

**Response to a Question Pursuant to Rule 14
of The Rules of Procedure of the States of Deliberation and their Committees**

Subject: Open Market Part A Housing Register

States' Member: Deputy Curgenvén

Date received: 16th September 2025

Date acknowledged: 16th September 2025

Date of reply: 3rd October 2025 (extension of deadline until 3rd October approved by the Deputy Bailiff)

Question 1

In its policy letter of 11 February 2025, the Committee for Housing's (the Committee) predecessor assured the Assembly that 'The Open Market Housing Register (Guernsey) (Amendment) Law, 2025' (the Law) will not "remove, or reduce, any pre-existing rights which someone has acquired under the existing or previous laws." What measures are the Committee taking to ensure that the commencement of the Law will not act to remove, or reduce, any pre-existing rights under the Law (including any right to have an application determined, to appeal a decision, and, where an appeal is upheld, to have a fresh decision made in accordance with the Law and policy that was in force at the relevant time)?

Response Q1

The commencement of the Amendment Law will not vary or otherwise change any existing Open Market Part A Inscription. The Law contains transitional provisions which set out the process for any undetermined applications for inscription in Part A, and the Policy Letter that accompanied that legislation made the intention regarding that provision very clear. On commencement of the Amendment Law, undetermined applications are to be returned to the applicant along with any fee paid, and the Committee is required to invite the applicant to make an application under the relevant section of the Law as amended. Decisions of the Committee are subject to a statutory appeal mechanism and judicial review.

Question 2

In December 2023, the Committee's predecessor wrote to Open Market Part A homeowners assuring them that they will continue to be able to transfer inscriptions as they could previously. What other assurances has the Committee, or its predecessors, given in relation to the inscription of properties on Part A of the register (whether by way of new inscription, transfer or otherwise)?

Question 3

What steps are the Committee taking to ensure that all assurances made by the Committee and its predecessors are upheld in full?

Response Q2-3

The only assurance of general application given was in the President's letter to owners of Open Market Part A properties in December 2023 in which she stated:

To enhance the quality of the Open Market Part A, new inscriptions will generally only be approved for new build properties (or existing properties that have been recently substantially refurbished or renovated). Additionally, individuals and developers will still be able to transfer Part A inscriptions from one property to another as they are able to currently. Due to the uplift in value associated with the inscription on Part A of the Open Market Housing Register, the Committee intends to introduce a levy to reflect the uplift in value. The charging mechanism and system charges is still being worked on."

This assurance is incorporated in the amended legislation.

Question 4

How many "section 3" applications for Part A inscriptions on the Open Market Register remain undetermined at the time of answering? (For the avoidance of doubt, undetermined applications include any applications which the Committee has received and is declining to process or determine.

Response Q4

24.

Question 5

How many distinct properties (or applicants) have received an assurance from the Committee or its predecessors relating to Part A inscription (whether a new inscription, transfer, or otherwise)?

Response Q5

All those submitting applications after April 2023 were advised at the time of their application that the Committee was reviewing its Open Market Part A inscriptions policy and would not be considering their applications until the policy is agreed and can be implemented. A notice to this effect had been put on the OMHR website and on the HR1 application form.

Question 6

At the time of answering, how many appeals or claims relating to section 3 applications for Part A inscription are currently 'live' (summons served, in court, not withdrawn or disposed of, etc.)?

Response Q6

One.

Question 7

Does the Committee expect further related appeals or claims to be brought against it?

Response Q7

The Committee has not been informed that any further claims or appeals will be brought.

Question 8

In 2023, the Committee's predecessor inscribed a property known as Seascope on Part A of the Open Market Housing Register. It is understood this single inscription resulted in an uplift in value of approximately £6m (estimates vary). If the courts find that the commencement of the Law, or the Committee's refusal to determine applications, breached domestic or international legal obligations (including Article 6 and/or Article 1 Protocol 1 of the ECHR), what would be the States' worst-case total financial exposure, considering all undetermined applications, live appeals and legitimate expectation arising from assurances?

Response Q8

The Committee does not have this information available.

Question 9

Prior to submission of the Commencement Ordinance:

- a) Did the Committee obtain legal advice as to the potential risks posed by commencing sections 1(2) and 2 of the Law before it had determined all applications and before any appeals had been allowed to conclude?
- b) If so, who provided the legal advice, what risks were identified, what was the estimated likelihood of each of the risks and the potential downside if the risk were to eventuate?
- c) If not, why did the Committee determine that advice to be unnecessary?

Response Q9

The Committee received legal advice from the Law Officers' Chambers in the normal way. Such content of such advice is privileged.

Question 10

On 9 April 2023, the Committee's predecessor added a banner to the HR1 form on the Open Market Register website stating that it would "not be considering applications until the [new Part A inscription] policy is agreed." In November 2024, the banner was revised to state that applications would not be considered until "the policy is agreed and can be implemented." On what legal basis did/does the Committee rely upon for refusing to perform its statutory duty to consider applications by members of the public, and what case law does it believe supports its position?

Response Q10

The Committee does not accept that the policy of not considering applications for inscription until a relevant policy had been prepared and implemented constitutes a refusal to undertake a statutory duty. Legal advice received by the Committee in this regard is privileged.

Question 11

Does the Committee agree that the Law is retrospective legislation (i.e. the Law applies to past events and rights)?

Question 12

If the Committee does not agree that the Law applies retrospectively, please can it explain its reasoning?

Response Q11-12

The only provision in the legislation which has substantive application to past events is the transitional provision dealing with applications for inscription in Part A that were submitted but not processed before the coming into force of the Amendment Law. Such procedural transitional provision in legislation is not uncommon.

Question 13

Has the Committee had sight of legal advice confirming that the Law, and its proposed commencement, is human rights compliant?

Question 14

Will the Committee share with States Members, confidentially if need be, this legal advice?

Question 15

If the Committee is unwilling to share this information, why not?

Response Q13-15

No.

All Bailiwick legislation is subject to the Human Rights (Bailiwick of Guernsey) Law, 2000 and all primary legislation, such as the Amendment Law, is subject to scrutiny for compliance with international obligations, including human rights obligations, by lawyers in the Ministry of Justice as part of the process of granting Royal Sanction.



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