

STATES OF JERSEY



SINGLE QUALIFIED PROPERTY CLASSIFICATION: RESCINDMENT OF DECISION AND DEBATE

**Lodged au Greffe on 3rd February 2010
by Senator B.E. Shenton**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to request that the Minister for Housing –

- (a) rescind MD-H-2010-0001 in which he introduced a new policy on a single qualified property classification to replace the current 1(1)(a) – (h) and 1(1)(a) – (j) classifications (except for social and supported housing); and
- (b) bring forward for debate a report and proposition in order that the matter may be considered by the States Assembly.

SENATOR B.E. SHENTON

REPORT

The Proposition P.25/2005 makes it clear that any changes to the migration policy and supporting regulatory systems would be brought back to the Assembly for consideration. It is on this basis that the proposition was passed in 2005.

This proposition is not about the merits of the actual decision but rather about maintaining the authority of the States Assembly and ensuring that policy changes are subject to robust scrutiny and consideration.

Furthermore it is important that both the exact wording and spirit of propositions are adhered to. As a Chamber we must ensure that we adhere to the rules, regulations and spirit of Government. If important policy changes are transferred to Ministerial Departments and away from the States Assembly it will make a mockery of the democratic process and will be a dangerous path to follow.

Financial and manpower implications

There are no financial or manpower consequences arising from this proposition.

APPENDIX 1

Open e-mail to Greffier of the States (01/02/2010)

Cc All States Members

Dear Michael,

I shall be grateful if you will examine the recent Ministerial Decision to change J Category Licence consents as the Minister, with the support of the Council of Ministers, appears to have acted ultra-vires.

The Minister stated that authority to change policy was given under P25 /2005 which dates back to pre-Ministerial Government.

However the Proposition that was passed by the States Assembly clearly and unequivocally states that permission was given “to bring forward the necessary legal and other measures to give effect to the above **for consideration by the States.**” Clearly this has not happened.

Whilst I do not necessarily disagree with the policy in question the issuing of MD’s which do not comply with the underlying proposition is naturally of serious concern. When MD’s are signed it is important that the interpretation of the authority given by the States Assembly is not open to abuse. Naturally the States Greffe has an extremely important function in relation to compliance and monitoring activities. If a MD has been issued without the necessary sanction of the States Assembly my assumption must be that it is automatically revoked.

As previously stated P25/2005 is very clear in stating that any changes must be put forward **for consideration by the States.**

This is extremely important in respect of the scrutiny process which provides the necessary checks and balances in respect of Ministerial Government.

Many thanks,

Ben Shenton
Senator Ben Shenton

P25 – 2005 PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to refer to their Act dated 7th October 2003 in which they charged the Policy and Resources Committee, in consultation with other Committees as appropriate, to bring forward for approval detailed proposals on migration policy and supporting regulatory systems, and –

- (a) to agree in principle that the States should monitor and regulate the factors that govern migration in the context of the overall population to ensure a balance between economic growth and the demand for and supply of labour, accommodation, infrastructure and resources of the

Island, and promote greater social inclusion, as set out in section 3 of the report of the Policy and Resources Committee dated 18th November 2004;

- (b) to agree in principle to –
1. integrate the policy for housing consent, monitoring employment and regulation of undertakings and development to simplify and streamline the processes involved, as detailed in section 5.1 of the said report;
 2. have only three categories of registration –
 - (i) those who are **entitled**, comprising persons who qualify as local (a-h) under the Housing (General Provisions) (Jersey) Regulations 1970, as amended;
 - (ii) those who become **licensed**, either through gaining a licensed job, including persons who are currently described as (j) category, or (k) category under the 1970 Regulations; and
 - (iii) those who are **registered-only**, equivalent to those who currently do not qualify under the 1970 Regulations;with aligned criteria to access both employment and accommodation, as detailed in section 5.2 of the said report;
 3. link access to accommodation to employment for those who are described as licensed and registered-only in (2) above, as detailed in section 5.3 of the said report;
 4. create a register of the Island population in the three categories: entitled, licensed or registered-only, as detailed in section 5.4 of the said report;
 5. monitor migration and regulate the factors that govern migration through a system of job licensing for employers and overall control of employment, as detailed in section 5.5 of the said report;
 6. designate a single office by July 2005, working with the Housing, Economic Development, Employment and Social Security, and Environment and Public Services Committees, to amalgamate the functions of housing consent, Regulation of Undertakings and Development and Social Security registration;
- (c) to charge the Policy and Resources Committee, in consultation with the Economic Development, Housing, Home Affairs and Employment and Social Security Committees, to bring forward the necessary legal and other measures to give effect to the above **for consideration by the States.**

APPENDIX 2

Decision Summary

Housing Minister

Ministerial Decision

Decision Reference: MD-H-2010-0001			
Decision Summary Title (File Name):	Introducing a single Qualified property classification (as a result of further consultation on the matter and in line with previous States decisions).	Date of Decision Summary:	07/01/10
Decision Summary Author:	Director, Population Office	Decision Summary: Public or Exempt? (State clauses from Code of Practice booklet)	Public
Type of Report: Oral or Written?	Written	Person Giving Oral Report:	N/A
Written Report Title (File Name):	Introducing a single Qualified property classification (as a result of further consultation on the matter and in line with previous States decisions).	Date of Written Report:	04/01/10
Written Report Author:	Director, Population Office	Written Report : Public or Exempt? (State clauses from Code of Practice booklet)	Public
Subject: Introducing a single Qualified property classification (as a result of further consultation on the matter and in line with previous States decisions).			
Decision(s): The Minister approved the introduction of a new policy in respect of property classifications, to enable a single Qualified property classification to emerge (amalgamating the current a – h and a – j property classifications), and directed that the attached Report outlining the new policy should be presented to the States.			
Reason(s) for Decision: To rationalise and simplify a complex system of property classification.			
Resource Implications: None.			
Action required: Officers of the Population Office to: 1. Send the attached Report to the Greffier of the States and ask for it to be lodged 'au Greffe' and presented to the States as an "R" as soon as possible, and; 2. Undertake other such actions as required to present the policies in the public domain.			
Signature:		Position:	
Date Signed:		Date of Decision (If different from Date Signed):	

Report of the Minister for Housing:

Introducing a single Qualified property classification (as a result of further consultation on the matter and in line with previous States decisions)

4th January, 2010

Background

It is proposed that all persons with housing qualifications or permission from the Housing Minister under the Housing (General Provisions) (Jersey) Regulations, 1970, will be able own and occupy any property of their choice. **This single 'Qualified' property classification will replace the current a – h and a – j property classifications.**

The only exceptions to this will be social and supported housing, including first time buyer properties, which will continue to be reserved for persons qualified as a – h; and housing for 1(1)(k) migrants, where specific application will be needed.

This simplification of the controlled classes of property under the Housing Law was proposed in P25/2005, "Migration: Monitoring and Regulation", which was approved by the States by a large majority. This simplification was further outlined in the recent consultation; "Managing Migration; New Mechanisms - Part 2: Managing Access to Employment and Housing".

This proposal will improve a complex and often somewhat arbitrary system without any expected effect on the overall level of property prices, while also reserving social and supported housing for long established residents.

Following the close of the abovementioned consultation, it is noticeable that no substantial objection to the concept of simplifying the property market as controlled by the Housing Law was raised, and indeed, that the rationalisation carried support.

Current situation

The occupation conditions that apply to all existing property are identified in the formal consent issued under the Housing Law at the time that the property was purchased, and remain in place until the next sale. That Law applies to all sales since it's inception in 1949.

Current policy relating to the granting of consent for the sale of existing houses allows for all such property having a value in excess of £250,000 and over 2 years old to be subject to a-j occupancy conditions. Consents relating to new developments and land intended for residential development have a mix of a-h and a-j occupancy condition on 50/50 basis. This has led to a most houses being a – j.

Where flats are bought and sold by flying freehold, as a matter of policy, the occupancy conditions imposed at the time of the original purchase of the development site are carried forward in every subsequent consent issued for any individual flat and are not varied. As to flats that are company owned and subsequently bought and sold by way of share transfer, the occupancy conditions imposed on the consent at the time the company acquired the site or flats remains in place irrespective of the sale of shares relating to the occupation of any individual flat, this is because the company owns the property, and it is the shares that are changing hands not the flats themselves.

Over the years, various policies have been applied as to what occupancy conditions should be attached to new flats and as a consequence, it is rarely apparent to an outside observer as to why some flats are a - h and others are a - j.

The large majority of consents are issued with a – j occupancy and ownership conditions; and a minority carry a – h conditions (see appendices). In particular, the present policies lead to most houses being 1 – j and mainly flats carrying the a – h designation - which are suitable residences for many 1(1)(j) employees, including and in particular at the lower end of the pay spectrum, e.g. nurses, teachers, etc.

New Policy

On the basis of the previous States decision, the recent consultation, and the general need to simplify administration, it is proposed that *any application for consent for the purchase or lease of property, and for the occupation of share transfer property* will henceforth granted for ownership and occupation by persons qualifying for consent under Regulation 1 of the Housing (General Provisions) (Jersey) Regulations, 1970, with the exception of persons qualifying under sub-paragraph (k) and Social Housing as defined below.

In particular:

1. All applications for consent to the sale of individual properties will have an a-j occupancy condition imposed, including applications for development, and any additional units to be created on the site in future will fall into that same category of occupation.
2. All applications for the sale of any flying freehold flat will have an a-j occupancy condition imposed, irrespective of any previous a-h restriction.
3. Where any application for the sale of multiple residential units or a mixture of residential and commercial units is submitted, any consent issued will impose a-j occupancy conditions on all residential units.
4. Any owner of property by means of freehold or flying freehold with current occupancy conditions restricting that occupation to a-h may apply to the Housing Minister for a formal revised consent to be issued enabling a-j occupancy conditions to be imposed.
5. Where a block of flats is owned by a company and any of those flats are currently restricted to a-h occupation, that owning company may apply to the Housing Minister to have that consent formally revised enabling an a-j occupancy condition to be imposed relating to all the flats referred to in the original consent.
6. Similarly, where a company owns a mix of commercial and residential accommodation, such as a flat above a shop, that company can make an application for a formal revised consent enabling a-j occupancy conditions to be imposed.
7. Any application for a formal revised consent must be accompanied by the usual fee (currently £20).

The new policy does **not** apply to the following property exceptions:

- All new and existing developments on sites specifically designated in the Island Plan for occupation by first time buyers, including Jersey Homebuy purchasers, in perpetuity;

- All residential developments having specific occupancy conditions attached as a condition of a planning permission, or as part of a Planning Obligation Agreement relating to that permission, such as sheltered and other housing specifically for the elderly, homes for persons over a certain age, agriculture workers dwellings, but not including staff accommodation;
- All purchases and leases by bona fide Housing Trusts, such as Jersey Homes Trust, Les Vaux Housing Trust and CTJ Housing Trust;
- All new and existing registered Nursing and Residential Homes;
- All sales and leases by the Public of the Island, or individual States Departments or Parishes, unless otherwise agreed by the Housing Minister depending on the nature of the proposed transaction and intended use of the site or individual properties, for example, where the property is unsuited for social housing, etc.

This housing will continue to be available only for the occupation of individuals qualified under Regulation 1(1)(a), (b), (c), (d), (e), (f), (g), or (h) of the Housing (General Provisions) (Jersey) Regulations 1970, as amended.

As to persons qualifying for consent under Regulation 1(1)(k) it is recommended that *the present practice continues*, namely, that consent be granted where a property has previously, and most recently, been granted consent for ownership and occupation by such persons, or where it carries the following traits:

- High value, normally in excess of £1m; and
- Of a size, location, or nature outside the market that would normally be affordable to the majority of Jersey residents, this being normally demonstrated by a lack of demand from persons qualified under other provisions of the Housing Regulations, or by comparison with other properties for which consent was granted for ownership and occupation by such persons.

Further Comments

These new proposals, although presented as part of the Migration Policy process, are also part of continuing policy development relating to rationalisation and simplification of current Housing Law policy, and are not dependant on the approval of the proposed new Migration legislation. Notwithstanding that, it was not considered appropriate to make these changes in advance of the recent consultation, but rather to use that consultation to inform this policy change.

Policies amending occupancy conditions have gradually evolved in recent years from a firm one of imposing a-h conditions on almost all property transactions to one of a more liberal and realistic response to the actual housing market. This change therefore represents the culmination of gradual change over recent years.

These proposals as to property classification do not in any way undermine the fundamental controls relating to *individuals* attaining the right to access qualified housing, which remains a matter for the Housing Law and the Housing Minister.

Appendices:

1. Managing Migration; New Mechanisms - Part 2: Managing Access to Employment and Housing; Extract

*The new controls will introduce **two types of property, with most properties being “Qualified” and the rest “Registered”**. This will replace the current classifications of (a)-(h), (a)-(j), etc, which are complex having been developed by successive Housing Committees since 1970. This has resulted in a position whereby occupancy restrictions do not reflect consistently size, style, or location of property. At present, the controlled housing market is sharply divided and can at best be characterised as follows -*

- *The current **(a)-(h) only** category includes many flats developed from commercial property in recent years, and most houses under two years old. It is estimated that 20% of properties carry this designation.*
- *Conversely, many flying freehold flats, some share transfer flats, and almost all houses over two years old are available to **(a) – (j) qualified** persons. It is estimated that 80% of properties carry this designation.*
- *A limited range of properties are also available under **Regulation 1** to any qualified person, including 1(1)(k) residents.¹*

*All these properties (a)-(h), (a)-(j), Regulation 1 properties will be able to be purchased or leased by any Entitled or Licenced Person. **This new single controlled market will reduce the complexities of the current system** without effecting the overall level of prices. Indeed, the present policies that segment the market simply shift demand the demand placed on the market by 1(1)(j) employees from one type of property to other types - as such, this policy change does not affect the total demand for housing from the Island's population.*

Late in 2008 policies related to property classifications were amended to grant 50% of all new developments Regulation 1 status; with the remainder of the units being (a) – (h). The other elements of the classifications policy remain in place, being that the 50% classed as (a) - (h) will become (a) – (j) after 2 years if free standing property², or if apartments, will retain the (a) – (h) status until the policies change again. The introduction of 50% Regulation 1 for new developments is part of a gradual introduction of the agreed Migration Policy principles, and a “half way house” toward the single controlled property market.

It is proposed that in time all the remaining (a) – (h) restrictions will be removed, other than properties earmarked as ‘affordable housing’, which will

¹ The average price of a property purchased by a 1(1)(k) resident is £3.9 million (2009, Population Office); the average price of a property bought by a 1(1)(j) resident is £604,000 (2009, Population Office); the average price of a property in Jersey is £497,000 (2009, House Price Index). **Figures updated to reflect latest information as at 4th January, 2010, with both the 1(1)(k) and 1(1)(j) figures based on very small populations (9 and 38 consents respectively, compared to 509 transactions in the House Price Index).**

² Properties also have to be over £250,000 to be granted (a) – (j) status.

remain only available to Entitled Persons who meet other relevant criteria, in particular:

- “Jersey Homebuyer” Shared Equity Housing
- First Time Buyer Re-Zoned Housing
- Sheltered Housing (where planning permits place age restrictions)
- States and Housing Trust Property

Table 7 illustrating purchase consents issued 27 June 2007 – 25 June 2008:³

	a-h properties	a-j properties	k consents	Total
Purchase Consents	451	1,657	7	2,115

House prices in Jersey are affected by a whole host of factors including:

- The cheapness and availability of credit;
- Overall economic conditions including trends in earnings and employment;
- Natural population growth and demographic changes;
- Household formation rates (e.g. single parents; sole owners);
- Net migration;
- Confidence in the housing market.⁴

This would suggest that the total number of employees granted immediate housing rights is just one of a wide range of factors that influence house prices in Jersey and that j employees by themselves have only a limited impact on house prices. Notwithstanding that, j employees are generally highly skilled and provide important contributors to Jersey’s well being and economy – earning in the private sector on average £90,000, supporting a range of valued businesses, and complimenting local employment opportunities.

Table 8 illustrating purchase consents issued, total and to j employees, 2007 and 2008

	Total Purchase Consents	J consents	% of purchases by js
2007	1881	138	7.3%
2008	1617	98	6.0%

2. P25/2005, “Migration: Monitoring and Regulation, Extract:

5.3 Link access to accommodation to employment for those who are described as licensed and registered-only

All residential properties listed on the existing Island-wide land and property index would be classified as one of only 2 main groups, either:

³ Excluding share transfer properties, over which consent to purchase is not required (albeit occupation remains reserved for qualified persons)

⁴ Based on the comments of the Office of the Economic Advisor.

- *'uncontrolled' accommodation, i.e. accommodation that all residents may occupy (typically, lodging houses and staff accommodation);*
- *'controlled' accommodation, i.e. all other accommodation, that only an entitled person may purchase in their own name; or a licensed person may lease or may occupy through company ownership.*

There would be no distinction in future, for example, between (a)-(h) or (a)-(j) housing. However, a sub-category of controlled accommodation would remain applicable to first-time buyer properties.