quality rental accommodation, compared to what currently exists, can be achieved but at a cost. Higher quality, if required of and financed by the landlord, will mean higher rental prices, as the landlord seeks a return on his investment. Higher housing quality achieved in this way would so cut across the policy goal of improving affordability. Landlord financed improvements will mean higher rental prices.

230. Alternatively, higher housing quality could be achieved by eliminating from the existing stock those properties that fell below a certain level. The minimum standard could be set at any level desired by the authorities. Properties could be closed by some sort of order, through either existing or new legislation. Compulsory purchase powers might precede a slum clearance programme. However, this would reduce the stock available for rent and cut across the third policy goal of maintaining or increasing the PRS stock- at least in the short term. Furthermore, the reduction in the stock, unless matched by new build, would cause rents to be bid up with further undesirable impacts on the second goal of affordability. It might also lead directly to homelessness and demands for more social housing. Higher standards would then do little to improve accessibility and affordability for households, especially low income households, as it would be the lowest quality and lowest priced PRS housing that would be shut down.

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<sup>106</sup>

See Annex 1.



231. Improving the affordability of PRS housing can come about only through two possible avenues- either decreasing the price of such housing or improving the incomes of those in such housing. Both mean that less household income is spent proportionately on housing. A superficially attractive way to lower market prices in the short term is to impose rent control, but this might simply lead to some landlords ceasing operations and so a reduction in the stock would take place in the longer term- running against the third goal. However, in the longer term the States might try to encourage a higher level of build and conversion of property, reducing the rate of house price and rent inflation. This is a very long term policy. In the absence of market imperfections which are keeping prices higher than necessary, the only more immediate method of achieving the affordability objective is some form of subsidy from the States to either the landlord or tenant. In the former case it is aimed at lowering the net rent price, whilst in the latter it is aimed at increasing household income.
232. Maintaining or increasing the stock of housing in the PRS needs to be looked at in both the short and long term. In the short term, housing from one of the other two tenures might transfer to the PRS, perhaps attracted by tax breaks on rental income, other tax incentives or States' policy. However, any gain in the size of the PRS stock will be matched by an equivalent reduction elsewhere. There will be no net gain in the total Guernsey housing stock at all. The only caveat to this is if the efficiency of use of the existing stock can be improved and the effective housing capacity of the current stock increased <sup>107</sup>. In the longer term the total stock can only really be increased by the new build of property or conversion of buildings from other non-residential uses. Here the familiar issues of the planning system and the reconciliation of development with other objectives, especially environmental, emerges.
233. All this is written to point out that there is no simple, or obvious, answer to the problems of the PRS. Such policies as are feasible to meet the three goals of the research brief will generally either not meet all three goals simultaneously or will involve the States subsidising PRS activity. The financial cost of improving quality and affordability has to be met by someone. If it is not to be met by landlords and tenants it must be the general taxpayer, via the States.

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<sup>107</sup> By, for example, one large house previously housing one single person household being used more intensively. This could be by the taking in of lodgers or by conversion of the property to several housing units.



#### 4. States' Policies towards the Private Rented Sector

234. Many States' policies affect the PRS, with some having a more significant impact than others. In this section nine policy areas are considered, namely; the background legal framework; the background macroeconomic policy; policy towards other housing tenures; the tax regime; planning and building controls; fire and environmental health regulations; landlord-tenant law; rent control law; and welfare support via Supplementary Benefit and Public Assistance . Together with the range of current and forthcoming PRS policy initiatives in the CHP <sup>108</sup>, these comprise the primary policy measures in place at present.

##### (i) The background legal framework

235. A very wide range of laws potentially impact on the PRS, depending on which aspect of the PRS is under consideration. Moving from the general to the specific one might expect the following to have some impact; general competition law, general consumer law, housing and property law, planning law, fire and environmental law, landlord-tenant law, rent control law, and welfare law relating to the income support of PRS tenants.

236. There is no general competition law in Guernsey, so that problems of market domination and abuse, if they were to be found in the PRS, cannot be addressed by direct recourse to legislation. This is unlike the situation in the UK, other European countries and the EU where a body of competition law exists.

237. There is a fledgling competition law in Guernsey which has been developed since 2001. However, this deals only with the parts of the utility sector. This has resulted in the creation of the Office of Utility Regulation (OUR), which now regulates the electricity, post office and telecommunications companies active on the Island <sup>109</sup>. Despite a natural tendency for monopoly problems to be more acute on a small Island, there is an understandable reluctance to extend such regulation, except where it can be shown to be needed and be cost effective.

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<sup>108</sup> For details see, Advisory & Finance Committee, *2003 Policy and Resource Plan, Billet d'Etat XIV, July 2003*.

<sup>109</sup> See the OUR website for details: [www.regutil.gg](http://www.regutil.gg). The main law is the *Regulation of Utilities (Bailiwick of Guernsey) Law 2001*.

238. Similarly there is no general consumer protection law, akin to the raft of legislation in the UK and elsewhere. The one exception to this is the Weights & Measures (Guernsey & Alderney) Law 1991, which is largely irrelevant to the PRS.
239. This means that trading practices (of landlords) and contract terms (of landlord-tenant agreements), for example, have no specific law relating to them. Instead reliance is placed, when disputes occur, on common, or customary, law. In practice this means that the Trading Standards Service, part of the Board of Industry, can offer little general advice to tenants (as consumers), nor produce any general guidance to landlords (as traders), as there is insufficient clarity in legislation.
240. Recognising this gap in the general law the Board of Industry put a Policy Letter to the States in January 2000 <sup>110</sup>. This covered, inter alia; the sale and supply of goods and services and unfair contract terms. Both of these are relevant to the PRS. In the UK the OFT has interpreted the unfair contract terms law there, the Unfair Terms in Consumer Contract Regulations 1999 (UTCCR), arising from the EU Directive <sup>111</sup>, as applying to tenancy agreements. This view has been confirmed after a recent High Court case <sup>112</sup>. The OFT has also produced guidance material on tenancy agreements, outlining what might count as an unfair contract term <sup>113</sup>. Depending on the particulars of any new Guernsey law in this area a similar situation might, if not should, result.
241. The Board of Industry's Policy Letter above has been approved by the States and is currently with the Law Officers for drafting into legislation, although it does not have a high legislative priority attached to it. It is therefore uncertain when this legislation might come into force. Further ahead still, there has been preliminary discussion about further consumer law, including some "general duty to trade fairly", and it is possible a Policy Letter on this will come from the Board to the States in 2004. This would again have implications for the PRS and landlord practices.
242. The structure of the housing market in Guernsey, including the PRS, and the associated Housing and Property law, are complex. The main current law is the *Housing (Control of Occupation) (Guernsey) Law 1994*, though the origins of the

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<sup>110</sup> Board of Industry, *Fair Trading Practices- Civil Matters*, dated 31 January 2000.

<sup>111</sup> Council Directive 93/13/EEC.

<sup>112</sup> *OFT Press Release 133/03*, Tenants Have Unfair Contract Terms Protection : High Court Upholds OFT View, 21 October 2003.

<sup>113</sup> In general terms an unfair contract term is one which causes a significant imbalance in the rights and obligations under the contract to the detriment of the consumer. This includes having contract terms written in plain and intelligible language. The OFT published "*Guidance on Unfair Terms in Tenancy Agreements*" in November 2001 and published a consumer leaflet entitled "*Unfair Tenancy Terms- Don't Get Caught Out*" in April 2002. It anticipates producing further guidance documents on tenancy contracts in 2004/05.

main elements go back to the post-war situation<sup>114</sup>. It is presumed that readers of this report are familiar with the main elements- the open/local market distinction and the rules restricting the occupation of dwellings, except with a Housing Licence, residential qualification and so on. It is therefore not outlined further<sup>115</sup>.

243. Moving from these quite general laws to the more specific areas noted earlier means that they have increasing relevance and significance for the PRS. The remaining areas of law; planning and building control law, fire and environmental law, landlord-tenant law, rent control law, and welfare law and arrangements relating to the income support of PRS tenants are therefore considered in more depth as sub-sections. Annex 4 deals with further technical legal framework issues, including comparisons with the UK and the desirability of change to the Guernsey legal system (as it applies to the PRS). This has been canvassed by some<sup>116</sup>.

## **(ii) Background macroeconomic policy**

244. The 2002 Economic Study of the Housing Market (ESHM) set out how the background macroeconomic policy of the States impacts on the housing sector<sup>117</sup>. As the PRS operates as a market with separate demand and supply sides to it, so the factors influencing its operation are fundamentally economic in character.

245. The fiscal and monetary policies run by the States affect overall economic performance and hence matters such as; inflation, economic and income growth, employment and unemployment and the distribution of income. These will impact on any market's operation, including the PRS. As the ESHM considered this in some depth its analysis and arguments are not repeated here.

## **(iii) Policy towards other housing tenures**

246. The ESHM also outlined the range of specific micro- level policies which impacted on the housing market and the interactions between its constituent parts<sup>118</sup>. The

<sup>114</sup> See, Parr, *op. cit.*, 2002, p.38-39.

<sup>115</sup> A short introduction is the paper, *Guernsey Housing Law*, by advocates at Babbe Le Pelley Tostevin, available at [www.bltguernsey.com](http://www.bltguernsey.com).

<sup>116</sup> See the SGLS reports for example.

<sup>117</sup> Parr, *op cit.*

<sup>118</sup> *Ibid.*, especially section 4, States' Housing Policies, pp.36-49.

subsequent development of the Housing Strategy and the CHP, and some of its work areas, is an expression of the fact that the component parts of the housing market are interconnected and that policy in one area has effects elsewhere. The very rationale of the CHP is that tenure policies, and effects, are interlinked and that an integrated approach is needed.

247. As these linkages were also set out in the EHSM, and are implicit in the CHP, they are not fully set here. However two examples make clear the connections.
248. First there is the general pattern of taxes and subsidies which come from and go into the housing sector. At present these are not tenure neutral. Some tenures are more favoured than others. The extent to which the current pattern of subsidies and taxes is a conscious, and numerically targeted, choice by the States is unclear. Considering subsidies, it is clear that the housing expenditures of consumers in the owner-occupied and States' parts of the market are much more favoured than tenants in the PRS. At the time of the EHSM report, some £25m in subsidy was effectively being spent. This was split roughly equally between owner-occupiers and States' tenants. The latter, being less numerous, received, on average, a significant amount of subsidy per head<sup>119</sup>. PRS tenants received no subsidy. Given the antiquated basis for some parts of property taxation in Guernsey, it is also quite possible that property taxation is not tenure neutral<sup>120</sup>.
249. The subsidy calculations made in the EHSM have not been updated but the situation in 2004 is unlikely to be significantly different, though the forthcoming revised States' rents and rebate scheme may change this a little, depending on its detail.
250. Such differences in tax and subsidy treatment will affect the housing choices and aspirations of Guernsey residents. This was commented on earlier in section 3 in considering the responses given to the HNS questions about the desired tenure.
251. Second, the quantum of States' social housing, and the forthcoming Guernsey Housing Association social housing, will affect demand for PRS property. As some tenants in the PRS are unable, and/or unwilling, to enter owner-occupation the availability of social housing, and the allocation policies followed in allotting that housing, will affect PRS demand. To the extent that further social housing becomes available, in excess of the growth of the numbers of households already entitled to it, this should reduce waiting lists and in time reduce the pressure on the PRS stock.

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<sup>119</sup> *Ibid.*, Table 21, p.69.

<sup>120</sup> This is because the basis of TRV and occupiers rates is the RV system stemming from 1948, which is widely recognised as having created many anomalies in the intervening 50 + years. For example, changes to properties since will normally have involved a change and uprating of the RV. This is more likely with flats, which are more frequently found in the PRS. It may therefore be that, even on a simple per adult head basis, that PRS tenants pay more than owner-occupiers in property tax.

#### (iv) The tax regime

252. Spending by PRS tenants on their rent has no special tax treatment. It is an expenditure like any other made by a consumer out of their after tax income. Just as with other spending on, for example, food, clothes, entertainment and travel, housing expenditure simply reduces the disposable income left for other consumer expenditures or saving. Rent is just part of the normal household budget of a PRS tenant <sup>121</sup>.
253. Rent received by landlords does, in contrast, have some special tax features in Guernsey.
254. Rent forms part of the landlord's income and is so chargeable to tax. This applies whether the property is owned by an individual or through a company <sup>122</sup>. For an individual the annual Return of Income, which has to be made to the tax authority, has a section D, dealing with the ownership of property. Rental income has to be entered here. However, there are deductions that are made from rental income before the sum to be taxed is arrived at.
255. Deductions for services provided, such as water rates, may be made where the rental charged to the tenant includes the cost of such services. Alternatively, the rent paid may exclude such services and the landlord may have to pay the water rates, the cost of lighting and occupiers rates, for example. These expenses too are tax deductible. Similarly if a landlord uses a letting/management agent to administer the property for him, the expenses associated with this are also deducted. Other legitimate landlord expenses include building insurance costs.
256. More importantly, if the landlord is responsible for the costs of all internal and external repairs to the property, a deduction is made from the gross rent for such repairs. This is called the statutory repairs allowance (SRA). It is given each year irrespective of whether any expenditure is actually incurred. It is currently set at 25% of the gross rent (after deductions for services).
257. A numerical example might help. If a landlord had a property worth £200,000 (its current market valuation) being rented at a gross yield of 5% then the rent would be £10,000 a year. If deductions for services and other expenses are say £1000, the annual gross rent would be £9000. The statutory repairs allowance would reduce the taxable rent by 25% of this, or £2250, to give £6,750 of rental income eligible for tax.

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<sup>121</sup> As noted earlier this is not the case in some other EU countries where rental payments are tax deductible.

<sup>122</sup> There are numerous reasons why individuals might form companies to own any property. These include; the limited liability form of the company and the special laws of inheritance, which distinguish personality from realty.



If tax were levied on all this at the standard 20% rate, the tax would be £1350. The net money return to the landlord would then be £5400 and the net after tax yield on the property would be 2.7%.

258. In addition, and it is thought rather rarely, it might be the case that in a particular year the landlord has to carry out repairs and maintenance which cost far more than the annual SRA allowance. This might be, for example, when expensive roof repair and maintenance is needed. There is then an additional allowance which can be claimed- the Excess Repairs and Maintenance Allowance (ERMA).
259. ERMA allows for exceptional expenditure by making a rolling 5 year calculation of average expenditure, which must be above the SRA allowance, and allowing that to be deducted. In the example above of a landlord with a SRA of £2250, it might be that the average 5 year spend is £4000, because in the current tax year there has been a particularly large bill of, say, £10,000. In this case the excess of the average over the SRA ( £4000 - £2250, or £1750) can additionally be deducted as ERMA in the current tax year. ERMA allows for spending above the SRA, but in a financially smoothed way.
260. The SRA and ERMA are meant to allow for the normal upkeep and maintenance of property, so that the value of the asset under tax is maintained at the year end. In that way only the economic rent, net of depreciation, is being taxed. Note that the SRA and ERMA are only on repair and maintenance expenditure, not on improvement expenditure <sup>123</sup>. Expenditure which improves a property, and raises its quality, is not eligible as an expense against rental income. This is because the improvement spending should be reflected in a change in the capital value of the property, the full value of which lies with the owner and which should be reflected in a higher gross rent. This aspect of the tax regime will be returned to in considering how to improve the quality of PRS property.
261. The value of this tax treatment of repair and maintenance expenditure can be estimated <sup>124</sup>. There are, roughly, some 4000 local market households in the PRS. The average rent was some £161 per week, according to the 2001 Census. This gives an annual PRS rental paid then of £33m. Updating to 2004 values gives, say, £40m of rental expenditure by PRS tenants and, obviously, the same rental income to landlords. If ERMA is ignored, being exceptional, the value of SRA is thus, approximately, 25% of this and the tax revenue foregone is a further 20% of that sum. This is £2m.
262. One can debate whether this is a “subsidy” to landlords. In my view it is not as the income tax system is meant to be taxing the net income generated each year, whether

<sup>123</sup> Without going into the detail of what constitutes just repair and maintenance expenditure, which exercises the tax authorities, improvement expenditure raises the quality of a property and its market value.

<sup>124</sup> Unfortunately the ITA has manual recording of SRA and ERMA data and has been unable to provide figures for the total amount claimed under these two allowances.



by individuals or businesses. Capital values need to be preserved so allowance for expenses and depreciation are a normal feature of personal and business income tax systems. Such allowances are not a subsidy. One might query whether a SRA rate of 25% is under or over-generous for maintaining the asset base, but rough estimates suggest it is of the right order <sup>125</sup>.

263. There are a number of additional tax rules relating to cases such as; when a property is let free of charge; when the responsibility for repairs is split between the tenant and landlord; when properties are furnished and part of the rent is for furniture as opposed to the property alone. These are of relatively minor significance for this report and will not be set out <sup>126</sup>.

264. From a landlord's perspective, there are also tax issues connected with the purchase and sale of property. Where properties are purchased with the help of a mortgage, tax relief on the interest payments is given, as with property purchase by owner occupiers. This tax relief on interest currently applies irrespective of the number and size of loans.

265. Finally there is the *Dwellings Profits Tax (Guernsey) Law 1975*. This was set out in the ESHM <sup>127</sup>. The effect is to encourage landlords to own property for a minimum of five years, otherwise, if they were to sell, they would be liable for DPT. Very few cases of DPT have occurred. In updating the ESHM data, the Income Tax Authority have said that no cases of DPT liability arose in 2002 and just two cases arose in 2003. DPT discourages churning of PRS property.

#### **(v) Planning and building controls**

266. The main statute governing planning law is *The Urban Development (Guernsey) Law 1966*, as amended. This sets the structure within which the Island Development Committee (IDC) operates in producing development plans, details what requires planning permission, sets out broadly how the IDC is to deal with planning applications for building and development, and so on <sup>128</sup>.

<sup>125</sup> If the gross yield on a property is say 6%, a 25% SRA allowance is equivalent to expecting a 1.5% level of capital spending each year. Reciprocally this implies an economic life of the asset and fittings of 66 years. This does not seem unreasonable as an average.

<sup>126</sup> See KPMG, *A Guide to Guernsey Personal Tax (1992)*, Chapter 8, Property Income and Dwellings Profits Tax, for further details.

<sup>127</sup> Parr, *op cit.*, p.48.

<sup>128</sup> For further details see the helpful article on Planning Law by advocates of Babbe Le Pelley Tostevin, available at [www.bltguernsey.com](http://www.bltguernsey.com).

267. Further laws, such as the *Island Development (Amendment) (Guernsey) Law 1988* and the *Island Development (Use Classes) Ordinance 1991*, deal with the important issue of change of use of property from one use class to another. Change to this whole body of planning law is currently underway. A new draft law was published in 1998 and a revised draft law in 2002<sup>129</sup>.
268. Some properties have a special, and additional, regime under the *Ancient Monuments and Protected Buildings (Guernsey) Law 1967*. Under this law the Heritage Committee has the power to list on a Register of Ancient Monuments and Protected Buildings any building, structure or object which, in the opinion of the Committee, is of historical, traditional, archaeological, architectural or other special interest. This list is maintained at the Greffe and contains some 2000 entries. The majority of these are residential properties.
269. Properties on this list whose owners seek to “develop” them must not only seek the relevant planning permission from the IDC but also seek listed building permission from the Heritage Committee. Without that Committee’s permission, it is forbidden to demolish, in whole or in part, efface, effect any alteration or addition to, or change the appearance of the building. This is a requirement that, deliberately, goes far wider than normal planning permission<sup>130</sup>.
270. The IDC also now has powers, previously vested in the States Housing Authority, with regard to matters concerning building. This is under the *Building (Guernsey) Law 1956*. This allows the IDC to specify the standard to which building and development work, following planning permission, must be carried out. The rules presently in force are the *Building Regulations 1992*. These updated a set from 1957<sup>131</sup>.
271. The significance of these planning and building laws for the PRS is that any new build, or conversion of existing property, so as to expand the size of the PRS stock, has to go through the planning and, if applicable the listed building, application procedures. When permission is granted, with or without conditions, the work has to conform at a minimum with the Building Regulations. These regulations, aimed at ensuring minimum standards, were similar to those in force in England and Wales in 1992, but are below current levels there<sup>132</sup>.

<sup>129</sup> IDC, *Review of the Island Development (Guernsey) Law 1966 & 1990 - Consultation Document (2002)*. I will not comment on the prospective changes to planning law.

<sup>130</sup> Repairs do not require permission.

<sup>131</sup> Various guidance documents are available from IDC Building Control on the regulations, including; *Building Regulations 1992*, and, *Manual to the Building Regulations 1992*.

<sup>132</sup> There the 1991 Regulations have been replaced with the Building Regulations 2000, and consultation is currently underway on updating these in various ways. See [www.odpm.gov.uk](http://www.odpm.gov.uk) for details.

272. Where properties have been in the PRS for some time, there is no guarantee that they meet the 1992 Building Regulations. They may simply meet the standards in place at the time of build or conversion. Thus, the age of the housing stock is generally found to correlate with its condition. There is no data on the age profile of the Guernsey housing stock. Similarly, repair and maintenance work on PRS property does not require planning permission so it too may fall below the standards for new build. In this, of course, the PRS is no different from the owner-occupied sector.
273. The issue of how the planning and building laws and regulations affect the housing sector is a topical one in the UK and a major review of this, the Barker Review, is now complete. This was commissioned in April 2003 and has just reported<sup>133</sup>. Its findings and recommendations are largely now subject to consultation, expected to take a year.

#### **(vi) Fire and environmental health regulations**

274. Fire and environmental health regulations are grouped together as they apply on an on-going basis to PRS property<sup>134</sup>. They are concerned with the health and safety of occupants and their living conditions.
275. Fire regulations stem from *The Fire Services (Guernsey) Law 1989*. The system is fundamentally a self regulatory one. The 1989 law specified, in its Part III, certain requirements for fire precautions in controlled premises. These required the provision of; a means of escape, and securing that the means were available; fire fighting equipment and a means of warning persons in the premises in the event of fire.
276. Controlled premises are defined in Part III of the 1989 law. No doubt in an effort to exclude owner-occupied property from the regulations the definition of controlled premises was limited. Critically, it only included premises where sleeping accommodation for more than 10 people was provided and excluded premises occupied solely as a single private dwelling. Because of this definition only some households in the PRS were covered; chiefly those in buildings sub-divided into several flats and houses in multiple occupation (HMOs). These would then exceed the 10 person threshold.
277. Under the 1989 law, the Committee for Home Affairs, responsible for fire fighting services, had to maintain a register of all controlled premises. However, in practice, it

<sup>133</sup> See the interim report, Kate Barker, *Review of Housing Supply : Securing our Future Housing Needs: Interim report- Analysis* (London: SO, December 2003) and the final report, *Delivering Stability : Securing Our Future Housing Needs* (London : SO, March 2004). Both are available in full, including Executive Summaries, at [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk). See also [www.barkerreview.org.uk](http://www.barkerreview.org.uk).

<sup>134</sup> Fire regulations do not apply to all PRS property, environmental health regulations do.

is the responsibility of the owner of PRS property which meets the controlled premises definition to register. In addition, the fire services had a right to inspect premises, but not a duty. Where premises breach the regulations a system of requiring improvements backed ultimately by closure was set out.

278. The coverage of the regulations was widened in *The Fire Services (Amendment) (Guernsey) Law 1997*, which brought in as controlled premises accommodation where sleeping was below ground level or above first floor level.
279. In practice it is unclear how comprehensive the register of controlled premises is. It is an offence not to register but it seems likely that a number of landlords do not register. Few complaints about fire precautions are made each year by PRS tenants in controlled premises and few requirement or prohibition notices are served. In 2002 just one of each was served<sup>135</sup>. Despite this it is the view of the Chief Fire Officer and the Senior Fire Safety Officer that a reasonable degree of safety exists in PRS controlled premises<sup>136</sup>.
280. From today's perspective, environmental health requirements are ill defined in statute, as the current statute's are the *Loi Relative a la Sante Publique 1934*, and its associated Ordinance, *Ordonnance Provisoire Relative a la Sante Publique 1936*. (There was a minor amendment in 1999.) Expected standards and concerns are now rather different than in the 1930s.
281. The 1934 and 1936 laws set out arrangements which continue to operate today, namely; a definition of a public health "nuisance"; a compliance procedure involving abatement notices and ultimately closure orders on property; and the central role of the Medical Officer of Health in the process of eliminating public health risks, including a power to enter property.
282. Particular nuisances referred to in the 1936 Ordinance were; filthy or verminous premises, overcrowding (where a minimum 300 cubic feet per person requirement was specified for dwellings), insufficient water supply and insufficient or defective sanitary installations. However, the Medical Officer of Health was effectively given the power to determine any nuisance which, in his view, was prejudicial to health. This has meant the legislation has not needed to be updated. The discretion found within the 1934 and 1936 laws has allowed new nuisances to be defined, de facto, without fresh legislation.
283. Thus there is no formal equivalent to the environmental standards set out in, for example, the UK with its current and proposed new housing fitness standards- see

<sup>135</sup> States of Guernsey Fire Brigade, *Annual Report 2002*, p.17.

<sup>136</sup> Some of the problems in some properties reside with tenants themselves, as, for example, they open fire doors, obstruct passageways, move fire extinguishers, and remove smoke alarms. Ultimately, of course, it is the landlord's responsibility to deal with this type of behaviour and ensure continuing compliance.

Annex 3 for details. In practice the Environmental Health Department (EHD), currently working within the Board of Health and to the Chief Medical Officer of Health, aims to make the Guernsey system broadly equivalent to that operated in the UK<sup>137</sup>. I have been told that it, informally, uses the current UK HFS. This is partly because many Guernsey EHOs come from the UK and most are trained in the UK. Usage of UK standards, even if modified, would then be sensible. However, this discretionary power of the Guernsey system works against transparency as what is required is nowhere set out in law. In practical terms it is unclear what formal environmental health standards have to be met. What constitutes fitness for occupation, and unfitness, has become increasingly vague to the general public.

284. The EHD has produced a code of good practice for renting accommodation to fill this gap<sup>138</sup>. However, as the foreword makes clear, these are recommended standards and are not compulsory, so a landlord would not know what attitude an EHO would take to premises below the recommended level. Furthermore, many of the standards are not sufficiently specific to have much operational meaning for a landlord. For example, on heating, the code simply says that “habitable rooms shall have adequate means of heating at all times”. On sound insulation, the code says that “each separate occupancy should be insulated against excessive noise”. Adequate and excessive are not defined.

285. The environmental health system is reactive and complaints driven. The typical pattern is that a written or telephone complaint is received, almost always from the public. An Environmental Health Officer (EHO) will then visit and assess the property concerned. The EHO will look at the property as a whole and may find defects that have not been the subject of complaint. In instances where the complaint is felt to constitute a breach of the law, the EHO will seek to resolve the matter by negotiation and letter with the owner. Complaints are judged on a case by case basis. Since 2000 no Notices for Abatement have been issued, though a small number of Closure Notices, signed by the Chief Medical Officer of Health, have been issued<sup>139</sup>. Table 37 below shows the numbers of housing complaints received since 2000.

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<sup>137</sup> After 1 May 2004 I understand there will be an independent Director of Environmental Health and Pollution Regulation, working within an Environment Department.

<sup>138</sup> Environmental Health Department, *Code of Good Practice for Renting Accommodation*, March 1998.

<sup>139</sup> An average of 2 per year were issued in the 1998-2002 period. Closure orders are never issued for owner-occupiers and are, in practice, issued only to PRS owners when the Housing Authority will rehouse the tenants displaced by closure. The number of closure notices is used by the States as the measure of housing quality in Guernsey- for discussion on this see Annex 3.

Table 37 : Housing complaints to the Environmental Health Department, 2000-2002.

<i>Year</i>	<i>Total number of housing complaints</i>	<i>Number from the PRS</i>	<i>Number from States tenants</i>
2000	63	n/a	n/a
2001	68	63	5
2002	66	59	6

Source : Environmental Health Department.

Note : 1. This excludes complaints about noise.

286. The type of complaint is broken down in Table 38.



**Table 38 : Breakdown of housing complaints to the Environmental Health Department, 2001-2002.**

<i>Complaint issue</i>	<i>2001</i>	<i>2002</i>
General disrepair	28	30
Dampness	37	36
Overcrowding	4	4
Cooking facilities	3	2
Sanitary facilities	3	4
Other	9	10

Source : Environmental Health Department.

- Note : 1. The above is for all complaints and not just the PRS.  
 2. Complaints may cover more than one matter.  
 3. Noise is again excluded.

287. It is apparent that general disrepair and damp form the bulk of complaints. EHD systems do not record how many of these are deemed to be justified. If all are, and are made by separate households, the total number of complaints represents 1.5% of the PRS stock in 2002. However, it is believed that some complaints are made erroneously by tenants in the PRS in the hope that this will strengthen their case for rehousing by the Housing Authority. As with the fire regulations, many more properties, including some owner-occupied properties, may be failing to meet environmental health standards. Given the imprecision of what these standards are, the reluctance of some to complain<sup>140</sup> and the reactive, not pro-active, nature of the system, little can be concluded about environmental health standards in the PRS. This is also true more widely for housing as a whole<sup>141</sup> - see also Annex 3.

<sup>140</sup> Because of fears of antagonising the landlord.

<sup>141</sup> As with fire precautions, some responsibility for environmental health conditions will reside with tenants. Tenants, and indeed owner-occupiers, may not always live in a manner which minimises problems. Problems are perhaps especially likely in HMOs, where communal living arrangements exist.

**(vii) Landlord-tenant law**

288. According to Dawes<sup>142</sup>, there is very little landlord and tenant law in Guernsey, whether statute or case-law. The basis of law is customary and it is the process by which a landlord regains possession of property which is the focus of the Guernsey law and the legal process. As Dawes says;

*“It is the .. the eviction process itself which Guernsey law regulates”*<sup>143</sup>.

289. PRS tenancies are typically of a fixed term, say one year, or of a periodic form, say monthly<sup>144</sup>. For a fixed term tenancy the contract between landlord and tenant will specify that at the end of the term possession is to be returned to the landlord. If no other terms of the contract are broken during the fixed term the tenant will enjoy the property for the contractual period. Normally, the tenant will voluntarily leave at the end of the fixed term, or a new fixed term contract will be arranged. If the tenant refuses to leave the landlord would start the legal process of regaining possession by arranging the issuing of a summons<sup>145</sup> and hoping to gain an eviction order. The tenant may then decide to contest this, though they would be advised to have some legitimate grounds for doing that.

290. With periodic tenancies, there will normally be a period of notice specified in the contract which must be given for the landlord to regain possession. Again, tenants may voluntarily leave when given the due period of notice, but if there is disagreement a notice to quit must then be served. This is served by H.M. Sergeant. This will be of the length specified in, or appropriate to, the tenancy<sup>146</sup>. If the tenant does not leave during the notice to quit period the landlord will again arrange a summons, hoping to gain an eviction order.

291. In both types of tenancy, breach of the terms and conditions of tenancy, at any time, may lead the landlord to seek an eviction order directly. This is typically for non-

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<sup>142</sup> G Dawes, *The Laws of Guernsey* (Oxford: Hart Publishing, 2003) p. 684.

<sup>143</sup> *Ibid.*, p.684.

<sup>144</sup> The contract may be a formal agreement or simply a rent book with any terms and conditions noted in it. Sometimes there may simply be a verbal agreement. Broadly the more expensive PRS properties have formal contracts and are fixed term contracts, with cheaper properties having rent books and being periodic tenancies. The less well specified the contract the more, in principle, the scope for problems between landlord and tenant.

<sup>145</sup> An advocate will issue a summons in the Royal Court for the eviction of the tenant.

<sup>146</sup> A weekly tenancy will get a week's notice, a monthly tenant a month's notice and so on.

payment of rent. Contested hearings may well result in such cases as there will have been a breakdown in the normal landlord-tenant relationship.

292. Tenants may choose to leave a property once a summons to the Court for their eviction has been issued, but they may not. The matter may continue to a hearing in the Royal Court, where the Court will consider the summons and will either grant or refuse the eviction. Even if eviction is granted, consideration will be given to a stay of eviction. A stay allows the tenant time to continue in the property and find other accommodation. The length of this stay is at the discretion of the Court, and, depending on the circumstances of the case, can sometimes be lengthy. There is no right of appeal against this. It is the role of H.M.Sheriff, once ordered by the Court, to carry out evictions.
293. From a tenant's perspective, some may be reluctant to agree to leave property if there is little prospect of finding alternative accommodation. In practice, agreeing to leave property voluntarily will also mean that the Housing Authority will not give the tenant priority in finding social housing. It is far better to be evicted forcibly and become homeless. There is a limited legal aid scheme, which is means tested <sup>147</sup>, so as to ensure that poorer tenants are not excluded from recourse to the law when disputes occur.
294. From the landlord's perspective, the regulation of the eviction process means that it can sometimes be difficult to regain possession of property. With stays of eviction existing and being largely unpredictable, except where there has been non-payment of rent <sup>148</sup>, the length of a tenant's occupation becomes uncertain and using the legal process to regain possession costs.
295. Landlord-tenant law is considered further in Annex 4.

#### **(viii) Rent control**

296. Rent control appears to be a powerful tool to achieve policy objectives as it directly targets the rent paid by a tenant, and conversely the return received by a landlord.
297. Rent control arrangements are based on the *Rent Control (Guernsey) Law 1976*, as amended by the *Rent Control (Amendment) (Guernsey) Law 1993*. The law does not

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<sup>147</sup> This is a two stage process. The Green Form scheme allows an initial amount of legal advice, followed by a Legal Aid Certificate stage. The second will only happen if an Advocate provides an opinion that the case is strong enough to justify using public funds. The Guernsey Legal Aid Service administers the scheme.

<sup>148</sup> When no stay is usually granted, or only a short one conditional on rent and rent arrears being cleared.

apply to States' housing. Technically rent control provisions may only apply to; houses occupied by one household where the rateable value (RV) is less than £50; premises used or intended to be used by more than one household, irrespective of the RV; any part of a premises which is used or intended to be used for some other purpose (e.g. a shop), irrespective of RV. Aside from the exclusion of single occupancy households in properties with a RV above £50, this seems to give almost complete coverage of the PRS, including HMOs.

298. The rent control law is intended to set a "fair rent" in the event of a dispute between landlord and tenant. Only a tenant who has been in occupation of a property for at least 3 months, or a landlord, can apply for assessment of the rent. A Rent Officer has to set the controlled rent, known as the recoverable rent, which is the maximum that can be charged. In giving guidance on what constitutes a fair rent, the law says only that the rent then set must be fair and reasonable in the opinion of the Rent Officer.
299. Once a property has become rent controlled it is entered into a register compiled by the Rent Officer. The property and its rent are controlled for 5 years. There is provision for annual review of the rent to ensure it remains fair. In practice, the Cadastre Committee, which currently administers the law, passes an annual *Rent Control (Variation) Order*, which changes all controlled rents. In May 2003 such an Order was passed and all recoverable rents were increased by 7%. The Cadastre Committee itself, somewhat surprisingly, will sit as an Independent Rent Tribunal as necessary, normally when one party is dissatisfied with the Rent Officer's decision.
300. In order to prevent landlords trying to victimise tenants who ask for a Rent Officer to assess the rent charged there are also rules regarding eviction. The aim is to encourage tenants to freely apply. However, as Dawes points out, even if a tenant is evicted, the property and the rent remain registered for 5 years so a greater rent cannot be obtained in any event <sup>149</sup>. Once registered there is little financial point in trying to evict the tenant. Even if a landlord were so minded, normal landlord-tenant law would come into play, with the possibility of the Court refusing to make an eviction or granting a stay <sup>150</sup>.
301. As noted, the precise meaning to be attached to a "fair and reasonable rent" in determining the maximum, or recoverable, rent is unclear. The rent control law would be pointless if it was simply interpreted to mean the current market rent. It must mean less than this <sup>151</sup> and rent control legislation in other countries has always struggled with defining exactly what should constitute a fair rent. The Chief Rent Officer has

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<sup>149</sup> Dawes, *op cit.*, p.690.

<sup>150</sup> See earlier.

<sup>151</sup> Or implicitly assume that either current market rents being charged as a whole are not competitive or that the specific rent being charged is out of line with the current market rent.

explained to me that his determinations are below market rents but are not linked to the ability to pay of the tenant.

302. For the last decade only around 50 properties on average have been rent controlled, so in practice the rent control laws would not appear to have been a major influence on the PRS in this period. This number of properties represents only a little more than 1% of the PRS stock. The reasons for such a low take-up and impact are unclear. Numerous reasons have been put forward, notably a continued reluctance on the part of tenants to approach Cadastre for fear of eviction (though this seems misplaced given para.300 above). However, prior to the 1993 Amendment substantially more properties were rent controlled. It is believed around 750 properties were so controlled in the mid 1980s and immediately prior to the 1993 Amendment 546 were so controlled. This represented around 12% of the total PRS stock at the time.

303. At 1 July 2003 there were 61 rent controlled premises on the register. 26 of these, or 43%, were furnished and 35, or 57%, were unfurnished. 34, or 56%, of the premises were 1 bedroomed <sup>152</sup>. A rent controlled property is therefore more likely to be smaller and furnished than in the PRS as a whole.

304. The average controlled rent was £110 per week, with that of furnished properties being £104 per week and that of unfurnished properties being £115 per week <sup>153</sup>. Although these are the controlled rents, with the discount to a pure market rent being unknown, it seems very likely that the typical rent controlled property is not just smaller but also at the lower price end of the PRS <sup>154</sup>.

#### **(ix) Supplementary benefit and Public Assistance rent support**

305. Supplementary benefit (SB) and Public Assistance (PA) <sup>155</sup> are income support measures and are the only benefits which make an explicit allowance for rental costs, including PRS rents, in their determination. The two benefits are administered, respectively, by the Guernsey Social Security Authority (GSSA) and the Public Assistance Authority (PAA). Both benefits are non-contributory and means tested.

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<sup>152</sup> This figure includes bedsits.

<sup>153</sup> This is the recoverable rent for the property alone, excluding any charge for furniture hire, services or car parking.

<sup>154</sup> As the 2001 Census found the average PRS rent then to be £161 per week.

<sup>155</sup> PA is sometimes called Outdoor Assistance or Parish.

They are paid weekly and are aimed at ensuring that no-one ordinarily resident in Guernsey falls below a certain level of income. They are mutually exclusive<sup>156</sup>. The minimum income level deemed to be needed by a claimant, and paid to them, is essentially the same for both<sup>157</sup>. Crucially, both benefits can have a housing costs component paid on top, subject to an upper benefit limit or cap.

306. SB is just one of a large number of types of benefit administered by the GSSA, which is the main benefit agency on Guernsey<sup>158</sup>. SB is paid to those who qualify under one or more of nine distinct categories, called categories A to I by the GSSA, namely; the handicapped, the sick (incapable of work); the elderly (aged 60+); those incapable of self-support; a single parent; a pregnant woman not living with her partner; somebody with a husband or wife in custody; a man who has given up work to care for his children while his wife is in hospital; and somebody who has ceased work to care for a member of the same household (an incapacitated spouse, child, parent or co-habitee).
307. PA may be paid to others seeking income support. The overwhelming majority of cases come from the unemployed or part-time employed<sup>159</sup>. To claim and receive PA you must be; over 15 and under 60; ordinarily resident in Guernsey; in possession of a valid Right to Work; and fit for, and actively seeking, work.
308. SB is administered Island wide through the GSSA, whose employees are States employees. SB is a States benefit. Anyone who thinks their income is insufficient, and that they fall into one of the eligible categories, applies to the GSSA in St. Peter Port.
309. PA is administered through the Parishes and Relieving Officials<sup>160</sup>, who are volunteers sworn in by the Royal Court. Someone seeking PA approaches a Relieving Official for interview at their local Parish Hall<sup>161</sup>. Relieving Officials have discretionary powers to adjust benefit.

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<sup>156</sup> A claimant can switch from one benefit to another but cannot claim both at the same time.

<sup>157</sup> The intention seems to be that they are the same. The “requirement rates” of claimants (the minimum amount of income deemed necessary to live on) are the same and there is a common upper limit on the amount to be paid, the “benefit limitation”. However, there is some difference in the two means tests and as they are administered by different bodies the treatment of housing costs can also vary.

<sup>158</sup> Including; the death grant, invalidity benefit, old age pension and unemployment benefit (UB).

<sup>159</sup> As there is normally a gap of 3 weeks between signing on and payment of UB, so demands for PA are generated.

<sup>160</sup> Also known as Procureurs or Overseers.

<sup>161</sup> Or the Douzaine Room.



310. SB is widely viewed as the official income support measure, with PA a safety net for others. In 2003 the weekly requirement rate, used as the basis of both SB and PA, was £132.20 for a married couple. This is the rate if the benefit is paid for a period of 6 months or less. This rate increases to £163.55 a week if benefit was still needed after 6 months<sup>162</sup>. To this can be added a rent allowance. The maximum amount of SB and PA, the benefit limitation, is £250 a week<sup>163</sup>. In money terms of income support, and explicit housing allowances, paid by each form of assistance, SB is much the more important. In 2003 it is estimated that total SB expenditure was around £10m<sup>164</sup>. Total PA expenditure in 2002 was £0.26m. SB spending is therefore almost 40 times bigger than PA spending.

### *Supplementary Benefit*

311. In late September 2003, there were 1695 SB claimants, representing 2.8% of the total Guernsey population or 7.5% of households, if each claimant was from a separate household. Of these, 402, or 23.7%, were from the PRS. The 402 PRS claimants represented 5.4% of the PRS population or 10.3% of PRS households, if each claimant was from a separate household. There were therefore more PRS claimants proportionately than from the general population. The other principal groups of SB claimants were States' tenants and those in nursing or residential care. Together these groups accounted for almost 75% of all claimants.

312. The table below shows the breakdown of claimants by type, using the GSSA eligibility classification. The main claimants are A, B, C and E - the handicapped, sick, elderly and single parents. Looked at this way, there is not a great deal of difference between the type of PRS claimants and the SB population as a whole. The same groups dominate.

<sup>162</sup> The full schedule of rates, for different types of claimant, is set out in GSSA, *Benefit Payment and Contribution Rates for 2003*. This also covers all other benefits administered by the GSSA. The structure of SB rates is changing with single person's SB moving towards 70% of the married couple's rate. The £250 a week rate (the benefit limit) for a married couple will be further enhanced by autumn and winter fuel allowances.

<sup>163</sup> Higher for those in residential care homes or nursing homes, to reflect care costs.

<sup>164</sup> GSSA data for the first 10 months of 2003 suggest a cash SB spend of around £9.0m. Their estimated forecast spend for the year is higher at £10.0m. These estimates excludes UK rehabilitation courses, special grants and residential and nursing home expenditure. The precise figure is not crucial for the purposes of this report.

**Table 39 : Number and percentage of SB claimants by GSSA classification, for Guernsey and the PRS, in September 2003.**

<i>Classification</i>	<i>Total number of claimants</i>	<i>Total percentage of claimants</i>	<i>PRS number of claimants</i>	<i>PRS percentage of claimants</i>
A - The handicapped	200	11.8	63	15.7
B - Sick	256	15.1	74	18.4
C - Elderly	852	50.3	180	44.8
D - Persons unable to support themselves	34	2.0	7	1.7
E - Single parents	334	19.7	73	18.2
F - Pregnant women	10	0.6	2	0.5
G - Prisoner's spouse	6	0.4	3	0.7
H - Man caring for children	0	0	0	0
I - Person caring for adult	3	0.2	0	0
<b>Total</b>	<b>1695</b>	<b>100.0</b>	<b>402</b>	<b>100.0</b>

Source: GSSA and own calculations.

313. The age distribution of claimants is in the following table.

Table 40 : Age distribution of SB claimants, September 2003.

<i>Age band</i>	<i>Percentage of all claimants in each band</i>	<i>Percentage of all PRS claimants in each band</i>	<i>Numbers of PRS claimants as a percentage of the PRS population in that band</i>
0-18	3.2	0.7	0.2
19-29	13.5	15.4	3.8
30-39	13.6	13.2	3.5
40-49	9.8	10.7	4.5
50-59	8.1	12.9	6.6
60+	51.8	47.0	13.6
	100.0	100.0	

Source: GSSA and own calculations.

314. There is relatively little difference in the age profiles of SB claimants and PRS claimants. However, although 5.4% of the PRS population claim SB it can be seen that this is mainly because of the elderly, who account for the bulk of claims. 13.6% of the over 60s living in the PRS are claiming SB.

315. As previously noted, in calculating the amount of SB a claimant will receive, an allowance for rent is added to the basic requirement rate. In principle, the GSSA Administrator examines the circumstances of every claimant to assess the amount to be paid. In practice this is delegated to the Manager of SB when the rent sought is less than £100 a week. The Administrator sees all claims for above £100 a week.

316. For claims below £100 a week a Visiting Officer will visit the property concerned. Before that takes place the claimant will receive a temporary allowance. Once visited only rarely will less than the rental amount sought be paid, subject to the total benefit limit not being breached.

317. For claims above £100 a week, the Administrator will sometimes award less than the rent charged if he feels that the property is overpriced for its size, location and/or condition. Sometimes advice will be sought from the Cadastre officials. A form of implicit rent assessment is undertaken in deciding SB.

318. At September 2003, total rent allowances being paid out to all SB claimants were running at an annual rate of £2.6m. 65% of this, or £1.7m., was going to PRS claimants. The average rent allowance to PRS claimants was £83 a week <sup>165</sup>. The table below shows the breakdown of rent allowances.

**Table 41 : Rent allowances granted by the GSSA to PRS claimants for SB, September 2002**

<i>Rent allowance granted to PRS claimants for SB, weekly £.</i>	<i>Number and percentage</i>	
No rent allowance	6	1.5
0-50	113	28.1
51-100	151	37.6
101-150	120	29.9
151- above	12	3.0
	402	100.0

Source: GSSA and own calculations.

319. Only 9 cases of PRS rent not being allowed in full existed. This is just 2% of those receiving a rent allowance. The GSSA therefore generally accepts all market rents as given and fair. Of more significance is the situation where a claimant breaches the benefit limitation once their rent allowance has been added to the basic SB requirement rate. They then become capped and do not receive the rent allowance in full- only that amount which takes them upto the benefit limit. For PRS claimants this happened in 47 cases, or 11.7% of the total number of PRS claimants, in September 2003. Given an annual PRS rental total of around £40m at that time, SB were paying some £1.7m of this. This represents 4.3% of the rent received by landlords.

#### *Public Assistance*

320. PA is of considerably less significance. As previously noted total PA expenditure in 2002 was under £0.3m. This went to claimants from all tenures and the amount going to PRS tenants alone is not readily available. Nor, in turn, is the amount going on PRS rent allowance.

<sup>165</sup> Excluding the temporary payments made before a property has been visited.

321. However, even on extreme assumptions it is difficult to see how above £0.1m goes on PRS rent support. SB is the dominant form of rent support to PRS tenants. PA is primarily a short -term benefit. The average length of a PA claim is 5 weeks and the average amount disbursed is under £100 per claimant. It is therefore something of an emergency benefit.

## 5. Consultation Undertaken

322. A considerable number of organisations and individuals have been consulted in the course of researching this report. These are listed at Annex 2. Interviews with these people were semi-structured and were carried out both to assemble information about the current way the PRS operates, or is thought to operate, and to gauge the views of respondents about the PRS's problems, if any, and the potential solutions to those problems. It was hoped there might be a consensus about the problems and solutions in the sector.

323. However, a very wide range of views were expressed, both about the size and nature of problems in the PRS, the causes of those problems and the most attractive solutions to rectify them. The results were therefore similar to a comparable exercise carried out recently in the UK, where no consensus was found amongst those canvassed <sup>166</sup>.

324. Accordingly, I first present the more factual information that has been gathered and which extends understanding about how the PRS currently operates. Secondly, I present the opinions gathered about the PRS. These naturally cluster into certain distinct, and quite different, views. The views are not attributed to individuals or organisations, except where permission has been given.

### (i) Factual matters

325. A large number of properties are brought to, and maintained in, the PRS through third parties. Although no company acts just as a letting agent in Guernsey, many estate agents offer property letting and management services. The main estate agents providing such services, each with dedicated letting and management teams, are; Cooper-Brouard, Lovells, Martel Maides and Swoffers.

326. These four have provided me with data about the number and types of property they were involved with in late 2003. Together with estimates of the volume handled by others, I estimate that upto 50% of the new rental agreements made last year passed through such third parties <sup>167</sup>. At the same time I estimate that around 15% of the PRS stock was also being managed by these same third parties <sup>168</sup>. The difference in the

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<sup>166</sup> J Rugg, D Rhodes, *Chains or Challenges : The prospects for better regulation of the private rented sector* ( British Property Foundation & the Chartered Institute of Housing, 2001).

<sup>167</sup> Based on approximately 800 transactions a year- see earlier HNS based estimate- and some 400 lettings a year made through estate agents.

<sup>168</sup> Or some 600 properties under management.



two figures is partly because many landlords will chose to use an estate agent to initially find a tenant but will then manage the property themselves.

327. An important feature of the PRS which discussion with agents has raised is that the total pool of PRS property is far from stable and unchanging. Each year there is a flow of new properties into the PRS pool, as properties are brought to market. Equally there is an exit from it, as properties are withdrawn from being rented out. Properties might come into the pool for reasons such as; a temporary move away from the Island by an owner-occupier with no wish to sell during their absence, inheritance of property with the property being retained as a capital asset, unsold properties built by builders and/or developers, build or conversion of properties specifically for rent and so on. Properties leave the PRS pool for the reverse reasons. The dynamics of the Guernsey PRS pool are not known. In England, for example, a recent analysis has found that only 65% of PRS properties in 1991 remained so in 1996<sup>169</sup>. This is quite a high rate of exit, and entry, in the five years. No comparable data are available for Guernsey. However, if true, it would suggest that the size of the PRS could be changed in the short term through policy measures (although at the expense of other tenures as the total housing stock changes much more slowly).
328. Estate agents charge a standard 10% of the first year's rental for letting a property. The attraction for the owner of the property is that all the marketing and other costs of finding a good tenant and setting up the tenancy are handled by someone else- the agent- but in return for the fee. An agent may make suggestions about desirable improvements to the property prior to renting, how best to present the property and the market rent to be sought. They may have a database of potential tenants looking to find or change properties. They will also normally take up two or more references on intending tenants to assure the owner and deal with legal matters, including the lease, which is typically one year long.
329. Estate agents may also be asked to manage the property over the course of the lease. For this an additional fee is payable. This is normally 7.5- 10% of the annual rent, but if an owner seeks both to let and manage the property through the agent, the combined fee for both services is generally reduced to 15%. The level of fee appears negotiable.
330. The management services offered vary a little between agents, but will typically involve some or all of the following; making a schedule of condition at the start of the let (perhaps backed with photographs), making an inventory, collecting the rent monthly or quarterly, forwarding the rent to the property owner, arranging internal and external repairs if needed during the let<sup>170</sup> (the cost of these will be charged to the

<sup>169</sup> A D H Crook, J M Henneberry, J E T Hughes, P A Kemp, *Repair and Maintenance by Private Landlords* (London : DETR, 2000), p.20. This is based on an analysis of the 5 yearly EHCS surveys.

<sup>170</sup> Various arrangements are possible here. Some owners delegate all powers, whilst others require their approval is any item of expenditure is above a given amount.

owner), arranging garden maintenance (again the cost of this will be additional and charged to the owner), arranging insurance, arranging payment of RV taxes and income tax on rental income and making periodic inspections of the property during the year. The attractions for the property owner are that all of the problems of management are sub-contracted. They simply receive the rental income less all the agreed deductions.

331. The type of properties let, and managed by, estate agents are at the mid to upper end of the PRS spectrum, by size and price. They are more frequently unfurnished properties than in the PRS as a whole, though unfurnished typically includes a kitchen fully fitted with appliances. Relatively few cheap, small or furnished properties are on estate agent's books for rent <sup>171</sup>. For the properties under management, they report relatively few problems of either "bad" tenants or "bad" landlords. They have no significant condition problems to report. A high proportion of deposits, 90%+, are returned in full at the end of leases. Almost no properties are rent controlled.
332. The ownership of property is somewhat veiled on the Island, for understandable reasons. Individuals generally view such information as a private and confidential matter (aside from declarations to the tax authorities). However, the owners of property who use estate agent services are thought typically to be small scale. The vast majority own just 1 or 2 properties. In the last few years some of these have been buy to let investors, occasionally from off island. Managed properties are more likely to be owned from off the island. There are a few landlords with reasonable property holdings, say upto 50 properties. These include some family trusts and builders/developers. The identity and size of the largest landlords is hazy, but it is not thought that there is any one landlord with anything approaching 5%, or 200 properties, of the PRS stock.
333. This "cottage industry" form of the PRS is found elsewhere, including the UK <sup>172</sup>. The PRS generally is characterised in many countries by small scale landlords with an absence of involvement from the corporate sector <sup>173</sup>. For the bulk of the small scale landlords the ownership of property is a sideline and does not constitute a large part of their total income. Investment and financial motives may not loom very large in their thinking. When they both let and manage properties themselves they might be characterised as "amateur" landlords.

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<sup>171</sup> These are normally advertised by the landlord directly in the press or sought out by word of mouth.

<sup>172</sup> See D Hughes, S Lowe, *The New Private Rented Sector*, Ch. 2, in, D Hughes, S Lowe, (eds.), *The Private Rented Sector in a New Century: Revival or False Dawn?* (Bristol: The Policy Press, 2002).

<sup>173</sup> See A D H Crook, *The Private Rented Sector and Institutional Investment: Lessons from Overseas* (Joseph Rowntree Foundation, 2000).

334. The tenants of property let and professionally managed through estate agents were generally thought to be either in transit, for example working on licence, and/or getting ready to buy. Occasionally marital splits occasioned demand for PRS property, as did property owners who were having major work done on their own properties and wished to rent for a period. There was divergence of opinion about whether tenants fully read and understood the leases they took on.
335. As complaints about damp featured in both the HNS and SGLS, the views of estate agents were sought on this. No agent would accept that any properties they dealt with, either letting or managing, suffered from this in any serious way. They pointed out that there was a big difference between damp and condensation<sup>174</sup>. Condensation was likely in a maritime climate like Guernsey, where winter rainfall was high. It also frequently occurred because of inadequate ventilation, lack of heating, lack of dehumidification equipment and poor tenant behaviour, e.g. steam from cooking and bathing with no ventilation. This is certainly true. However, it would be surprising if properties in the mid-upper price range did suffer from damp. It might be more frequent in lower end PRS property, especially in the older stock with no damp proofing.
336. Similar questions were put to officials from the States Housing Authority. They estimated that of the complaints to them about the issue in States' property, over 90% were attributable to condensation rather than dampness. There does then seem an educational issue about identifying and dealing with damp and condensation. I will return to this.

## **(ii) Opinions about the operation of the PRS**

337. Although individual views and opinions were individual, they generally clustered into one of three main groups. Each of these form, in the absence of hard facts to support one or other position, a reasonably coherent set of prior beliefs. They are stereotypes, but quite useful ones. The three sets of opinion I call the free market, the free market moderated and the free market constrained views. They are broadly in increasing order of dissatisfaction with the market's provision of rented housing in Guernsey and with believing there is an increasing need for intervention and regulation to change matters.

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<sup>174</sup> Damp is where water enters a property from outside, primarily through walls and foundations. Condensation is where the water originates from inside the property.

*View A - The free market view*

338. This view believed that the PRS had many of the characteristics of a free market, in that prices did broadly reflect differences in the attractiveness of property and that rental prices were not leading to excessive returns for most landlords. In contrast there was fear that many landlords were relying excessively on buoyant capital values, and increases, to make adequate returns. There was a big variation in quality in the sector, and some low quality properties, but this was entirely normal and to be expected. It was not objectionable in itself. Seeking to arbitrarily raise quality standards was only going to raise prices and work against the interests of tenants. This would be especially true for those on lower incomes renting at the lower end of the sector.
339. Such faults as were found were largely explicable. Poorer conditions were associated with lower prices and with poorer quality tenants. Some tenants chose to live in a particular way and could impose undue costs on landlords in consequence. The failure to meet fire and environmental standards was often attributable to bad tenant behaviour. Interventions in the market, such as rent control, generally had undesirable consequences, which worked against the long term interests of tenants.
340. The best way to foster the interests of tenants, and landlords, was to eliminate regulations where possible, minimise intervention and encourage competition. If landlords were allowed to charge market rents and there was sufficient fair competition between them then this would ensure that the optimal amount of quality variation was provided. It might actually drive up standards so long as tenants were able and willing to pay for such an improvement.
341. Minimum standards already existed, but they were opaque and should be enforced more effectively. This would be to the benefit of good landlords and competition, which was hampered by regulatory failure. Fire and environmental standards were not observed by all. The authorities had to ensure policing of existing standards was much better. If higher standards were wanted, on public health or other grounds, then rents had to rise to pay for them.
342. There were some issues that needed addressing. One was the absence of any background competition and, especially, consumer law. Its absence was not helpful. Competition was not always working well when bad landlords could continue undesirable trading practices and have unfair terms in contracts. They didn't get driven out by the law nor by the market. The existing profile of landlords, with their small portfolios and amateur approach, might also not be sufficiently large scale and professional to manage property well. Some technical help, spread of best practice and encouragement of professional associations was needed. There was no residential landlord association on Guernsey. It should be encouraged. Some self regulation was needed. There probably also was some consumer inertia and ignorance, for example,

on shopping around, improving and maintaining property and understanding contracts and their responsibilities, which needed addressing. The States had a minor role here.

343. If affordability was seen as a problem, and this remained to be shown, then either planning regulations needed easing to encourage more supply and build for rent, or there had to be some support of rents or tenant incomes.
344. There was no general need for increasing security of tenure or for grants and loans to landlords, so long as they could earn proper returns and fair competition was enabled and encouraged. This alone would ensure repairs got done. If there was sufficient property for there to be a degree of competition, the poorer quality property would be forced out or forced to accept a price which fully reflected its condition. Rent control should be abolished.
345. View A therefore viewed the free operation of the market as the best way of ensuring rental prices reflected the quality of the accommodation and of raising standards. It was sceptical of past interventions and believed that policies to ensure a level playing field for competition to function were the best approach. Existing standards needed to be properly implemented. Landlords needed to be made more professional. Fair trading laws should be enacted. Consumers needed to be enabled to play a more active role. But beyond this there was no case for new regulations.

*View B - The free market moderated view*

346. This view was more pragmatic. It accepted that the market was the best general method of providing private rental accommodation but believed that simply relying on free market forces alone was not enough. The market failed in some important areas and these failures were likely to be long lasting and not easily remedied. Limited additional regulation was needed.
347. Problems of quality and affordability were not thought to be very prevalent in the upper part of the PRS sector, such as those properties let through and managed by estate agents. This might be the top 50 or 75%. But the bottom part of the sector, say the bottom 25% was a problem that stricter enforcement of existing regulation would help, but not solve alone. Policies to restrain and improve the market's working here were needed- both carrots and sticks. There were rogue landlords who sailed close to the wind.
348. There were limits as to how far consumers at the lower end could be encouraged to play a greater role. Their understanding of contracts and their willingness to shop around properties, and negotiate with landlords, were always going to be limited. Greater information could be provided but it would not resolve problems at the bottom end. There could be discretionary heating and improvement grants, but policies aimed



at eliminating, or controlling, rogue landlords were needed. General or selective licensing was an option. This could be backed by a system of annual, or more frequent for some, inspections. This might mirror the annual rating of tourism premises. It would provide a signal about quality and could focus regulatory action.

349. Affordability needed addressing, but this needed to be approached from the general market tightness that existed overall in housing. Rent control was not in general desirable, but it might have a continued limited role here, perhaps linked to the provision of grants and loans, the failure of EHD standards, the provision of SB and PA or failures elsewhere.

350. View B therefore took a more middling stance. It recognised that there were few problems to be found at the mid- upper end of the PRS, but thought that at the lower end there probably were quality and affordability issues. Tenants there were not going play their role in making the market work. Some areas could be improved so that the market functioned better, but some new substantive initiatives might be needed. These could be helpful and welfare improving.

#### *View C - The free market constrained*

351. This view was altogether more concerned about the market's performance in delivering good quality fairly priced rented accommodation, and thought there were some serious faults in the way the market operated across the board. These were unlikely to be alleviated by piecemeal measures. Instead the market needed strongly constraining . Increased regulation across the whole sector was needed to effect more widespread tenant protection.

352. This was often coupled with some questioning of whether rented housing could be viewed as a product that the market ought to be providing. Housing of a certain standard was often presented as a social right. This view often went hand in hand with arguments that much more social housing was needed. Subsidising tenants and private rented housing was seen as a second best to providing social housing directly. If the market was to operate it needed to be strictly controlled. Its failures were large scale and likely to be permanent. Quality was believed to be a widespread problem as were rent prices. There was believed to be a general affordability problem in the PRS.

353. Accordingly a range of interventionist policies were needed. Some or all of the following usually figured; increased standards legislation, compulsory licensing of all landlords; changes in landlord-tenant law to increase security of tenure; extensions of rent control (some suggested it should cover all of the PRS); social landlords to be enabled to build non-social homes; and compulsory purchase powers for the States to buy up selected properties to foster redevelopment.



354. View C was therefore one which saw major problems in the PRS, which were incapable of resolution by market forces. Extensive States' action was needed.

355. Views A, B and C are very different from each other in terms of their perception of problems and the best way to move forward. The differences also reflect some underlying difference about both what housing policy is meant to be achieving and the potential efficiency of the market in providing rented housing. Naturally, it will be important in the next section to distinguish between these views in analysing the PRS and framing policy recommendations

## 6. Further Analysis and Identification of Policy Options

356. This section moves from the uncovering and reporting of facts, and making some preliminary observations on those facts, to their interpretation and, based on that, the selection and analysis of policy options. In putting forward policy recommendations - some of which may be controversial- it is vital that there is sufficient evidence on the nature and scale of problems in the PRS; that the diagnosis of the causes of those problems is correct; that possible policies to remedy those causes are identified; that these policies are proportionate to the problems identified; and that any policies recommended are consistent with each other and, if necessary, ordered correctly.

357. Accordingly, this section considers;

- evidence on the core issues of PRS quality, affordability and quantity improvement
- evidence on market failures
- evidence on poverty and income need in the PRS
- possible change to existing States' policies
- possible new States' policies
- a recommended way forward in light of the above

358. Ideally, the analysis and identification of policy options should be based on a good understanding of conditions in the PRS as it stands today, in 2004, and as it has evolved over time, i.e. there would be both point and trend confidence in the data. But, as should already be appreciated, the absence of comprehensive statistics means that this is lacking. This means that a high degree of judgement will be evident in this section. This will also have implications for the design of a policy programme.

### (i) Evidence on the core issues

#### *Housing quality in the PRS*

359. A number of pieces of evidence have been set out and discussed at various points. For convenience these are listed below, along with a subjective rating, on a three point scale, of the weight I attach to each of them.

Table 42 : Sources of evidence on PRS quality.

<i>Evidence</i>	<i>Date and Type</i>	<i>Where covered in this report</i>	<i>Rating</i>
Past census reports	Various- full survey	Annex 3	***
HNS	2000- sample survey, with self reporting to given questions	Section 2	**
SGLS	2000- sample survey, with self reporting to given questions	Section 2	**
EHD	2001/2- complaints statistics	Section 4	*
Consultation	2003- interviews and opinions expressed	Section 5	*

360. Past Censuses have collected data irregularly on basic amenity provision in the whole housing stock and in parts of it, by housing tenure. This is limited in dealing with all the dimensions of housing quality but does show improvements in the overall Guernsey stock. The PRS is also improving, if always lagging behind general developments. This is characteristic of other countries and one hypothesis has been put forward as to why the PRS always seems to lag rather than lead trends<sup>175</sup>. This suggests that the PRS will always, of its own accord, lag quality trends.

361. The HNS asked various questions. One was about problems with accommodation. A very high number reported one or more of a given list of problems, across all tenures, but when asked if this was a serious problem, the numbers finding faults dropped considerably. 77% of the PRS respondents reported no serious problem with 23% having one or more serious problems in their accommodation<sup>176</sup>. Three of the four problems presented by ORS as choices for the respondent- heating, sound and space- are, at least in part, to do with the income levels of the respondent, and the consequent housing and expenditures they can afford, rather than the intrinsic nature of the accommodation. A later HNS question probing the reasons for wanting to move from

<sup>175</sup> See Annex 3. Essentially that it is a rational risk averse financial strategy for landlords to follow market trends rather than lead them, when the strength of consumer preferences and the willingness to pay for those preferences is uncertain.

<sup>176</sup> See Tables 15 and 16 and discussion there.

the current accommodation found that poor repair was the third most cited reason, with 20% of PRS respondents mentioning this<sup>177</sup>.

362. The SGLS used a similar methodology to the HNS. It was a sample survey, though very much smaller, with PRS tenants asked a number of questions about housing matters. My interpretation of the SGLS questionnaire responses is much less definite than that of the SGLS authors, who painted a rather bleak picture of housing conditions in Guernsey, both overall and in the PRS<sup>178</sup>. In my view their assessment was unduly dependent on the responses to just one question asked. Even then, their interpretation of this was inconsistent with other answers. 85% of PRS respondents were satisfied with their accommodation and 86% of PRS respondents rated it as good or adequate<sup>179</sup>. However, when asked to identify, from a set list of problems, which problems their accommodation had, a high proportion of PRS respondents, 68%, reported one or more problems. This led the SGLS authors to think that there were severe problems in the PRS. However, 51% of all Guernsey respondents also reported one or more problems, even those living in tenures with extremely high levels of satisfaction in the earlier questions. This makes me believe that little confidence should be placed in the results of the one question asked about “problems”, which did not distinguish between whether the problem was major or minor, occasional or continuous, important to the tenant or not important, had been reported to the landlord or not reported, and so on<sup>180</sup>.

363. Complaints to the EHD about environmental conditions in PRS property are at a much lower level, running at just over 1% of the PRS stock annually<sup>181</sup>. These complaints are predominantly about general poor repair and about damp. Although there may be a reluctance to complain, which is depressing the true figures of PRS property not meeting EHD standards, the actual complaints received are not an unduly high figure. At present there is no way to know the extent of any underreporting.

364. The fifth and final piece of evidence comes from the consultation undertaken in the preparation of this report. It reveals a range of opinion about PRS housing quality. Those involved in business transactions associated with property let and/or managed through third parties (estate agents) thought there was very little wrong with any of the property handled that way. These transactions probably comprised 50% of all new lets and 15% of the total PRS stock in 2003. It was also thought that many residents failed to distinguish damp from condensation. States’ Housing officials also reported that

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<sup>177</sup> See Table 22 and discussion there.

<sup>178</sup> Based largely on the responses to one question and, within this, to a consideration of just 2 out of 9 sub-responses (on damp and leaking roofs).

<sup>179</sup> See Tables 30-31 and discussion there.

<sup>180</sup> See Table 33 and discussion there.

<sup>181</sup> See Tables 37-38 and discussion there.

complaints to them generally failed to distinguish between the two, with 90%+ of complaints about damp actually being about condensation rather than damp. This is an important distinction as condensation is largely a matter of tenant behaviour. Others interviewed were more critical of the PRS. However these interviewees were those probably seeing the cheapest, and poorest, quality PRS accommodation (because of the nature of their work) so their views on the general condition of the PRS might be skewed by this.

365. It would be consistent with the above pieces of evidence to conclude that any quality problems within the PRS stock are a minority problem, perhaps confined to the bottom 25% of the sector. The upper 75%, or the top three quartiles, might then be deemed to be satisfactory. However, although this is much the most likely state of affairs, I do not think the evidence permits such a definite conclusion to be drawn. This is for a number of reasons.
366. First, most of the evidence above is subjective. It is either opinion, complaint (which is the opinion of the complainant) or a self reported answer by a PRS tenant to a question asked by others. It is likely that such subjective evidence will be very much influenced by the expectations of the respondent about what “normal” or “satisfactory” quality is. Annex 3 argues that housing quality is best thought of as a multi-dimensional concept. Housing may be good on one dimension but not on others. I have also suggested, in discussing the SGLS work, that there may be a generational difference in expectations. As those in the PRS are younger on average than in Guernsey as a whole, this might affect their responses and would have to be accounted for in interpreting the self reporting of PRS tenants.
367. Second, assessing the condition and quality of the PRS stock and identifying it as “good”, “bad” or “adequate”, for example, requires some criterion or criteria against which to make such a judgement. This is not explicit in subjective evidence and wildly different criteria may be being used.
368. Third, evidence from the UK shows that there can be a large difference between subjective evidence and objective evidence, the latter based on a clear, unambiguous and commonly interpreted definition of housing quality. There are two main surveys in England which illustrate how big the gap between subjective and objective evidence can be.
369. The Survey of English Housing (SEH) asks, inter alia, for the views of tenants and part of it can be considered to be an attitudinal, or subjective, survey. (It collects much more information than just this.) In the latest survey, in 2000/2001, tenants were asked how satisfied they were with various aspects of their relationship with their landlord

and in addition were asked how satisfied they were, taking everything into account, with their landlord as a whole. 75% of PRS tenants were satisfied <sup>182</sup>.

370. In contrast, the English House Condition Survey (EHCS) objectively measures the condition of property against a given standard, the decent home standard (DHS) <sup>183</sup>. The latest survey found that only 51% of PRS housing met the DHS and so could be deemed adequate <sup>184</sup>. 49% failed to meet the DHS. It would therefore have been unwise to conclude anything about objective conditions in the English PRS from the subjective responses made in the SEH. This implies that if policy is based just on subjective evidence then it is not going to be soundly based or appropriate to actual conditions.

371. This leads me to believe that there is a need for an objective house condition survey, periodically undertaken, in Guernsey. This might be confined to the PRS, but would be much more valuable in monitoring the achievement of the seventh objective of the Housing Strategy if applied to the whole housing stock. The sort of survey needed would be similar to that of the EHCS and the Adamson Stock Condition Survey undertaken for the States in 2001 (though this only covered States' housing) <sup>185</sup>.

**Recommendation 3 - there should be a periodic housing condition survey. This would resolve disagreement and uncertainty about housing conditions and provide baseline data for the monitoring of policy. It should cover all the housing stock, not just the PRS.**

372. This would reveal true housing conditions on Guernsey. Given the long term nature of programmes to improve housing quality, it would seem appropriate that such a survey were done every 5 years or so <sup>186</sup>. An essential precondition for such a survey would be agreeing metric(s) against which to measure housing condition. Annex 3 deals with measuring housing quality and some of the possibilities. However, there are strong arguments for adopting the same measure as in the UK- the decent home standard (DHS) - as the metric. Building controls and environmental standards in Guernsey are largely based, either explicitly or implicitly, on those in the UK. Key

<sup>182</sup> H.Mew, C Robinson, A Humphrey, E Kafka, R Oliver, S Bose, *Housing in England 2001/2 : A Report of the 2001/2 Survey of English Housing carried out by the National Centre for Social Research on behalf of the Office of the Deputy Prime Minister* ( London :ODPM, 2003) p.70.

<sup>183</sup> See Annex 3.

<sup>184</sup> ODPM, *English House Condition Survey 2001 : Building the Picture* (London : ODPM, 2003) p.4. Note that the fact that only 51% meets the DHS does not mean that standards are low. It may mean that the DHS is a high target standard- see Annex 3.

<sup>185</sup> D Adamson & Partners, *op cit*.

<sup>186</sup> As with many other exercises.



personnel are familiar with the UK approach, if not the exact current regulations. Surveyors, builders and others seem to have significant professional contacts with the UK, through membership of professional bodies and the like. Developing a measure unique to Guernsey is unlikely to be cost effective and it would seem more sensible to adopt a pre-existing measure from elsewhere (though it might need be tweaked if there were any peculiarities when applied to Guernsey, such as differing EHD standards).

**Recommendation 4 - any house condition survey should adopt the decent home standard used in the UK.**

373. A house condition survey should provide a rigorous base for the development of policy. The Housing Strategy's seventh objective of improving housing quality across all tenures needs both condition data and targets to ensure that any money is spent addressing the most serious problem areas. A house condition survey would also allow a much better indicator of housing quality, houses meeting the DHS, to be used in policy discussion and reporting. The current housing quality indicator used by the States is wholly inadequate<sup>187</sup>.

**Recommendation 5 - numbers meeting the decent home standard should replace the existing quality measure, which is based on closure notices, used in States' monitoring reports.**

374. It might appear as if little can be done until this more comprehensive data is available. However, I will later argue that some elements of policy change need not await such a survey as they are sensible now and not dependent on the survey results.

*Affordability in the PRS*

375. Evidence on the affordability of PRS property is even more sketchy. A precondition for assessing affordability, and changes in affordability, is some soundly based time series of average rental price information for the PRS. Although there is a private rent component to the quarterly RPI data, it is not, in my view, sufficiently soundly based to be used as a measure of the level of rents<sup>188</sup>. This is because the sample size is small and unrepresentative. The equivalent RPI rent figure was very much out of line with the findings of the 2001 Census on average PRS rents at April 2001. The Census

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<sup>187</sup> See Annex 3.

<sup>188</sup> See paras. 130-133 for a discussion.

figure was 60% above the RPI figure. As the Census is almost certain to be reasonably accurate it calls the RPI value seriously into question. I have already recommended that either the RPI be examined and made more robust or a separate and regular survey of private rents be undertaken.

376. A further requirement for assessing affordability is a soundly based time series of the average income, preferably both pre and post income tax, of PRS households. Then rents paid out by PRS households can be compared to their incomes to measure the changing importance of rents in pre and post tax household budgets. Unfortunately no such household income series exists in Guernsey. Even average incomes of the whole population are not routinely surveyed<sup>189</sup>. They have to be estimated indirectly and annually by PRU. There are estimates of PRS incomes in for example the HNS and SGLS, but these are one-offs and have given conflicting results. A much more soundly based statistical series is needed. This leads me to a further recommendation.

**Recommendation 6 - PRU need to examine the possibility of collecting regular individual and household income data, including its distribution across tenures, on a more regular basis than currently exists.**

377. Ideally such data would allow affordability to be measured, not simply by comparing average rents with average incomes for the average PRS household, but also by sub-analysis on the distribution of rents and incomes (for those above and below the average). This might be done, for example, by comparing the quartile populations. Then the average rent of the bottom, by rent, 25% PRS properties might be compared with the average income of the bottom, by income, 25% of PRS households<sup>190</sup>. Even when there might be no apparent changes overall because average affordability was constant over time, it could be that the situation has worsened, or improved, for groups within the PRS population (but this has been offset by improvement for others).
378. This sort of figuring is typically done with house price affordability calculations, where the lowest quartile of house prices is often compared to the lowest quartile average income to assess affordability for first time buyers, a key group in the market.

<sup>189</sup> There are returns to the Tax authorities for individuals, but these exclude all those not paying tax. PRU and ITA income estimates were both used in the ESHM, but there is a big gap between them and it is unlikely that better understanding and co-ordination of existing data sources alone would bridge the statistical gap.

<sup>190</sup> Though note that there is no certainty that the poorest 25% of households actually live in the cheapest 25% of properties. To actually find what proportion of the household budget rent accounts for in the poorest 25% of households requires incomes and rents to be collected simultaneously. It can be the case that some "rich" households prefer to live in "cheap" accommodation, perhaps because they are wishing to save to move to owner-occupation. Conversely, some "poor" households may chose to live in "expensive" accommodation because they value housing conditions very highly, above other sorts of expenditure.

This is already partly done on Guernsey by PRU. Exactly equivalent calculations should be possible for the other housing tenures.

379. There is a limited amount of distributional data on incomes and rents. The last Guernsey HES in 1998/99 collected distribution data on household incomes. There is a forthcoming HES in 2004. The last Census in 2001 collected distributional data on PRS rents. However these are too separated in time to be of much value for my purpose which is to measure affordability now and trends over time.
380. Some speculations about the affordability of PRS property can, however, be attempted. The ESHM attempted to measure changes in housing affordability for those owning property over the 1981-2001 period <sup>191</sup>. This measure was subsequently adopted by the States and has been reproduced almost unchanged as its indicator of affordable housing <sup>192</sup>. That table is reproduced below.

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<sup>191</sup> Parr, *op cit.*, Table 10, p.29.

<sup>192</sup> Advisory & Finance Committee, 2003, *op cit.*, Table 14.

Table 43 : Affordability of (owner occupied) housing in Guernsey, 1981-2001.

<i>Year</i>	<i>Price/Earnings ratio</i>	<i>Base rate + 1.5%</i>	<i>Affordability index</i>
1981	4.9	16	78
1982	4.5	12.9	58
1983	4.2	11.5	48
1984	4.7	11.8	55
1985	4.6	13.5	62
1986	4.9	11.5	56
1987	5.9	10.5	62
1988	6.3	9.5	60
1989	8.4	15.5	130
1990	7.5	15.5	109
1991	6.7	13.5	90
1992	5.9	11.5	68
1993	5.5	7.5	41
1994	5.3	7	37
1995	5.5	8.25	45
1996	5.9	7.5	44
1997	6.7	8.25	55
1998	6.9	8.75	60
1999	6.8	7	48
2000	7.5	7.5	56
2001	8.2	6.5	53
Average over the period	6.0	10	63

Source: Advisory and Finance Committee, 2003 Sustainable Guernsey, *op cit.*, p. 76.

Note : 1. The lower the index the more affordable property is to buy.

381. For owner occupiers, average house prices have increased considerably in the period in relation to average income. The price/earnings ratio has almost doubled. But the fall in base rate, on which mortgage rates are based, has compensated for this. Thus, affordability in 2001, for a person buying with a 100% loan to value mortgage, was below its long term average (at 53 on the index compared to a 63 average). A similar calculation of affordability for those renting PRS property can be made but a number of much more speculative assumptions are necessary in order to do this.
382. First, I assume that rents in the period have grown exactly in line with house prices. This does not seem unreasonable, as renting and buying are substitutes and one would expect there to be a long term equilibrium relationship between the two prices. Formally what I assume is that the real gross yield on rental property has been constant over the period. There is no time series of nominal gross yields data so I have estimated this by taking the annual inflation rate and adding a constant real gross margin to give the nominal yield in that year. I have further assumed this real margin to be 5%<sup>193</sup>.
383. Second, I assume that the incomes of PRS tenants have grown in a similar way to those of households in the economy at large. Again this does not seem too far fetched, as earnings growth across the population might reasonably be similar over time (unless the distribution of incomes has shifted, so the position of PRS tenants has deteriorated or improved substantially in the last 20 years<sup>194</sup>). The evidence of household incomes from the HNS previously presented suggests that the level and distribution of PRS incomes was very similar to that in the economy at large (aside from the absence of very high income households)<sup>195</sup>. In fact on a per head basis it was found that PRS average income was higher than the whole economy average income.
384. If these assumptions are true, the price-earnings column in Table 43 can be used as the basis for constructing a PRS affordability measure. This is done in the table below.

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<sup>193</sup> This does not seem unreasonable. The long term real return to risk free government debt is 1-2%. Equities have a long term equity premium of 3-6 % points above this. Property is of the same order.

<sup>194</sup> There is no distribution of income data over the period.

<sup>195</sup> See Tables 29-30 and discussion there.



Table 44 : Measuring Guernsey's PRS Affordability?

<i>Year</i>	<i>House price/earnings ratio</i>	<i>Average RPI inflation in year, %</i>	<i>Assumed nominal gross yield on PRS property ( RPI + 5%)</i>	<i>PRS affordability (House P/E ratio x nominal gross yield)</i>
1981	4.9	11.2	16.2	79.4
1982	4.5	8.0	13.0	58.5
1983	4.2	4.7	8.9	37.4
1984	4.7	6.0	11.0	51.7
1985	4.6	7.2	12.2	56.1
1986	4.9	4.0	9.0	44.1
1987	5.9	5.0	10.0	59.0
1988	6.3	6.0	11.0	69.3
1989	8.4	9.3	14.3	120.1
1990	7.5	10.0	15.0	112.5
1991	6.7	7.2	12.2	81.7
1992	5.9	3.9	8.9	52.5
1993	5.5	1.8	6.8	37.4
1994	5.3	2.4	7.4	39.2
1995	5.5	3.5	8.5	46.8
1996	5.9	2.4	7.4	43.7
1997	6.7	4.0	9.0	60.3
1998	6.9	3.8	8.8	60.8
1999	6.8	2.1	7.1	48.3
2000	7.5	4.2	9.2	69.0
2001	8.2	2.6	7.6	62.3
Average in period	6.0	4.9	10.0	61.4

Note : 1. The lower the index the more affordable property is to rent.

385. This calculation shows that PRS affordability has improved in the period and is close to its long term average. It has exhibited cycles, in much the same way as the house affordability index. This is because the rental affordability index is based on the data underlying the house affordability index. The finding that 2001 renting



affordability was close to trend also appears to be because the rise in the p/e ratio has been compensated for by the fall in nominal gross yield, as a result of inflation falling.

386. However, I would view this calculation as of use for illustrative purposes only, rather than definitive evidence. The actual rents set are unlikely to have behaved in the manner assumed here. Annual rents will not have been set on a yield basis. Nor will nominal gross yields, and rents, have fluctuated as sharply as implied in the table on a year to year basis. It is much safer to say that, in the absence of a reliable time series of PRS rental price data, that no firm conclusion can presently be reached about present or past affordability.

### *Quantity in the PRS*

387. The quinquennial Census collects data on the housing stock by tenure and this information has been presented previously <sup>196</sup>. The trend has been for a decline in quantity, in line with the UK, Jersey and other EU countries (though their current levels and rate of decline vary and the absolute decline is much smaller than the proportionate decline). Various explanations for this decline have been put forward ; the rise of real income and wealth funding owner-occupation; public policies, including tax breaks, encouraging owner-occupation; the impact of rent control and security of tenure legislation on the profitability of landlord operations; and so on.
388. There is no information available about the intra-quinquennial flows into and out of the PRS pool. Nor is there any information available about the characteristics of the PRS stock, such as its type or age. A regular house condition survey would be able to provide this.

## **(ii) Evidence on market failures**

### *Monopoly*

389. It would matter a great deal if the structure of the PRS was such that monopolistic landlords could hold rents (prices) above their competitive level. Then accusations about landlords controlling the market and charging exploitative rents would have some basis in a market failure, which was leading to market inefficiency and a case for corrective intervention and regulation.

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<sup>196</sup> See Tables 1-2 and discussion there.

390. The consultation phase of the project probed this. However, no evidence was found to suggest that there is a single dominant landlord who could act in this way. Although precise information on portfolio holdings is absent, professionals active in the market thought it unlikely that any one landlord had more than 5% of the PRS. The normal level of single firm market share which triggers concern that price-setting power exists is variously 25% or 40% <sup>197</sup>. The PRS is well below this. It is not a structurally concentrated sector. It is in contrast quite fragmented, with many small landlords. The fragmented nature of property holdings also makes collusion amongst landlords to set prices an unlikely prospect. There is no trade association or forum and collusion is normally only possible when a limited number of medium sized operators exist, as together they have a large market share.

391. I therefore discount the possibility that monopolistic exploitation is taking place. New let prices may appear high but this is as a result of general tightness in the Guernsey housing market, which extends into the PRS. It is, or has been until recently, a seller's market.

392. There is the possibility that landlords take advantage of tenants once a tenant is settled to raise prices in subsequent rent reviews. This might be because tenants are reluctant to move once they have settled in a property. The house becomes a home and moving house to set up a new home has all sorts of costs associated with it. Some of these are financial - the cost of searching for a new property and the removal costs. Others are non-financial- costs of building up a new network of friends and neighbours, costs associated with moving schools (if there are children), and so on. Technically, tenants might be "locked-in" to a landlord because of switching costs <sup>198</sup>. This lock-in might give price raising power to the landlord, not in new lets but in existing lets.

393. However I discount this as a possibility as well. This is on a number of grounds; Guernsey is sufficiently small that network effects are probably low; evidence suggests that there is a high degree of switching- PRS tenants are transient at one address; being in the tenure as a whole is temporary; and if there are switching costs they are symmetric- landlords have a cost interest in keeping a tenant rather than replacing him/her. Empty property (no rental income), cleaning, re-marketing and tenant selection are all costs to a landlord of changing tenants.

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<sup>197</sup> Merger and monopoly investigations are normally triggered in the UK for the OFT if a 25% market share (of the merging parties or single party) test is breached. Dominance enquiries in the EU normally require a 40% market share.

<sup>198</sup> See OFT/DTI, *Switching Costs, Parts One and Two* (London: OFT/DTI, 2003).

*Information asymmetry*

394. There are a number of possible information failures that exist in housing markets <sup>199</sup>.

These might also harm the market's operation and give grounds for intervention and regulation. Such information asymmetries will typically see the seller (the landlord) more informed than the buyer (the tenant) so that the seller might be able to take advantage of this in charging a price which does not reflect the true market value.

395. As regards the condition of property- its quality- landlords should know the true position if they have owned it for some time. Until a tenant lives in a property they cannot know, *ex ante*, what problems of noise, damp, anti-social neighbours and property performance through the seasons (wind, rain, cold, etc.) might be encountered. Similarly, the behaviour of the landlord during the tenancy (say in effecting repairs) will be unknown to the intending tenant. In this respect, renting is much like buying a house (aside from landlord behaviour). In advance it is difficult to know for certain what it will be like living there. However, I discount this argument. A reasonable consumer would be able know many of the characteristics of a property in advance. Size and location are observable, as is the condition of the property when viewed. Fairly easy steps to take for a prospective tenant are to visit the property at different times of the day, to talk to neighbours and any other tenants to gauge the landlord's behaviour.

396. Although it is unreasonable and not generally cost-effective for a tenant to have to take the same steps as a house buyer might do, such as getting a surveyor's report, observing the quality of a property, *ex ante*, does not seem an intractable problem, if the tenant values this highly.

397. A similar argument, about an informational failure, might be made about prices. Prospective tenants might not be fully informed about market prices, so a landlord can take advantage of this in agreeing a deal. This might stem from several factors. First, renting is a relatively irregular occurrence so market prices might have moved since the last time it was purchased (rented) by the tenant. Second, properties are not identical. They are differentiated, so the market price for a particular property will be unique <sup>200</sup>. Again, I do not think these problems are intractable for a prospective tenant taking reasonable steps to inform themselves. Market prices can be observed in the letting section of estate agents and in press adverts. A number of properties can also be visited to gain a feel for the market- searching can occur. Friends and relatives can be consulted, some of whom may be renting. Finally, PRS tenants are transient so they will learn and gain experience. Renting is not such an irregular occurrence.

<sup>199</sup> See N Barr, *The Economics of the Welfare State* ( Oxford : Oxford UP, 3/e, 1998) Ch.14, Housing.

<sup>200</sup> Clearly uniqueness is much less of a problem with "standard" properties, such as 1 and 2 bedroomed flats in purpose built apartment buildings , where there is a lot of standardisation.

398. One area where informational problems might exist is the actual tenancy agreement/contract. Because this is a legal document, with potentially a big impact on tenant-landlord relations during the tenancy, it is important tenants understand this. There is doubt that many do read the documentation fully, understand what they read or take much account of it. Rent books, used at the lower end of the PRS sector for periodic tenancies, frequently have conditions of occupancy, which may not always be crystal clear. They may give a great deal of discretion to the landlord. Leases, used at the mid-upper end of the PRS sector and normally for 1 year's duration, are prepared by the legal profession and may also be written in language which obfuscates. At the mid-upper end of the market, a prospective tenant might be able to afford to have their own legal advice on the agreement they are considering signing. But this is unlikely to apply at the lower end of the PRS. I understand that the Guernsey Bar has developed a standard form contract for house sales, but no such equivalent document exists for the renting of properties.

### *Externalities*

399. In contrast to the first two potential market failures, there is no doubt that housing, including rented housing, exhibits externalities. These are of many types and a thorough consideration of externality arguments, including whether current Guernsey regulations properly account for these is beyond the scope of this report. However, a number of points can be made.

400. Fire, public health, planning and building controls and regulations are all based on externality considerations and need retention.

401. Spatial externalities arise out of slums. This is the problem of dilapidation and of areas falling into a spiral of decline. If property is allowed to deteriorate then it has an effect on the value of surrounding property, as well as on the likely behaviour of those living there. Slum neighbourhood characteristics generally dominate attempts to improve by any one individual property owner, or landlord, because he cannot find a tenant prepared to pay a rent high enough to cover the cost of improvement. Once the dilapidation and slum process has started it tends to continue.

402. The market may be able to resolve this, if sufficient numbers of far-sighted developers and owner-occupiers exist to move into dilapidated areas, recognising the long term potential. However, such a process may not come about if the dilapidation is very widespread and beyond the capacity of any one developer. There may be a momentum and knife-edge issue here. Once sufficient numbers are involved the

outcome- improvement or gentrification- becomes more certain <sup>201</sup>. Without critical mass slums continue. Then there may be a case for public regeneration funds, such as improvement grants, compulsory purchase or slum clearance powers.

403. This is something that I have not examined in this report, but it would require the identification and consideration of run down areas in Guernsey, how the planning system currently approaches this, the capacity of the private sector alone to renovate them and the availability of grants to kick start such regeneration <sup>202</sup>. As such areas frequently have a mix of uses and tenures in them, it is a considerably wider issue than the PRS alone. Any grant system, for example, would have to encompass more than just landlords. I am therefore reluctant to make recommendations in this area without the necessary research.

### **(iii) Evidence on poverty and income need in the PRS**

404. The question of income need has partly been addressed in the earlier section on the core issue of affordability. There is no time series data of PRS incomes, nor their distribution. Indeed some sources, such as the HNS, suggest that average PRS incomes per head are actually higher than the Guernsey average <sup>203</sup>. Given household composition in the PRS, which is predominantly young without children (compared to Guernsey as a whole) the average equivalised income in the PRS is probably substantially above that of Guernsey. On average there might be no general income need in the PRS. Of course there might be a specific income need for some groups.

405. I also note that SB statistics show that SB support is closely linked to age in the PRS. SB support in the lower age ranges is not out of line with Guernsey as a whole, being around 3-4% of the age band, but increases with age. Nearly half of all SB claimants in the PRS are over 60, where nearly 15% of those in that age band and living in the PRS are on SB <sup>204</sup>. A disaggregate analysis of household income and expenditure would cast light on where, within the PRS, rents form a high percentage of the household budget and where in consequence there might be an income need. On

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<sup>201</sup> Young house buyers are familiar with this. They search for “up and coming” areas, preferably with skips in evidence, in which to buy. The risks of buying in run down areas are that improvement fails to come about.

<sup>202</sup> I understand that all such funding would be from the States. No EU grants are available.

<sup>203</sup> See Tables 27-28 earlier and discussion there.

<sup>204</sup> See Table 40.

the basis of the SB statistics alone, the main problem in the PRS appears to be one of pensioner income need<sup>205</sup>.

406. The SGLS work defined relative poverty in a particular way and claimed to find that 24% of all PRS households were poor<sup>206</sup>. This is substantially more than the other data suggest and reflects the definition and measurement of poverty used. The adoption of the CAPP in late 2003, with its housing component, is addressing poverty, so defined. The target is to reduce poverty levels by 50% by 2008. The SGLS will then be repeated to measure achievement against that target. That will give an opportunity to re-assess PRS poverty.

#### **(iv) Possible change to existing States' policies**

407. Before considering possible changes to existing policy and new policies, it is important to set out the general approach I will follow.

408. I have had to bear in mind that many critical issues are insufficiently resolved to permit firm conclusions and policy recommendations to be drawn. This stems from weaknesses in the statistical information available. I have already made some recommendations concerning that.

409. Nevertheless the evidence so far suggests that the sector is working reasonably well. There is no sector wide failure. For example;

- no monopolistic market failure was found
- no widespread information failure was found (although contract issues and misunderstandings do give rise to some concern)
- the evidence on quality suggests that any problems are confined to the bottom end of the sector, perhaps just the lower quartile (although note my reservations about the subjective basis of this conclusion and the recommendation for an objective condition survey)
- there is no widespread commercial misconduct (although practices by a small number of landlords give rise to concern, the majority of complaints stem from the general tightness of market conditions in the sector and the consequent selectivity of landlords in choosing tenants and in being concerned with maintaining their property. Market tightness coupled with the existence of less desirable tenants inevitably mean some problems will be reported ).
- there is no reason to think the market fails in providing rented accommodation at affordable prices any more than it fails in providing owner-occupied

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<sup>205</sup> Though other categories of benefit paid by the GSSA ought to be investigated to see if there are any other clusters of non-SB claimants from the PRS.

<sup>206</sup> Table 2.11, p. 29, SGLS report no.3, 2002.



accommodation at affordable prices. Prices of all housing, aside from the subsidised social housing, have become high in absolute terms.

410. I therefore incline towards views A and B expressed in the consultation exercise, rather than view C <sup>207</sup>. In order to keep the consideration of policy options manageable, I will be considering options only in the A and B areas. These are the ones I think are justifiable. My approach to the PRS is therefore market based, recognising that selective intervention may be necessary in some areas.
411. However, there is considerable uncertainty about some matters and this needs to be recognised. I therefore propose a staged process is the best way to develop policy. Stage 1 contains policy changes which I think are justifiable now, even in the present state of knowledge. They can be implemented over the next few years. Stage 2 contains a menu of policies which might need to be implemented after that once further information is available. They are preliminary policy recommendations which are conditional on better understanding. This fits with the rolling nature of the CHP. It will, and should, evolve over time.
412. This approach recognises that the basis for major policy change needs to be certain and based on reasonable evidence. It also recognises that any programme aimed at improving quality, improving affordability and reversing the decline in the numbers of PRS properties is inevitably going to be very long term, i.e. 10+ years. This gives the opportunity for adjusting and extending policies as the CHP develops.
413. The programme for improving States' properties is already expected to stretch out over 30 years. The programme for improving housing conditions in England and Wales has targets for the next 20 years and even then many houses will still not meet the DHS. It seems sensible to accept that some matters on Guernsey are unclear now, but that a staged approach allows a programme to be refined and developed as more compelling and direct evidence is accumulated.
414. To forestall criticism of this approach, I do not think it is realistic to expect the first study of the PRS to resolve all the issues and questions raised and provide a complete template for a PRS programme for the next 30 years. If policy is to be evidence based then there needs to be evidence. The States' property improvement programme was only possible because the States already had to hand a good knowledge and experience of, and data on, of the problems of tenants and properties. This is lacking with the PRS.

**Recommendation 7 - I recommend an incremental approach to policy development for the PRS is followed. This recognises the present uncertainties in some key areas.**

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<sup>207</sup> View A is the free market view. View B is the free market moderated view. View C is the market constrained view. See the previous section.

415. As data, hopefully, becomes more available from new surveys on, for example, PRS rents, PRS incomes, and housing conditions in the sector, and from already planned surveys, such as the 2004 HNS, the 2004 HES, the 2006 Census and the 2008 SGLS, so policy can be better based and Stage 2 policies developed and refined. The timescale of a quality improvement programme for the PRS also allows a number of other possibilities, for example integrating any PRS programme with the existing States property programme, and considering whether and how quality improvement in the owner-occupied sector can best be achieved<sup>208</sup>. An integrated approach to housing stock improvement might then be followed.

416. Turning now to existing States' policies towards the PRS.

*The background legal framework*

417. One desirable change immediately stands out here. The consumer protection legislation, sponsored by the Board of Industry and presently with the Law Officers, should be accorded a higher priority and made law as soon as possible.

**Recommendation 8 - Implement the pending consumer legislation on sale of goods and unfair contract terms, as already agreed by the States, as soon as is practicable.**

418. The significance of the unfair contract terms provisions, both generally and for the PRS, should not be underestimated. Furthermore, this is a policy that has already been consulted upon and agreed by the States and the business community. It only remains to be implemented.

419. The impact on the PRS can be judged by examining what has happened in the UK since unfair contract terms regulations were made there in 1999. A number of effects are clear. First, after a High Court case and an appeal, it has been confirmed that the UTCCRs apply to tenancy agreements<sup>209</sup>. Second, model tenancy agreements which comply with the law have been produced by those in the sector for use. Thus, for example, the Association of Residential Letting Agents (ARLA) worked with the OFT

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<sup>208</sup> It would seem logical, for example, that the quality target to be delivered by improvement programmes in the different tenures should be the same, or, if different, at least based on the same sort of measures.

<sup>209</sup> See OFT Press Release 29/04, 24 February 2004, Tenants and New Home Buyers Protected from Unfair Contract Terms.

to produce a model tenancy agreement with standard pre-printed clauses. This was launched in 2002<sup>210</sup>. Landlord associations in the UK have introduced similar standard agreements<sup>211</sup>. It would be relatively easy to use these as the basis for a Guernsey standard agreement.

420. Although the Courts are the ultimate arbiter of what constitutes “fairness” in the terms and conditions of contracts, it is widely thought that four main tests apply; is the clause concerned written in plain, intelligible English?; is it misleading or have the potential to mislead the tenant over legal rights?; does it impose disproportionate or unfair financial penalties on the tenant?; and, does it create a significant imbalance in rights and obligations, to the detriment of the tenant? Having been told of a number of complaints about poor landlord behaviour in this area, the latter two questions are especially important.

421. The OFT has produced guidance for both landlords and tenants and the list of terms that the OFT thinks may be unfair is very wide. Terms may be unfair if;

- *“ it makes you (the tenant) pay an excessive interest rate or extra penalty charges for late payment of rent*
- *it makes you pay landlord’s costs which are unreasonable*
- *it makes you pay for repairs which are the landlord’s responsibility*
- *it allows the landlord complete freedom to decide whether you should pay a penalty*
- *it allows the landlord complete freedom to decide whether you have breached the agreement*
- *it makes you hand back property in a better state than you received it*
- *it allows the landlord to enter the premises without giving you reasonable notice, and in most cases written notice, except in an emergency*
- *it prevents you assigning (i.e. letting someone else take over the tenancy) at all*
- *it allows the landlord complete freedom to say how much of the deposit to keep at the end of the tenancy without challenge “<sup>212</sup>.*

422. Although the UK rental situation is different in some respects from Guernsey, for example because of the existence of distinct types of tenancy, it seems unlikely that this would change the interpretation the Royal Court would place on the meaning of “unfair terms”. Although I do not personally persuaded that unfair terms are

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<sup>210</sup> See [www.arla.co.uk](http://www.arla.co.uk).

<sup>211</sup> See [www.landlords.org.uk](http://www.landlords.org.uk) and [www.nfrl.org.uk](http://www.nfrl.org.uk) for the Small Landlords Association (SLA) and the National Federation of Residential Landlords (NFRL) websites.

<sup>212</sup> OFT, *Unfair tenancy terms* (London : OFT, March 2002).

widespread in Guernsey, the effect of such legislation would be to address those that are, however large the problem, and give impetus to the development of a standard form intelligible contract. This would address the one potential information asymmetry problem I have identified.

423. This is a Stage 1 change and should help eliminate some of the worst business practices in the sector.

*The background macroeconomic policy*

424. There are no new immediate changes I propose here, beyond the general measures suggested in the ESHM <sup>213</sup>. Some of these are now the subject of Action Area A of the CHP, particularly in the Economic Policy Working Group.

*Policy towards other housing tenures*

425. One of the main ESHM conclusions was that tenure neutrality <sup>214</sup> in housing subsidy policy did not exist and various questions were raised about why this was so and whether it was justifiable. The conclusion reached there was that little economic efficiency case existed for a policy that promoted one tenure over another. Even if subsidy policy was just founded on equity considerations, there were clear inconsistencies in application.

426. The impact of subsidising owner-occupation and States' housing is adverse on the development and maintenance of the PRS. Private sector tenants have been, and remain, financially better off if they can move to one of the other two tenures. If they can become owner-occupiers they benefit from interest tax relief and possibly also the SHLS. If they can become States' tenants they benefit from below market rents and possibly the RRS.

427. This (tenure non-neutrality) is widely believed to be one of the main factors behind the decline of the PRS in other countries and explains some of Guernsey's HNS and GSLS survey results, in particular the tenure of choice of respondents. Unless the balance of subsidy policy is changed (and there may also be tenure imbalances in housing tax policy, which I have not examined) there will always be a fiscal bias against PRS tenants.

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<sup>213</sup> Parr, *op cit.*

<sup>214</sup> For a technical discussion of this concept see Barr, *op cit.*, p 390-on.

428. Action Area A of the CHP is examining this, but unless subsidy policy is greatly rebalanced the reversal of the long term decline in the size of the PRS will be hard to achieve. I note that the intention of Action Area A is that, by 2008, subsidies are directed towards those most in need across all sectors. I agree strongly with this as a statement of intent, though the subsidies need not be confined to consumers. What matters is the amount going to each tenure. I am in favour of rebalancing but not increasing the amount of housing subsidy for all the reasons given in the ESHM. This is a Stage 1 policy.

**Recommendation 9 - As argued in the ESHM, housing subsidy policy should be tenure neutral.**

*The tax regime*

429. SRA and ERMA are allowances aimed at covering the costs of repair and maintenance in the PRS. However, there is no guarantee that the amounts allowed under SRA (25% of gross rental income) will actually be spent. It is an automatic allowance each year. In contrast ERMA is for actual incurred spending above the SRA.

430. This automaticity of the SRA concerns me. I can understand that, perhaps to save on ITA costs, it is thought better to give all landlords an allowance without knowing whether a landlord has actually incurred the costs, but it is not a general principle of tax system design that hypothetical business expenses are automatically given as an allowance. Businesses account for their income and expenditure. Profit and loss accounts account for actual spending, not assumed spending, so landlords should know the actual level of repairs and maintenance spending they make.

431. I am therefore minded to recommend that SRA is no longer automatically given to all landlords, but instead that only actually incurred repair and maintenance expenditure is allowed, backed by receipts and open to investigation by the ITA. If as now there was no cap on spending allowable, and there was a move to annual (in arrears) accounting, ERMA could be scrapped.

432. The advantage of this, besides bringing this element of spending into line with the treatment of other business spending, is that it would remove the possibility that a landlord might deliberately underspend on repair and maintenance spending each year while simultaneously claiming the full tax allowance in order to get a higher net after tax yield on property.

433. Landlords who routinely do actually spend on repair and maintenance would continue to get a full tax allowance on that. Indeed if ERMA was abolished they would get the allowance in the year after spending. There would be no more 5 year averaging.

434. However there are a number of possible effects of this change, which probably need to be better worked through.

435. First, I do not know the numbers of landlords who routinely exceed the SRA and so claim the ERMA<sup>215</sup>. To them the effect of my proposal would be advantageous. They would receive full tax allowance on all spending sooner. This would give them some cost saving and potential small price advantage. There are also those landlords who routinely spend about the value of the SRA. There would be no change in their position. However, for those that routinely spend less than the SRA, the removal of SRA automaticity would have several effects. If they wished to maintain the same net yield, and they had lost the tax break, the only way to do this would be to try to increase the rents charged. It is unclear how far this would be possible as they would be trying to charge a higher price for the same quality accommodation.

436. Second, there would be extra costs for the ITA of scrutinising and validating landlord returns in this area. Removing automaticity will raise ITA costs because of the increase in workload.. The size of the extra resources needed is unknown to me but needs to be estimated.

437. It might therefore be more sensible to consider this change along with other tax proposals I make later, though I incline to making this a Stage 1 policy change.

**Recommendation 10 - The ITA should reconsider its policy on the automaticity of the SRA allowance.**

*Planning and building controls*

438. I confine my analysis to the existing planning law and not the proposals for change. Data provided to me by IDC show that in the 12 month period, February 2002-February 2003, there were 220 applications under the *Ancient Monuments and Protected Buildings Law 1967*. Of these 150 were approved, 35 rejected and 35 withdrawn. A number of those withdrawn were withdrawn voluntarily, resubmitted and approval gained. Similarly, a number of those refused are reworked and ultimately gain approval. I have not investigated this process, which would require a large number of case studies and consultation.

439. However, a straight pass rate of 150 in 220, or nearly 70%, does not indicate that protected status on buildings is an undue deterrent to gaining planning permission.

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<sup>215</sup> As noted earlier, ITA records are manually based, though this could no doubt be found if thought worth pursuing.



440. One minor recommendation is that the forthcoming study into the use of Planning Covenants - what are called s.106, or planning gain, agreements in the UK- is drawn up so that the provision of affordable housing includes both housing to buy and housing to rent. Both are important. It would be helpful if that study considered the desirability of this in depth along with experience of the use of Planning Covenants to achieve that. It is my impression that little use has been made in the UK with s.106 agreements to build affordable houses to rent. The main problem is that a developer will not want to get involved in complicated legal arrangements limiting the purpose of the house he is selling. Nevertheless there may be cases of such agreements being used to ensure affordable rented property is built. This is certainly worth exploring and is a Stage 1 proposal.

**Recommendation 11 - the forthcoming IDC/Housing Authority external study into Planning Covenants, to be commissioned in 2004, should include the use of such arrangements to bring forth more affordable housing for rent.**

441. However, the UK experience of planning covenants has not been entirely successful. They have not worked that well. This has lead the Barker Review to recommend that they are generally replaced by a development gains tax<sup>216</sup>. It would be unfortunate if Guernsey adopted planning covenants just as the UK was abandoning them. If Guernsey were to go down the same route as the UK there would be major implications for the draft new planning law.

#### *Fire and environmental health regulations*

442. The existing environmental health standards are based on old laws, which permit considerable discretion to the EHD and EHOs in carrying out their statutory duties. In practice, it seems as if they operate the system to be broadly the same as the UK. However, this discretion leads to a lack of clarity in policy, particularly as to what standards are required.

443. This is evident in the document produced for landlords, which is merely recommended standards. It would be much better if landlords, and others including tenants, knew where the dividing line between fitness and unfitness lay. Inevitably some discretion will always be present, but the EHD should consider guidance to provide greater transparency and clarity about standards for all housing participants. Then landlords could have no excuse about not knowing what needs to be provided. If this is not possible, consideration should be given to updating the law so that standards are prescribed in modern legislation. Such modernising of the environmental health

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<sup>216</sup> Kate Barker, 2004, *op cit*.

laws would take some time and in the first instance clarification of the position, through guidance, would have to suffice. This is a Stage 1 proposal. Setting standards backed by the force of law would be for the longer term.

**Recommendation 12 - EHD should consider providing more concrete guidance on environmental standards, and, in the longer term, updating of the environmental health laws.**

#### *Landlord-tenant law*

444. As proposed earlier, implementing the unfair contract terms law would be a help here. Annex 4 deals with more specific issues of landlord-tenant law, including creating specific new laws which might change the balance of responsibilities and obligations between landlord and tenant. However, for the reasons set out in the Annex, I propose no immediate changes here.

#### *Rent control law*

445. A number of people, including the SGLS authors, have suggested that rent control needs extending. Some have suggested this extension should be widespread so that much more of the PRS is subject to price control. Rather than 1% of the sector being controlled, as it is now, it has been suggested that it might be very much more. At first sight this is a policy directly aimed at improving PRS affordability. If prices are felt to be too high and believed to be straining the household budgets of some (though the extent of this remains to be shown), or much of the household budget comes from States' funds via SB and PA, then tenants or others should be able to apply for rent control and rents will be held down below the market levels being sought. Renting is then made more affordable and household finances improve.

446. In the short term, and if rent control is operated like this, then those households will indeed benefit from rent control as it lowers the rent paid. The overall benefit received will depend on how many households are subject to the rent control and how far controlled rents are reduced below their market levels. There is an immediate short term gain to those tenants subject to rent control. This will last for as long as the control is applicable. However, it is not just these short term effects that need to be considered but also the long term effects. What will be the effect and consequences of rent controls over time? Is there the possibility that adverse effects will come into play and outweigh any short term gain. The short term gain would then just be temporary.

447. Rent control has changed over the years in Guernsey in the way it has operated, particularly as regards its coverage. Prior to 1993 many more properties were rent controlled, perhaps as much as 15 or 20% of the sector at peak<sup>217</sup>. The precise way and stringency with which it was operated will have determined its precise long term impact on the Island. I have not undertaken such a historical exercise. But it seems clear it will have significantly affected landlord expectations and behaviour, both because it has existed for a number of decades and because it has at times been extensive. There is also plenty of evidence on the general effects of rent control from both a theoretical and practical perspective. From that a number of clear long term effects of rent control are apparent.
448. To the extent that rent control systems are different so the magnitude of the longer term effects will differ<sup>218</sup>. But the direction of these effects is clear, if not the size and the speed with which they come about.
449. Conclusions from the technical analysis of rent control have remained quite constant in recent times even though the sophistication of analysis has improved<sup>219</sup>. The general predictions of the effects of rent control are that;
- the supply of rented property will decline in the longer term as a consequence of rent control. If rents are held below market levels, the profitability of being a landlord will be reduced. Landlords will be squeezed over time and will look eventually to move out of the activity of providing rented accommodation. The long term attractions of operating in a price controlled market, which leaves less, if any, room for profit, are very low. Even for those landlords professing non-investment motives<sup>220</sup>, the financial consequences will eventually emerge.
  - if there are restrictions on the sale of rent controlled property and/or there is greater security of tenure for tenants the quality of the rented property on offer will fall. This is because, if landlords cannot exit from ownership, there is an incentive for them to cut repair and maintenance expenditure so as to maintain net yields and profitability. If prices are fixed, because of the rent control, only cost cutting can raise profits, or, in extremis, prevent operations being cash flow negative. Being a landlord may be loss making<sup>221</sup>.

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<sup>217</sup> See earlier.

<sup>218</sup> In particular, how far below market rents the controlled rent is and the criteria for a property becoming rent controlled.

<sup>219</sup> Compare, for example, an analysis made in 1983- A Maynard, Ch.10, *The Economics of Housing*, in, D H Gowland, (ed.), *Modern Economic Analysis* (London : Butterworths, 1983)- with an analysis made in 1998 using the more complex stock adjustment model - N Barr, *op cit.*, p.386-389.

<sup>220</sup> Such as charities and religious bodies.

<sup>221</sup> The main factor affecting the ability and willingness of landlords to carry out repairs and maintenance is the rent price received. See p.77 and Table 9.5. of, A D H Crook, J M Henneberry, J E T

- excess demand arises for rent controlled property, as controlled rent prices are now lower than before the control was applied. The falling quality of rented property may not prevent the excess demand, and some form of rationing demand by discrimination comes into play, e.g. landlords start to specify no children or no pets. Such discrimination cuts their costs of property maintenance. Access to accommodation may then be restricted to good tenants, in cost terms, excluding those imposing the greatest costs on the landlord. Access to the market will increasingly be a problem for those who are thought to be costly.
- If rent control is concentrated on the lower priced properties, as it may well be at the moment in Guernsey, the paradoxical effect may be that the supply of these properties falls, their quality declines and the position of the least well off is worse with the rent control in place- as their access to the market deteriorates- compared to when there was no control. Landlords may improve some properties to take them out of the low cost area and into the mid-upper parts of the market where the rent control is less likely to be applied.
- the excess demand and increased problems of market access creates an increased need for social housing
- there are uncertain redistributive effects of the rent control. Not all landlords are rich and not all tenants are poor. Rent control may be regressive (i.e. fall on the poor) rather than progressive (i.e. fall on the rich) in its impact. This may be important as rent control is often presented as redistributing from rich to poor.

450. These are not just hypothetical effects. There is widespread agreement that rent control has played some part in both the reduction of the PRS size and in the low comparative quality of housing in the sector found in many countries and reported earlier and in Annex 3.

451. For example, Albon and Stafford reported, in 1987, on the basis of;

*“research into the effects of rental market controls in various parts of the world at various times (that) the same picture emerges... (and that this picture is) devastating - similar to the impact of bombing”<sup>222</sup>.*

452. Holmans notes that;

*“rent restriction has in general attracted little but criticism. Comment from the world of property including the property professions has been adverse.”<sup>223</sup>*

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Hughes, P A Kemp, *Repair and Maintenance by Landlords* (London : DETR, 2000). There is no reason to believe this UK result will be any different in Guernsey.

<sup>222</sup> Quoted in, J Doling, *Government and Housing in Advanced Industrial Countries* (London :Macmillan, 1997) p.197.

453. More recently, the EC's Directorate General for Research concluded;

*"The private rented sector's (decline)..is attributable to rent controls, demolition programmes and support for other tenures..... Policies for private rental housing have often, in Europe, been predicated upon the imperfections of the housing market dominated by private landlords. But this view is misplaced and mythological; the inadequate housing now prevalent in parts of every European private rental sector is now primarily a reflection of policy failure, either by suppressing landlord investment or by failing to target subsidies to acutely needy households."*<sup>224</sup>

454. Closer to Guernsey, Jersey had rent controls operating from 1970-1991 but eventually accepted the above reasoning about the long term effects of rent control.

*"In more recent years, there has been an awareness on the part of the Housing Committee that rent control produces a vicious circle which ultimately harms rather than helps tenants: demand exceeds supply; therefore controls are applied against the high rents which would otherwise ensue; this in turn deters landlords from providing rental units, which simply aggravates the initial shortage"*<sup>225</sup>.

455. The only attraction of rent control is as a short term measure, but it does not help in the longer term. Crucially, it reduces incentives to invest and can cause deteriorating quality (or a failure to keep up with rising standards) and a loss of the stock. In the longer term therefore intending tenants have problems of access to the sector, as it tends to shrink, and of paying higher rents than would otherwise exist, even with the rent control in place. Current tenants may appear to benefit from the control but only at the expense of their own and other's long term interests.

456. Although rent control does not currently play a large part in Guernsey, it has done so in the past and these long term effects will have taken place. The continued existence of rent control has a significance much larger than the numbers of properties actually rent controlled. It signals how private rented accommodation is viewed and is a potential risk an intending landlord faces. Rent control could be applied and/or made much more extensive, as it was in the past. Removing rent control in entirety is the

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<sup>223</sup> A E Holmans, *Housing Policy in Britain (Beckenham : Croom Helm, 1987)* p.443.

<sup>224</sup> Directorate General for Research, 1996, *op cit*.

<sup>225</sup> Jersey Housing Department, *Services Provided by the Housing Department, July 1996*, para 10.4.



right long term policy. Along with other measures I will propose, this should provide a good signal to landlords. It is a Stage 1 proposal.

457. I would not expect the removal of rent control to have a great immediate effect. The stock of PRS property has been declining for many years and landlords will want to know that such a policy change is permanent. However, the removal of rent control is an essential part of any market based policy to rejuvenate the PRS. There will be a positive effect on the PRS in the longer term as it removes the risk of price control being subsequently put on a landlord's investment. This form of risk raises the cost of finance and rents. Price control is necessary when there are monopoly elements present in a market- that is the justification for OUR and its regulation of utilities. In the absence of monopoly and in almost all other circumstances it prevents the price mechanism from working. That is bound to have detrimental effects<sup>226</sup>. Price controls are incompatible with the proper functioning of the market.

458. It might be thought that OUR's operation shows that price control is sensible. But OUR aims only to avoid monopolistic pricing and ensure that competitive market prices are charged, not to hold down prices below market levels. The experience of doing this, or capping profits, in the utilities has been that under-investment inevitably follows<sup>227</sup>. Continuing with or even extending price control in the PRS would be undesirable not just for these long term reasons, but also for some practical ones. Without a set of market determined PRS prices, the setting of rents for States housing would be made extremely difficult. Setting just "administrative" prices inevitably leads to anomalies and problems. In the absence of market prices to help the process of rent setting for States property, complex administrative rules would be necessary to try to make rents reflect the size, location and condition of property. These are inevitably cumbersome and blunt. They can lead to problems of equity and disputes about prices set. It is no surprise that detailing the rules for setting "fair" prices has also bedevilled rent control systems.

459. The illogicality of rent control can be shown in another final way. Such price control is recommended by some because it enables rented property, which is said to be expensive and unaffordable, to become cheaper. If this were true then the same should apply in other areas, including houses. They too are widely believed to be expensive and unaffordable, yet the right policy is not to recommend that house prices also be controlled and set by the States with a House Price Officer. The consequences of that are rightly seen as undesirable. Yet some will willingly argue that rent control for

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<sup>226</sup> Though the strength of market signals and forces in housing markets characterised by many "amateur" landlords will be weaker than in one with more professional landlords.

<sup>227</sup> A key feature of price or profit regulation is leave sufficient incentives for investment. Indeed approving investment plans enters both forms of monopoly regulation, though in a slightly different way.



rented property should exist, whilst allowing a free market for owner occupation. The correct approach is to allow free price setting in both.

**Recommendation 13 - Rent control should be abolished.**

460. There would need to be some transitional regime for those currently living in rent controlled property. Perhaps the most straightforward solution is to stop any more properties becoming rent controlled and allow those already on the register to remain until their due date is up.

*Welfare support via Supplementary Benefit and Public Assistance*

461. I propose no immediate changes here, though I endorse the large increase in the maximum benefit limit in 2003 for a married couple and the decision to move the single person's limit in stages to 70% of this. These CAPP changes will be making a difference to income need in the PRS. However, there will need to be consequential changes to the powers of officials in the GSSA and PAA if the proposal to abolish rent control is followed.

**(v) Possible new States' policies**

462. The distinction between existing and new States' policies is not hard and fast, but is nevertheless useful for organising policy options. Many of the new policies suggested will need both debate and refinement, so they will take longer to implement. Many of them are also dependent on more information being collected and analysed, so these are, in the main, Stage 2 policies (though some are not.) I follow the same ordering of policies by category as in the previous part dealing with existing States' policies.

*The tax regime*

463. The tax regime allows tax breaks to be given to either landlords or tenants, or both, so as to provide incentives to modify behaviour in the direction wanted.
464. To encourage new landlords to enter the PRS, or for existing landlords to increase their holdings, so as to increase the size of the sector, various tax incentives could be given to them. Most simply, this would apply to income from property for a number of years, or to a certain level of rental income for an indefinite period<sup>228</sup>. An example of the latter would be the “Rent-a-Room” scheme in the UK, which was introduced in the early 1990s.
465. This is a simple scheme to encourage people to let out a spare room, rooms or flat in their home- in essence to take in a lodger. I am aware that this may be common in Guernsey already so further work would be needed to assess its potential. In the UK if the income from taking in a lodger is below a certain amount, currently £4250 a year, then it is exempt from income tax. The intention is to encourage greater use of the housing stock, particularly where people are living in a house which is too large for them. Renting out a room or rooms then helps the PRS and the efficiency of stock usage. It does not require extra building.
466. A number of conditions must be fulfilled in the UK scheme; the property must be the landlord’s home and they must live there; the rent is freely set and can be above the tax free amount; the landlord is responsible for any maintenance and repairs and so on<sup>229</sup>.
467. Such a tax break could be of any size decided, but the UK scheme is small scale and aimed at bringing small 1 or 2 room landlords into the PRS. One difficulty of allowances to new entrants or new property in the PRS is to ensure the break is only given to those that are genuinely new and additional. Various rules would be necessary to ensure this was the case. Only genuinely new and additional property would expand the size of the PRS. What needs avoiding is people ceasing being small scale landlords in order to re-enter the sector and claim a tax allowance as new entrants.

**Recommendation 14 - Consideration should be given to having an amount of rental income exempt from income tax for new small landlords.**

<sup>228</sup> I will not deal with capital incentives, though these could also be considered. Capital incentives, such as set up costs of becoming a landlord, would in all likelihood be more expensive than income incentives.

<sup>229</sup> See for example ODPM, *Letting rooms in your home ; A guide for resident landlords* (London :ODPM, 2002); ODPM, *Renting rooms in someone’s home : A guide for people renting room from resident landlords* (London : ODPM, 2002), and, Inland Revenue, *Taxation of Rents : A guide to property income* ( London : Inland Revenue Practitioners Series IR 150, 1999).

468. The size and scope of such a tax incentive would need more work. It would probably be sensible to discuss with potential landlords any difficulties foreseen and to examine the success of the UK scheme. If a similar arrangement was introduced in Guernsey, a figure of say £5000 a year exempt income would not seem unreasonable. The lost tax on this would be 20%, or £800.
469. A more substantial tax break could be given to encourage improvements in PRS housing quality. This might, for example, allow all capital expenditure which improves and upgrades a PRS property to qualify as an allowance for tax offset against rental income. At present, as I understand it, SRA and ERMA are only on repair and maintenance expenditure, which preserves the existing level of quality. Allowing all capital expenditure to qualify as an allowance would be a big incentive for upgrading property.
470. The drawback to this is that the improved quality of the property would also be captured in a higher market value, to be enjoyed only by the landlord. It might lead to landlords improving properties and then selling them, or renting them at a higher rent. I am unattracted to trying to limit the rent charged after allowing improvement spending as this is effectively a form of price control, but some safeguard would be necessary to prevent landlords enjoying the tax allowance on property and then selling it. A number of possibilities are possible- from an agreement that the property will remain a rented property for x years, to a phased system of allowances so that the landlord does not enjoy all the tax benefit in one year. This would provide an incentive to remain in the PRS until all the tax break had been gathered.
471. Because this latter possibility bears some similarity to the existing ERMA, I noted earlier that my proposal on SRA automaticity might be considered alongside this proposed widening of eligible spending for deduction against rental income. The two might be considered together as a general restructuring of the tax allowance system for capital spending by landlords on PRS property.

**Recommendation 15 - Consideration should be given to widening the definition of repair and maintenance spending for offset against rental income to include some or all improvement spending. Safeguards might be needed to prevent exploitation of this new wider allowance.**

472. A measure which was found to be used in other countries to provide income support to PRS tenants is to allow income tax relief to tenants on the rent paid. I am aware that this has been suggested already by officials.

473. The problems with this are twofold. First it is another demand side subsidy, much as interest relief is for owner-occupiers and rent rebate is for States' tenants. Indeed this is one of its purposes - to have a greater equality of treatment between tenures. This I support. However, the effect of all demand side subsidies is to increase demand, which in the short term will inevitably put upward pressure on prices. It would be undesirable if the total amount of demand side subsidy to owner occupiers, States' tenants and PRS tenants were to increase. Greater amounts of total subsidy are undesirable. If this proposal were considered it needs to be part of a general rebalancing of the total subsidy. On other grounds reducing the total subsidy is even more desirable.

474. The second problem is the assumption that such a policy can be fine tuned to improve the situation for those with an affordability problem. I have already noted that evidence on affordability is unclear and recommended more is done to understand what, if any, the problem in the PRS is. It might be, for example, that the problem is concentrated in the OAP population. Then alternatives such as raising the pension, or the SB rates might be more effective. In short, a clearer knowledge of the nature of the affordability "problem" is needed before I could recommend this measure.

**Recommendation 16 - Income tax relief on private rental costs is attractive only as part of a rebalancing of demand side subsidies. It needs to be considered only after more analysis of the scale and nature of affordability issues in the PRS. Nevertheless at that point it is worthy of consideration.**

475. A policy that has been receiving some attention in the UK of late is the attempt to increase corporate investment in the PRS. One proposal is for a Real Estate Investment Trust (REIT). REITs originated in the US in the 1960s but did not take off until the 1990s. They have been imitated in a number of countries, including Japan, the Netherlands and France<sup>230</sup>. Consultation on REITS, renamed PIFs (Property Investment Funds) has been published with the recent UK Budget<sup>231</sup>. It is hoped this will encourage new build which could ultimately be managed within a PIF.

476. Although the scope for such a measure is very much more limited in Guernsey because of its size, policy development in the UK should be watched to see if any lessons can be learned. Corporate involvement in the PRS is deemed desirable by many as it would lead to a more professional approach.

**Recommendation 17 - Monitor UK proposals on PIFs.**

<sup>230</sup> See J Ratner, Real Estate: Tax at the Heart of property change, *Financial Times*, 10 March 2004, p.23.

<sup>231</sup> H M Treasury, *Promoting More Flexible Investment in Property : A Consultation* (London : H M Treasury, March 2004). Available from [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk).

*Planning and building controls*

477. As previously noted I have not examined the planning system nor considered the issues of urban regeneration. I have noted that clearance and redevelopment powers, including compulsory purchase, are thought necessary in other countries. In the absence of evidence on the urban regeneration problem in Guernsey I make no recommendations here.

478. However, the subject of the impact of the planning system on the long term supply of new housing, including the PRS, has recently been one of the subjects of a major review in the UK. This was carried out by Kate Barker, with a large support team. It has held numerous seminars, visited and consulted widely, commissioned a good deal of research and undertaken many case studies. It has just reported, again at the time of the recent Budget <sup>232</sup>. Some of its recommendations have already been accepted by the government, such as establishing a long term market affordability goal. Others, such as the development gains tax proposal mentioned earlier in the context of s.106 agreements, are to be the subject of consultation over the next year.

479. I recommend that the Barker analysis and conclusions, and the policy debate which will ensue, are studied in Guernsey to see if there are transferable policy ideas. Among the issues and policy proposals it has addressed are; how to speed up the release of land held by developers; land taxes; the impact of land-use regulations; how to speed up the planning system; and how to give incentives to planners to encourage development. These are big issues and go substantially wider than just the PRS, as they are concerned with new house building in general.

**Recommendation 18 - Study the Barker Review final report and follow the subsequent policy debate.**

*Fire and environmental health regulations*

480. If an earlier recommendation about having a house condition survey were accepted, and that the UK's decent home standard should underpin this, then there would be implications for the EHD.

481. If the DHS were accepted as it stands then the EHD would have to consider how to move its practices to be more overtly in line with the HFS. It might also have to move to the HHSRS in due course.

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<sup>232</sup> Kate Barker, 2004, *op cit*.

**Recommendation 19 - The EHD should consider how best to update its practices to accommodate the HFS and, potentially, the HHSRS. This might require legislation.**

482. Although requiring resources, EHD should also consider a more proactive approach to fitness standards (whatever they are- the current approach, a more formal HFS or the new HHSRS). Simply responding to complaints will not exert pressure on landlords failing to meet current standards. However, the extent of the problem would be much better known once a housing condition survey had taken place. Then the resource implications would be clearer. There would still remain the problem of sanctions as strict enforcement would take property off the market. A full consideration of alternative sanctions, including fines backed ultimately by seizure of property, would then be needed.

**Recommendation 20 - The EHD should consider, if the housing condition survey shows this, a more proactive approach to dealing with sub-standard property failing environmental standards.**

483. Similarly if there is a major failing found with fire precautions, which would be uncovered in an HHSRS approach, consideration might need to be given to strengthening the legislative provisions on fire safety. This might involve a compulsory certification scheme for landlords, similar to the annual inspections undertaken for tourism premises and the gradings given by the Tourist Board.

484. In the UK there are also rules concerning gas and electrical safety, including annual certification of gas appliances and installations<sup>233</sup>. Depending again on conditions found in the PRS this may also need to be considered.

485. Such measures will raise landlord costs, but they should be tax deductible. The gain would be in housing quality, though there would be costs. Scaling these is not possible at present.

**Recommendation 21 - Fire regulations may need tightening once data is available on housing conditions.**

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<sup>233</sup> See ODFM, *Letting rooms in your home*, op cit.



*Landlord-tenant law*

486. Again, if a housing condition survey uncovered sufficient quality problems across the whole of the PRS and the implementation of the unfair contract terms law failed to prevent unease about landlord behaviour, then a more forceful policy option would be to require licensing of all landlords in order for them to operate.

487. I think this is an unlikely prospect, and one I would be very reluctant to see generally adopted. Most landlords are reputable and licensing is not needed for them. But if problems were found definitely to reside in one part of the market then selective licensing might be needed. In the UK, a problem has been identified with HMOs and the Housing Bill now going through parliament introduces a mandatory licensing scheme for HMOs<sup>234</sup>.

488. The aim is to eliminate persons who are not fit and proper from the sector. Once such persons are barred, the unfortunate consequence might be that their properties are sold for redevelopment and owner occupation, rather than remaining in the PRS stock having been sold to a more reputable landlord.

**Recommendation 22 - The case for licensing can be visited once a housing condition survey is done and once the unfair contract terms law has had chance to operate for some time.**

*Welfare support via Supplementary Benefit and Public Assistance*

489. Although primarily a simple administrative change I would recommend the amalgamation of SB and PA. Although the Parish system is an important part of Guernsey's heritage it sits uneasily with a modern approach to welfare provision, which would want a consistent approach followed across cases on the Island. At present, there is the possibility that discretion plays too large a part in assessing the level of welfare support. Then there is inequity in the system. There are no direct impacts on the PRS.

**Recommendation 23 - Amalgamate SB and PA.**

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<sup>234</sup> The Bill also gives local authorities powers to license landlords where there is a problem of anti-social tenant behaviour. For the background and policy discussion see, ODPM, *Selective Licensing of Private Landlords : A Consultation Paper* (London : ODPM, November 2001).

490. More substantively, further work on affordability in the PRS and on income need over the next 5 years will allow an informed decision to be taken on whether more income support is necessary, targeted at the housing costs incurred by some PRS tenants. As discussed with the proposal on tax relief on rental costs, I do not think this can be sensibly considered now. From the HNS, it appears as if average incomes per head in the PRS are higher than Guernsey as a whole- at least in 2001. The nature of the PRS uncovered in Section 2 of this report suggests the problem of income support is likely to be affecting just specific sub-parts of the PRS. Until the nature of the tenants with an income need is clearer it is inadvisable to frame policy recommendations. This is especially so given the recent CAPP changes in benefit limits which will be changing the situation. Up to date information is required here.
491. One obvious policy is a general Housing Benefit (HB) scheme for all tenants, subject to eligibility. In the UK and elsewhere these have not run without problems. Over 50% of households in rented accommodation (private and social) in the UK receive HB. As another demand side subsidy the effects of such schemes are generally to exert upward pressure on rent prices. In consequence a variety of complex arrangements have been designed to mitigate this. The current arrangement in the UK is that HB will normally only cover rents which are at or below the general level of rents for properties in the locality. This involves Rent Officers trying to determine Maximum Rents on which HB can be based. The actual HB may then be paid upto this. This inevitably involves a good deal of judgement on the part of the Rent Officer about what are market levels.
492. In addition property has to be “appropriate” for the claimant. The size, ages and any special circumstances of the family are taken into account in determining what type of property the Maximum Rent determination is to be on. Again this necessitate administrative rules.
493. Any HB can be paid direct to the landlord, so this introduces an incentive for prices to rise. In an effort to preserve anonymity there are pilot schemes underway changing the way UK HB works. In the pilot tenants receive a flat rate allowance which is paid to them direct. The intention is to introduce some incentive for the tenant to minimise rent costs. In many ways it is no longer a housing benefit based on the accommodation actually inhabited but a direct income support measure. If the pilots work it is hoped to roll out the scheme nationally in 2 years.
494. Once the nature of income need in Guernsey of (some) PRS households is better understood it will be possible to consider the alternative schemes which best target them. But without knowing the target group and without looking at the Guernsey tax and welfare system in detail, it is inadvisable to recommend any policy measures now. Obviously this makes this a Stage 2 policy. One possibility which might then be considered is to vary the benefit limitation by tenure, i.e. have different benefit limitations for those in States, PRS or owner-occupied housing. States’ rents are unlikely to move to market levels, so a higher benefit limitation for SB claimants in

the PRS would be justified. However, this might be too crude an adjustment and it would be better if this was subsumed under a more general examination of income need across all types of welfare claimant in different tenures.

**Recommendation 24 - Once there is a fix on the nature and scale of income need within the PRS household population, then measures such as SB benefit variations, HB or tax relief or other income support, can be compared in their meeting the target groups' needs.**

#### *Housing Authority and Others*

495. There are a large number of policies which might be implemented by the Housing Authority, either alone or in liaison with other States' Departments and bodies.

496. One feature of the Guernsey PRS is the fragmented nature of the sector and the small scale of many landlords' operations. This probably explains the absence of a landlords' association. Such an association can play a useful role in many areas. It can help make the sector more professional, spread best practice about property management, help develop a standard contract with no unfair terms, formulate a common view and approach and engage with the States. It might, in time, develop a tenancy deposit scheme, as associations in the UK have done, which can provide security for deposits and allow independent resolution of disputes at the end of tenancies. These possibilities, and access to legal and other services, would be the attraction to landlords of forming and participating in such a body. For the States, it needs to be seen to be encouraging good landlords and good landlord practice whilst discouraging bad landlords. Given the fragmented nature of the supply side, the HA could try to kick start such a body.

497. I see no reason why this cannot be done quickly, perhaps as part of the immediate follow up to this report. In the first instance the HA might have to run a Landlords' Forum, with it setting the agenda. It would probably be useful to include letting agents at first. The HA has already tried to facilitate the formation of a States' Tenants Association and the experience gained could be useful. It would still be a challenge for the Authority, given the fragmented nature of the rented sector, but one that would be worth taking up.

498. Although I am sceptical of the general value of self-regulation the onus must partly be on landlords themselves to help provide ideas and solutions, such as voluntary codes of conduct or accreditation schemes, to any problems faced by the PRS. Without some general forum that is unlikely.

**Recommendation 25 - The HA should try to kick start a landlord's association through establishing a Private Landlords Forum.**

499. Consumers generally need information to help them become better informed, and tenants are no different. There is a need for a limited amount of information provision, in liaison with bodies such as the TSD (especially if unfair contract terms law is passed), the CAB, the EHD, the Board of Health and others. The sort of information leaflets, tailored to Guernsey, might be; a guide to renting for tenants, a new guide for landlords on standards, keeping your home free from damp and mould, what to do about noise, your rights under the law, and so on<sup>235</sup>. Co-ordinating delivery to PRS tenants will be crucial.

**Recommendation 26 - The HA can take the lead in organising a series of leaflets relevant to the problems and issues in the PRS, though responsibility for production and distribution might best lie with some other body.**

500. I do not think information provision will make a major impact on the sector, partly because tenants may already be taking reasonable decisions and I can find no major information failures in the market. As previously noted tenants may quite rationally not be over concerned with the structural and other repair conditions of PRS property, given the transience of most<sup>236</sup>. However, such information provision is not expensive and may be of some benefit.

501. A further possibility is a Home Energy Efficiency Scheme. This was recommended by the SGLS authors. I agree with their proposal. Implementation of this was delayed until after May 2004 when the new Environment Department is formed. It should be a priority.

502. Evidence from the UK shows that thermal failure is by far the most common reason for properties in all tenures, but especially in the PRS, from reaching the DHS<sup>237</sup>. This is probably true in Guernsey too. Packages of heating, insulation and energy efficiency measures can be targeted towards some or all tenures and some or all households in a tenure.

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<sup>235</sup> As an example, the EHD where I live produces leaflets, including one on damp and mould. I am aware that a DoE leaflet on damp and mould is available in Guernsey.

<sup>236</sup> See A D H Crook, Housing conditions in the private rented sector in a market framework, Ch.11, in, S Lowe, D Hughes, eds., *The Private Rented Sector in a New Century* (London : Policy Press, 2002).

<sup>237</sup> See Annex 3.

503. The UK has a Warm Front programme which targets vulnerable households in all tenures. It provides free grants of upto £2500 to those households to spend, after an audit, on loft insulation, draught proofing, cavity wall insulation and heating to make homes warmer, healthier and more fuel efficient.
504. Potential difficulties might lie in the transient nature of the PRS population, so that measures might increase the value of the property which would flow to the landlord. Similar rules to those needed for the tax proposal on improvement spending might be needed. Alternatively, spending by landlords on energy efficiency, such as loft and cavity wall insulation, might be made tax deductible.
505. A HEES is also likely to be relatively cheap. Evidence from the EHCS finds that improving the thermal comfort of properties in England costs around £1000 per property. If I assume there is a similar rate of thermal failure in Guernsey's PRS as to England's PRS and further assume that Guernsey construction /repair costs are 50% above those in England, then this gives a grants bill for all households in the PRS needing a thermal upgrade of £2.25m<sup>238</sup>. If the HEES were covering all tenures, then the cost would be higher and budgetary limits might mean that targeting of grants to households is needed. But even a modest HEES grants budget of £0.5m. a year would see all the PRS upto the DHS within 5 years.

**Recommendation 27 - The HA should work with the new Environment Department to design and implement a HEES.**

506. Wider in scope are general improvement grants and loans by the States to tenants and landlords in the PRS. Here the possibilities are very large. The UK has had a system of grants and loans for many years and the arrangements have been quite labyrinthine at times<sup>239</sup>. They started with the *Housing Act 1949* and have been refined and changed in the period since.
507. Such aid has been aimed at improving housing conditions and has generally been means tested, so that aid is only made to those unable to afford to shoulder the burden entirely on their own, be they owner-occupiers, tenants or landlords. Generally different schemes and rules have applied to each of these.
508. Schemes have included general renovation grants, common parts grants (for the improvement of communal areas in properties), HMO grants, home repair grants and

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<sup>238</sup> 1500 properties at £1500 each.

<sup>239</sup> For a survey see M. Egan, *op cit.*, Ch. 11, Grant Aid.

disabled facilities grants<sup>240</sup>. They have differed by size of grant and by the stringency of conditions placed in applying. Small home repair grants have a low upper limit but relatively easy access. Renovation grants have had higher upper limits, to cope with major modernisation and structural repair, but more stringent terms and conditions.

509. In most cases where grants have been to landlords some restriction on the continued use of the property as a rental property, say for 5 years, has been a condition of approval.

510. The current English and Welsh system, based on the *Regulatory Reform (Housing Assistance) (England and Wales) Order 2002*, gives local authorities new and wider powers to provide assistance to owners and tenants for repairing and improving their homes. It is hoped that new innovative policies will develop, including equity release and use of third parties.

511. Low cost loans are cheaper than grants. A low cost loan will have the capital repaid in full at some point, but during the period of the loan the interest rate charged will be below market rates. The help being given is therefore the annual interest rate subsidy, i.e. the gap between the actual rate charged and the market rate, over each year of the term of the loan. This is equivalent to the subsidy provided to owner occupiers under the States Home Loans Scheme.

512. Grants are more expensive, and a more powerful policy lever, as the whole of the capital provided is the subsidy. As with loans, it is a transfer from the taxpayer to the recipient but grants provide the subsidy in one lump.

513. Clearly it would help in framing a precise recommendation to know the scale and nature of the PRS “problem”. Then appropriate action could be framed. Grants and loans to tenants, but more obviously landlords, seem to me to be a Stage 2 policy. Tenants are unlikely to be that interested in taking out loans to improve PRS property, given the hassle of arranging this with the landlord, their transience at any one time and potential for the tenancy to be terminated. Grants and loans to landlords offer more scope. The existing Home Repair scheme for owner occupiers run by the HA might provide useful experience.

514. In order to scale the problem of the total cost of upgrade needed in the PRS, one can make a similar calculation to that made previously for the HEES. I assume that the quality level being sought of the PRS stock is the DHS; that the gap of those failing is the same as in the English PRS stock, i.e. 49%; and that the average cost to meet the standard is the same as in England, i.e. £9815<sup>241</sup>. I further assume that repair costs in

<sup>240</sup> Booklets on these, with all the details of operation, are still available from the ODPM. For example Home Repair Assistance has a limit of £2000; PRS tenants can apply if they have a duty pr power to carry out the works; must be in receipt of income benefit (i.e. be poor); and so on.

<sup>241</sup> See Annex 3.



Guernsey are 30% above England. If that were the case the total cost for bringing properties in the PRS which currently fail the DHS standard would be £24.4m<sup>242</sup>.

**Recommendation 28 - Grants and loans should be considered after further information on the PRS quality gap is collected. A small pilot loan scheme for landlords, capped and subject to eligibility criteria, might be introduced first to gauge reaction and help later formulation of a more substantial package (if needed).**

515. There are a number of other policy possibilities which may be worth working up in the next few years<sup>243</sup>. These include the HA managing private rented accommodation itself. It would lease property from private landlords and use it as temporary housing for those threatened with homelessness. That might allow stricter enforcement of fire and environmental standards. Such a scheme operates in my locality. Landlords are protected by guarantees given to; fully maintain the property for the period (12 months), guaranteed rent irrespective of occupancy, management responsibilities carried out by the HA and full vacant possession at the end of the lease.
516. Once the Guernsey Housing Association (GHA) has more experience of building and running housing, it will become a major landlord by 2008. This will be social housing but the GHA has the power to expand from not just providing social housing but to being able to build and operate normal rented housing as well<sup>244</sup>. It will be a large professional and responsible landlord, almost certainly the largest on the Island. It may need to be encouraged to move into normal market renting.

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<sup>242</sup> Some 1900 properties at £12,750 each.

<sup>243</sup> I have not considered a bond deposit scheme as this was recommended by the SGLS authors and discounted in the CAPP. A bond scheme might be costly to administer. Nor have I considered expanding still further States and GHA social housing, though this would impact directly on the PRS by removing from the sector those with income and other needs which are difficult for private landlords to meet at low cost.

<sup>244</sup> Subject to the approval of the HA and ring fencing of accounts for the two activities.

**(vi) A recommended way forward**

517. In line with my incremental approach to developing a policy framework for the PRS which improves quality, affordability and increases the stock, I have argued for a two stage process. In the first stage are policies that I believe can be implemented now, or in the short term, say within 5 years. In that period of time much new information is already scheduled to be collected. I have recommended some additional data that needs collecting. The dimensions of some of the problems can so be narrowed down. Then a second stage of policy development can occur, focusing particularly on further quality improvement measures and on improving the income position of needy PRS tenants. These should be better identified at that point.

518. The table below shows what policies I would put in a first stage. The 11 policies are listed in broadly descending order of significance. The top four proposals are the most significant. Together they are a package which aims largely at quality issues and improving competitive forces in the sector. The data needed for soundly based policies to address affordability issues does not yet exist in sufficient quantity. The CAPP will provide a measure of relief, especially for pensioner incomes. But there is no clear case at present for any generalised support of PRS tenants.

Table 45 : Recommended stage 1 policies for the PRS upto, say, 2008/9.

<i>Recommendation number</i>	<i>Policy</i>	<i>Comment</i>
9	Housing subsidies to be tenure neutral	Evening up subsidy policy will make the PRS more attractive and encourage demand, which in the long term will encourage supply.
8	Unfair consumer contract terms law to be implemented	A consumer (tenant) protection measure. It also enables fair competition to occur and better landlords to gain.
13	Rent control abolished	Not significant in numbers affected but as a statement of intent which reduces regulatory price risk for landlords.
27	Create HEES	Thermal failing is major defect in UK and seems likely to be a major failing in Guernsey
10	SRA no longer automatic	Only actual spending allowed
14	New tax relief for small landlords	To encourage greater supply
28	Pilot loans scheme	To see if loans are attractive to tenants/landlords
25	HA to kick-start Landlords Forum	First move towards a more professional landlord sector
26	HA to co-ordinate information provision	Consumer and landlord education
12	EHD to have greater standards transparency	Will create greater certainty
11	IDC research proposal on s.106 agreements to include affordable housing to rent	May be able to help supply side.

519. Beyond Stage 1 a number of policy ideas have been put forward, some of which will be necessary as knowledge of the sector expands. The contents of a Stage 2, in pursuit of the goals of raising quality, improving affordability and raising the size of the PRS, cannot be predicted at this time. What needs to be done, however, is to ensure that forthcoming data collection exercises this year- the 2004 HNS and the 2004 HES- both collect, preferably, individual and household income, gross and net, and rent spending for their samples of the PRS. As both are reasonably well founded surveys the results can be cross checked with each other. This should allow an analysis of

household budgets in the PRS and the significance of rent payments. This should inform analysis of income measures, such as housing allowances in SB, tenure variations in the requirement rate, tax relief on rental payments and housing benefit.

**Recommendation 29 - The forthcoming HNS and HES need to collect PRS household income and expenditure data so a disaggregate analysis of PRS households can be done.**

## 7. Conclusions and Recommendations

520. This report is the first major study of the PRS in Guernsey. Many features of the sector have, hopefully, been illuminated for the first time, especially in Sections 2, 4 and 5. However, some areas remain opaque. This makes for uncertainty in policy making.
521. The approach I have taken is to develop policy recommendations only on the basis of what I consider to be firm evidence and analysis. That way policy will be effective and need little revision for some time. In many important areas the evidence is weak or inconclusive. I am reluctant to make recommendations in those areas, except to specify what evidence needs to be, and can be, collected.
522. The absence of sound evidence on many important aspects of the research brief means that a staged approach to policy development is the most sensible way forward. Consequently, this report is best viewed as a framework document for the development of policy rather than a complete set of precise proposals for the coming decades. I believe it is unrealistic to expect this first report on the private rented part of the housing market to do anything more.
523. Nevertheless, a number of policies are desirable now. Some of these will be controversial given the wide range of views expressed in the consultation phase of the research. I have put forward an initial, Stage 1, package of recommendations. This has been detailed in Table 45. These could be implemented within the next five years of the CHP, i.e. by the end of 2008. Beyond that, the development of further policies will depend on the outcome of data gathering. There are several surveys already planned by the States which can be used for this- the 2004 HES, the 2004 HNS and the 2006 Census. Measuring the level of private rents more accurately and regularly, perhaps by a revised quarterly RPI exercise, will also be critical. In addition I recommend a house condition survey is carried out within the period, preferably within 2 years. As evidence mounts it should be possible to develop policy, set targets and take a more integrated approach to the PRS and the whole housing market.
524. As far as quality in the PRS is concerned, quality improvement will cost. The house condition survey, coupled with a target standard, will enable the quality gap to be measured and, hopefully, costed. I have estimated the cost of improvements needed now to meet the UK's DHS to be around £25m. If this sort of expenditure is forced too quickly onto landlords it will mean higher rental prices or even some landlords ceasing business and selling their property, most probably to owner occupation. This will accentuate price problems in the PRS. The States will need to assist with this expenditure if it wishes to hold rental prices down. Quality improvement in the PRS should therefore be sought over a long time frame so the financial consequences can be smoothed for both the States and the private sector. I believe a cost effective place to start is a HEES.

525. As far as affordability is concerned it is uncertain whether PRS tenants are in the same position as owner occupiers, with affordability around its long term average, or above or below this. It is unclear if there is a general problem. The impact of the CAPP will be changing matters and I am in favour of properly identifying an income need and then targeting any subsidy payments. Generalised and significant subsidy payments, through any form of income support or tax break, will only cause price rises in the short term, unless the PRS stock can expand. Firm evidence on affordability for the sector and the different types of household within it is needed. Once that is done schemes can be devised. At that point my expectation is that any affordability problem will be confined to specific groups, most notably pensioners. These can then be targeted. In the short term, improving the functioning of the market is sensible as increased competition will help hold prices in check.

526. As far as the quantity of the PRS stock is concerned, the revitalisation of the sector will depend on a clear and stable approach being taken to the providers of rented accommodation, landlords. This needs to recognise their need to be profitable and to invest within a clear framework of standards and consumer law. This will require a supportive approach from the States. The removal of rent control, and its associated price control risk, is an important change here. However, increasing the supply of rented properties will be a major challenge given attitudes and policies to owner occupation.

527. The specific recommendations made are as follows;

Recommendation 1 - PRU should examine the private rents element in the RPI calculation and consider establishing new sampling procedures to ensure it is both more representative and more robust. Alternatively, if the RPI survey is unchanged, data on private rents needs to be surveyed in some other way so as to measure the level of rent paid in the PRS more accurately.

Recommendation 2 - Arising from recommendation 1, PRU should consider constructing and reporting an affordability index for private renting. This would necessitate comparing accurate rental price data with an average income measure, either for the whole population, or better still, an average household income measure for the PRS population.

Recommendation 3 - there should be a periodic housing condition survey. This would resolve disagreement and uncertainty about housing conditions and provide baseline data for the monitoring of policy. It should cover all the housing stock, not just the PRS.

Recommendation 4 - any house condition survey should adopt the decent home standard used in the UK.



Recommendation 5 - numbers meeting the decent home standard should replace the existing quality measure, which is based on closure notices, used in States' monitoring reports.

Recommendation 6 - PRU need to examine the possibility of collecting regular individual and household income data, including its distribution across tenures, on a more regular basis than currently exists.

Recommendation 7 - I recommend an incremental approach to policy development for the PRS is followed. This recognises the present uncertainties in some key areas.

Recommendation 8 - Implement the pending consumer legislation on sale of goods and unfair contract terms, as already agreed by the States, as soon as is practicable.

Recommendation 9 - As argued in the ESHM, housing subsidy policy should be tenure neutral.

Recommendation 10 - The ITA should reconsider its policy on the automaticity of the SRA allowance.

Recommendation 11 - the forthcoming IDC/Housing Authority external study into Planning Covenants, to be commissioned in 2004, should include the use of such arrangements to bring forth more affordable housing for rent.

Recommendation 12 - EHD should consider providing more concrete guidance on environmental standards, and, in the longer term, updating of the environmental health laws .

Recommendation 13 - Rent control should be abolished.

Recommendation 14 - Consideration should be given to having an amount of rental income exempt from income tax for new small landlords.

Recommendation 15 - Consideration should be given to widening the definition of repair and maintenance spending for offset against rental income to include some or all improvement spending. Safeguards might be needed to prevent exploitation of this new wider allowance.

Recommendation 16 - Income tax relief on private rental costs is attractive only as part of a rebalancing of demand side subsidies. It needs to be considered only after more analysis of the scale and nature of affordability issues in the PRS. Nevertheless at that point it is worthy of consideration.

Recommendation 17 - Monitor UK proposals on PIFs.

Recommendation 18 - Study the Barker Review final report and follow the subsequent policy debate.

Recommendation 19 - The EHD should consider how best to update its practices to accommodate the HFS and, potentially, the HHSRS. This might require legislation.

Recommendation 20 - The EHD should consider, if the housing condition survey shows this, a more proactive approach to dealing with sub-standard property failing environmental standards.

Recommendation 21 - Fire regulations may need tightening once data is available on housing conditions.

Recommendation 22 - The case for licensing can be visited once a housing condition survey is done and once the unfair contract terms law has had chance to operate for some time.

Recommendation 23 - Amalgamate SB and PA

Recommendation 24 - Once there is a fix on the nature and scale of income need within the PRS household population, then measures such as SB benefit variations, HB or tax relief or other income support, can be compared in their meeting the target groups' needs.

Recommendation 25 - The HA should try to kick start a landlord's association through establishing a Private Landlords Forum.

Recommendation 26 - The HA can take the lead in organising a series of leaflets relevant to the problems and issues in the PRS, though responsibility for production and distribution might best lie with some other body.

Recommendation 27 - The HA should work with the new Environment Department to design and implement a HEES.

Recommendation 28 - Grants and loans be considered after further information on the PRS quality gap is collected. A small pilot loan scheme for landlords, capped and subject to eligibility criteria, might be introduced first to gauge reaction and help later formulation of a more substantial package (if needed).

Recommendation 29 - The forthcoming HNS and HES need to collect PRS household income and expenditure data so a disaggregate analysis of PRS households can be done.

## **Annex 1 : Objectives of the study from the terms of reference**

The following is an extract from the full terms of reference, which also cover some background and contractual matters. The extract covers all the substantive points made about the scope of the study.

### *Aims and Objectives of the Study*

*The States of Guernsey has agreed that as part of its Corporate Housing Programme there is a need to identify effective measures to improve the quality of private rented housing without reducing the size of the sector or raising rentals above the means of those on modest incomes, and to do this in the context of promoting a wider programme of urban renewal. In particular, it is considered that a good quality, fairly priced, private rented sector is essential to the operation of the Guernsey housing market and that, with the right measures in place, development of this sector could provide an alternative to the historic preference for owner occupation to meet housing needs.*

*To achieve this, there is a need to gain a better understanding of how the local economy and public policy impact on the private rented sector, in order to identify the initiatives that need to be integrated into States' housing policy to extend the provision of good quality, affordable rental accommodation to meet the Island's housing needs.*

### *Aims*

*The broad aims of the study are to carry out an analysis of the operation of the private rented sector in Guernsey and, based on those findings, to identify and assess the potential impact of measures, legislative and otherwise, that can be taken to influence the sector:*

- *to improve housing quality; and*
- *to make rents affordable;*

*in a manner that will maintain, or increase, the number of dwellings available within that sector.*

### *Core objectives of the study*

1. *To identify and recommend measures, legislative or otherwise, that could be introduced to ensure that rents for private rented accommodation are commensurate with the location, size and quality of accommodation provided, including the possibility of amending the Rent Control (Guernsey) Law, 1976.*

2. *To review the provisions of the legislation governing assistance with housing costs provided to welfare benefit claimants and to make recommendations on the best means of providing such assistance.*
3. *To ascertain the extent to which legislation, policy and practice (including planning controls, building regulations and matters relating to the use of protected buildings) influence the development of rental housing, identifying measures that could be taken to facilitate improvements in the provision of private rental accommodation.*
4. *To identify and recommend fiscal and other financial measures that would promote the maintenance and development of a high quality, fairly priced, private rented sector, including the possible provision of grants and /or loans for the upgrading of privately rented properties.*
5. *To identify and recommend appropriate internationally or nationally recognised quality standards that should be applied to regulate the private rented sector in Guernsey, including reviews of the relevant provisions of the;*
  - *Loi relative de la Sante Publique 1934 and its associated Ordinance 1936*
  - *Fire Services (Guernsey) Law 1989, as amended*
  - *Building (Guernsey) Law 1956.*
6. *To review issues concerned with conditions of tenancy and, in particular, security of tenure in the private rented sector and, if appropriate, to make recommendations on any amendments or extensions required thereto.*
7. *To advise on whether the private rented sector should be regulated and, if so, the best means of achieving this, including, if appropriate, which States Committee(s) should have responsibility for:*
  - *ensuring fair rents are charged*
  - *ensuring appropriate standards of accommodation are set and enforced*
  - *monitoring the number, size and quality of accommodation available in the sector.*
8. *To identify any differences of approach that may be needed to apply to tenancies offered on a short- rather than a long-term basis.*

## **Annex 2: Individuals met in the research phase**

Individuals met during the research and consultation phase are listed below, broadly in chronological order of meeting.

Deputy B M Flouquet, President of the States Housing Authority  
Deputy P N Bougourd, President of the States Cadastre Committee

Dr. S Langford, Chief Executive, Housing Authority  
Mr A Le Lievre, Director of Policy and Administration, Housing Authority  
Mr M Burton, Chief Cadastre Assessor, Cadastre Department

Mr M Nutley, Administrator, Guernsey Social Security Authority (GSSA)  
Mr J Roberts, Manager, Supplementary Benefit, GSSA  
Mrs A Le Page, Supervisor, Visiting Officers, GSSA

Mr T Rowe, Deputy Environmental Health Officer, Environmental Health Department

Deputy Gallienne  
Deputy R Matthews

Mr J Honeybill, Executive Officer, Town Centre Partnership

Mr R H Taylor, Chief Fire Officer, Fire Brigade  
Mr N F Acton, Divisional Officer, Fire Safety Department, Fire Brigade

Mrs A Lockwood, Strategic Adviser (Policy Development), Advisory & Finance Committee

Mr W Lockwood, Island Development Committee (IDC)  
Mrs F Rose, Conservation and Design Manager and Acting Forward Planning Manager, IDC and Heritage Committee of Home Affairs  
Mr J Rowles, Development Control Manager, IDC

Mr J Wolfe, Deputy Director, Children Board

Mr S de Carteret, Project Manager, NCH Guernsey Youth Housing

Mr B Brehaut, Overseer of the Poor, Public Assistance Authority

Professor D Gordon, Director, Townsend Centre for International Poverty Research, University of Bristol

Mr K R L Forman, Administrator, Income Tax Authority

Mr D Savident, Secretary, Supplementary Benefit Tribunal

Ms K Raleigh, Citizen's Advice Bureau

Mr K B Enevoldson, Martel Maides

Mr B B Guilbert, Chief Trading Standards Officer, Board of Industry

Mr N Brett, Director, Lovells

Ms C Dupont, Lovells

Mr S Noyon, Director, Swoffers

Ms K Bray, Swoffers

Deputy R Bisson

Mr K Mann, Director of States Houses, Housing Authority

Mr D Teasel, Social Worker, Services for People with a Learning Disability, Board of Health

Mr C Melville, Social Worker for People with a Physical or Sensory Disability, Board of Health

Mr D Orton, Director of Finance & Administration, Tourist Board

Mr P Perrio, Advisory Service Manager, Tourist Board

Ms D Pitman, Health Visitor, Board of Health

Ms R Copeland, Health Visitor, Board of Health

Mr Faborsky, Eaton Place Investments

Mr M Dorey, Manager of properties for Mrs B D Dorey.

Mr R Le Marquand, Partner, Cooper Brouard

Ms L Guilbert, Cooper Brouard

Ms N Killner, Corporate Housing Programme Co-ordinator, Housing Authority

Advocate M Baudains, Babbe Le Pelley Tostevin

Mrs P Tickner, landlord



### **Annex 3 : The concept and measurement of housing quality**

1. This annex examines the concept and measurement of housing quality. It presents selected data on housing conditions and quality in Guernsey and elsewhere, deals with UK legislative standards and targets (as Guernsey standards have historically been based on those in the UK) and, finally, looks at the existing housing quality measure in use in Guernsey.
2. There is no single internationally accepted way of defining and measuring housing quality. Even within one country many indicators typically exist. As the definitions and methods of measurement vary between countries this means that cross country comparisons of housing quality are not exact. However, there is some conceptual similarity between the approaches taken so limited comparisons can be made, though caution is needed in drawing conclusions from such comparisons. Efforts are being made to establish more uniformity, for example within the EU through its statistical agent, Eurostat, but this is at an early stage of development. National statistical agencies are still pursuing the development of their own preferred measures.
3. It is also worth noting here that there is a difference between the way housing standards and quality are addressed in legislation and other national policy documents, where apparently simple terms such as “fit for human habitation” , “decent housing” and “reasonable state of repair” are used, and the way such terms then have to be interpreted and implemented in practice. The former are general statements which usually lack precise operational meaning. In contrast those on the ground, such as officials charged with policy implementation and statisticians charged with measurement of housing stock conditions, have to make such phrases concrete. This inevitably raises many technical issues and necessitates the production of, often substantial, technical guidance manuals <sup>245</sup>.

#### **The concept of housing quality**

4. As argued in section three of the main report, the quality of a product usually has a large number of aspects, or dimensions, to it. A number of specific product examples were given and discussed there to illustrate that quality is a multidimensional concept. This is especially true when applied to housing. Housing quality covers issues such as; the (many) inherent features of the property concerned; its suitability for the actual occupants; its suitability for potential occupants; subjective and objective views of these features; and a property’s location within a wider neighbourhood space.

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<sup>245</sup> The term “a decent home”, for example, was first used in the UK in a White Paper as far back as 1971, but it is only in the last decade that it has acquired a precise operational meaning.

5. The inherent features of a property are those aspects which can be considered on a stand alone basis, but which will be important to any occupant living there and any objective analyst. Many such features are commonly identified. They include the amenities present (hot/cold running water, inside toilet, bath/shower, central heating, double glazing, natural lighting, garden), the amount of space available (number of rooms/bedrooms, floor area) and the structural condition and repair of the property (age of wiring and plumbing, kitchen, bathroom, other fixtures and fittings, heat retention/insulation value, etc.) as well as less tangible features (such as design, style, and ambience).
6. It should be apparent that there can be several ways of measuring the same characteristic. Space can be measured by the number of rooms available or by the total square footage of the property. When rooms become smaller, as they have done in new houses in the UK <sup>246</sup>, the rooms per property measure can indicate an improvement in housing quality whilst another measure, such as the square footage, might show no change, or even a deterioration. Nevertheless the features of a property are all particular to the property and, in principle, can be observed and measured. Estate agents and surveyors are normally used to measuring the inherent features. One might reasonably surmise that the presence of one of these features, and generally more of any particular item, means higher quality. For properties which are just part of a single dwelling, such as flats or HMOs, one should also consider the condition of communal areas, inside and outside the property.
7. From a wider housing policy perspective one might also think that neighbourhood conditions affect the quality of housing, as housing exists in a location. It is not entirely inward looking. Then neighbourhood factors such as the condition of the area, the incidence of vandalism and anti-social behaviour, abandoned properties, street architecture and furniture, open spaces and so on will affect the quality of a particular housing unit. A unit may be good on the first dimension of quality, its own inherent interior and exterior features, but poor on the second, neighbourhood conditions. Neighbourhood conditions might be classified as external amenities. This dimension of quality is especially important in estate type and high density settings <sup>247</sup>.
8. These stand alone features are the simplest way of thinking about housing standards. However, it is important also to consider the suitability of any particular housing unit in relation to those actually occupying it. This covers the numbers and type of people in a property. A property may have "good" inherent features but still be unsuitable if, for example, there is overcrowding and lack of space for those living there. If there are special needs of the occupants, such as children or the elderly, then additional factors, such as safety or security concerns, enter. The point here is that the quality of housing,

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<sup>246</sup> Both in square footage and in height.

<sup>247</sup> For a fuller discussion of neighbourhood factors see Ch.5, Decent places, in, Office of the Deputy Prime Minister, *English House Condition Survey 2001* (London : ODPM/HMSO, July 2003).

per se, is different from the quality of the experience of accommodation<sup>248</sup>. The latter has to take account of those actually occupying the housing.

9. By extension, a property may be suitable for the current occupants but be unsuitable for some other types of occupant. The quality of a property might so be assessed not just against the current occupants' requirements or needs, but against a range of potential occupants. The safety risks of the property, arising, for example, from layout, windows, stairs, balconies, etc. will be dependent on who lives there. A property might be suitable for adults but not, for example, for children. One might also distinguish between the subjective views of those that live in the property, and their assessment of its quality, and some outside independent objective assessment. The former will be conditioned by expectations and the housing standards of others. The latter will take less account of those. Arguably, the subjective experience of living in a property has some weight, though I would argue objective factors have to dominate in assessment.
10. Finally, in assessing the quality of rented property, there is also a service being provided through time. This will be under some sort of explicit or implicit contract between the landlord and the tenant. This is irrespective of whether the landlord is a private or social provider. This means that the service from the landlord, in terms of listening to tenants, dealing with problems (perhaps especially repair and maintenance problems), adhering to the contract, having satisfactory relations and so on, might also be thought of as part of the housing quality experienced.
11. It is my view that these many considerations and facets mean that single measures of housing quality cannot capture the full range of factors that go to make up housing quality. Multiple quality indicators are needed. This has not prevented some from trying to develop a single indicator for housing quality, but it is my view that this can hide as much as it reveals<sup>249</sup>.
12. The actual measures being collected by most national statistical agencies lag some way behind this framework. The more straightforward concepts are the ones most generally measured.

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<sup>248</sup> This is hardly new. In the 19<sup>th</sup> century concern about overcrowding of households living in cities was a frequent source of social comment.

<sup>249</sup> In the UK the Housing Corporation has attempted to develop a Housing Quality Indicator system, which can be used to calculate a single score for a proposed or existing housing development. The score is made up of scores for ten separate sub-indicators; location, site- visual impact, layout and landscaping, site-open space, site-routes and movement, unit-size, unit-layout, unit- noise, light and services, unit-accessibility, unit- energy, green and sustainability issues, and performance in use. These 10 sub-indicators have themselves sub-sub indicators, which have to be scored and combined. See, The Housing Corporation, *Housing Quality Indicators : Research Report and Indicators* (London: Department of the Environment, Transport and the Regions, 1999).

### **The measurement of housing quality**

13. Existing national attempts to measure housing quality largely look at the first dimension above- the inherent amenities and features of a property. Physical surveys play a large role in the wider property market too, as they impact on the value of property. Estate agents normally prepare particulars of a property for sale or rent and these may then be independently supplemented by fuller surveys and valuations on the part of sellers and/or buyers. National statistics collected by government agencies also tend to be restricted to this measure of a property- size, number of rooms, presence or absence of standard amenities, condition and so on.
14. Amenities are the basic facilities available in a home. It is easy to forget that until relatively recently such facilities were lacking in many homes. It is only in the last 50 years, since the Second World War, that the provision of such facilities has become widespread in homes in European countries.
15. The Guernsey Census used to collect some information of this type, though it did so irregularly. Even so, it shows that basic amenities are now provided in almost all Guernsey homes. The Table below brings together data for the last 50 years and shows the percentage of households without a specified amenity.



**Table 46 : Percentage of private Guernsey households entirely without a given amenity, 1951-1996.**

<i>Date</i>	<i>Cooking stove</i>	<i>Sink</i>	<i>WC</i>	<i>Fixed bath or shower</i>	<i>Cold water tap</i>	<i>Hot water tap</i>
1951	2.8	42.3	12.7 - see footnote 3	51.3	n/a	n/a
1961	n/a	n/a	14.6 - see footnote 3	34.6	11.6	37.8
1971	0.9	7.4	30.8	16.9	n/a	14.6
1976	0.5 (0.8)	3.6 (7.4)	11.1 (21.4)	9.5 (20.8)	n/a	n/a
1981	n/a	n/a	6.1 (13.2)	5.5 (13.2)	n/a	3.9 (9.0)
1991	n/a	n/a	1.7 (3.4)	1.6 (3.5)	n/a	n/a
1996	n/a	n/a	n/a	n/a	n/a	n/a

Source : Various Censuses.

Notes: 1. The gaps in the table are caused by no data being collected in that year's Census.

2. Figure in brackets are for the PRS. Information on amenities by housing tenure has been selectively collected only since 1976.

3. With the WC, data upto 1971 was for a household without access to a WC either inside or outside the property. For 1971 and after the data refers to access to an inside WC.

4. The table classifies as having access to the amenity if it is for exclusive use or if it is shared. In 1951 many of the amenities above were shared. In England and Wales at this time only a little over half the households had exclusive use of some standard amenities<sup>250</sup>.

16. The Table shows the advance made in Guernsey housing standards, as measured by the availability of these basic amenities. Although incomplete, the data also suggests that the PRS has always been behind the general Guernsey situation. It lags general improvements, with rates at any one time about double the general all household rate. The speed of improvement though is similar. One can speculate why this is so, not just in Guernsey but elsewhere. It seems reasonable that improvements in housing standards are driven by the owner occupied sector and then diffuse through the rest of

<sup>250</sup> See, A M Carr-Saunders, D Caradog Jones, C A Moser, *A Survey of Social Conditions in England and Wales* (Oxford: Clarendon Press, 1958).

the housing stock<sup>251</sup>. This is because in advance it is uncertain what will become viewed as a basic amenity, so there is less financial incentive for landlords to lead trends rather than follow them, especially if rented housing is used by those on mid to lower incomes. In retrospect, of course, it seems obvious why certain things, such as inside toilets and baths/showers, become viewed as essential. But in advance this is less so. This probably explains why the PRS lags in housing quality in most countries. Landlords, on average, follow amenity trends<sup>252</sup>.

17. Although the proportion of Guernsey households without the basic amenities above is probably now negligible, this is not true elsewhere. According to Eurostat, even in 1996, seven countries in the EU (Belgium, Germany, France, Ireland, Austria, Portugal and Finland) still had more than 5% of households without one of three basic amenities (a bath/shower, indoor flushing toilet and hot running water)<sup>253</sup>. Information on amenities is now collected via the European Community Household Panel (ECHP). A little earlier in the 1990s the position appears to have been still worse in parts of the EU.

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<sup>251</sup> This would accord with models of new product adoption, with early adopters and diffusion later.

<sup>252</sup> If we think about improvements currently possible to houses, it seems clear that only some of the following will come to be viewed as essential and become widely adopted throughout the stock; solar panels, natural wooden floors, textured wall coatings, security shutters, conservatory, indoor gym, jacuzzi. A landlord is unlikely to adopt current must-haves as tenants might not wish to pay for them in higher rents. It is a more conservative strategy to lag trends.

<sup>253</sup> *European Commission, Eurostat Yearbook - 2001 edition (Office for the Official Publications of the European Communities)*, p.169.



Table 47 : EU house condition, percentage of dwellings, 1991-1995.

<i>Country</i>	<i>Year of survey</i>	<i>In good condition</i>	<i>Lacking basic amenities</i>	<i>Unfit</i>	<i>In serious disrepair</i>
UK	1991	86	1	8	3
Austria	1995	94	6	0	0
Belgium	1991	57	28	14	0
Denmark	1995	89	11	0	0
Finland	1995	85	15	0	0
France	1992	n/a	9	n/a	n/a
Germany	1995	62	25	n/a	19
Ireland	1991	86	9	6	0
Italy	1991	52	49	0	0
Netherlands	1995	81	13	4	2
Portugal	1991	77	16	1	6
Spain	1991	90	8	2	0
Sweden	1995	99	1	0	0

Source: J Perry, International Comparisons, p.37, in, S Wilcox (ed.), *Housing Finance Review 2001/2002* (London: CIH and CML for the Joseph Rowntree Foundation, 2001).

Notes: 1. The above should be treated with caution given the variations in national standards and methods of measurement as it is based on national definitions and data. No information is given by the author on the consistency, or meaning, of the categorisation.

18. Although matters have improved within the EU as a whole the PRS, as in Guernsey, has, historically, been the tenure with the lowest housing standards in almost all EU countries<sup>254</sup>.

19. As expectations have changed, and got higher, so the elements which might be considered basic amenities have altered. In some countries this has been reflected in legislation and/or the national statistics collected. For example the English House Condition Survey (EHCS<sup>255</sup>) now collects data on whether a household has; central

<sup>254</sup> See Director General for Research, *op cit*.

<sup>255</sup> EHCS, *op cit*, for the 2001 results. This is the eighth such survey in England.

heating, double glazing, secure windows and doors and a smoke detector. It also currently defines a modern dwelling as one which has had its kitchen and bathroom installed after 1964, has PVC wiring, modern sockets and light fittings and a central heating system which is less than 30 years old<sup>256</sup>.

20. Looking ahead one might expect some or all of the following to become generally viewed as basic amenities : effective double glazing, central heating and cavity wall insulation; air conditioning; provision of storage space; use of natural light; noise reduction insulation; advanced telecomms facilities (such as broadband connection); and car parking.
21. In the US the American Housing Survey (AHS) currently tracks a rather larger number of basic amenities and physical features in monitoring quality. This is used to distinguish between severe and moderate quality problems in housing and goes considerably wider than examining just plumbing amenities.
22. The indicators of a severe physical problem are any of the following;
  - *plumbing* (lacking hot or cold piped water, or lacking both bath and shower, all inside the property);
  - *heating* (having been uncomfortably cold last winter because the heating broke down, breaking down at least three times for at least 6 hours each time);
  - *electric* (having no electric, or all of the following three problems- exposed wiring, a room with no working wall outlet, and three blown fuses or tripped circuit breakers in the last 90 days);
  - *hallways* (having all of the following four problems in the public areas[if applicable];no working light fittings, loose or missing steps, loose or missing railings, and no working elevator); and
  - *upkeep* ( having any five of the following six problems- water leaks from outside, leaks from inside the structure, holes in the floor, holes or open cracks in the floors or walls, more than 8 by 11 inches of peeling paint or broken plaster, or signs of rats in the last 90 days.)
1. The indicators of a moderate physical problem are having none of the severe problems, but any one of the following;
  - *plumbing* (on at least one occasion in the last 3 months all flush toilets broken for at least 6 hours),
  - *heating* (having unvented gas, oil or kerosene heaters as the primary heating equipment),

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<sup>256</sup>

Upto and including 2001 the EHCS was run every 5 years. From April 2002 it is running on an annual basis, partly so as to assist in monitoring progress against UK government targets.

- *kitchen* (lacking a kitchen sink, refrigerator or cooking equipment inside for the exclusive use of the unit),
- *hallways* (having any three of the four problems listed in the previous paragraph), and
- *upkeep* (having any three or four of the six problems listed in the previous paragraph).

**Table 48 : Housing quality in the US and selected cities, percentage with defined problems.**

<i>Area</i>	<i>Year of AHS</i>	<i>Severe problems</i>	<i>Moderate problems</i>
US	1999	2.0	4.7
New York	1999	7.6	6.2
Chicago	1999	3.8	7.6
Los Angeles	1999	5.0	7.1
Boston	1998	2.5	7.1
San Francisco	1998	6.5	9.4
Philadelphia	1999	3.2	6.9
Houston	1998	1.9	12.1

Source: M H Schill, G Daniels, State of New York City's Housing and Neighbourhoods : An Overview of Recent Trends, in, *Federal Reserve Bank of New York Economic Policy Review : Policies to Promote Affordable Housing*, 9,2, June 2003, p.12.

24. Attempts to incorporate the second conceptual dimension- the features of a property in relation to the actual occupants- have focused on living space. Two measures are in common use. The first is the overcrowding measure. A property is defined as overcrowded if there is more than one person per room, excluding kitchens and bathrooms. The European Household Community Panel (ECHP) collects data on this. In 1995 the average EU number of households which were overcrowded was just over 11%<sup>257</sup>. Unfortunately it is not possible to calculate an overcrowding measure for

<sup>257</sup> *Social Trends no 29* (London : HMSO, 1999) p.174.

Guernsey as the last Census did not identify the total number of rooms excluding kitchens<sup>258</sup>.

25. The second measure is the bedroom standard. This is also an indicator of the density of occupation and hence of overcrowding (or the reverse, under-occupation, when a property is larger than the household “needs”). The bedroom standard compares the number of bedrooms a household needs in order to avoid undesirable sharing with the number of bedrooms it actually has. The determination of the number of bedrooms needed takes account of its age/sex/marital status composition and the relationship of the household members to one another<sup>259</sup>. This is so that “undesirable sharing” is avoided. Bedroom use information was collected in the last 2001 Guernsey Census, but not in the right format for calculating a bedroom standard<sup>260</sup>.
26. In England in 2001/2 just 2% of households were below the bedroom standard and hence overcrowded. Overcrowding was highest in rented accommodation, with social housing the worst- local authority housing having a 6% rate and the PRS a 4% rate. Overcrowding was most common amongst ethnic minorities and lone parents with dependent children<sup>261</sup>.
27. A more ambitious attempt to incorporate the third conceptual element- housing quality in relation to potential occupants- is currently in process of introduction in the UK. This is the Housing Health and Safety Rating System (HHSRS). This is considered in the next section.

### UK legislative standards and targets

28. Three measures are of interest here; the Housing Fitness Standard (HFS), the Housing Health and Safety Rating System (HHSRS) and the Decent Home Standard (DHS).
29. The HFS is the current legal requirement. It is a set of basic requirements that homes must meet in order to be considered as acceptable places to live, or, in other words, fit for human habitation. The HFS is the basis of Guernsey’s own housing environmental standards law.

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<sup>258</sup> Question H3 counted rooms including kitchens at least 2 metres wide. It is not known why this was the count made, but future Censuses could count rooms excluding all kitchens- then an overcrowding measure could be computed.

<sup>259</sup> For a full explanation of the standard see, *Social Trends no 31 (London : HMSO, 2001)* p.259.

<sup>260</sup> Though it might be possible to calculate by sampling the data and comparing question H4 with the personal information in sections 2,3 and 7.

<sup>261</sup> *Social Trends no 33 (London : HMSO, 2003)* p.185.

30. The present HFS came into force in the UK, or more accurately England and Wales, in 1990<sup>262</sup>. This updated a previous HFS. The main elements in the HFS have been in use through most of the 20<sup>th</sup> century. A property is now unfit if, in the opinion of the local authority, it fails to meet one of the requirements set out in legislation<sup>263</sup>, and because of that is not reasonably suited for occupation. The current requirements are;

- it is structurally stable
- it is free from serious disrepair
- it is free from dampness prejudicial to the health of the occupants
- it has adequate provision for lighting, heating and ventilation
- it has adequate supply of wholesome, piped water
- it has satisfactory facilities for preparing and cooking food, including a sink with supplies of hot and cold water
- it has a suitably located WC
- it has a bath or shower and basin, each with supplies of hot and cold water
- it has an effective system for draining foul, waste and surface water.

31. These requirements focus just on amenities. There is also a separate HFS for HMOs, apart from the general standards just described. This compares the available facilities with the number of occupants and also ensures that there are adequate means of escape from fire and other fire precautions.

32. Failure to meet the HFS is important for many reasons, including; possible enforcement action, closure notices, demolition orders, group repair schemes and eligibility for renovation grants. It is for the local authority to decide the best course of action when a property fails the HFS.

33. The new HFS almost immediately drew criticism and the 1990s saw a number of pieces of research undertaken in the UK, examining the potential effects of building design and condition on the health and safety of users. This led in 1998 to formal consultation on the HFS itself, with a view to updating it.

34. A number of arguments were made in support of this. The HFS is a pass or fail test. Under the HFS a dwelling is unfit if it fails on one requirement. It was felt that developing a sliding scale might be more appropriate, with action taken on homes falling below a certain point on the scale. The focus would then be on the danger posed by the condition of the property. That way one could distinguish between buildings that were dangerous and an immediate threat to occupants from those that failed but were only a minor threat to health.

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<sup>262</sup> Devolution has further complicated arrangements in the UK, with the Welsh National Assembly and the Scottish Parliament having housing powers and their own distinct housing policy arrangements and approaches.

<sup>263</sup> s.604 of the *Housing Act 1985*, as amended by schedule 9 to the *Local Government and Housing Act 1989*.



35. In addition it was recognised that the HFS did not cover all the potential health and safety hazards which could be found in dwellings. It needed updating to deal with modern, and newly identified, hazards.
36. The view was reached that major reform to the HFS was needed and a new rating system was devised. This was intended to replace the HFS. The new system, the HHSRS, has since been piloted, tested and refined<sup>264</sup>. It was made available to local authorities in July 2000, and consultation on enforcement arrangements took place in 2001. It is the intention of the present government to introduce the HHSRS when parliamentary time for the primary legislation needed for it is available. It is thus not yet law.
37. The main elements of the HHSRS are a list of 24 main housing hazards, which need to be assessed<sup>265</sup>. These are assessed individually in a two stage process. First the likelihood of occurrence, such as an accident, is estimated. Then the range of probable harm outcomes that could result is estimated. The two are multiplied and this leads to a hazard rating score, which is essentially the probability of harm occurring. To avoid undue precision in this process, ten bands for the final score are to be used- A to J. If a hazard scores A - C, it is unacceptable, and some enforcement action will be required. The nature of this will be left to the local authority, though the local authority will have to take action in the case of unacceptable health and safety risks.
38. It will be the local authority Environmental Health Officer (EHO) who, using professional judgement, has to implement this HHSRS. An electronic survey programme, for use with a hand held computer, has been developed to assist.
39. In contrast to the HFS and the HHSRS the decent home standard (DHS) is more of an aspiration.
40. The DHS has come to prominence in the last few years and is the target to which housing quality improvement in England is now geared. The basic features of the DHS

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<sup>264</sup> A large number of documents relating to the HHSRS have been published, but see, for example, D.Ormandy, S Battersby, *Housing Health and Safety Rating System : Report on Development* (London: DETR, July 2000), and, DETR, *Health and Safety in Housing : Replacement of the Housing Fitness Standard by the Housing Health and Safety Rating System : A Consultation Paper* (London : DETR, 2001).

<sup>265</sup> The potential housing hazards are; excessive indoor temperatures (hot and cold); fall hazards; fire; hot surfaces and materials; damp and mould; carbon monoxide; radiation; electrical hazards; noise; lead; asbestos and other particulates; entry by intruders; crowding and space; explosions; domestic hygiene; food safety; inadequate provision for maintaining personal hygiene; inadequate sanitation or drainage; contaminated drinking water; structural failure; inadequate lighting; uncombusted fuel gas; entrapment and collision; poor ergonomics.



stem from work done in the EHCS, but became more central with the government's green and white papers in 2000<sup>266</sup>.

41. A decent home is defined as one which is wind and weather tight, warm and with modern facilities. It must meet four criteria;
  - it must meet the current minimum statutory standard, which is at present the HFS (but which will, at some point, possibly 2005, become the HHSRS), and in addition
  - it must be in a reasonable state of repair
  - it must have reasonably modern facilities, and
  - it must provide a reasonable degree of thermal comfort, through effective insulation and efficient heating.
42. As previously noted in para.3 of this annex, these criteria have had to be fleshed out with detailed technical guidance to establish what is meant exactly by "reasonable" state of repair, modern facilities and degree of comfort. These interpretative details are not set out here as such guidance is lengthy, but it is essential that all involved in helping meet the DHS use the same technical standards<sup>267</sup>.
43. A very large numbers of homes in England fail to meet the DHS. The 2001 EHCS found that 7.0 m. dwellings failed the test, or 33% of the English housing stock. This was an improvement on the 1996 situation where 46% failed to meet the DHS. Of the 7.0m. non-decent homes, 5.6m. do not provide a reasonable degree of thermal comfort, 1.9m. fail through disrepair, 0.9m. fail through being unfit and 0.5m. do not have modern facilities. Some properties fail on more than one count.
44. The main reason why dwellings fail to meet the DHS is the thermal comfort criterion. 3.5m. homes (50% of all non-decent homes) require only insulation measures to make them decent.
45. 38% of social housing and 32% of the private sector stock is non-decent. The breakdown by tenure and by type of failing is in the Table below. It can be seen that the PRS has the highest overall failure rate. In all tenures the thermal comfort criterion is the one most failed.

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<sup>266</sup> DETR, *Quality and Choice : A Decent Home for All - The Housing Green Paper* (London : DETR, 2000), and, DETR, *The Way Forward for Housing* (London : DETR, 2000).

<sup>267</sup> Such detailed guidance is available at [www.odpm.gov.uk](http://www.odpm.gov.uk), or, EHCS, *op cit.*, July 2003, Appendix D : Decent Homes- definition, pp.134-137.

Table 49 : English homes failing to meet the DHS, by tenure and type of failing, 2001

<i>Tenure</i>	<i>% Non decent</i>	<i>% failing thermal comfort</i>	<i>% failing disrepair</i>	<i>% failing fitness</i>	<i>% failing modernisation</i>
Owner-occupiers	29.0	22.9	7.7	2.9	1.4
Private rented	48.9	39.8	16.8	10.3	4.3
Local authority	41.9	33.4	8.6	4.1	5.8
RSL	27.1	21.8	4.7	3.0	2.4

Source : EHCS, *op cit.*, p.10.

46. PRS dwellings have the highest failure rate on thermal comfort, but are also twice as likely to fail on fitness and disrepair as any other tenure.

47. The average cost of making each home decent is estimated at £7,200, giving a total cost of bringing all housing upto the DHS of £50 billion now <sup>268</sup>. This average cost hides a wide spread. The average costs for different tenures are in the Table below.

Table 50 : Average costs for making non-decent homes decent, England, 2001.

<i>Tenure</i>	<i>Mean cost to make decent, £</i>	<i>Median cost to make decent, £</i>
Owner-occupied	7760	2220
Private Rented	9815	5392
Local authority	3818	1759
RSL	3631	832

Source: ECHS, *op cit.*, p.53

<sup>268</sup> For a full analysis, see, EHCS, *op cit.*, Chapter 3- Decent Homes, pp.38-53. Note that the £50bn. is not the sum needed for upgrading to the DHS over the whole period. In addition, there will need to be spending to keep homes decent, to prevent homes becoming non-decent and any other additional spending on housing quality over and above the DHS. This can be significant. The ECHS estimates that for local authority stock the sum needed to make present non-decent homes decent is £4.5bn. but the total needed to be spent upto 2010 is £20bn.

48. The worst, most costly, tenure to upgrade to the DHS is the PRS. Within the averages, however, lies a wide spread of failing and cost of putting right <sup>269</sup>. With 3.5m. (50%) of homes failing solely on the thermal criterion, the insulation measures necessary to bring them upto standard cost around £1000 each. At the other end of the scale are 10% of non-decent properties requiring spending of £20,000 or more to bring them each upto standard. These may require major modernisation.
49. The government has, in its housing plans, set a target of making all social housing decent by 2010. This will mean improving all the social housing failing to meet the DHS, some 1.6m. households. This target was set in 2000.
50. Because the number of private sector homes failing to meet the DHS, 5.4m., is so much larger the government has not adopted a similar target for private housing. Instead it has targeted just the “vulnerable households” in the private sector, some 1.2m. households <sup>270</sup>. In this way those most in need will be helped. The remaining 4.2m. non-vulnerable households in non-decent homes in the private sector are not explicitly targeted.
51. The government has set itself the targets of ensuring 65% of vulnerable households in the (English) private sector are in DHS homes by 2006/07, 70% by 2010/11 and 75% by 2020/21. This target was set in 2003 <sup>271</sup>. It plans to achieve this through a variety of policies, chiefly grants and loans for renewal and improving thermal comfort, which, as already noted, is the chief failing <sup>272</sup>.

### The Guernsey measure of housing quality

52. The States currently has a measure of housing quality, which is reported in the annual monitoring document <sup>273</sup>. This is the number of housing units found to be sub-

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<sup>269</sup> See Table 50.

<sup>270</sup> Vulnerable households are defined loosely as those where the household receives an income related or disability benefit. Under this definition there are 5.6m. vulnerable households, which is 27% of the English household population. Of these 2.7m., or 48%, live in the private sector. In turn, nearly 1.2m., or 43% of the 2.7m., live in non-decent homes.

<sup>271</sup> See, ODPM, *Sustainable Communities : Building for the Future* ( London : ODPM, March 2003).

<sup>272</sup> See, ODPM, *The Decent Homes Target Implementation Plan* (London : ODPM, June 2003) for details.

<sup>273</sup> Advisory & Finance Committee, *2003 Sustainable Guernsey : Monitoring Social, Economic & Environmental Trends* (September 2003), p.70.

standard, as measured by the number of closure orders issued by the Environmental Heath Department. In 2002 five such notices were issued.

53. This is a measure that is of very limited usefulness. This is because it measures the number of housing units that fall out of the housing stock. It says nothing about the condition of the remaining housing units, some 22,000, that remain in the housing stock. In fact very little, if anything at all, can be concluded about the quality of those remaining units.
54. It might be thought that all the remaining housing units are at or above the minimum statutory environmental health standard. But there is even uncertainty about this. Whether all the remaining housing stock is above the minimum standard or not is in doubt because enforcement of the standard is reactive not pro-active. There could be property which fails to meet environmental standards but the Environmental Heath Department may not know about them (as action by them has to be triggered by complaint). In addition, as discussed in section 4 of the main report, the Department will go through a process of trying to avert a closure notice because it does not wish to create homelessness.
55. In England the extensive, and well founded, EHCS reveals that in 2001 0.9m. homes were statutorily unfit, failing the HFS. This represented 4.2% of the stock. Despite the existence of the HFS there were homes failing it which the authorities were not acting on.
56. The current Guernsey housing quality indicator thus only shows the number of housing units that are so seriously deficient that, even after due process, they fail the environmental health standard and are closed. This indicator fails to measure anything about the quality of the remaining housing stock. It is evident that additional indicators need to be settled upon and measured to address this gap.
57. The choice of indicators is partly a matter of data availability and the cost of acquisition. One obvious possibility would be to adopt the DHS and to undertake an EHCS type survey, which would also show the numbers failing the HFS.

## **Annex 4 : Legal Framework Issues**

### **Some general considerations**

1. It is important that there is a legal framework within which the privately rented sector can operate. From a purely commercial point of view, such a framework facilitates the working of the market by providing a degree of legal certainty, so avoiding frequent and costly disputes. Commercial activity is then encouraged as parties to agreements, both landlords and tenants, know their position and can contract with each other with a degree of reassurance that a body of law stands behind them if things go wrong. It would undoubtedly restrict activity, and consequently lower social welfare, if this were not the case as trading would then be a much more risky process.
2. Reputable landlords also know that the legal framework, if a sufficiently developed one exists, will ensure that their reputable behaviour is not penalised in the market place because the law fails to weed out the less scrupulous whose conduct is questionable. In this way fair competition ensues.
3. From an ethical point of view, the legal framework is meant to capture the prevailing mores of society, in both criminal and civil law, or at least the standards society aspires to or believes behaviour should be judged by. The normal guiding principles of the law are that it should be fair, impartial and balanced for all.
4. The legal framework for landlord-tenant relations raises questions about the rights and responsibilities of the two parties, the landlord and the tenant, and how a fair balance between the two's separate interests can be struck. From the landlord's perspective, the landlord owns an asset, some housing property, in which he has property rights. Renting allows another person to have temporary use of those rights. It is a commercial transaction, just as is the renting of commercial property between businesses and the renting out of other capital assets, such as cars, plant and machinery. A landlord will want the option, at some point, to reclaim his property. If he did not want repossession, or the option of repossession, he would sell the property rather than rent it out.
5. However, from the tenant's perspective renting a property allows a household to have a home. This is significant as it is the basis of personal life. If a stable society is built on stable personal lives, then renting a property has rather wider implications than renting, say, a power tool from a hire shop. For this reason, special law dealing with property frequently exists. But a tenant too may not want to be locked into an arrangement from which there is limited room to move. Many tenants may be quite

happy with temporary arrangements. Some, of course, will not and will prefer a degree of security in their living arrangements.

6. It should be apparent that there is a potential divergence of interest here. Landlords have their property interests to consider and will expect their property rights to be observed and dominant. Tenants have their domestic arrangements to consider, which they will want to be predictable and not randomly disturbed. At the heart of debate about landlord-tenant law therefore lies the issues of security of tenure and the notice and procedures whereby a landlord reclaims use of his property- which ultimately may involve eviction of the tenant backed by the force of law.
7. If security of tenure is too weighted towards the tenant and it is difficult to regain possession and use of one's property, this will weaken the incentive to be a landlord. Conversely, if there is no protection and security for a tenant, it introduces considerable uncertainty into the tenant's life when one's home might be removed quickly with all the associated distress, upheaval, costs and difficulties. The legal framework needs to balance these, and other, considerations.
8. Further complexities can be present if the relationship between landlord and tenant is more than just a commercial one. Historically this has been the case where businessmen provided accommodation for workers. Then overlaying the property issue may be a set of employment issues. This is much less common today, aside from some special industries, and, in general, private rented property is let by landlords who have no direct pre-existing relationship with the tenant.

### **The Guernsey approach to landlord-tenant law**

9. Section 4 of the main report outlined the Guernsey law in detail. As was noted in that section, there is very little explicit landlord-tenant law. Instead the governing consideration is the law of contract. That is the framework within which Guernsey law views and adjudicates on tenancy arrangements and disputes, both residential and business.
10. There is therefore no security of tenure as such for a tenant in Guernsey beyond the strict contractual entitlement. However, the eviction process is regulated and stays of eviction can be granted by the Royal Court, which effectively distinguish between types of tenants.
11. Although this may seem at odds with some other countries where landlord-tenant law is more substantial, it should be remembered that such customary law has developed over a considerable period of time and it is the framework within which landlords and tenants in Guernsey have become accustomed to work. It has evolved slowly.



## The English approach to landlord-tenant law

12. In contrast, landlord-tenant law in England has been both much more extensive and more changeable over the last 50 years, with landlord-tenant issues frequently conflated with rent control arrangements<sup>274</sup>. Prior to the *Housing Act 1980*, tenants had a wide degree of security of tenure and could not be evicted without a court order. Many sitting tenants could have security of tenure for life.
13. This combination of rent control coupled with security of tenure began to be recognised, at that time, as important factors in the decline of the rented sector, both in size and quality. This was because the balance of rights and responsibilities was tilted towards the tenant. Landlords not only might find their returns from owning property restricted, but had little access to that property. Their asset was effectively in someone else's hands. The *Housing Act 1980* began to change this. It introduced a system of "shorthold" lettings, giving tenants security of tenure for an agreed period of between one and five years, but not for life.
14. The *Housing Act 1988* changed things still further and tilted the balance further towards the landlord. From the passing of the Act, new lettings were deregulated and two new types of tenancy were introduced. Subsequent legislation, such as the *Housing Act 1996*, has not really changed the template established then. There are so three main types of tenancy in use today in England;
  - regulated, or Rent Act, tenancies
  - the assured tenancy
  - the assured shorthold tenancy
15. Regulated tenancies are those that pre-date the deregulation. They were granted before 15 January 1989 and are regulated by the *Rent Act* of 1977. Under this arrangement a landlord can only charge a "fair" rent. Rents are controlled. It is also more difficult for the landlord to evict the tenant. The eviction process is complex and a landlord may not get possession, even if the tenant is in arrears. There is discretion for the court not to evict. Furthermore, if a regulated tenant dies, he can be succeeded by a member of the family who has lived at the dwelling. As no more of these regulated tenancies are being granted, they are slowly declining in number as tenants move or die. In 1988 59% of private tenancies were regulated. By 1999 this had fallen to under 8% and is probably around 5% now. The majority of tenants with regulated tenancies are elderly people, often living alone.

<sup>274</sup> For a fuller discussion of the changes see, for example, M.Egan, 1999, *op cit*, and J.Morgan, Unlawful Eviction and Harassment, Ch.8, in, S.Lowe, D.Hughes, eds., 2002, *op cit*. The ODPM also produces a range of booklets on housing matters, including; *Assured and assured shorthold tenancies- a guide for landlords*; *Assured and assured shorthold tenancies- a guide for tenants*; *Notice that you must leave- a brief guide for landlords and tenants*; *Regulated tenancies*; and, *Repairs- a guide for landlords*. See [www.odpm.gov.uk](http://www.odpm.gov.uk).

16. The assured tenancy gives the tenant the right to exclusive use of the property, though the landlord has the right to charge a market rent. The landlord can gain repossession of the property only on specific grounds, including where the tenant is more than two months in arrears.
17. The assured shorthold tenancy is a sub-set of the assured tenancy, so rent is again entirely market determined. This form gives the landlord the right to recover the property at the end of the fixed term of the agreement. This must be at least six months. At the end of a six month assured shorthold tenancy the landlord regains possession at the end of month six. In addition there is an additional ground for possession open to the landlord. There does not have to be any reason stated with the landlord simply giving two months notice. This form of tenancy is the most commonly granted today. Assured shorthold tenancies were 8% of the rented sector in 1990 but were over 54% in 1999 and are probably even more dominant today. Since 1997 the assured shorthold tenancy has become the default tenancy even if nothing is agreed in writing between landlord and tenant.
18. It should be apparent that in England private sector rents are nearly all now market determined. All new tenancies are market based. Rent controlled property is withering on the vine and is now very much a minority. Similarly, security of tenure for tenants has become much curtailed, with a rebalancing of landlord-tenant rights, compared to the situation several decades ago.
19. The difference between the situation in Guernsey and that in England has narrowed substantially in recent decades, with the discretion in Guernsey for stays of eviction, arguably, meaning there is only a small effective difference between the two.

### **The case for change in Guernsey**

20. In considering the case for change in Guernsey I am guided by the same principle I have used throughout this report- that any case for change has to be evidence based and that any policy change needs to be proportionate to the problem identified.
21. In the course of consultation quite different views about landlord-tenant relations and the law were put to me. Some believed that disputes were common, that harassment and eviction were frequent and that, in consequence, the law needed to change to protect tenants from this type of landlord behaviour. This was usually expressed in terms of “giving tenants greater security of tenure”. Quite what or how this was to be achieved was not specified.
22. Conversely, some expressed the view that the present law discriminated against landlords by making eviction, and repossession, uncertain and costly. Furthermore, this was said to deter some property owners from offering property for rent for short periods, perhaps when absent from the Island, because of the potential difficulty and

cost of gaining repossession. The risk of a dispute with uncertain repossession was not worth it.

23. Still others thought that disputes were infrequent. Those that occurred were generally thought to be at the bottom end of the sector, where poorer quality property co-existed with difficult landlords and difficult tenants. It was thought that this type of problem area might always exist, because of the nature of the parties and property.
24. Distinguishing between these views has not been possible. These claims have not been backed by any evidence, though I am inclined to think the last view is most likely the case. I am also mindful that the Guernsey system has evolved to where it is over centuries. I therefore think a high standard of proof is necessary if change to that system is to be recommended. Proposals for change to the law should not be based on subjective opinion. Accordingly, it would be helpful to establish a number of facts about landlord-tenant disputes and practices to see if the legal system is failing in a substantive way. The sort of information I would see as necessary is; a reasonably robust sample of views from tenants and landlords about the merits and demerits of the legal system; the types and frequency of disputes; the prevalence of harassment and illegal eviction; the number of cases that enter the legal system and end up in the Royal Court, their type and outcome; the adequacy of the Legal Aid system; the views of the legal profession; and so on. Only once the size and nature of any problems, and their source, is clear should the possibility of legal change be contemplated.
25. Legal change is also costly and time consuming (the Law Officers are unable to deal with the existing backlog of legislation). It would be controversial, require extensive consultation and be disruptive as all come to terms with what might be a radical new system. I therefore come to the view that insufficient evidence exists to make a case for altering the existing framework. Indeed the fact that both sides of the landlord-tenant nexus complain about the law being biased may well mean it is in balance.
26. I have recommended that unfair contract terms law be introduced as soon as possible and I would expect this to have a beneficial effect on the sector, both in terms of leading to clearer contracts and in giving greater protection to tenants. A real danger that needs to be avoided is rebalancing landlord-tenant rights and responsibilities which then adversely affects the goals of expanding the sector, improving affordability and improving its quality. Changing the balance would impact on these.
27. I therefore conclude that the unfair contract terms change be allowed to have an effect, whilst evidence on market problems is collected. If necessary, legal change can then be considered. But I do not view this as a pressing need at present.

## **Annex 5 : Abbreviations used in the report**

For convenience the abbreviations and acronyms sometimes used in the report are listed here.

AHS	American Housing Survey
ARLA	Association of Residential Letting Agents
CAB	Citizens Advice Bureaux
CAPP	Corporate Anti-Poverty Programme
CHP	Corporate Housing Programme
CIH	Chartered Institute of Housing
CML	Council of Mortgage Lenders
DETR	Department of the Environment, Transport and the Regions
DHS	Decent Home Standard
DPT	Dwelling Profits Tax
DTI	Department of Trade and Industry
EC	European Commission
ECHP	European Community Household Panel
EHCS	English House Condition Survey
EHD	Environmental Health Department
EHO	Environmental Health Officer
ERMA	Excess Repairs and Maintenance Allowance
ESHM	Economic Study of the Housing Market
ESU	Economics and Statistics Unit
EU	European Union
GHA	Guernsey Housing Association
GSSA	Guernsey Social Security Authority
HA	Housing Authority
HB	Housing Benefit
HEES	Home Energy Efficiency Scheme
HES	Household Expenditure Survey
HFS	Housing Fitness Standard
HHSRS	Housing Health and Safety Rating System
HMO	House in Multiple Occupation
HNS	Housing Needs Survey
HPI	House Price Index
IDC	Island Development Committee
ITA	Income Tax Authority
NCH	National Children's' Home
NFRL	National Federation of Residential Landlords
OAP	Old Age Pensioner
ODPM	Office of the Deputy Prime Minister
OFT	Office of Fair Trading
ONS	Office of National Statistics

ORS	Opinion Research Services
OUR	Office of Utility Regulation
PA	Public Assistance
PAA	Public Assistance Authority
PIF	Property Investment Fund
PRS	Private Rented Sector
PRU	Policy and Research Unit
REIT	Real Estate Investment Trust
RPI	Retail Price Index
RRS	Rent Rebate Scheme
RSL	Registered Social Landlord
RV	Rateable Value
SB	Supplementary Benefit
SEH	Survey of English Housing
SGLS	Survey of Guernsey Living Standards
SHLS	States Home Loan Scheme
SLA	Small Landlords Association
SRA	Statutory Repairs Allowance
TCP	Town Centre Partnership
UB	Unemployment Benefit
UK	United Kingdom
UTCCRs	Unfair Terms in Consumer Contract Regulations

**(NB The Policy Council supports the Report from the Housing Department)**  
**(NB The Treasury and Resources Department has no comment on the Report from the Housing Department)**

The States are asked to decide:-

VIII.- Whether, after consideration of the Report dated 27<sup>th</sup> May 2004, of the Housing Department, they are of the opinion:-

To direct the Housing Department to report back to the States in December 2004, as part of the 2005 Corporate Housing Programme proposals, with a firm Action Plan based on that Report, taking into account the views expressed by the States, together with the views expressed during consultations undertaken with interested parties.



## EDUCATION DEPARTMENT

### EDUCATION DEVELOPMENT PLAN – PROGRAMME 1 LES NICOLLES SITE DEMOLITION WORKS

The Chief Minister  
Policy Council  
Sir Charles Frossard House  
La Charroterie  
St Peter Port  
Guernsey

26<sup>th</sup> May 2004

Dear Sir

#### **Executive Summary**

##### **Purpose of the Policy Letter**

1. This report seeks the approval of the States for a vote for the remaining clearance works and demolition of structures and foundations on Les Nicolles site. This is in accordance with the resolution of the States in February 2004 to progress Phases 1 and 2 of the former States Education Council (SEC) rebuilding programme, otherwise known as the Education Development Plan Programme 1.

#### **Background**

##### **Previous States Resolutions**

2. At its meeting held on **26<sup>th</sup> February, 2003**, the States resolved to approve, subject to the final recommendations of the Strategic Review, the SEC proposals for the phasing for the building projects in Programme 1 of the Education Development Plan.
3. The States also resolved to authorise the SEC to proceed with Phase One of the rebuilding programme, subject to the States' approval of individual projects. The rebuilding programme was the result of resolutions approved, following amendment, by the States in **May 2001**, when members considered the SEC policy letter on "*The Future of Secondary and Tertiary Education in the Bailiwick of Guernsey*". The States directed the SEC to:

- *retain the Grammar School as an 11-18 school incorporating a Sixth Form Centre*
  - *report back to the States as soon as may be with proposals to develop three new High Schools, such proposals to include outline costs for the complete redevelopment*
  - *report back to the States with proposals to develop an improved College of Further Education on its existing site or such alternative site as the Council considers appropriate, such proposals to include costs for the complete development*
  - *raise the school leaving age to 16 by the beginning of the academic year 2008/9 or sooner if resources and curriculum arrangements permit.*
4. In **April 2002** the States considered the SEC follow-up policy letter *A Site Development Plan for the Reorganisation of Secondary, Post-16 and Special Needs Education in the Bailiwick of Guernsey*. The States approved, inter alia, the following resolutions:
- *to approve in principle the outline proposals for the reorganisation of secondary, post-16 and special needs education in the Bailiwick of Guernsey*
  - *to approve in principle the Council's proposals for the relocation of education facilities, alterations to premises and construction of new buildings as set out in its Site Development Plan.*
5. In **February 2003** the States agreed, inter alia, *to approve the use of Les Nicolles Vinery site by the States Education Council for the construction of a new secondary school and a new Special Needs secondary school.*
6. The States also agreed to progress the Plan by authorising the Advisory and Finance Committee to transfer a sum of £32,000,000 from the Capital Reserve to the capital allocation of the SEC for that purpose. An additional £2,000,000 was added to the £4,000,000 previously allocated in April 2002 to cover the initial planning costs of Phases One and Two of the programme.
7. The States agreed to note that, for planning purposes only, the SEC, in conjunction with the Advisory and Finance Committee, would work on the basis of a minimum of £15,000,000 per annum being made available from 2004 for the purposes of progressing the remaining phases of Programme 1 (the secondary, post-16 and Special Needs rebuilding programme) of the Education Development Plan.
8. The SEC emphasised in the February 2003 policy letter that the phasing proposals it laid before the States had been designed to ensure that throughout the five phases of the plan the educational needs and demands of the Island would continue to be met, and

that adequate facilities would be available at all times and able to be staffed appropriately.

9. The SEC also assured the States that it recognised the need to design the phasing programme to be flexible so that the phasing could be brought forward or deferred depending on the availability of funds and so that any individual project that was being progressed had the ability to be suspended at three key stages:

- Project Initiation
- Stage D (budget approval and planning drawings)
- Construction Contract (Financial close)

10. In **February 2004** the States considered the SEC follow-up policy letter *Progressing the Education Development Plan: Programme 1 (Rebuilding) Funding and Phasing and Construction of Additional Post-16 Facilities*. The States approved, inter alia, the following resolutions:

- *To transfer the sum of £12,750,000 from the Capital Reserve to the capital allocation of the States Education Council for the purposes of continuing Phases One and Two of the Council rebuilding programme (Programme 1)*
- *To note that the Treasury and Resources Department will have due regard to the need to work on the basis of transferring annually from January 2005 to January 2008, subject to the affordability and availability of funds, the sum of £12,750,000 in January each year to the capital allocation of the Education Department for the purposes of completing Phases One and Two of the Department rebuilding programme (Programme 1).*

11. The SEC stated that:

*by using the remaining balance of capital allocation together with future annual allocations of £12.75 million to achieve the Phase One and Two projects, the Council will be able to meet the immediate strategic education objectives of:*

1. *the raising of the school leaving age to 16 by 2008/9*
2. *reorganising Special Needs Education*
3. *addressing the critical post-16 shortage of accommodation problems at the College of Further Education and Grammar School.*

*It should be noted, however, that these objectives will have to be achieved partly through temporary works on the Les Beaucamps, La Mare de Carteret and St. Peter Port Secondary sites pending the completion of the remaining Phases Three to Five.*

*The funding and programming of Phases Three to Five can be reviewed towards the end of Phase Two and, depending on the financial position of the States, decisions can then be taken on how to fund the next phases.*

### **Clearance and Demolition Works at Les Nicolles site**

12. Following the termination of the final tenancy, the site was handed over by the Board of Administration to the SEC on 1 January 2004. The SEC (now the Education Department) has had to take steps to ensure that the site is safe. This includes starting the clearance of materials ahead of the main demolition works.
13. In consultation with the former Advisory and Finance Committee, consideration has been given to the alternative options for clearance and demolition of the structures on the site. The use of local management, early clearance of the non-structural elements followed by the main demolition works will assist in minimising the overall cost of these works.
14. The works comprise the demolition and removal from Les Nicolles site of two 7 acre glasshouses, several small buildings, sheds, oil and water storage tanks, boilers and flues. The removal of these structures will include all foundation and support work and associated drainage, leaving the site level and clean.
15. Clearance works are required prior to the proposed start of the main demolition works that are due to commence in August in order that the contractor can take on a clear site in spring next year.
16. Carrying out the clearance and demolitions prior to a contractor commencing the schools' construction work on the site will reduce the overall project cost by reducing the unknowns about the site conditions and hence the risk provision made by the contractor.
17. Therefore, in consultation with, and approval of, the Advisory and Finance Committee it was decided to clear as much as possible of non structural material from the inside of the glasshouses in time for the main demolition work to start immediately after States approval which would be sought in July 2004.
18. The clearance of the inside of the glasshouses is being progressed by use of the labour available under the Community Environments Projects Scheme (CEPS) for which there is no charge. The costs to be borne by the Education Department are for the related tipping charges, plant hire (e.g. lorries, compactor and angle grinders) and skilled labour for the use of such plant.
19. The methods that are being used and the scale and timescales in order to clear the materials (plants, grow bags, support framework, irrigation and electrical systems) have

been determined by initial test clearance works carried out by the CEPS workers under the supervision of the States Works Department.

20. Based on the test works, it is estimated that these initial clearance works will take up to six months and will require up to £100,000 of associated tipping and plant costs. In order not to delay the project and to keep costs to a minimum, the Treasury and Resources Department has approved funds for progressing these works up to the end of July when the States considers the proposals for the main demolition works. It is expected that these clearance works will need to continue until October 2004. If the States approves the proposals in this policy letter for the main demolition works, the demolition works will commence in August 2004.
21. Les Nicolles site requires a substantial amount of fill material, particularly to raise site levels to provide suitably draining pitches and external areas. The Education Department has been approached by representatives for other States construction projects who wish to dispose of surplus fill material. If Les Nicolles was to take this material then there would be the potential for significant cost savings as imported fill material is a costly item in Guernsey. The tipping of any such suitable material would be at the contractor's expense. This means that the Education Department will only have to bear costs relating to the management of such fill, including preparation of the ground to receive it and professional fees relating to its inspection and testing.
22. The funding position for the initial clearance and main demolition works can be summarised as follows:

		£
<b>March 2004</b>	Advisory and Finance Committee approved budget for immediate Les Nicolles site safety issues and test clearance works	25,000
<b>May 2004</b>	Treasury and Resources Department approved budgets for:	
	States Works Department fees for preparing, reviewing and appointment of a contractor for the demolition works on Les Nicolles site and supervision of clearance works until the end of July 2004	10,500
	Clearance of loose material, pipe work and other materials from inside of glasshouses to the end of July 2004 using Community Environment Projects Scheme labour - associated tipping and plant costs	40,000
<b>Current proposal</b>	Demolition of structures and foundations on Les Nicolles site and associated fees from August 2004 to May 2005	684,500
	Continuation of clearance of loose materials inside glasshouses from August 2004 to October 2004	60,000

	Budget for site preparation to take fill from other sites.	<u>20,000</u>
<b>Total Budget for Clearance and Demolition Works</b>		<b><u>840,000</u></b>

23. The States Works Department has issued tenders for the main demolition works and **it is proposed that the Treasury and Resources Department be granted authority by the States to approve the necessary tenders to carry out the works.**

24. The main demolition works are expected to take some six to nine months starting August 2004 so as to be completed before the intended construction start date for the Special Needs Secondary School in May 2005 which will then be followed by the mainstream Secondary School.

### **Funding**

25. The present funding position including these proposals can be summarised as follows:

<u>Date</u>	<u>Description</u>	<u>Credit</u>	<u>Vote</u>	<u>Balance</u>
		<b>£ million</b>	<b>£ million</b>	<b>£ million</b>
April 2002	Initial funding for planning and implementing projects	4.0		4.0
February 2003	Additional funding for planning and implementing projects	2.0		6.0
February 2003	Allocation from Capital Reserve	32.0		38.0
February 2003	Le Rondin Special Needs Centre		13.9	24.1
July 2003	Capital Allocation	1.0		25.1
February 2004	Phase A of College of FE		8.13	16.97
February 2004	Grammar School Sixth Form facilities		5.58	11.39
February 2004	Allocation from Capital Reserve	12.75		24.14
March to April 2004	Les Nicolles safety works and initial clearance of inside glasshouses		0.08	



Current Proposal	Clearance and demolition of structures and foundations on Les Nicolles site and associated fees from August 2004 to May 2005		0.76	23.30
Commitments	Planning for specific Phase One and Phase Two projects.		1.2	22.10
	Central project and Education administration costs		1.5	20.60

26. As emphasised in the February 2004 policy letter, the Education Department will continue to schedule the Phase One and Two projects to align with the availability of funds and work with the Treasury and Resources Department to report back to the States annually confirming progress and programme, recommending funding allocations and requesting project approvals.
27. The £20.60 million will complete the Phase One projects and get the Phase Two projects underway. The Education Department intends to come back to the States later this year with the next project proposals for Les Nicolles and Les Beaucamps.

#### **Future Timetable**

28. The Education Department is continuing to work with the Treasury and Resources Department in carrying out condition surveys on the overall estate and will be planning the conditions works alongside Programme 1 for the Education Development Plan.
29. Each of the Design Teams have been working with the Education Department and its Client Representative Team, King Sturge, to develop the designs, assess costs and programme the works efficiently. Meetings have been held with local contractors, and discussions have taken place on the coordination of the Education projects with the other States capital projects being planned.
30. As agreed by the States in February 2004, the Education Department is working with the Treasury and Resources Department and the Commerce and Employment Department to determine the most appropriate approach to phasing Les Nicolles building works in light of affordability and capacity of the local construction industry.
31. The Education Department will continue to work with these Departments to best match the Education Department obligations of capacity, fitness for purpose and condition in order to minimise the impact of each of the schemes upon the construction industry and affordability of the States as a whole.

### **Recommendations**

The Education Department therefore recommends the States:

1. to approve the clearance and demolition of structures and foundations on Les Nicolles site as set out in this report;
2. to authorise the Treasury and Resources Department to approve the acceptance of tenders and other professional services in connection with these works;
3. to authorise the Treasury and Resources Department to approve a capital vote not exceeding £840,000 for these works, such sum to be charged to the capital allocation of the Education Department.

Yours faithfully

M. A. Ozanne  
Minister  
Education Department

**(NB        The Policy Council supports the proposals)**  
**(NB        The Treasury and Resources Department supports the proposals)**

The States are asked to decide:-

IX.- Whether, after consideration of the Report dated 26<sup>th</sup> May 2004, of the Education Department, they are of the opinion:-

1. To approve the clearance and demolition of structures and foundations on Les Nicolles site as set out in that Report.
2. To authorise the Treasury and Resources Department to approve the acceptance of tenders and other professional services in connection with these works.
3. To authorise the Treasury and Resources Department to approve a capital vote not exceeding £840,000 for these works, such sum to be charged to the capital allocation of the Education Department.

***ORDINANCE LAID BEFORE THE STATES*****THE BURMA (SALE, SUPPLY, EXPORT, TECHNICAL ASSISTANCE AND SHIPMENT OF EQUIPMENT) (PENALTIES AND LICENCES) (GUERNSEY) ORDINANCE, 2004**

In pursuance of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, I lay before you herewith the Burma (Sale, Supply, Export, Technical Assistance and Shipment of Equipment) (Penalties and Licences) (Guernsey) Ordinance, 2004, made by the Legislation Select Committee on the 14<sup>th</sup> June, 2004.

***STATUTORY INSTRUMENT LAID BEFORE THE STATES*****THE ELECTORAL ROLL (CLOSURE) (ST PIERRE DU BOIS BY-ELECTION) ORDER, 2004**

In pursuance of the provisions of Article 78 of the Reform (Guernsey) Law, 1948, as amended, I lay before you herewith the Electoral Roll (Closure) (St Pierre du Bois By-Election) Order, 2004, made by the House Committee on the 2<sup>nd</sup> June, 2004.

**EXPLANATORY NOTE**

This Order specifies the period during which the Electoral Roll for the electoral district of St Pierre du Bois shall be closed in respect of a by-election of a Douzenier to be held in that parish on the 2<sup>nd</sup> June, 2004.

DE V. G. CAREY  
Bailiff and Presiding Officer

The Royal Court House  
Guernsey  
The 9<sup>th</sup> July, 2004

**APPENDIX**  
**HOME DEPARTMENT**

ANNUAL REPORT OF THE DATA PROTECTION COMMISSIONER

The Chief Minister  
Policy Council  
Sir Charles Frossard House  
La Charroterie  
St Peter Port  
Guernsey

19<sup>th</sup> May 2004

Dear Sir

**ANNUAL REPORT OF THE DATA PROTECTION COMMISSIONER**

I enclose the annual report from the Data Protection Commissioner setting out the activities of his office for the year ended 31 December 2003.

The Home Department is pleased to support the work of the Commissioner and his office in ensuring that organisations fulfil their responsibilities and that individuals are aware of their rights under data protection legislation.

High standards of data protection continue to be an important matter not only within Guernsey but also in ensuring the international reputation of the Bailiwick in this field.

Section 52 (b) of the Law requires the report to be laid before the States. I should, therefore, be grateful if you would arrange for its publication as an Appendix to the July Billet d'Etat.

Yours faithfully

M W Torode  
Minister  
Home Department

BAILIWICK OF GUERNSEY



DATA PROTECTION COMMISSIONER  
REPORT FOR 2003



## ***MISSION STATEMENT***

*The Data Protection Office will encourage respect for the private lives of individuals by:*

- *promoting good information handling practice,*
- *enforcing data protection legislation and*
- *seeking to influence national and international thinking on privacy issues.*

Cover Photograph:– “Trans-border flows” - the Water Ceremony at the start of the International Island Games in the Harbour of St. Peter Port, Guernsey on 28<sup>th</sup> June 2003.



*Data Protection Commissioner's Annual Report for 2003***CONTENTS**

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*Data Protection Commissioner's Annual Report for 2003***FOREWORD**

I am pleased to submit to the States my third public report on Data Protection in the Bailiwick of Guernsey that has been prepared in accordance with paragraph 5 of Schedule 5 of the Data Protection (Bailiwick of Guernsey) Law, 2001.

The report covers the calendar year ending 31<sup>st</sup> December 2003, which has been a busy and productive year for my office. The highlight was the formal decision by the European Commission on 21<sup>st</sup> November 2003 that the Data Protection régime in the Bailiwick was deemed adequate to permit the transfer of personal data from the European Union to the Bailiwick.

This decision followed a sustained period of international negotiations and is good news for locally-established companies with international clients and for any local subsidiaries of organisations based in Europe or elsewhere in the world.

In May, the Guernsey Training Agency and I were pleased to host a Data Protection conference featuring internationally eminent speakers. The conference was well supported both by the public and private sectors and the delegates provided positive feedback on the quality of the content and presentation.

In June, the States of Guernsey approved the drafting of regulations to implement the European Directive on Privacy in Electronic Communications. This decision was mirrored in Alderney and Sark and it is expected that Regulations implementing the Directive should be enacted early in the New Year, further reinforcing the international reputation of Data Protection within the Bailiwick.

My office received a few complaints against data controllers during the year. Where these related to organisations based in the UK, they were passed onto the Information Commissioner's Office, with which we continue to have a close liaison. Complaints against local data controllers were all resolved without recourse to formal action. A number of significant Data Protection issues that arose in the UK during the course of the year are covered in this report, including the Court of Appeal judgement concerning subject access to manual records.

I have consulted the Law Officers, the Police and States Committees over the impact of the Rehabilitation of Offenders legislation. Once this law comes into effect, enforced subject access to criminal records will become an offence, so I have developed a statutory Code of Practice to be laid before the States in 2004 that will define the procedures for obtaining convictions information in relation to employment.

The coming year should see further development by the States of e-government solutions within its revised departmental structure; I look forward to working closely with the newly-formed Departments to ensure that the balance between operational efficiency and personal privacy continues to be maintained.

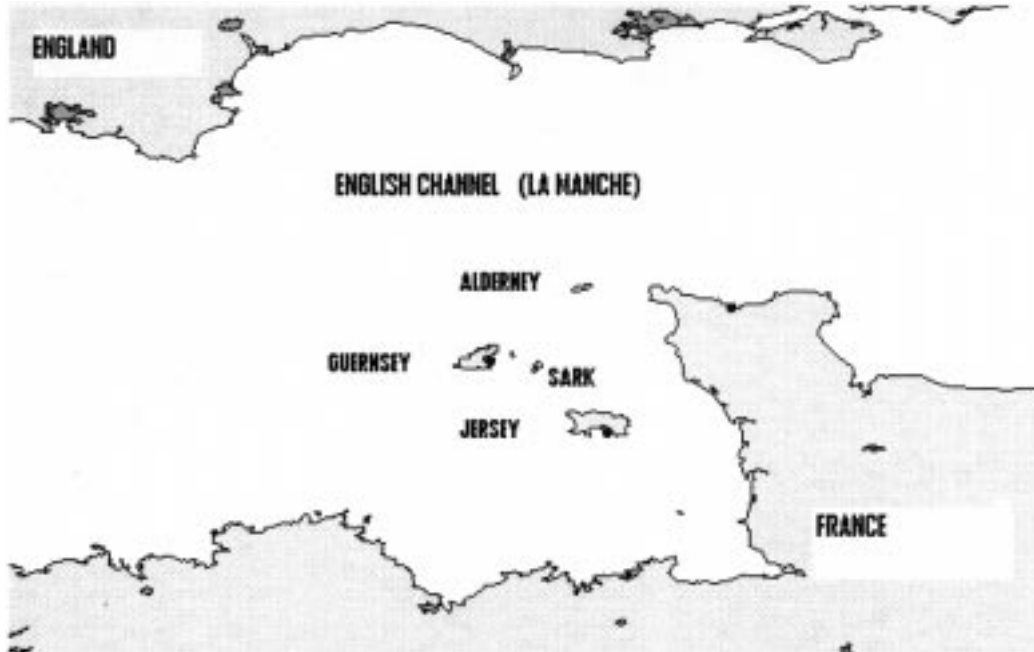


*Data Protection Commissioner, April 2004.*

*Data Protection Commissioner's Annual Report for 2003*

## INTRODUCTION TO THE BAILIWICK OF GUERNSEY

The Channel Islands are a group of islands, islets and offshore rocks located in the English Channel within the Gulf of St. Malo off the north-west coast of France. Although the Islands form part of the British Isles they do not form part of the United Kingdom. They are divided into the Bailiwicks of Guernsey and Jersey.



This report concerns the Bailiwick of Guernsey (hereafter referred to as 'the Bailiwick'), which comprises the main islands of Guernsey, Alderney, Sark, together with Herm, Jethou, Lihou, Brecqhou and associated uninhabited islets and offshore rocks. The censal populations and areas of the inhabited islands are as follows:

<b>Islands of the Bailiwick of Guernsey</b>	<b>Population (2001 census)</b>	<b>Area sq. miles</b>
Guernsey (including Herm, Jethou & Lihou)	59,807	25.11
Alderney	2,294	3.07
Sark (including Brecqhou)	591	2.11
<b>Entire Bailiwick</b>	<b>62,692</b>	<b>30.29</b>

*Data Protection Commissioner's Annual Report for 2003*

The Islands are dependencies of the British Crown (being neither part of the United Kingdom nor colonies) and enjoy full independence, except for international relations and defence, which are the responsibility of the United Kingdom Government. Guernsey, Alderney and Sark are each governed by separate elected Legislative Assemblies. The actual day to day administration, however, is conducted through various Committees formed predominantly by members elected from the Legislatures. The Committees are given specific portfolios of responsibilities and are supported by a dedicated Civil Service. Although much legislation is applicable to the individual islands, other legislation, such as that to do with Data Protection, applies on a Bailiwick-wide basis and the responsibilities of the Data Protection Commissioner similarly extend throughout the Bailiwick.

Guernsey is in the midst of a reform of its Machinery of Government that will see a more executive style of government, with the committees being replaced by a smaller number of larger departments under the overall control of a Policy Council.

One of the consequences of this reform will be that responsibility for liaison with the Data Protection Office will transfer in May 2004 from the Advisory and Finance Committee to the Home Department.

Accordingly, the staff of the Office will become seconded from the Home Department and the finance for the Office will be drawn from the budget of that department.

Both the staffing resource and the financial budget are 'ring-fenced' to ensure that they are dedicated to this Office so as not to compromise its independence.

Staff level discussions with the Chief Executive Designate of the Home Department have confirmed that this change of liaison department should make no material difference to the way in which the Office functions.

The merging of departmental responsibilities resulting from the reform of the Machinery of Government will not in itself permit additional data sharing since the fundamental Data Protection purpose limitation principle will still apply, irrespective of how the internal organisation of the departments is effected.

Further pressure for information sharing may also result from the move towards citizen-centric e-government, but any additional sharing of information for purposes related to e-government would, as for any related to the reform process, require legislative changes.

It remains important to ensure that the privacy of citizens is not adversely impacted by any possibility of increased data sharing in the interests of operational efficiency that these or any other similar developments might entail.

*Data Protection Commissioner's Annual Report for 2003***DEVELOPMENTS IN LEGISLATION**

Guernsey has had Data Protection legislation since 1986. Commencement of that legislation in 1987 enabled the United Kingdom's ratification of the Council of Europe Convention 108 to be extended to the Bailiwick.

**Data Protection Law**

The 1986 law was superseded by the Data Protection (Bailiwick of Guernsey) Law, 2001 ("the Law") which, being based on the 1998 UK Act, was designed to be fully compliant with the EU Data Protection Directive of 1995 and came into force on 1<sup>st</sup> August 2002. Two periods of transitional relief were defined in the Law: after the first, which ends on 31<sup>st</sup> July 2005, existing automated processing must be up to the standards for new processing in the Law; after the second, ending on 24<sup>th</sup> October 2007, manual data held in relevant filing systems will be fully incorporated into the law.

Sixteen Statutory Instruments came into force at the same time as the commencement of the Law, providing further detail on the implementation of the legislation, for example by specifying exemptions and detailing the notification regulations.

**Privacy and Electronic Communications**

On 25<sup>th</sup> June 2003, the States of Guernsey resolved to enact regulations to implement the European Directive on Privacy and Electronic Communications. This Directive extends the definition of personal data to include all manner of communications, including e-mail and SMS messaging and provides a statutory opt-out capability from receiving unsolicited marketing material by electronic or telephonic means.

It has already been confirmed that Bailiwick residents may take advantage of the preference services operated by the Direct Marketing Association in the UK and that, once the local regulations are enacted, direct marketing organisations based within the Bailiwick and marketing in the UK should cleanse their marketing lists using the suppression databases available from that association.

Work on drafting these Regulations is due to commence early in 2004 and it is intended that they should follow closely the regulations that came into force in the UK on 11<sup>th</sup> December 2003. As well as dealing with unsolicited direct marketing, the separate regulations for Guernsey, Alderney and Sark, will impose privacy standards on the operators of telecommunications services in the Bailiwick and help to ensure that all licensed operators are covered by common privacy standards.

*Data Protection Commissioner's Annual Report for 2003***Rehabilitation of Offenders**

Although the Rehabilitation of Offenders (Bailiwick of Guernsey) Law was passed in 2002, the commencement ordinance was not made by the Advisory and Finance Committee in 2003. This ordinance, which will specify in detail those occupations and professional appointments which are exempt from non-disclosure of spent convictions, is expected to be made early in 2004.

From the commencement of that law, it will become unlawful for spent convictions to be disclosed other than in circumstances specified in the ordinance; furthermore, commencement of Section 56 of the Data Protection Law will make it unlawful for an employer or prospective employer to require an employee to make a subject access request in order to reveal a police record that might include both unspent and spent convictions.

During 2003, the Commissioner consulted with the Law Officers, States Committees and the Guernsey Police in order to develop a statutory Code of Practice covering the disclosure of conviction information in connection with employment.

A draft version of this Code of Practice was circulated to States committees in December and will be published on a consultative basis early in 2004 with the aim of laying the final version before the States - in accordance with section 51(3) of the Data Protection Law - at about the same time that the Rehabilitation of Offenders Law and section 56 of the Data Protection Law are commenced.

This Code of Practice has been produced in three parts and is designed to complement the law by:

- providing guidance to employees who may need to obtain their record,
- specifying the procedures that should be used by employers who would be seeking such information and
- outlining the procedures to be followed by the Police who would be responsible for its provision.

**Simplification of the Operation of the Law**

The UK Information Commissioner has stated that he wishes to simplify the operation of the UK Act and there have also been calls to clarify the interpretation of some of its provisions following the outcome of the Soham murder investigation.

These developments will be monitored in the coming year and any consequential recommendations for changes to the local legislation advised to the States in due course.



*Data Protection Commissioner's Annual Report for 2003***DATA PROTECTION ISSUES**

A number of significant issues arose during 2003 that are dealt with in more detail below.

**Anti-money-laundering and “know your customer”**

In June, the Financial Action Task Force on Money Laundering issued an updated version of the “Forty Recommendations” and “Eight Special Recommendations” in relation to the combating of money laundering and the financing of terrorism.

These were incorporated in revised draft Guidance Notes issued by the Guernsey Financial Services Commission, prior to the making of new Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Regulations, 2003.

The Commissioner made representations to the Financial Services Commission over the draft Guidance Notes particularly in relation to the need for the definition of retention periods for personal data contained within transaction information and over the requirement for detailed originator and payee information to accompany all international wire transfers.

The Commissioner also proposed that a more risk-based approach should be taken in respect of anti-money laundering, rather than the blanket approach of harvesting all the “white data” in the hope of capturing the minute percentage of suspicious information therein.

The Financial Services Commission responded positively to these concerns and, in conjunction with other interested parties, produced an information leaflet for use by financial services institutions that explained the “Know Your Customer” procedures in layman’s terms.

**Disclosure of passenger manifest details to the US authorities**

In the aftermath of the terrorist attacks of 11 September 2001, the United States enacted legislation in November 2001, requiring that air carriers operating flights to, from or through the United States provide the United States’ Customs with electronic access to the data contained in their automated reservation and departure control systems, known as Passenger Name Records (PNR).

Whilst recognising the legitimate security interests involved, the European Commission informed the US authorities as early as in June 2002 that these requirements could conflict with Community and Member States’ legislation on data protection and with any provisions relating to the regulation of Computerised Reservation Systems (CRS).

The US authorities postponed the entry into force of the new requirements, but finally refused to waive the imposition of penalties on non-complying airlines beyond 5 March 2003. Several major European airlines have been providing access to their PNR since then.

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On 18 February 2003, the European Commission and the US administration issued a joint statement, recalling their shared interest in combating terrorism, setting out initial data protection undertakings agreed by US Customs and recording the parties' undertaking to pursue talks with a view to allowing the Commission to make a decision in accordance with Article 25 (6) of the Data Protection Directive 95/45/EC, recognising the protection given to the transmitted data as adequate. The talks have thus aimed to bring the way the US use and protect PNR data closer to EU standards.

The European Data Protection authorities have constantly argued for the correct balance to be struck between combating terrorism and respecting personal privacy and this process has resulted in the filtering of irrelevant personal details from the PNR and undertakings that the data transferred will not be used for other purposes. However, the general approach of indiscriminate harvesting of such "white" data remains of concern and will continue to be a matter that requires careful monitoring in future.

**Definitions of "personal data" and "relevant filing systems"**

There is a scarcity of case law on Data Protection, so the judgment of Lord Justices Auld, Mummery and Buxton dated 8<sup>th</sup> December 2003 in the Court of Appeal in the case of *Durant v Financial Services Authority* is of particular interest and would be persuasive in the interpretation of the Law in the Bailiwick.

The judges considered that four important issues of law concerning the right of access to personal data were raised:

1. What makes "data" "personal" within the meaning of "personal data"?
2. What is meant by a "relevant filing system"?
3. Upon what basis should a data controller consider it "reasonable in all the circumstances" within the meaning of section 7(4)(b) to comply with the request even though the personal data includes information about another and that other has not consented to disclosure?
4. How much discretion does the court have as to whether to order compliance with a request if it finds the data controller has wrongly refused a request under section 7(4)?

**The Court of Appeal's Findings****1. Personal data**

The judges found that in conformity with the 1981 Council of Europe Convention (Convention 108) and the 1995 General Data Protection Directive (95/46/EC) the purpose of section 7 of the Act is to enable an individual to check whether a data controller's processing of his personal data unlawfully infringes his privacy and,

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if so, to take steps, for example under section 14 or section 10, to protect it. It is not an automatic key to any information, readily accessible or not, of matters in which he may be named or involved. Nor is it to assist him, for example, to obtain discovery of documents that may assist him in litigation or complaints against third parties. It is likely in most cases that only information that names and directly refers to him will qualify.

## 2. "Relevant Filing System"

The judges noted that there was no material difference in the provisions of the Directive and of the Act. The court concluded that the intention "is to provide as near as possible the same standard of sophistication of accessibility to personal data in manual filing systems as to computerised records". It is right that the definition be broken down into three constituents:

1. Whether the material was a set of information relating to an individual;
2. Whether the material was structured either by reference to individuals or by reference to criteria relating to individuals;
3. Whether it was structured in such a way that specific information relating to a particular individual was readily accessible.

The Court found that the Directive supported a restrictive interpretation of "relevant filing system", and that "the protection given by the legislation was for the privacy of personal data, not documents".

## 3. Redaction

The Court found the protection that the Act gives to other individuals is qualified. The principle of proportionality means that the interest of the data subject in gaining access to his personal data must be balanced against that of the other individual in the protection of his privacy.

The balancing exercise only arises if the information relating to the other person forms part of the "personal data" of the data subject. The provisions of the Act appear to create a presumption that information relating to a third party should not be disclosed without his consent. The presumption may, however, be rebutted if the data controller considers that it is reasonable "in all the circumstances" to disclose it without such consent. The circumstances that go to the reasonableness of such a decision include, but are not confined to, those set out in section 7(6).

## 4. The Court's Discretion

The last issue to be considered by the Court was the extent of the Court's discretion under section 7(9) of the Act to order a data controller to comply with a request for information under that section where the data controller has failed to do so in breach of the Act.

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The Court noted that the question of the exercise of discretion did not arise in this case but agreed with the observations of Mundy J in the case of R (on the application of Alan Lord) v The Secretary of State for the Home Department [2003] EWHC 2073, at paragraph 160, that “the discretion conferred by that provision is general and untrammelled”.

The Commissioner welcomes the contribution that this judgment will make to case law on Data Protection. It is intended to issue updated guidance incorporating the consequences of judgement as soon as possible during the early part of 2004.

**Retention of criminal intelligence in connection with vetting**

Following the conviction of Ian Huntley for the Soham murders, it emerged that the Humberside Police had destroyed vital criminal intelligence information that related to allegations against him, ostensibly because of the data retention provisions in the Data Protection Act.

As a consequence there were initially calls for the Act to be amended, but later it emerged that this failure appeared to be due to misinterpretations of the law rather than to deficiencies in the law itself.

Nevertheless, it is likely that there will be some relevant findings from the enquiry set up after the conclusion of the case and these will be evaluated and taken into consideration in any policy advice that may be given to the States once they have been published.

**Bogus Data Protection Agencies**

The activities of the self-styled notification agencies have created considerable problems in the UK and some have extended their operations to cover the Bailiwick. There have been many complaints about the “official-looking” notices that are sent to businesses demanding that they notify and pay an inflated fee. The UK Commissioner has been working closely with Trading Standards Offices, the Office of Fair Trading and Police forces with a view to prosecuting these agencies. Any organisation in the Bailiwick that receives a communication from a “Data Protection Agency” based in the UK should ignore it.

**‘Blaggers’**

There has been some evidence of tracing agents using deception or impersonation to obtain information about people. This is colloquially known as ‘blagging’ information. A training video is available to assist those who might be the target of such blaggers on how to deal with them. The UK Commissioner has already successfully prosecuted some of the perpetrators.

*Data Protection Commissioner's Annual Report for 2003***NOTIFICATION**

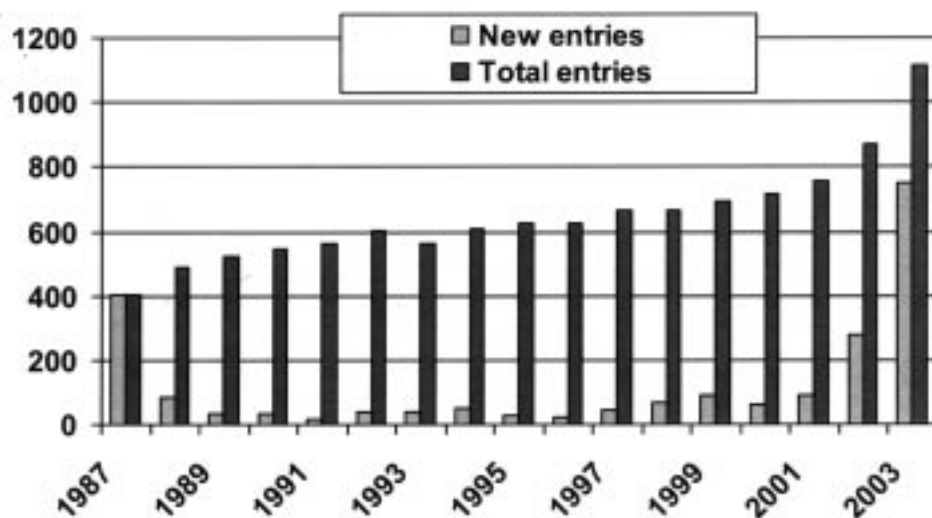
The Law requires data controllers to “Notify” the Commissioner of their processing of personal data. This Notification is on an annual renewable basis and covers all processing that is not exempt.

Exemptions from Notification exist for manual data, certain charitable and not-for-profit organisations and for the processing of data associated with the core business purposes of accounts, staff administration and marketing.

Controllers Registered under the 1986 Law are deemed to have Notified until their existing (three-year) Registrations expire.

The chart reproduced below shows that Registrations grew slowly from an initial figure of 400 in 1987, when the 1986 Law came into force, rising to just over 800 by the commencement of the 2001 law in August 2002. Since then, Notifications have risen by nearly 50%, reaching over 1100 by the end of 2003.

This is despite the fact that some multiple registrations by controllers under the 1986 law are being replaced by single notifications under the 2001 law and would appear to be as a result of the increased profile of Data Protection and especially the awareness and compliance campaigns that were mounted during the year.

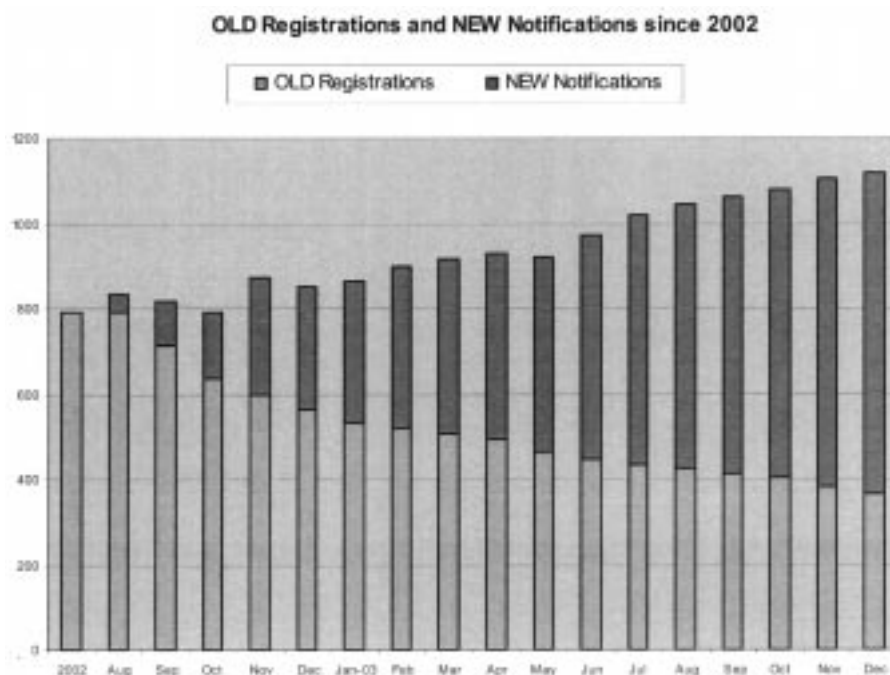
**GROWTH IN DATA PROTECTION REGISTER ENTRIES**

It is anticipated that this increasing trend will probably level off during 2004.

A total figure of 1200 - 1300 Notifications would appear to be a reasonable number for an area of the size, population and economic activity of Guernsey.

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The chart below shows the continued rise in New Notifications displacing those Old Registrations that have expired. Because Registrations under the 1986 Law have a 3-year life and continued to be issued and renewed until the end of July 2002, the last of those Old Registrations will not finally disappear until mid-2005.



The Internet Notification process was further enhanced early in the year to provide better support for the annual renewal process.

This meant that all data controllers who had provided an e-mail contact address within their Notification were sent their first renewal notice by e-mail and those who paid by direct debit had their Notification automatically renewed.

This resulted in a significant improvement in the efficiency of the renewals process; by the end of the year, over 87% (650) of Notifications included an e-mail address and over 80% of the 161 e-mail renewals issued from September to December 2003 led directly to a renewal without the need to issue a postal reminder.

In addition, of the 263 Notifications that were renewed between August and December, 56 (21%) had been set up by direct debit and were able to be renewed automatically.

A facility was also developed to allow data controllers to amend the details of their notifications on-line, by opening existing register entries for update. This further reduced the administrative effort of the Office and also assisted data controllers in the keeping of their entries up to date as is required by the Law.



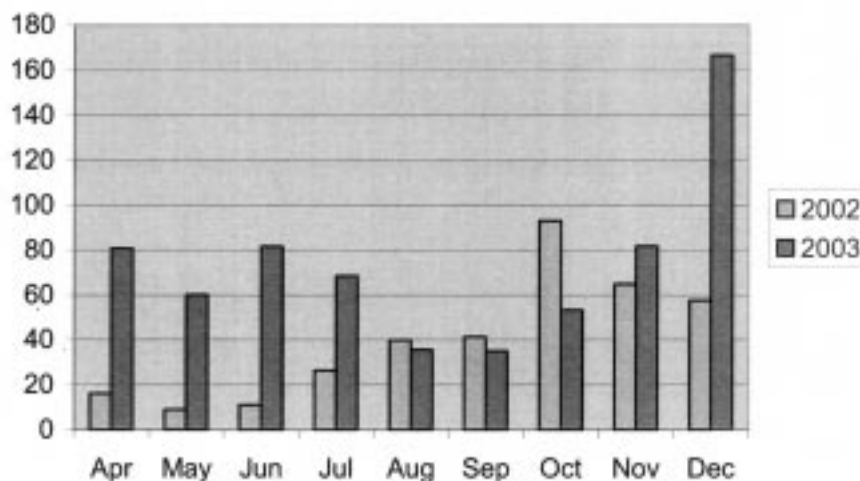
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The chart below illustrates the variation in the average daily activity on the online notification site: <http://www.dpr.gov.gg>, between April and December in 2002 and 2003. The vertical axis represents the average daily rate of successful requests for pages of data from the site.

The figures for 2002 show a sharp rise following the launch of the site in July with activity peaking in October.

The figures for 2003 show a reasonably constant activity apart from what seems to be a seasonal decline during the summer months of August and September and a sharp increase in December, possibly due to the larger number of renewals that fell due in that month.

**Comparison of Notification Site Activity  
between 2002 and 2003**

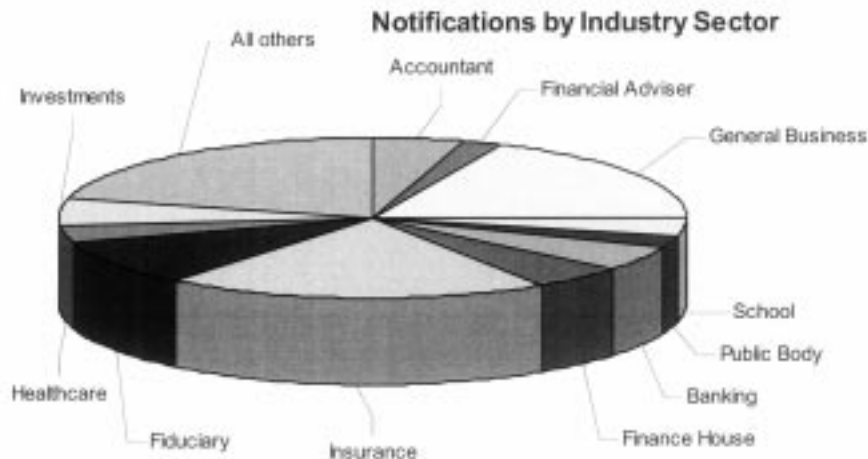


There remain problems in that Internet search engines looking for “Data Protection” tend to find the Guernsey Data Protection Notification site in preference to that of the UK Information Commissioner, for searches ‘within the UK’. This means that, despite the prominent warnings that are displayed on the Notification site, some UK controllers find that they have mistakenly notified in Guernsey rather than in the UK. These problems, and a few where the reverse has occurred, are normally resolved fairly swiftly by liaison with the staff of the UK office.

A similar problem that led to UK-based callers to the Directory Enquiry services being directed to Guernsey rather than the Information Commissioner’s Office in Wilmslow appears now to have been largely resolved, as far fewer calls originating from the UK were received in 2003.

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The Notification process requires data controllers to indicate the nature of their business activity. This not only simplifies the process, as it allows for the generation of a standardised draft Notification based on a template, but also enables an indicative record to be maintained of the number of Notifications by industry sector.



The chart above shows the cumulated distribution of notifications at the end of 2003 by industry sector, continuing a similar pattern to that of 2002.

The largest number of notifications was derived from Insurance (20%), followed by General Business (18%), Fiduciary (9%), Finance House, Accountant, Investments and Banking (all at 5%), with All others (21%).

Exemptions from the need to notify may be claimed by controllers whose processing is limited to the core business purposes of accounts & records, staff administration and a limited amount of marketing to existing clients. An exemption is also available to most voluntary organisations, charities and those whose processing is limited to manual data.

The compliance drive netted an additional 130 Notifications in 2003 and also resulted in 303 organisations being added to the database of exempt controllers. 37 organisations, who might otherwise have claimed an exemption, chose to Notify voluntarily. This relieves them of the alternative obligation under section 24 of the Law from making equivalent particulars of their processing available to any person on demand.

*Data Protection Commissioner's Annual Report for 2003***STAFFING AND STAFF DEVELOPMENT**

The establishment of the Office of the Data Protection Commissioner presently comprises three staff: the Commissioner and Assistant Commissioner - who work full time - and the Personal Assistant to the Commissioner who works part-time. The Commissioner is a statutory public appointment and members of his staff are seconded from the Civil Service, but wholly responsible to him.

Following the implementation of the reforms to the Machinery of Government, the Commissioner's staff will be seconded from the newly-created Home Department, rather than from the Advisory & Finance Committee.

The Commissioner remains of the view that, whilst his office remains responsible only for the Data Protection law, the current establishment of one full time Assistant and one part time Administrator represents the minimum level of staffing resource necessary for him to undertake his current functions. There is no evidence at present that an increased establishment is required.

The Assistant Commissioner, Anne Wiggins was appointed in August 2002. Her role is to assist the Commissioner in promoting and enforcing the Law, with primary responsibility for raising awareness amongst both individuals [data subjects] and organisations [data controllers]. She achieves this by the design and production of leaflets and the running of short in-house courses for data controllers.

In addition, she investigates compliance matters, having contacted and followed up numerous compliance issues with specific industry sectors in the past year. As part of her compliance activities, she is also responsible for the generation and completion of draft notifications.

Anne is normally the first point of contact for complaints from data subjects and she deals with the initial work on any resulting assessments of processing.



In April, she participated in the European Spring Conference of Data Protection Authorities that was held in Seville and represented Jersey and the Isle of Man as well as the Bailiwick. This was an opportunity to interact with members of supervisory authorities throughout Europe and to appreciate the common problems that are faced in many countries.

Also in April, she spent two days at the office of the UK Information Commissioner in Wilmslow, Cheshire. The full and varied programme which was organized for her enabled her to acquire knowledge of the structure and systems of the Commissioners office as well as meeting key members of his staff. She is thankful to him and his staff for providing this very valuable and positive experience.

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In July, she attended the three day conference at St John's College, Cambridge which is organized annually by Privacy Laws and Business. The theme of the conference was incorporating risk management into everyday practice. This gave her an opportunity to meet people from many public and private sector organisations and to learn how they are incorporating the requirements of data protection legislation into their work situations.

Towards the end of the year, Anne enrolled on an ISEB Data Protection course at Mason's in London. Successful completion of this course will not only give her a formal qualification, but will also provide an opportunity for her to assess the suitability of the course for local compliance officers who may wish to gain a qualification in Data Protection.

During the year, Wendy Ozanne was promoted to the post of Personal Assistant to the Commissioner.

In that role she combines her previous duties of administrative support to the office with more specific duties in support of the Commissioner, such as arranging appointments and travel, dealing with the office financial management and managing the Commissioner's correspondence.

Wendy is the initial contact for personal and telephone callers to the office and she has primary responsibility for the maintenance of the Notification system and the collection of Notification fees.

She has also attended Civil Service Board training courses on the use of the States corporate SAP accounting system and reconciles the entries in that system with the Commissioner's bank account.



*Data Protection Commissioner's Annual Report for 2003***RAISING AWARENESS**

There is a continual need to ensure that individuals are made aware of their rights under the Law and organisations that process personal data are made aware of their responsibilities.

The Awareness campaign for 2003 has included the following activities:-

- Organising Data Protection Conferences
- Delivering presentations and training
- Involvement in working groups
- Making use of the media.
- Giving compliance advice
- Developing the Internet web site

**Local Data Protection Conferences****Les Cotils Conference**

This Data Protection Conference was organised by the Commissioner, the Data Protection Adviser and the Training Agency on 13<sup>th</sup> and 14<sup>th</sup> May 2003 at Les Cotils Conference Centre.

The Public Sector day on 13<sup>th</sup> May was chaired by the Data Protection Adviser and attended by 74 delegates, including some public servants from Jersey. The Private Sector day on 14<sup>th</sup> May was chaired by the Commissioner and attended by 47 delegates. Papers were presented by:

- Robert Titterington - the draughtsman responsible for the Data Protection Law,
- Louise Townsend and Rosemary Jay from Mason's solicitors,
- Sandra Cavill from the Office of the UK Information Commissioner,
- Stewart Dresner, from Privacy Laws & Business,
- Diana Alonso Blas, from the European Commission,
- The Commissioner and Assistant Commissioner.

The Data Protection Supervisor from the Isle of Man, the Registrar and Deputy Registrar from Jersey also took part and chaired some of the discussions.

Delegates' responses from both days were positive, with the main comments being "interesting", "professional", "valuable", "helpful" and "well-presented".

The support and organisation provided by the Training Agency was of a high standard.

*Data Protection Commissioner's Annual Report for 2003***Conference for Board of Health Staff**

This conference, which took place at the Peninsula Hotel on 03 December 2003, was organised by the Commissioner and the Board of Health (BoH) . It was structured into two half day sessions which were attended by thirty eight delegates from the BoH and other health organisations. Ann Jones, Assistant Information Commissioner for Wales and David Evans, Compliance Manager, Health Sector, Office of the UK Information Commissioner delivered the sessions at the invitation of the Commissioner, who participated in the discussion and workshop sessions. The conference was well received by the delegates and resulted in further training needs for health service staff being identified.

**Delivering presentations and training**

The Commissioner and Assistant Commissioner delivered a number of talks and presentations throughout the year to many professional associations and organisations in the public and private sectors. These included: schools, finance institutions, law firms and retail businesses.

The total audience reached was around 770.

**Involvement in Working Groups**

The Commissioner and Assistant Commissioner also participated on various working groups such as the E-Government Sub-Group for Citizen Access, the States Data Sharing Group, the E-Business Liaison Group and the Board of Health Registration of Care Workers' Group.

**Making use of the media****Press releases**

The Commissioner issued a number of press releases throughout 2003; these gave information about:

- the data protection obligations of data controllers in relation to Closed Circuit Television Systems (CCTV)
- the Commissioner's visit to Zurich where he participated at the International Working Group on Data Protection in Telecommunication
- the data protection conferences organised by the Commissioner's office and Guernsey Training Agency for the public and private sectors.
- assurances that data protections principles would be upheld in the reorganisation that would be brought about by the future Machinery of Government changes
- bogus data protection letters from UK agencies to businesses and organisations within the Bailiwick



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- the approval by the European Commission of the Bailiwick's data protection legislation
- the anti-spam regulations which came into force in the UK in December and how these would affect Bailiwick residents

**Press articles**

There was a total of twenty-two articles published in the local press which concerned the following data protection issues:

- the legal obligations of data controllers in regard to registering details of their personal data processing with the Commissioner and their use of CCTV;
- bogus data protection letters from UK agencies to businesses and organisations within the Bailiwick;
- the Commissioner's visit to Zurich for the "anti-spam" discussions – this report was supplemented by an editorial in the Comment column which supported the Commissioner in undertaking his international co-operation activities in the fight against "spam";
- the approval by the States for the drafting of the Privacy and Electronic Communications "anti-spam" regulations;
- the conditions under which postal, telephone and e-mail communications may be intercepted by public bodies within the Bailiwick;
- how the Commissioner's office carries out its compliance responsibilities;
- the progress of the European Commission in deciding the adequacy of the Bailiwick's data protection legislation;
- the advantages and disadvantages of introducing Identity Cards within the Bailiwick;
- the Commissioner's views on the USA's demand that European airline carriers transfer personal data of passengers travelling to, from and through the United State so as to combat terrorism and other international crime;
- the data protection function of getting the balance right between protecting individuals' rights to privacy and protecting the general public – this was in the wake of the Soham trials;

The Commissioner was interviewed on a number of occasions on local radio and television on some of the issues raised in the press releases and the press reports.

*Data Protection Commissioner's Annual Report for 2003***Giving compliance advice**

To assist data controllers with compliance the office has also given advice and guidance on the following matters to various organisations:

- Standing orders
- Protocols
- Procedures
- Design of application forms
- Contracts with data processors
- Recording of telephone calls
- Subject access requests
- Transfer of personal data to other jurisdictions, especially “non-adequate” jurisdictions

The following literature has been produced by the Data Protection Office. The brochures are free of charge and are available in hard copy but may also be downloaded from the Commissioner’s website.

**Advice Booklets (A5)**

- Notification – a Simple Guide
- Baby mailing preference service (how to stop unwanted mail about baby products)
- Be Open ...with the way you handle information (obtaining data fairly and legally)
- CCTV – Guidance for Users
- CCTV Checklist
- Data Controllers (how organisations must process personal data)
- Your rights under the Law: Guidance for individuals
- Mailing, telephoning, fax and e-mail preference services
- No Credit (how to access, and correct, details held by credit reference agencies)
- The Data Protection Law and You (advice for small businesses)
- Violent warning markers: use in the public sector

*Data Protection Commissioner's Annual Report for 2003***Guidance Handbooks (A4)**

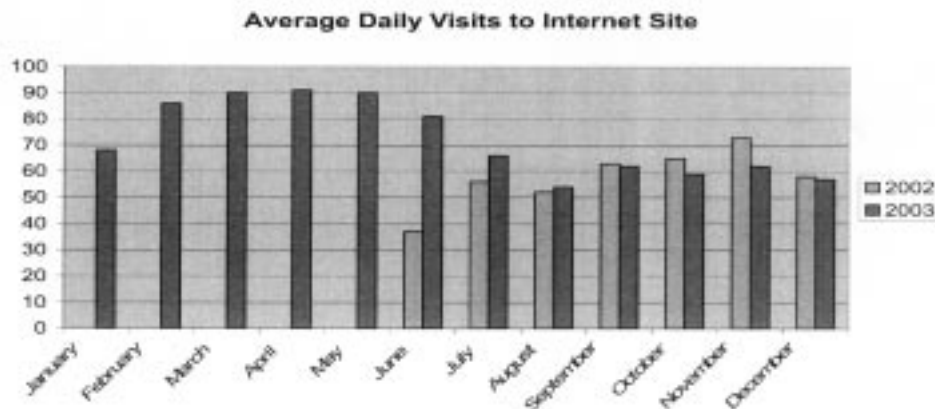
- Charities
- Data Controllers
- Financial Institutions
- Notification Exemptions
- Notification Handbook
- Small Businesses
- States Committees

The Assistant Commissioner has circulated the literature to a number of public, private and voluntary organisations throughout the Bailiwick. She keeps a record of the locations where the literature is sent so that a follow up can be undertaken to assess its uptake and impact.

Approximately 4,000 copies of the literature were distributed during 2003. In addition, Notification Guidance Handbooks were sent out to data controllers when their registrations under the 1986 law were about to expire.

*Data Protection Commissioner's Annual Report for 2003***Developing the Internet Web Site**

All of the information published by the Office is available on the Internet site: <http://www.dataprotection.gov.gg> , for which access statistics are available from June 2002.



The chart above shows that the usage of the site in 2003 has varied between about 55 and 90 visits per day. The most popular sections of the site have been those devoted to the 2001 Law and to “Guidance Notes”, where visitors are able to view or download an up-to-date copy of all of the guidance notes that have been published.

The site is updated on a regular basis and includes copies of all of the material which is published by the Commissioner’s office, together with links to other data protection sites and information for data subjects about complaint handling.

The range of information available on the Internet site continues to grow, but it was not possible to undertake the redesign of the site during 2003 as a major redevelopment of the overall ‘Guernsey.government’ portal, <http://www.gov.gg> was in progress.

Further work is anticipated in 2004 on improving the linkage between the Guernsey.government portal and the ‘dataprotection’ site, in particular by the provision of a search facility.

*Data Protection Commissioner's Annual Report for 2003***ENFORCEMENT**

The Law provides for a number of offences:-

- a) Failure to notify or to notify changes to an entry;
- b) Unauthorised disclosure of data, selling of data or obtaining of data;
- c) Failure to comply with a Notice issued by the Commissioner.

The Commissioner may serve an Enforcement Notice where he has assessed that a controller is not complying with the principles or an Information Notice where he needs more information in order to complete an assessment.

Complaints by data subjects to the Commissioner concerning notification, or disclosure offences would be dealt with as potential criminal prosecutions by the Police and Law Officers.

An Information Notice was served on one data controller who did not provide the Commissioner with a description of personal data processing upon request. This prompted the data controller to provide the requested information.

Towards the end of 2003 five data controllers were referred to the Law Officers in connection with notification offences. These are currently being investigated by the Police.

Brief details of the assessments undertaken during the year are as follows:

**Introduction**

During 2003 the Commissioner received nineteen complaints regarding how personal data were being processed. One of these complaints was ongoing from the previous year and is included in the eight official Requests for Assessment investigated by the Commissioner. Two complaints were forwarded to the Office of the United Kingdom Information Commissioner. Three complaints were treated as general enquiries as the Commissioner considered that to do so was in the general public interest. Enquiries were made into the remaining six complaints but these were not pursued.

**Official Requests for Assessment**

1. An individual who was undergoing divorce proceedings complained that her husband's advocate had acquired itemized billings of telephone calls that she had made. The Commissioner's office received full co-operation from the organisation concerned. It was established that the calls were made during a period when the couple were still co-habiting. The

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Commissioner found the complaint was ill-founded as no unlawful disclosure had been made by the organisation.

2. A voluntary organisation complained that an ex-employee had removed a card index system which contained names of customers. The Commissioner was unable to help in this case as the manual data concerned were subject to the transitional provisions allowed for in the Law, and so would not be subject to data protection requirements until 31 July 2005.
3. An individual received an adverse report from an organisation which prevented him from setting up a new business venture. He suspected that the negative report was a result of inaccurate data contained within his personal file. He was advised to make a subject access request so that he would have the opportunity to have any inaccurate information corrected and to have his comments added to any statement which was in dispute. On gaining access to records inaccuracies of information did come to light. Following a without prejudice face to face meeting the individual provided the organisation with additional information with which the relevant records were updated.
4. An Alderney resident and a local politician raised concerns that hotels and guest houses in Alderney were being officially requested to collect excessive amounts of personal data on their guests. It was established that the information collected exceeded its intended purpose which was statistical analysis. The Commissioner referred the matter to the Law Officers who suggested to the States of Alderney that the appropriate legislation be amended to draft an Ordinance that would specify the purpose of the collection of information. It was also suggested that the Ordinance might only need to be made if a voluntary code of practice failed.
5. An individual complained that a number of health professionals had made disclosures of her health records to her estranged husband without her consent. She also expressed concern that she had been given an inaccurate diagnosis which prejudiced how she was treated by different doctors.

On advice from the Commissioner she made subject access requests to the relevant health professionals. She received copies of her medical records from some doctors but others did express concern that the release of the records might be of some detriment to her. There is a provision in the secondary legislation which exempts data controllers from complying with subject access requests if it is considered that to do so would serious physical and / or mental harm to the data subject.



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Following further discussion with the Commissioner the individual decided not to proceed further with the complaint.

6. An individual complained to the Commissioner that a local credit reference agency had not removed spent information from his personal file. The Credit Reference Agencies' Code of Practice in the UK states that all information over six years old should be deleted from credit files. After liaison between the Commissioner and the credit reference agency concerned the file was deleted.
7. A finance company did not renew a client's credit facility and added an extra sum of money to the final settlement figure. Another person, acting as the authorized agent for the client, wrote to the finance company and asked for an explanation as to why these actions had been taken; he also asked why his offer as a guarantor had been refused.

The finance company responded by saying that they could not discuss matters with the authorized agent due to "recent legislation being imposed on the finance industry by the Guernsey Financial Services Committee (Data Protection)." Subsequently the Financial Services Commission referred the agent to the Data Protection Office.

The finance company was contacted and advised of their obligations under the law in relation to subject access rights. This resulted in the finance company agreeing to discuss the matter with the authorized agent.

8. An individual complained that on receipt of the revised Postcode Finder he discovered that the road where he lived had been renamed. He claimed that this would cause him, and anyone else similarly affected many problems, such as difficulty in buying goods on the internet and undergoing security checks.

The Postcode Finder had been revised by Guernsey Post following a collation exercise done by Guernsey Digimap Services (GDS) between the "official road names" used in the Digital Map and those held by Guernsey Post.

The Commissioner's Office liaised with Guernsey Post, the relevant Parish Constables and GDS about this matter and it was agreed that all queries relating to road name changes would be investigated. GDS contacted all parochial authorities requesting updates to the "official road names" that had been used. In the meantime the complainant received assurance from Guernsey Post that address information would not be passed on to any third parties until all corrections to road names had been processed; therefore the accuracy of his personal data was unlikely to be compromised in any way.

*Data Protection Commissioner's Annual Report for 2003***Referred Complaints**

Two complaints, each received from elected States members within the Bailiwick of Guernsey, were referred to the Office of the UK Information Commissioner.

The first complaint concerned a UK based organisation using a personal e-mail address of a Bailiwick resident for the purpose of unsolicited marketing.

The second complaint also concerned using a personal e-mail address by a training agency for the purpose of unsolicited marketing. The company concerned was allegedly based in Guernsey but there was uncertainty about this as there was a diversion when the local telephone number was used and the e-mail address was a UK based ISP. The company was not listed in the local directory.

The investigation into these complaints continued into 2004.

**General / Public Interest Enquiries**

- On opening a deposit account with a bank an individual wished to nominate his employees to be signatories to the said account. When he complained that the bank was asking for excessive information to verify the identity and addresses of his staff the bank stated that they acting in accordance with what Guernsey Financial Services Commission (GFSC) required. He was also informed that the bank would retain any information obtained during the verification process.

The Commissioner decided to treat this matter as a general issue rather than a complaint against the specific bank. On contacting the GFSC it was learned that the GFSC was in liaison with the Association of Guernsey Banks and the Financial Intelligence Service (FIS) about preparing a leaflet on how banks could give clearer guidance to their customers on the procedures to be used in respect of Due Diligence checks. This leaflet has since been published. The GFSC informed the Commissioner that it would contact the Law Officers and the FIS on the issue of record retention.

- The Commissioner was contacted and subsequently interviewed by a local radio station as one of their reporters had found a patient's notes in a hospital car park and handed them in. This incident raised public concerns over the protection of patient confidentiality as well as the security measures taken by health personnel when they were transporting clinical notes between sites.

After liaison between the Commissioner and the appropriate authority the security policy of the organisation was assessed and it was advised that staff should be given more explicit guidance when carrying clinical notes on their person and / or in their cars. This advice was actioned.

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- An enquirer concerned about people's rights and civil liberties asked whether civil servants and politicians would have access to individuals' personal data via the States computer systems and the computer system of a locally owned airline, especially with regard to their movements.

The Commissioner wrote to the President of the Advisory and Finance Committee and the airline's Managing Director. The responses that the Commissioner received showed that the complainant's concerns were ill-founded.

The Commissioner also gave assurance that any States employee obtaining and / or disclosing personal data made without the consent of the relevant States Committee would face prosecution. Further assurances were also given about the data protection training that civil servants receive and the independence of the Data Protection Commissioner

The complainant was advised that for an Assessment of Processing to take place he would have to provide firm evidence of a contravention of the law. No response to that effect was received.

**Complaints not pursued**

Six complaints were not pursued by the Commissioner as the complainants did not supply necessary information and / or documentary evidence to enable the complaints to be accepted as official Requests for Assessment.

*Data Protection Commissioner's Annual Report for 2003***INTERNATIONAL LIAISON**

A major focus of the International visits made in 2003 was to facilitate obtaining a positive decision from the European Commission on the adequacy of the Data Protection régime in the Bailiwick.

In January, the Commissioner and a legislative draughtsman were invited to visit the offices of the European Commission in Brussels, for a day-long examination of the Bailiwick's Data Protection legislative and enforcement régime.

Immediately prior to this meeting, the Commissioner took the opportunity to attend a conference in London organised by the newly-appointed UK Information Commissioner, Richard Thomas, on the Government proposals on 'entitlement cards'; following an address by the Home Secretary, many speakers expressed concerns over the potential privacy implications of the cards and the likelihood of "function-creep" once they were introduced.

The Commissioner and the legislative draughtsman also met officials from the Data Protection Unit within the Lord Chancellor's Department [ now the Department of Constitutional Affairs ], which represents the UK Government on Data Protection matters in Europe, for a briefing on the UK position in relation to the adequacy question prior to travelling to Brussels.

The EU officials in Brussels posed numerous questions, all of which were satisfactorily addressed by the Bailiwick representatives. The officials outlined the 'comitology' process leading to a final decision of the European Commission and explained that it involved a protracted time-scale:

- firstly, the working party established under Article 29 of the Directive, comprising the European supervisory authorities, would be asked for their opinion;
- following that, the committee established under Article 31 of the Directive, comprising representatives from the EU Member States would be asked to endorse the Opinion of the Article 29 working party;
- next, a draft decision would be prepared and circulated amongst the EC Directorates, a process known as 'inter-service consultation';
- finally, the draft decision would be laid before the European Parliament for any comments prior to its being formally published in the Official Journal.

The delegates from the Bailiwick were advised that the soonest that they could expect the official decision would be by the end of the year, on the assumptions that no delays were encountered in this comitology process.

The fact that the official decision was indeed published in the Official Journal on 25 November means that the finding of adequacy for the Bailiwick represents the fastest adequacy decision taken by the Commission to date.

It is to be hoped that the process used for Bailiwick will be able to be used as a means of expediting similar decisions for the other Crown Dependencies.

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### **International Working Group on Data Protection in Telecommunications**

The Commissioner [also representing Jersey and the Isle of Man] attended the 33<sup>rd</sup> meeting of this group that was held in Zurich in March 2003.

The main topics for discussion centred on developments in e-government and the privacy aspects of the Internet and of Mobile Communications. The topics being addressed by the Working Group included:

- Regional availability of documents on the Internet as opposed to global availability;
- Prevention of unsolicited e-mail ("spam");
- Media privilege and privacy;
- Intrusion detection systems;
- The ENUM protocol for Internet-based telephony.

The 34<sup>th</sup> meeting was held in Berlin in September and was attended by the Assistant Supervisor from the Isle of Man, who was also asked to represent the Bailiwick.

A particular topic at this meeting concerned the privacy aspects of 'RFID' tags; this new technology offers the possibility that individual articles may be tagged with unique codes that would permit them to be tracked not only during manufacture but also after purchase.

A draft resolution on RFID was prepared for consideration by the Annual conference in Sydney and then refined following comments received thereafter. The final version of this resolution is reproduced on page 34.

### **European Spring Conference**

The Spring Conference of European Data Protection Commissioners was held in Seville, Spain on 3-4 April 2003. It was attended by eighty-eight delegates from twenty-five European data protection supervisory authorities, the European Commission, the Council of Europe and the Data Protection Secretariat. The Bailiwick of Guernsey was represented by Assistant Data Protection Commissioner, Anne Wiggins, who was also asked to represent Jersey and the Isle of Man.

The conference was structured into 6 sessions, the first five sessions concentrated on specific topics and the last session was devoted to general topics:

*Session 1 – "Roles of Data Protection Authorities"*

*Session 2 – "Implementation of Directive 95/46/EC"*

*Session 3 – "The current situation of data protection in candidate countries"*

*Session 4 – "International transfers of personal data"*

*Session 5 – "Data protection in the Telecommunications Sector"*

*Data Protection Commissioner's Annual Report for 2003***British and Irish Data Protection Authorities**

This meeting of the supervisory authorities from the UK, Ireland and the Islands was held in Wilmslow on 23<sup>rd</sup> July and chaired by the UK Information Commissioner. It was an opportunity to meet the regional assistant commissioners for Northern Ireland and Wales, whose offices were in the process of being established.

The items covered in the meeting included:

- The Privacy and Electronic Communications Directive;
- Citizen identity and e-government;
- Know Your Customer;
- Biometrics and genetic information.

**Rights to Privacy**

This seminar entitled "Privacy: Thai and Farang [foreign] experiences" was hosted by the Thailand Office of the Information Commission in Government House, Bangkok on 2 September.

The Commissioner and the Jersey Registrar had been invited to lead the seminar by presenting the way in which the Channel Islands had addressed compliance with European directives on privacy and data protection. The seminar was well attended and included the government lawyer who was drafting the Thai Data Protection Law.

The illustration opposite shows the Guernsey Commissioner and the Jersey Registrar, with Mr. Niti Wirudchawong, the organiser of the seminar, preparing the material in Government House.



The ensuing debate highlighted some cultural differences between Western and Asia/Pacific societies that can pose difficulties with privacy legislation that is concerned with personal data. Asian culture tends to value the rights of the family higher than those of the individual, leading to potential conflict with the traditional Western view of individual privacy and subject access rights.



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### **The Body as Data**

This international conference, on the Data Protection implications of Genetics and Biometric Data was held in the impressive 'BMW Edge' conference centre in Melbourne, Victoria on 8<sup>th</sup> September and attended by about 140 delegates, about half of whom were from Australasia.

The conference included papers on the privacy aspects of genetics and biometrics and the Commissioner was invited to participate as a member of the "panel of experts" that facilitated the discussion session following the presentation of papers.



Picture courtesy of the Victoria Privacy Commissioner

Further details of the conference are available on [www.privacy.vic.gov.au](http://www.privacy.vic.gov.au) by following the 'conferences' link.

### **25<sup>th</sup> International Conference of Data Protection Authorities**

This annual conference was held from 10-12 September 2003 at the Convention centre in Darling Harbour Sydney. It was attended by over 360 delegates, comprising Data Protection and Privacy Commissioners from Europe, Asia, the Americas and Australasia, representatives from a number of other countries that were in the process of implementing privacy legislation and many interested parties from government and commerce in Australia.

The theme of the conference was "Practical Privacy for people, government and business", the aim being to get Data Protection and Privacy Commissioners, and other government regulators, practitioners, analysts and consumers talking together about what makes good privacy, where the problems are and where the opportunities are to implement good privacy practice.

Full details of the conference may be found on the internet site:

<http://www.privacyconference2003.org>

The public sessions were followed by a closed session of accredited Commissioners, in which the Guernsey Commissioner participated and at which Resolutions were made on:

1. Improving the communication of data protection and privacy information practices;
2. The Transfer of Passengers' Data;
3. Data Protection and International Organisations;
4. Radio-Frequency Identification;
5. Automatic Software Updates.

*Data Protection Commissioner's Annual Report for 2003***Improving the communication of data protection and privacy information practices**

1. The conference calls the attention of organisations, in both public and private sectors, to the importance of:
  - improving significantly their communication of information on how they handle and process personal information;
  - achieving global consistency in the way they communicate this information;
 and by these means
  - improving individuals' understanding and awareness of their rights and choices and their ability to act on them; and
  - putting an incentive on organisations to improve, and make more fair, their information handling and processing practices as a consequence of this awareness.

[N.B. the remainder of this conference resolution is available on:

<http://www.privacyconference2003.org/commissioners.asp> ]

**The Transfer of Passengers' Data**

A. The Conference notes that:

1. In the course of the legitimate struggle against terrorism and organized crime measures are being considered in some countries that could threaten fundamental rights and freedoms, in particular the right to privacy.
2. There is a danger of undermining democracy and freedom by measures designed to defend it.
3. Legal requirements on airlines and other transports to provide access to, or transfer data from, comprehensive passenger data stored in reservation systems could conflict with international data protection principles or those providers' obligations under national data protection laws.

B. The Conference therefore affirms that:

1. In the fight against terrorism and organized crime, countries should determine their responses paying full regard to fundamental data protection principles, which are integral parts of the values being defended.

Where regular international transfers of personal data are necessary, they should take place within a framework taking data protection into account, e.g. on the basis of an international agreement stipulating adequate data protection requirements, including clear purpose limitation, adequate and non-excessive data collection, limited data retention time, information provision to data subjects, the assurance of data subject rights and independent supervision.

*Data Protection Commissioner's Annual Report for 2003***Data Protection and International Organisations**

The conference calls upon:

- (a) international and supra-national bodies to formally commit themselves to abiding by principles that are compatible with the principal international instruments dealing with data protection and privacy;
- (b) international and supra-national bodies that hold or process personal data to establish appropriate mechanisms to ensure compliance with applicable data protection principles, such as the establishment of internal but operationally independent supervisory authorities with control powers;
- (c) international and supra-national bodies that have a role in promulgating standards, rules or common practices which affect personal data handling within the jurisdictions of their constituent members to develop and adopt suitable mechanisms to ensure that data protection considerations are effectively taken into account, such as the use of privacy impact assessments and consultation with recognised data protection authorities;

and requests the host of the 25<sup>th</sup> International Conference to draw this resolution to the attention of the relevant bodies.

**Radio-Frequency Identification**

The Conference highlights the need to consider data protection principles if RFID tags linked to personal information are to be introduced. All the basic principles of data protection and privacy law have to be observed when designing, implementing and using RFID technology. In particular

- a) any controller – before introducing RFID tags linked to personal information or leading to customer profiles – should first consider alternatives which achieve the same goal without collecting personal information or profiling customers;
- b) if the controller can show that personal data are indispensable, they must be collected in an open and transparent way ;
- c) personal data may only be used for the specific purpose for which they were first collected and only retained for as long as is necessary to achieve (or carry out) this purpose, and
- d) whenever RFID tags are in the possession of individuals, they should have the possibility to delete data and to disable or destroy the tags.

These principles should be taken into account when designing and using products with RFID.

*Data Protection Commissioner's Annual Report for 2003***Automatic Software Updates**

1. The Conference notes with concern that software manufacturers worldwide increasingly use non-transparent techniques to transfer software updates to users' computers. In doing so they

- can read and collect personal information stored on the user's computer (e.g. browser settings, and information on the user's browsing habits) without the user being able to notice, to influence or to prevent it,
- may gain at least partial control over the target computer thereby restricting the ability of the user to meet his legal obligations and responsibilities as a controller to ensure the security of any personal data he may be processing,
- change the software installed on the computer which will then be used without any required testing or clearance and
- may bring about malfunctions in the updated computer without the possibility to identify the update as the cause.

This may cause particular problems in government institutions and private companies to the extent that they are under specific legal obligations how to process personal information.

1. The Conference therefore calls on software companies
  - a. to offer procedures to update software online only at the user's initiative or request, in a transparent way and without allowing unchecked access to the user's computer;
  - b. to ask for the disclosure of personal data only with the informed consent of the user and insofar as it is necessary to carry out the online update. Users should not be forced to identify (as opposed to authenticate) themselves before they can initiate the download process;
  - c. to provide for freedom of choice by offering online updates only as an alternative to other (offline) means of software distribution such as CD-ROM.
3. The conference encourages the development and implementation of techniques to update software which respect the privacy and autonomy of computer users.

*Data Protection Commissioner's Annual Report for 2003***Liaison with the UK Government**

Staff of the then Lord Chancellor's Department ("LCD") hosted a meeting for the Data Protection authorities from Guernsey, Jersey and the Isle of Man ("the Islands") at the end of April 2003.

The main topic of discussion was the implementation of the European Directive on Privacy and Electronic Communications (2002/58/EC), for which a representative from the Department of Trade and Industry was present.

It was made clear that access to the telephone and fax preference service opt-out lists from the Islands was essential in order to ensure that unsolicited communications emanating from the Islands could be properly regulated.

Also discussed were the responses to the LCD Consultation Paper on Subject Access and progress by the European Commission with the adequacy assessments of the Islands' Data Protection régimes.

The staff from the LCD updated the Island authorities on other developments in the EU and in the Council of Europe. Mention was made of the possibility of a free-standing provision on Data Protection in discussions being undertaken on a revised treaty proposed under the Convention on the Future of Europe.

Following the reorganisation of government in the UK, the Lord Chancellor's Department was renamed the Department for Constitutional Affairs.

Responsibility for Freedom of Information, Data Protection and Data Sharing now rests with the Information Rights Division within the Constitution Directorate of that department.

The department has moved to the MWB Business Exchange in Greycoat Place, but the senior staffing is unchanged and continues to be an invaluable source of assistance on UK government policy and on European and international developments.

*Data Protection Commissioner's Annual Report for 2003***OBJECTIVES FOR 2004***Legislation*

Completion of the drafting of regulations that implement the European Directive 2002/58/EC with the aim of commencing these regulations in the first half of the year.

Completion of the Statutory Code of Practice on the Disclosure of Criminal Convictions in connection with Employment and commencement of section 56 of the Data Protection Law.

Considerations of any recommendations that may arise from reviews of the UK Act or legislative developments elsewhere.

*Adequacy Determination*

Ensuring that the European Commission's adequacy finding for the Data Protection régime in the Bailiwick is respected and that international data transfers comply with the eighth Data Protection principle.

*International Liaison*

The Commissioner will liaise with the Jersey Registrar, the Isle of Man Supervisor and attend meetings with officials from the UK Department of Constitutional Affairs and with the British and Irish Commissioners as issues arise. Attendance at relevant UK and international conferences will continue as a means of maintaining the international recognition of the Bailiwick and updating our knowledge of international developments.

*Raising Awareness*

Continuation of the media awareness campaign and the mounting of seminars and talks for the public and private sectors.

Collaboration with the Training Agency with the aim of assessing the feasibility of running courses leading to formal qualifications in data protection, such as the ISEB Certificate.

Promotion of relevant training using UK specialists, with training being targeted separately to financial sector organisations, other private sector organisations and the public sector.

*Compliance*

Targeted compliance activities will be organised to increase the notification level of local organisations. More rigorous enforcement will take place, including consideration of prosecution of non-compliant organisations.

*Government*

Further advisory work will be undertaken, specifically as a consequence of the Commissioner's advisory role in relation to the States Digimap Management Board and the Commissioner's and Assistant Commissioner's participation in a number of other ad-hoc data sharing groups.



*Data Protection Commissioner's Annual Report for 2003***FINANCIAL REPORT**

The Data Protection Office is funded by a grant from the Advisory and Finance Committee that is based on a budgetary estimate of expenditure prepared annually by the Commissioner.

In accordance with Section 3 of Schedule 5 of the Law, all fees received are repaid into the General Revenue Account.

The Data Protection Office's Income and Expenditure, which are included within the accounts for the Advisory and Finance Committee, have been as follows:

<b><u>INCOME</u></b>	<b>2003</b>	<b>2002</b>
	<b>£</b>	<b>£</b>
Data Protection Fees <sup>1</sup>	23,937	5,902
<b><u>EXPENDITURE</u></b>		
Rent	15,526	22,853
Salaries and Allowances	114,988	120,014
Travel and Subsistence <sup>2</sup>	15,648	13,219
Furniture and Equipment <sup>3</sup>	33,045	11,020
Publications	3,255	2,693
Post, Stationery, Telephone	5,295	3,919
Heat Light, Cleaning	5,366	4,015
<b>TOTAL EXPENDITURE</b>	<b>£193,123</b>	<b>£177,733</b>
<b>EXCESS OF EXPENDITURE OVER INCOME</b>	<b><u>£169,186</u></b>	<b><u>£171,831</u></b>

**NOTES**

<sup>1</sup> Fees were £35 per notification or renewal of a notification.

The Income for 2003 includes accrued income which was received during 2002 of £12,644 from triennial registrations and renewals under the 1986 Law and [from August 2002] annual notifications under the 2001 law. The income for 2002 did not include any income accrued from previous years.

The cash received for 2003 was £26,285 representing the 751 annual notifications and renewals that were processed during 2003.

<sup>2</sup> This also includes an apportionment of the costs associated with the Data Protection Conference held in Guernsey of £3,740.

<sup>3</sup> This includes one-off costs of £8,160 incurred in the upgrading of the Notification System to deal more effectively with renewals and a £13,600 recovery of the development costs of the notification system originally funded in 2002 directly from the Advisory and Finance Committee's unspent balances.

*Data Protection Commissioner's Annual Report for 2003***THE DATA PROTECTION PRINCIPLES**

1. Personal data shall be processed fairly and lawfully and special conditions apply to the processing of sensitive personal data.
2. Personal data shall be obtained for one or more specified and lawful purposes.
3. Personal data shall be adequate, relevant and not excessive in relation to the purposes for which they are processed.
4. Personal data shall be accurate and kept up to date.
5. Personal data shall not be kept for longer than necessary.
6. Personal data shall be processed in accordance with the rights of data subjects.
7. Technical and organisational measures shall be taken against unauthorised or unlawful processing and against accidental loss or damage to personal data.
8. Personal data shall not be transferred to a country or territory outside the Bailiwick unless the destination ensures an adequate level of protection for the data.

Further information about compliance with the Data Protection (Bailiwick of Guernsey) Law 2001 can be obtained via:

E-mail address: [dataprotection@gov.gg](mailto:dataprotection@gov.gg)  
Internet: [www.dataprotection.gov.gg](http://www.dataprotection.gov.gg)  
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