

PARISH RATES REVIEW

**Lodged au Greffe on 13th March 2001
by the Legislation Committee**

STATES OF JERSEY

STATES GREFFE

180

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PROPOSITION

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

to receive the report of the Legislation Committee, dated 13th March 2001, and to approve, in principle, the following proposals -

- (a) that appointments by Parish Assemblies of members of an Assessment Committee be staggered so that each autumn only a proportion of the Committee members are elected for a further three years; (Assessment Committee appointments - Section A);
- (b) that the Committee should undertake further consultation and, if appropriate, bring forward proposals in the draft legislation in relation to the method of assessment of the rateable value of any land or property where it is impossible to make any sensible comparison; (Rate Assessment method for non-comparative property - Section B)
- (c) that the occupier rate should be retained (Occupier Rates - Section C);
- (d) that exemptions from rating liability should continue to apply to Crown and States property used exclusively for public purposes - (Exemptions from Foncier and Occupiers Rate - Section D).

LEGISLATION COMMITTEE

- Notes:
- 1. The Finance and Economics Committee's comments are to follow.
 - 2. The Human Resources Committee's comments are to follow.

REPORT

Introduction

1. In 1993 a review of the Parish Rates (Administration) (Jersey) Law 1946 and its possible shortcomings was produced by a working party chaired by the late Connétable of St. John- John Le Sueur - in a report to the States (P.124/93) and lodged "au Greffe" on 24th August 1993.
2. The report contained 28 recommendations and was brought to the States on 24th May 1994 for debate, during which recommendations numbered 8, 9, 13 and 18 were withdrawn and recommendations numbers 20 and 28 were rejected - all other recommendations were adopted.
3. On 31st July 1998 (Act No. 3) the Legislation Committee set up the Parish Rates Working Party, which was tasked to produce instructions for a new Parish Rates Law based upon the 22 recommendations actually adopted by the States in 1994.
4. The members of the Working Party are -

Constable H.G.	(Chairman)
Coutanche	
E. Godel	(Former Constable of St. Mary)
L. Crapp	(Chairman - Rates Appeal Board)
P. Hanning	(Rates Assessor - St. Saviour)
T. Lavery	(Rates Assessor - Grouville)
M. Mallet	(Parish Secretary - St. Saviour)
R. Weston	(Ratepayers' Association)
F. Clarke	(Former Constable of St. Helier)
M. Roberts	(Deputy Greffier of St. Helier - Co-opted)
P.J. Bryans	(Law Review Officer - Administrator)
5. The first meeting of the Working Party was held on 25th September 1998, and the summary of the decisions and recommendations required to produce Law Drafting Instructions agreed by the States was reviewed by the Working Party, following which Law Drafting Instructions were prepared, agreed by the Legislation Committee, and sent to the Law Draftsman in April 1999.
6. The Working Party has subsequently reviewed several drafts of the new Law and solicited comments from the Parish Constables and their Assessment Committees, resulting in a new draft Parish Rates Administration Law which is almost ready for presentation to the States.
7. However, there are several issues about which no recommendations were made in the 1993 Report or upon which no decisions were taken during the 1994 debate, and the Legislation Committee wishes the States to take an 'in principle' decision on each of these issues before the final draft of this Law is lodged "au Greffe".
8. The Legislation Committee felt it necessary to bring these issues to the States at this stage because they have arisen during the time which has elapsed since the States first considered these matters.
9. There are four issues upon which the Legislation Committee seek a decision. Each one is dealt with by a separate proposition to facilitate debate and decision making.

Section A - Assessment Committee appointments

Background

- A1 In the existing Law, Parish Assemblies have to elect an Assessment Committee of five members (12 for St. Helier) during November or December of every third year.
- A2 If any member of an Assessment Committee dies or has to resign during that period of three years, then his replacement only holds office for the remainder of that three-year term.
- A3 Thus, every three years, all Assessment Committees cease to exist at the same time.

Problem

- A4 There is no guarantee that any or all of the members of any Parish Assessment Committee will be re-elected or even wish to serve another term.
- A5 Thus, there is always the possibility that the knowledge and experience contained within the Assessment Committee could be lost at one single occasion - in fact this has occurred within recent years.
- A6 The resultant skill gap and learning curve can contribute significantly to a lack of continuity.

Proposal

- A7 Members of Assessment Committees be elected for three years as at present.
- A8 However, the appointment of members should be staggered so that each autumn only a proportion of the Assessment Committee members are elected for a further three years.
- A9 Thus, over the next few years, Assessment Committees will evolve to consist of members, one third of whose terms of office will expire at the end of each year.
- A10 This rolling appointment method should ensure that eventually there is only a minority of new members to be "trained" at any one time, with the consequent improvement in continuity and consistency of decisions.

Section B - rate assessment method for non-comparative property

Background

- B1 The existing Law is based on a liability for rates calculated by reference to the rental value of the land - whether any rent is paid or not.
- B2 Even where no rent is paid, assessments have been made by reference to the rental value of similar properties or land on a comparative basis.

Problem

- B3 The problem arises where there is no comparable property or land, such as there would be if a public utility installation or a Crown or Government facility had to be assessed for rates.
- B4 Under the existing Law, such assessments commonly cause difficulty only with public utility installations. Judicial decision has required the Jersey New Waterworks Company Limited properties to be rated on a "profits" basis, which assessors have found difficult to administer in practice. Other options would appear to be a contractors method which essentially gives a rateable value as a percentage of the capital value of the property, or a method based upon a statutory formula. Use of the contractors method would be likely to lead to a significant increase in rates payable by the utility companies.
- B5 If existing rateable values were to be fixed so that there would be no question of reassessing the existing public utility installations of electricity, water or gas, a problem might arise in assessing rateable values if any new public utilities or any new type of non-residential use should be created, such as might occur with Jersey Telecoms, Jersey Post or even Jersey Airport. In such cases there would be no similar enterprises within the Island with which to assess their comparative rateable values.

Proposal

- B6 It is highly desirable that an objective way be found to deal with land or property which needs to have its rateable value assessed and where it is impossible to make any sensible comparison with other land or property in the Island having similar attributes. The Committee wishes to take further time to consider the approach to existing and future utilities, and to consult more widely than has hitherto been the case. Further work is necessary in this very complicated area of rating Law, and the draft legislation may when lodged contain more detailed proposals for consideration by the States which can then be debated and voted upon separately.

Section C - occupier rates

Background

C1 On 24th May 1994, the States approved 22 recommendations contained in the Review of the Parish Rates (Administration) (Jersey) Law 1946. (P.124/93).

C2 The question of which parties were liable to rate (owner and/or occupier) was considered, and the conclusion was that there should be no change, and that the levying of both foncier and occupier rates should continue.

C3 Below is the relevant extract from that Review -

“Parties liable to rate

Early in its deliberations, the Working Party considered whether liability to Rate should continue to be borne by OWNERS and OCCUPIERS, or alternatively -

should there be only one rate (i.e. single element rating);

and if only one rate, should it be levied on the owner or occupier?

The FONCIER (owner’s) RATE has a long ancestry. It ultimately derives from the ancient tithes levied on land and its cultivators. This being then virtually the only source of taxable wealth. It remains related to immovable property and in some degree to the principle of ‘capacity to pay’.

From about the mid 19th century, a mobilier rate was also levied by the parish on movable property. It was not levied on the basis of a declaration - as was the foncier rate - but rested on the opinion of the assessment committee as to the movable wealth of the ratepayer. In 1928 when income tax was introduced in Jersey, the mobilier rate was abolished and the OCCUPIER’S RATE was brought in.

The rates system in Jersey is unusual in that a property gives rise to a rate levied on the owner and another levied on the occupier. An owner/occupier bears both.

The Working Party has studied other systems, for example how it works in Guernsey and the United Kingdom. Indeed, the fate of the (U.K.) poll tax is certainly a warning, but one cannot fault the principle of those who benefit from parochial expenditure should, if at all possible, contribute to it. Both the ownership and occupancy of property benefit from parish services in some degree.

A very significant percentage of the Island’s total rate assessments come from the ownership of property. It would not be reasonable to put all of this on to the shoulders of occupiers or, for that matter, vice versa and make the proprietor solely responsible.

There is also the constitutional aspect. To introduce single element rating would disenfranchise a number of people quite unfairly. All electors in a parish have the right to vote in the Parish (budget) Assembly and it is fair and just that occupiers as well as owners, should dictate the cost of parish services which they all enjoy and contribute to. There can be surely no finer example of ‘taxation by representation’.

Another problem that could arise, if in future the owners of property alone are assessed to rate, is in respect of rent levels. While the switch of a rate burden from occupiers to owners might seem to be simply a change in the distribution of the taxation rather than an increase in its level, experience in other countries would suggest that such changes tend to be inflationary, that is, advantage is taken of the change to increase charges (e.g., rents) by more than is required to compensate for the tax change itself.

The history of taxation is that change often gives rise to more problems than it solves and therefore, because of the over-riding advantages and familiarity aspect of the present system, it is considered fundamental that the levying of two rates as at present should continue.”

C4 In 1998 a Working Party was set up by the Legislation Committee under the Chairmanship of Deputy, now Constable, Coutanche, and together with the Law Draftsman’s Office, they have produced a new draft Parish Rates Law, which is virtually ready to put before the House with a view to its coming into effect for the rates year commencing January 2003.

Problem

- C5 In 2000 there were suggestions from some St. Helier Parish representatives that the occupier rate should be abolished.
- C6 However, because the occupier rate is such a fundamental element of the rating structure, the implementation of a new draft Parish Rates Law (which has taken the Working Party and Law Draftsman's Office over two years to produce) will be significantly delayed.

Proposal

- C7 The Working Party came out very strongly in favour of retaining the occupier rate (by a majority of seven to one) and the Committee recommend that it be retained.
- C8 *General*
- (a) Any suggestion to abolish a situation which will save money, simplify administration and cut staff is bound to be initially seductive - especially if that situation is perceived as causing even only a minor problem.
 - (b) Furthermore, it is often difficult to justify the *status quo*, because change is often seen as good for its own sake, without examining the ramifications of the effects of that change; and the Working Party strongly make the point that there are many such ramifications which would need to be fully explored.
 - (c) However, all but one of the members of the Working Party were convinced that the extent of problems which would be created by the abolition of the occupier rate more than justified its retention and the maintenance of the *status quo*.
- C9 *Loss of revenue by Parish*
- (a) This was felt not to be significant, e.g., in 1999, occupiers who had left their address owed £34,000 to St. Helier out of a total budget approaching £8,000,000 (1999). Furthermore, the swifter issue of demand notices under the new Rates Law should reduce this further.
 - (b) The existence of a few defaulters is surely not a convincing argument for abandoning a legal charge.
- C10 *Administration cost savings by Parish*
- (a) There could undoubtedly be modest savings in postage and stationery if the Parishes did not have to contact persons liable for occupier rate, although these administrative cost savings by the Parish would simply be transferred as additional costs to the property owners recovering their share of the rates - whether they be private landlords, the States Housing Department or Housing Associations.
 - (b) Most Parishes, include literature relating to Parish matters in the same envelope as rate assessment forms. If contact with parishioners was maintained, even though they were no longer liable for occupier rate, then any assumed modest cost savings in postage and stationery would be negated.
- C11 *Cost impact on tenants*
- (a) Almost half of all ratepayers are currently tenants liable for occupier rates. If occupier rates were abolished, then these tenants would be exempt from rates and only landlords or property owners would be liable for a single rates demand.
 - (b) However, even advocates for the abolition of occupier rates take the view that landlords will seek to recover all or part of their rates liability from tenants by either increasing rents, or adding a separate amount to cover the amount of rates apportioned by the landlord to that tenant.
If this practice is unregulated, it is a landlord's charter, and if apportionment, collection procedures, rights of appeal etc., are provided for in law it becomes more bureaucratic than the existing situation.
 - (c) Apart from the inflationary effect that increasing rents would have, it should also be remembered that tenants are the sector of our community most vulnerable to financial pressures, but often the least able or willing to question financial demands from landlords.

C12 *Cost impact on the States*

- (a) The additional costs incurred by transferring the occupier rate to the States Departments who are landlords for nearly 5000 units of accommodation (Housing, Education, Health and Social Services) would at the very least negate the cost savings to the Parishes alleged to result from the abolition of occupier rate.
i.e., whilst the rates would be paid in full to the Parish, any arrears of rates or increased rents would simply inflate the already large amount of rent arrears owing to the States.
- (b) If rents were increased to include some or all of the owners' foncier rates liability, then the Rent Rebate Scheme would be using taxpayers' money to subsidise these enhanced rents.

C13 *Disenfranchisement*

- (a) If there were no occupier rate, then occupiers who were not also electors of a Parish would be unable to vote at Parish Assemblies, nor would they be entitled to stand for any Parish Offices from Constable to Roads Inspector.
In St. Helier, whilst the existing Law allows officers to reside outside the Parish- if there were no occupier rate then they would be disbarred from standing for office unless they were foncier ratepayers.
- (b) One of the great democratic tenets has been "no taxation without representation". Thus, if occupiers of property in a Parish have no say in the level of rates (which will be recovered from them by way of rent or surcharges) then they have been disenfranchised.
- (c) Similarly, if occupiers are electors but not ratepayers, then they could turn up at Parish meetings and irresponsibly demand and vote for additional Parish expenditure, confident in the mistaken belief that it would be paid for by property owners in their rates and not by them as tenants.

Section D - Exemptions from foncier and occupiers' rate

Background

D1 In the present 1946 Law, the following land is exempt from foncier rate -

- (a) churches, district churches, chapels, meeting houses and other premises exclusively appropriated to public religious worship, and cemeteries;
- (b) Presbyterian houses and lands;
- (c) dwelling-houses, with the buildings and land appertaining thereto, owned by religious bodies and occupied exclusively by officiating ministers or caretakers of churches or chapels;
- (d) land owned by His Majesty;
- (e) land owned by any department of His Majesty's Government and used exclusively in His Majesty's service;
- (f) land owned by any public or parochial authority and used exclusively for public or parochial purposes;
- (g) land under the administration of the Education Committee;
- (h) land owned by the Don Baudains;
- (i) common land.

D2 Similarly, in the present Law, the following land is exempt from occupier rate -

- (a) churches, district churches, chapels, meeting houses and other premises exclusively appropriated to public religious worship;
- (b) land occupied by His Majesty or by any Department of His Majesty's Government and used exclusively in His Majesty's service;

(c) land occupied by any public or parochial authority and used exclusively for public or parochial purposes, but excluding land in the occupation of any employee of any such authority.

- D3 The exemptions in the existing Law generally have a historical background of agreements or negotiation to justify them - although it is a purely political decision as to whether the States are morally bound to abide by them in any new Law.
e.g. The then Public Instruction Committee (now Education Committee) were exempted from foncier rate as a *quid pro quo* when the States took over the cost of running the Parish Schools from the Parish School Boards in 1916.

Problem

- D4 The Working Party is aware that some members of the States feel that, in particular, there should be an end to any exemption from rates for land or property owned by either the Crown or a public authority and used exclusively for public purposes.
- D5 Unfortunately, there was no States decision on this issue when the 1994 recommendations were agreed by the States, because the arguments put forward by the Finance and Economics Committee in their Report and Proposition (P.65/94) were so overwhelming that the relevant sections relating to States and Crown property were withdrawn.
- D6 The new draft Law will directly implement the recommendations agreed to in the 1994 States debate but, in the absence of a decision on such an important issue, the Working Party is reluctant to come to the States with a new draft Rates Law which is not based upon a specific political decision in respect of rating liability for States and Crown property.

Proposal

- D7 The Working Party and the Legislation Committee are both agreed that the *status quo* in respect of exemptions from rating liability should continue to apply to Crown and States property used exclusively for public purposes.
- D8 Furthermore they are convinced that the robust arguments put forward by the Finance and Economics Committee in their Report then are equally, if not more, compelling today.
- D9 However, to enable changing views to be reflected in years to come, the new draft Law will be framed so that the types of land or property which can be exempted from foncier and/or occupier rates can be changed by the States by Regulations and so the exemption list is not "set in stone".

Financial and manpower implications

It is not possible to assess the financial and/or manpower implications for the States, and, therefore, this matter has been passed to the Finance and Economics and Human Resources Committees for comment in this regard.

13th March 2001