

**HOUSING COMMITTEE STRATEGIC POLICY REPORT
2002 – 2006 (P.2/2002): SECOND AMENDMENT**

**Lodged au Greffe on 14th May 2002
by Deputy J.A. Martin of St. Helier**



STATES OF JERSEY

STATES GREFFE

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HOUSING COMMITTEE STRATEGIC POLICY REPORT
2002 - 2006 (P.2/2002): SECOND AMENDMENT

Insert in paragraph 1, after sub-paragraph (f) a new sub-paragraph (g) -

- (g) to agree that, prior to any sale or transfer of social rented housing to a Housing Trust or Association or similar body, there shall be a formal consultation process, to include a ballot (or another appropriate method) to establish whether tenants are in favour of such sale or transfer.

Re-letter the remaining sub-paragraphs.

DEPUTY J.A. MARTIN OF ST. HELIER

REPORT

The purpose of the amendment is to ensure that States tenants are consulted and that it is explained to them what any sale or transfer of the property in which they reside would mean, should the social rented housing stock be sold or transferred from the States to another body. I am also recommending that a ballot should be conducted to establish whether the tenants support the transfer. This action has been commonplace for many years in the United Kingdom, and has been carried out to ensure that such transfers are best value and have the support of the tenants. In the United Kingdom, the ballots are carried out by an independent body, Electoral Reform Ballot Services Limited.

Local government authorities receive guidance on the consultation exercise which should be carried out, and a recent update has been issued which, for ease of reference, I copy below -

**“Department for Transport,
Local Government and the Regions**

Housing Transfer Guidance 2002 Programme

SECTION 11

The consultation exercise

Key points
<ul style="list-style-type: none">• An authority is legally required to consult all tenants whose homes would be transferred.• The formal consultation requirements involve the issue of a ‘Stage 1’ consultation document followed by a ‘Stage 2’ notice.• As a minimum, an authority should follow DTLR good practice guidance in drawing up its consultation material.• Transfer cannot go ahead if the majority of tenants are opposed to it.• A ballot is considered a good way of establishing tenants’ views, although we are willing to consider other methods.• An authority is advised to wait until it has a place on the LSVT Programme, or agreement to develop an SSVT proposal further, before commencing formal consultation.• In order to reflect the views of tenants resident at the time of transfer, the authority should seek to minimise the period of time between the ballot and the proposed date of transfer.• If the period between ballot and the proposed date of transfer extends beyond 12 months, a further ballot may be required.

- 11.1 A transfer cannot go ahead unless the authority has consulted the tenants whose homes would transfer and it has been demonstrated that a majority are not opposed. The authority is legally required to make an ‘offer’ to all tenants whose homes would transfer during what is known as the ‘formal consultation’ period. In practice, we expect the formal consultation to be preceded by ‘informal’, i.e. non-statutory, consultation when the authority introduces and explains its proposals.
- 11.2 The consultation requirements are described below. In 1999, we issued some good practice guidance on formal tenant consultation material based on feedback from tenants who had gone through the transfer process. This is at Annex P; it has been updated to take account of the Government’s rent reforms and various good practice issues.
- 11.3 In carrying out the consultation exercise, authorities should also adhere to the *Code of Recommended Practice on Local Authority Publicity* given in Department of the Environment Circular 20/88. This allows the authority to explain and justify its proposals and ensures that publicity concentrates on facts or explanation or both. It does not, however, oblige the authority to publish the views or opinions of those opposed to transfer or to fund the publication of such views or opinions.

TENANTS' CONSULTATIVE GROUPS

- 11.4 Tenants' consultative groups can provide a forum for the exchange of ideas. The constitution, remit and funding of such groups should be agreed at the outset. In particular, any arrangements for publicising the views or opinions of consultative groups should be carefully considered, and the provisions of the *Code of Recommended Practice on Local Authority Publicity* should be followed in any publicity issued with the aid of local authority assistance.

MULTI-LINGUAL CONSULTATION MATERIAL

- 11.5 English may not be the first language of many tenants and an authority should therefore consider the need to produce its consultation material in a number of languages to ensure that all tenants are fully able to understand the implications of the transfer. The range of languages will of course be dependent on the ethnic mix of the tenants involved.

INFORMAL CONSULTATION

- 11.6 As detailed in Section 4, as well as involving tenant representatives in the decision to pursue transfer and in selecting the prospective new landlord, the authority should aim to keep all tenants informed of the proposals from an early stage. This process should have started well before an application for the LSVT Programme, or initial information on a proposed SSVT, is submitted. Indeed, one of the information requirements at the application stage is the level of tenant support for the proposals; we would want to see that tenants are not entirely against the concept of transfer.

- 11.7 Experience has shown that there is no one best way to consult tenants, and the techniques used should be tailored to individual circumstances, including the number of properties involved and the geographical spread of tenants. The aim of the exercise should be to give tenants the necessary information to make a well informed and genuine choice. The following points should be borne in mind:

- it is important that all material issued should be accessible, clear and accurate (the authority should correct inaccuracies whatever the source);
- it should not over simplify the issues at the expense of accuracy and should look at the case for and against transfer;
- the information should explain the consequences of staying with the authority and of transferring;
- the council should state clearly why it is offering the option to transfer, but tenants must be given sufficient information to enable them to decide whether they agree with the council's point of view;
- any promises regarding repairs and improvements or future service standards should be unambiguous and made in the secure knowledge that they can be fulfilled;
- promises made at the informal consultation stage should normally be carried forward to the formal consultation. If they are not, any changes must be clearly indicated and explained.

- 11.8 When involving tenants in the decision making process, it is important that all the options for further investment in, and management of, the housing are set out. It is important that tenants should at all times have access to information on the range of investment and ownership options. This is best achieved by ensuring that a full set of information and formal consultation material issued is held by the tenants' organisations, local housing offices and the Independent Tenant Adviser.

Methods of Informal Consultation

- 11.9 Research indicates that, whilst written material is important in helping tenants to make up their minds, a range of methods should be employed to ensure different sections of the community are aware of the proposals and the issues. Pamphlets, leaflets, posters, press advertisements, newsletters, meetings, door-knocking, exhibition caravans and telephone hot-lines have all been used by authorities in the past (a more comprehensive list of possible methods is in Annex E).
- 11.10 Newsletters have been particularly valuable in explaining the transfer proposals step by step, and enable an

authority to give straightforward answers to the questions asked by most tenants.

- 11.11 Public meetings or exhibitions and door-knocking provide valuable opportunities for face to face contact. Factual briefing of key personnel such as carers, wardens and other members of council staff who come in to day to day contact with tenants can also be helpful in explaining proposals and reassuring tenants. Other key organisations such as residents' associations and individuals such as community elders should be involved from the start. These are often key opinion shapers who must have a clear understanding of the proposal from the investment appraisal stage.
- 11.12 In many authorities, the production of a short video explaining the transfer proposal has also been helpful. It enables the authority to provide information in a format that is easily accessible to most tenants.
- 11.13 Where TMOs exist or are proposed, these should be involved from the outset. It is essential that they have a clear understanding of what is proposed and how the interests of their TMO will be protected. In particular, the TMO will want to consider the implications for the housing management responsibilities it carries out under its management agreement with the authority.
- 11.14 An authority must present an accurate picture to the tenants about the transfer proposal and the implications of staying with the council, but it should not seek to persuade tenants to vote one way or the other. The prospective new landlord can, however, explain to tenants the benefits of transfer, providing its material is fair and accurate (see paragraph 11.15 below).

The Role of the Prospective New Landlord

- 11.15 The prospective landlord may also produce material for tenants, to supplement and complement that produced by the authority. As a guide, once the authority has effectively launched the transfer proposal, the prospective new landlord (even if it is a shadow organisation) should consider sending additional material. This will allow the tenants to get an understanding of the nature of the organisation, its structure, ethos, objectives and what it has to offer. Where the prospective new landlord already owns or manages stock, it may be useful to refer to its track record elsewhere.
- 11.16 The Department expects the distribution of new material by the prospective new landlord to stop once the Stage 1 formal consultation material has been delivered. However, material can be sent from the prospective new landlord to correct inaccuracies.

THE FORMAL CONSULTATION REQUIREMENTS

- 11.17 The formal consultation requirements are set out in section 106 of and Schedule 3A to the Housing Act 1985 (as inserted by section 6 of and Schedule 1 to the Housing and Planning Act 1986). The required process has two stages

Stage 1 Notice

- 11.18 The authority must first serve a notice on its secure tenants and those with an introductory tenancy setting out:
- the details of the transfer proposal, including the identity of the prospective new landlord(s);
 - the likely consequences of the transfer for the tenant; and
 - the effect of the provisions of Schedule 3A (i.e. the consultation requirements) and the provisions inserted by section 8 of the 1986 Act (i.e. the preserved right to buy).
- 11.19 This notice is usually referred to as the "formal consultation" or "offer" document. It must invite representations within "a reasonable period", which we consider to be at least 28 days. The authority is required to consider any representations made within that period and may wish to revise its proposals accordingly. Where the authority proposes to change the terms of the offer following Stage 1, the revised terms must be clearly set out in the Stage 1 notice.

Stage 2 Notice

- 11.20 The authority is required to serve a further written notice:
- describing any significant changes in the proposal;

- saying that objections may be made to the Secretary of State within 28 days or a specified longer period; and
- drawing attention to the fact that the Secretary of State will not give his consent to a transfer if it appears to him that the majority of tenants are opposed to the transfer.

11.21 We would normally expect the ballot to commence immediately after the issue of the Stage 2 notice and the 28 days, or other specified period, in which objections may be made to the Secretary to State, to run concurrently with the ballot (see paragraph 11.25 below).

The Structure and Content of the Formal Consultation Document

11.22 An authority should draw up its formal consultation document in accordance with the good practice guidance at Annex P. The document should set out clearly the terms of the proposed transfer including tenants' rights under the assured tenancy regime; it should compare those rights to the rights of secure tenants. The document should explain that, although transferring tenants will have broadly similar rights, some rights will be lost while others will be provided by contract rather than by statute. Any promises made at the informal consultation stage should be incorporated into the formal consultation material.

ESTABLISHING TENANTS' VIEWS

11.23 The Secretary of State cannot grant consent to transfer if it appears to him that the majority of the tenants are opposed to it. Whilst not a legal requirement, we consider that a properly conducted formal ballot, carried out under the auspices of an independent body, is an effective way in which an authority can satisfactorily demonstrate that a majority of tenants are not opposed to the transfer.

11.24 Where an authority wishes to use an alternative method of establishing tenants' views, it will be required to make a case to the Department and demonstrate why a ballot would not meet its needs.

A BALLOT OF TENANTS

11.25 Where an authority conducts a ballot, in general we would expect it to commence immediately after the Stage 2 notice had been issued. The 28 day or longer period specified for the making of objections to the Secretary of State (see paragraph 11.21 above) can run concurrently with the period for voting in the ballot.

11.26 We consider that a simple majority of those voting in favour is sufficient to indicate tenant support for a transfer. However, an authority may wish to impose a more stringent test. The Stage 1 and Stage 2 notices should give an indication of the likely timing of the ballot and explain the mandate from tenants required by the authority to proceed with its proposals which should bind the authority's future action.

11.27 The ballot paper should be delivered to each tenant under separate cover from any consultation material. During the ballot period, an authority should generally refrain from issuing any further material about the proposed transfer. However, there may be instances where the authority considers it reasonable to clarify certain aspects, for example where a tenants' organisation or anti-transfer group has made inaccurate claims about the process, and an authority may wish to issue a statement which addresses the points made. It should not, however, raise any new issue.

11.28 The authority should inform the HAPF policy adviser of the result of the ballot as soon as it is known. If the majority are in favour, and the authority decides to proceed with the transfer, formal notification of the ballot result will be required in support of the consent application.

WHO SHOULD BE CONSULTED?

11.29 The statutory consultation procedures are concerned solely with secure tenants or those with an introductory tenancy. This will include tenants against whom there is a suspended possession order, unless that tenant is not complying with the order and the authority has taken steps to have a date set for possession. There are likely to be occasions when someone takes up a new tenancy during the formal consultation period. Provided that they have taken up their tenancy before the Stage 2 notice has been issued, they should be included in the ballot.

Leaseholders

11.30 There are no statutory requirements for consulting long leaseholders (i.e. people who have exercised their Right to

Buy (RTB) on a long leasehold basis or have bought from those who have exercised their RTB) as the terms of their lease would not change if the freehold transferred to an RSL. However, an authority should involve leaseholders in the transfer proposal, particularly if the transfer would result in their being asked to pay a larger than normal amount towards the cost of repairs or improvements, for example to communal areas of blocks of flats.

11.31 Leaseholders should be kept informed of progress on the transfer proposal and told that they may make any objections to the transfer to the Secretary of State, who will take them into account when making his decision on the consent application. Where there are significant numbers of leaseholders, the authority should consider producing a separate leaseholder information pack.

11.32 Although an authority may, in order to ascertain their views, ballot leaseholders about a transfer proposal, it is not obliged to do so and it should conduct such a ballot as a separate exercise to ensure that tenants' views can be clearly demonstrated.

Other Groups

11.33 An authority may wish to seek the views of other groups affected by the transfer proposal, for example occupiers of leased premises and hostels, but should make clear how these views will be taken into account. Whilst we encourage the consultation exercise to involve early discussions with any existing Tenant Management Organisation (TMO), tenants whose property is managed by a TMO should not be balloted separately from other tenants as all secure tenants should have the right to vote individually rather than as representatives or members of a specific organisation.

TIMING OF FORMAL CONSULTATION AND BALLOT

11.34 The aim of the formal consultation exercise is to seek tenants' views on the terms of the proposed transfer. It is important that the information given to tenants and promises made regarding future policies on rent and repairs and levels of service are well founded. Formal consultation should not start, therefore, until the authority is sure that its proposal accords with the policy set out in this guidance. We consider that securing a place on the LSVT Programme, or DTLR agreement to develop a proposed SSVT further, is the best way of confirming this to be the case.

11.35 An authority which decides to hold a ballot prior to this does so at its own risk and should note that a vote in favour will not guarantee a place on the LSVT Programme or that agreement to proceed with an SSVT proposal will be given. In any event, the authority should not start consultation until it has valued the property and has a clear understanding of the nature of the repair and improvement package and the service that would be provided by the prospective new landlord. Should consideration of the details of a transfer proposal reveal aspects which do not comply with policy, further consultation may well be required before the transfer can proceed.

11.36 In order to ensure that it reflects the views of tenants resident at the time of transfer, an authority should seek to minimise the time between ballot and the transfer. Ideally it should be no more than 6 months. In cases where the period between the ballot and completion of the transfer extends beyond six months, which may be the case in some of the more complex urban transfers, the Secretary of State will take a view on whether the original ballot reflects the views of current tenants and may require that further consultation be undertaken. Normally, a period of up to 12 months will be accepted. Where the period extends beyond 12 months, a further ballot may be considered necessary.

.....”

The Methods of Informal Consultation are less relevant to Jersey, but, for example, the section relating to leaseholders may be relevant to those occupiers of property at Les Quennevais who have 99 year lease properties.

As in the United Kingdom, I recommend that all ballots should be conducted by an independent person/body.

I have also appended for information the following documents -

Appendix A - Department for Transport, Local Government and the Regions - Housing Transfer Guidance 2002 Programme, extract from Section 1 (the full text is available at- www.housing.dltr.gov.uk/transfers/guidance2002) see especially the paragraph relating to 'trickle transfer'.

Appendix B - Department for Transport, Local Government and the Regions - Independent Tenant Advisors and Stock Transfers: A Good Practice Guide, extract from Chapter 3 (the full text is available at- www.housing.dltr.gov.uk/transfers/ita).

Financial and manpower implications for the States

Tenants currently receive newsletters on matters of interest from the Housing department through the estate caretaker. The process of consultation with tenants could be dealt with in the same way at minimal cost. It would be appropriate to hold one or two public meetings, where the costs would relate to the hire of venues. A greater cost would be incurred by holding a ballot conducted by a private company. There is no company in Jersey that specialises in such ballots as far as I am aware, but the Electoral Reform Ballot Services Limited has undertaken to provide me with an estimate on the basis of 5,000 homes and I will notify members of this amount prior to the debate.

There will be manpower consequences involved in this process, but I do not believe it to be significant bearing in mind the small numbers of tenants concerned.

Conclusion

The purpose of this proposition is to put in place an appropriate procedure to provide that States tenants shall be consulted about any proposals to sell or transfer their homes to an association or housing trust or similar body, and to obtain their agreement, in common with established good practice in the United Kingdom.

**“Department for Transport,
Local Government and the Regions**

Housing Transfer Guidance 2002 Programme

SECTION 1**Introduction****THE PURPOSE OF THIS GUIDANCE**

- 1.1 This document provides guidance on housing transfer, i.e. the transfer of ownership and management of all or part of a local authority’s housing stock to a registered social landlord (RSL). It applies to proposed transfers of housing which has a positive value and which would provide the authority with a capital receipt, as well as to proposed transfers of stock with a negative value which the authority is proposing to fund from its Housing Investment Programme (HIP), from an existing RSL or other source such as the New Deal for Communities programme.
- 1.2 As well as detailing Government policy on housing transfer and providing examples of good practice, this document sets out the procedure by which an authority should make an application to the Department for Transport, Local Government and the Regions (DTLR) for a place on the 2002 Large Scale Voluntary Transfer Programme or submit details of a proposed Small Scale Voluntary Transfer (SSVT).
- 1.3 This guidance also explains how an authority should consult its tenants on a transfer proposal and, subject to tenants indicating that they are in favour of transfer, how it should apply for the Secretary of State’s consent to the transfer under sections 32-34 and/or 43 of the Housing Act 1985.
- 1.4 This guidance replaces the Department’s *Housing Transfer Guidelines (1998)* and incorporates advice contained in the *Guidance for Applicants to the 2001/02 Transfer Programme*. It also contains guidance previously contained in *SSVTs - Guidance to local authorities* and *The structure, presentation and content of consultation documents - good practice guidance*. As such, it can be considered the definitive guidance to authorities considering undertaking a housing transfer in 2002/03. It will also be of interest to tenants of authorities that are considering transfer and to prospective recipient landlords.

PROPOSED LARGE SCALE VOLUNTARY TRANSFER

- 1.5 Where the conclusion from an authority’s investment appraisal is that it should carry out a Large Scale Voluntary Transfer (LSVT), i.e. the transfer of more than 499 tenanted and leasehold properties to a single RSL over a five year period, it must first secure a place on an LSVT Programme. The LSVT Programme application process ensures that the Department receives details about a proposed LSVT, so that we can then check to see that they accord with Government policy, and that tenants would be consulted on a proposal which the authority would be able to deliver.
- 1.6 The LSVT Programme is essentially a list of authorities which have DTLR agreement to consult tenants formally and which may, subject to the majority of tenants not being opposed, submit an application for the Secretary of State’s consent to the transfer, with a view to completing the transfer within the proposed two (financial) years the particular Programme covers. The application process for the 2002 LSVT Programme is described in Section 9 of this guidance.

PROPOSED SMALL SCALE VOLUNTARY TRANSFER

- 1.7 Although a proposed Small Scale Voluntary Transfer (SSVT), i.e. the transfer of 499 or fewer properties, does not require a place on an LSVT Programme, that is essentially the only difference between a proposed SSVT and a proposed LSVT. As detailed in Section 10, an authority proposing an SSVT is required to provide the Department with information about the proposal, which we can check to see that the proposal accords with policy and would be deliverable. Subject to it being so, we then give our agreement for the authority to develop the proposal further and consult tenants formally.

PROPOSED TRICKLE TRANSFER

- 1.8 A trickle transfer occurs when an authority arranges to transfer a small number of its properties to an RSL as and

when they become vacant. The Secretary of State is unlikely to agree to large scale trickle transfers because they avoid the need for a tenants' ballot and thereby run counter to the principle that tenants should be in favour before transfer proceeds. Ministers have also not been keen on small scale trickle transfers, because of the uncertainty of how frequently properties will become available for transfer, thus making financial and management planning difficult for the purchasing RSL. Nevertheless, each case will be considered on its own merits, from both an economic and a strategic point of view. An authority proposing to enter into a trickle transfer agreement must first submit details to Martin Webb or Katy Crossthwaite.

.....”

**“Department for Transport,
Local Government and the Regions**

Independent Tenant Advisors and Stock Transfers:

A Good Practice Guide

CHAPTER 3

The stock transfer process

INTRODUCTION

- 3.1 No two stock transfers are the same. What happens with the stock and the tenants and leaseholders can be very different from one case to another. The level of tenant participation before the transfer is proposed, the length of time the local authority has spent working with tenants to prepare the way for transfer, and what the tenants need from a Tenant Advisor will also vary from case to case.
- 3.2 This section looks at existing policies that will influence the approach to stock transfer.

BEFORE STOCK TRANSFER

- 3.3 Consulting tenants about a wider set of options for their area is not a major focus of this ITA guide. However, local authorities are undertaking business planning at present which may involve consideration of stock transfer. DTLR is considering whether there is a need to provide further guidance for local authorities in developing Housing Revenue Account Business Plans and exploring the most effective ways of engaging tenants in that debate.
- 3.4 There is no set time for this period of preparation but the way it is conducted, the local authority's tenant participation strategy, its approach to Best Value and the nature of its' Tenant Participation Compacts can play a significant part in how it works with tenants during later stages.

PRE-BALLOT STAGE

- 3.5 Pre-ballot describes the stage at which the local authority has officially proposed a stock transfer but before tenants have voted on the proposal.
- 3.6 The local authority must submit its proposal to the DTLR and if it covers more than 499 properties, must get a place on the Annual Stock Disposal Programme. Once accepted onto the programme, the local authority can find detailed guidance on how to proceed with the stock transfer process in the DTLR's *Housing Transfer Guidance - 2002 programme*.

AFTER THE BALLOT

- 3.7 If tenants vote in favour of stock transfer, there is a post-ballot period where further detailed negotiation and legal and financial work takes place. This stage usually lasts no more than six months, during which the new landlord must register with the Housing Corporation (the regulator of 'registered' new social landlords), and the local authority must get DTLR consent to formally transfer.
- 3.8 If tenants vote against stock transfer, the Secretary of State cannot consent. Tenants therefore play an important role in the process and should be involved at all stages.....”

