

STATES OF JERSEY



DRAFT SOCIAL HOUSING (TRANSFER) (JERSEY) LAW 201-

Lodged au Greffe on 31st May 2013
by the Minister for Housing

STATES GREFFE



Jersey

DRAFT SOCIAL HOUSING (TRANSFER) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Housing has made the following statement –

In the view of the Minister for Housing the provisions of the Draft Social Housing (Transfer) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy A.K.F. Green of St. Helier**

Minister for Housing

Dated: 29th May 2013

REPORT

Background

On 16th May 2013, by adoption of P.33/2103 the States requested the Minister for Housing to, inter alia –

take the necessary action to prepare for Company status and to bring forward for approval by the Assembly the necessary legislation to give effect to the proposals with a target date for commencement of the Company's operation of 1st July 2014.

The Draft Social Housing (Transfer) (Jersey) Law 201- has been prepared in response to the request by the States, and contains all the necessary legislative changes to ensure that the States has the power to establish a new wholly States-owned Company Limited by Guarantee, and to transfer assets, liabilities and staff to that Company subject to States agreement of specific subordinate Regulations.

The nature of the Company and its operation are all as set out in paragraphs 3.38 to 3.47 of the report accompanying P.33/2013.

Timetable

Subject to the States' approval of the Draft Social Housing (Transfer) (Jersey) Law 201-, the following timetable is anticipated for the introduction of Regulations and the establishment of the Company's operation.

Milestone	Delivery Date
States Assembly consideration of Draft Social Housing (Transfer) (Jersey) Law 201-	16th July 2013
States Assembly consideration of Designate Board appointments	October 2013
Registration of Social Housing (Transfer) (Jersey) Law 201- in Royal Court	November – December 2013
Appointed Day Act considered by States Assembly	
States Assembly consideration of enacting Regulations	January 2014
Company Registration completed	March 2014
Near market rents policy takes effect	April 2014
Company operation commences	July 2014

Financial and manpower implications

The financial and manpower implications of establishing the Company are as set out in paragraphs 5.21 to 5.32 of the report accompanying P.33/2013.

Human Rights

The notes on the human rights aspects of the draft Law in the Appendix have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

Human Rights Notes

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As regards employee rights, accrued pension rights in particular are certainly capable of being property rights under Article 1 of Protocol 1 of the European Convention on Human Rights. However, the draft Law does not alter the rights of employees, as it there will be continuity of service in terms of employment conditions and pension arrangement. There are therefore no human rights issues as regards the rights of employees.

Whilst the rights of tenants in respect of their homes do engage Article 8 of the European Convention on Human Rights, the draft Law does not of itself alter the rights of tenants in respect of their homes. The draft Law creates a change in landlord from the States to a States-owned company, and this does not give rise to human rights issues.

The draft Law therefore does not give rise to any human rights issues and is compatible with the Human Rights (Jersey) Law 2000.

Explanatory Note

This Law provides for the transfer from the States to a company limited by guarantee of certain assets, rights and liabilities of the States.

Article 1 defines certain expressions used in this Law.

Article 2 provides for the States to make Regulations which prescribe the company to which the States' assets, rights and liabilities must be transferred. It must be a private company, incorporated under the Companies (Jersey) Law 1991, that is limited by guarantee and whose sole guarantor member is the States of Jersey. Being a company limited by guarantee, the States' membership of it is not transferrable. *Article 2(3)* permits the Minister for Treasury and Resources to exercise the powers of the States in their capacity as sole guarantor member and, in exercising those powers, that Minister must act in the interests of the States. By *Article 2(4)* the Minister for Treasury and Resources may nominate one or more persons to act on behalf of the States, in the States' capacity as sole guarantor member, on such terms and in such manner as the States direct. *Article 2(5)* makes clear that the power to vote on a resolution to wind up the company may only be exercised by the States and *Article 2(6)* enables the States to prescribe in Regulations other powers that may only be exercised, in relation to the company, by the States.

Article 3 requires the States to make Regulations prescribing the transfer date or dates, which must not be a date that is earlier than the date on which the Regulations come into force.

Article 4 provides that the assets, rights and liabilities of the States that are specified in Regulations must be transferred to the company on the transfer date. Such a transfer is to be made on such terms and conditions as are prescribed in the Regulations.

Article 5 sets out the effect of a transfer of any assets, rights or liabilities under this Law or under Regulations made under this Law.

Article 6 provides that the production of a copy of any Regulations made under *Article 4* and signed by the Greffier of the States are for all purposes conclusive evidence of the transfer to and vesting in the company of any assets, rights or liabilities to which those Regulations apply. Regulations that specify any interest in immovable property situated in Jersey and that are signed by the Greffier of the States shall be registered in the Public Registry of Contracts and that registration shall have the same effect as a contract passed before the Royal Court. The title to any interest in such immovable property specified in those Regulations shall vest in, belong to and be held by the company on and after the day of that registration.

Article 6(4) permits the States to make provision in Regulations with respect to the values to be assigned to the assets, rights and liabilities of the States, and the treatment of any transfer of them under this Law, in accounts.

Article 7 provides that stamp duty is not chargeable for or in respect of a transfer that is effected under this Law or in respect of certain related transactions that may be prescribed in Regulations.

Article 8 makes provision for the transfer of staff. An employee of the States whose ordinary and normal place of work immediately before the transfer date is the Housing

Department will be transferred to the company from the transfer date. The States' employee becomes an employee of the company. His or her contract of employment will have effect as if it had originally been made between the employee and the company at the date when it was actually made, and all rights, powers, duties and liabilities under or in connection with the contract of employment will be enforceable or exercisable as if it had been originally made between the employee and the company.

Article 8 also sets out the effect the transfer has on any collective agreement made by the States (or otherwise on behalf of the States) with a representative body recognized by or on behalf of the States. It also provides that anything done before the transfer date under or in respect of the contract of employment or the agreement or in respect of the employee shall be taken to have been done by or in relation to the company at the time when it was actually done.

Article 8(2) makes clear that the liabilities include any liability that relates to the employment of a person by the States at any time before the person becomes an employee of the company, and the person's membership of a pension scheme under the Public Employees (Retirement) (Jersey) Law 1967.

Article 8(3) makes clear that employees will not be transferred to the company unless the company has been admitted to the pension scheme referred to in Regulation 9 of the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989 and paid into the pension fund such amount as the Actuary determines as being reasonably attributable to the company in respect of the capitalized value from time to time of the debt transferred to the scheme when the scheme was amended with effect from 1st January 1988.

Article 9 provides for an employee transferred under this Law to retain all his or her rights he or she had as a member of any scheme made under the Public Employees (Retirement) (Jersey) Law 1967.

Article 10 permits the Council of Ministers to lodge an amendment to the medium term financial plan approved under Public Finances (Jersey) Law 2005 in consequence of the coming into force of this Law or Regulations made under it. Such amendment may be made despite the restrictions contained in Article 9(2) of that Law to the making of such amendments.

Article 11 provides that Regulations under this Law may contain such transitional, consequential, incidental ancillary or supplementary provisions as appear to the States to be necessary or expedient for the purposes of the Regulations.

Article 12 states the name of this Law and provides for it to come into force on such day or days as the States may by Act appoint.



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Arrangement

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Jersey

DRAFT SOCIAL HOUSING (TRANSFER) (JERSEY) LAW 201-

A LAW to transfer the States of Jersey housing stock and other assets to a company and related purposes.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law –

“assets” means any interest in immovable property or movable property of any description, and includes capital, securities, choses in action and documents;

“liabilities” means any liabilities, debts or obligations (whether present or future and whether vested or contingent);

“representative body” includes a trade union and any other association of employees formed for the purpose of representing those employees in their relationship with their employers;

“rights” means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent);

“transfer date” means the day prescribed by Regulations under Article 3;

“company” means the company prescribed under Article 2;

“transferor” means the States or a person acting on behalf of the States.

2 Nature of company

- (1) The States may by Regulations prescribe a company to which such assets, rights and liabilities of the States or of the public as are referred to in Article 4 shall be transferred.
- (2) The prescribed company must be a private company, incorporated under the Companies (Jersey) Law 1991¹, that is limited by guarantee and whose sole guarantor member is the States.
- (3) Subject to paragraphs (5) and (6), the Minister for Treasury and Resources may exercise the powers of the States in their capacity as sole guarantor member and, in exercising those powers, shall act in the interest of the States.
- (4) The Minister for Treasury and Resources may from time to time nominate one or more persons to act on behalf of the States, in their capacity as sole guarantor member, on such terms and in such manner as the States direct.
- (5) The power to vote on a resolution to wind up the company may only be exercised by the States.
- (6) The States may prescribe in Regulations any other power that may only be exercised, in relation to the company, by the States.

3 Transfer date

- (1) The States shall by Regulations prescribe the transfer date or dates for the purposes of the provisions of this Law.
- (2) The date prescribed under this Article shall not be a day earlier than the day on which the Regulations prescribing the day come into force.

4 Transfer of assets rights and liabilities

- (1) On the transfer date, the assets, rights and liabilities of the States or of the public that are specified in Regulations shall be transferred to the company in accordance with those Regulations.
- (2) Such a transfer may be made on such terms and conditions as are prescribed by the Regulations and may (as prescribed in the Regulations) consist of the transfer of a liability, or transfer of an interest in an asset or right, that is less than the entire liability, or entire interest in the asset or right, of the States or of the public.
- (3) If it appears to the States expedient so to do for the purpose of removing any difficulties or uncertainties arising out of the operation of this Article, they may, by Regulations, direct that such assets, rights, or liabilities, of the States as may be specified in the Regulations –
 - (a) are not transferred under this Article or shall be taken not to have been so transferred; or
 - (b) are transferred under this Article or shall be taken to have been so transferred.

- (4) The States may, by Regulations, prescribe any asset, right or liability not subject to transfer, and an asset, right or liability that is so prescribed is not transferred under this Article, but this does not prevent its transfer otherwise than under this Article.

5 Vesting in company

- (1) When any assets, rights or liabilities are transferred under this Law or in Regulations made under this Law, the following provisions have effect –
- (a) except to the extent provided in Article 6(3), the assets of the transferor vest in the company by virtue of this Article and without the need for any further conveyance, transfer, assignment or assurance;
 - (b) the rights or liabilities of the transferor become by virtue of this Article the rights or liabilities of the company;
 - (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the company;
 - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the company;
 - (e) a reference in any enactment, in any instrument made under any enactment or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent to which it relates to those assets, rights or liabilities) taken to include a reference to the company.
- (2) The operation of this Article or of Article 4 or 6 (or of any Regulations made under any of those Articles) is not to be regarded –
- (a) as a breach of contract or confidence or otherwise as a civil wrong;
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities;
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, obligation or relationship, because of a change in the beneficial or legal ownership of any asset, right or liability; or
 - (d) as an event of default under any contract or other instrument.
- (3) No compensation is payable to any person or body in connection with a transfer to which Article 4 or 6 applies except to the extent (if any) to which the Regulations made under that Article so provide.

6 Evidence, registration and treatment of transfer

- (1) The production of a copy of any Regulations made under Article 4 and signed by the Greffier of the States shall, for all purposes, be conclusive evidence of the transfer to and vesting in, the company of any assets, rights or liabilities to which those Regulations apply.
- (2) Nothing in paragraph (1) affects the value of any other evidence of a transfer that may be adduced.
- (3) Regulations made under Article 4 that specify any interest in immovable property situated in Jersey and are signed by the Greffier of the States shall be registered in the Public Registry of Contracts and that registration shall have the like effect as a contract passed before the Royal Court and the title to any interest in such immovable property specified in those Regulations shall vest in, belong to and be held by the company on and after the day of that registration.
- (4) The States may, by Regulations, make provision with respect to the values to be assigned in accounts to the assets, rights and liabilities of the States, and the treatment of any transfer of them under this Law.
- (5) The States may, by Regulations, make provision for the purposes of the values to be assigned to the assets, rights and liabilities of the States, and the treatment of any transfer of them under this Law, as far as they are relevant to any matter under the Companies (Jersey) Law 1991².

7 Stamp duty

Stamp duty is not chargeable for or in respect of –

- (a) a transfer that is effected under this Law or, if otherwise effected, that is prescribed for the purposes of this Article by Regulations made by the States; or
- (b) anything prescribed by Regulations made by the States as something done in consequence of such a transfer.

8 Transfer of staff

- (1) Subject to paragraph (3) an employee of the States whose ordinary and normal place of work immediately before the transfer date is the Housing Department of the States of Jersey shall, on the transfer date, be transferred to the company and on and from that date –
 - (a) the person shall be an employee of the company;
 - (b) the person's contract of employment with the States shall have effect as if it had originally been made between the person and the company at the date when it was actually made;
 - (c) all rights, powers, duties and liabilities under or in connection with the contract of employment shall be enforceable or exercisable as if the contract had been originally made between the employee and the company;
 - (d) any collective agreement made by the States (or otherwise on behalf of the States) with a representative body recognized by or

on behalf of the States, being an agreement that has effect in respect of the employee immediately before the transfer, shall continue to have effect in respect of the employee as if it had been originally made by or on behalf of the company with that representative body;

- (e) any collective agreement made by or on behalf of the States with a representative body recognized by or on behalf of the States, being an agreement that is expressed to have effect in respect of the employment of persons by the company who were not immediately before the transfer date employees of the States shall have effect from the transfer date as if it had been originally made by or on behalf of the company with that representative body; and
 - (f) anything done before the transfer date by or in relation to the States (or otherwise on behalf of the States) under or in respect of the contract of employment or the agreement or in respect of the employee shall be taken to have been done by or in relation to the company at the time when it was actually done.
- (2) A reference in paragraph (1)(c) to a liability includes any liability that relates to –
- (a) the employment of a person by the States at any time before the person becomes an employee of the company by virtue of this Law; and
 - (b) the person's membership of a scheme under the Public Employees (Retirement) (Jersey) Law 1967³.
- (3) No employee may be transferred to the company until the company has been admitted to the scheme referred to in Regulation 9 of the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations 1989⁴ and paid to the pension fund of that scheme such amount as the Actuary determines as being reasonably attributable to the company in respect of the capitalized value from time to time of the debt transferred to the scheme when the scheme was amended with effect from 1st January 1988.

9 Saving of rights under retirement schemes

If a person was, immediately before becoming an employee of the company by virtue of this Law, a member of any scheme made under the Public Employees (Retirement) (Jersey) Law 1967⁵ then, on so becoming such an employee –

- (a) except to the extent provided in sub-paragraph (b), the terms of the person's membership of the scheme, and the rights and liabilities under that scheme, are unaffected by the person becoming such an employee; and
- (b) notwithstanding anything in that Law or any other enactment or in any other document or under any arrangement, the company shall, by the operation of this Article, become the person's employer for the purposes of the scheme made under the Public Employees (Retirement) (Jersey) Law 1967⁶.

10 Amendment of medium term financial plan approved under Public Finances (Jersey) Law 2005

Despite Article 9(2) of the Public Finances (Jersey) Law 2005⁷, the Council of Ministers may lodge a proposition for a purpose described in Article 9(1) of that Law, in consequence of –

- (a) the transfers effected by the coming into force of this Law, or of Regulations made under this Law; or
- (b) an increase in the rents payable by tenants of social housing pursuant to a decision of the States to adopt P.33/2013.

11 Regulations

Regulations under this Law may contain such transitional, consequential, incidental, ancillary or supplementary provisions as appear to the States to be necessary or expedient for the purposes of the Regulations.

12 Citation and commencement

This Law may be cited as the Social Housing (Transfer) (Jersey) Law 201- and shall come into force on such day or days as the States may by Act appoint.

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- ¹ *chapter 13.125*
 - ² *chapter 13.125*
 - ³ *chapter 16.650*
 - ⁴ *chapter 16.650.36*
 - ⁵ *chapter 16.650*
 - ⁶ *chapter 16.650*
 - ⁷ *chapter 24.900*