HISTORY OF THE 1(1)K POLICY

1. In 1970 the present Housing Regulations were adopted and those seeking to retire or otherwise move to Jersey to take advantage of the Island's favourable tax arrangements, who had entered Jersey in large numbers in the 1960's, were faced with the requirement that a consent to purchase a property was only possible if they satisfied the Housing Committee that they were of economic or social benefit (i.e. Regulation 1(1)k).

2. In the years immediately following the introduction of the Regulations the controls were not too tightly applied and in 1973, for example, there were 66 1(1)k consents granted. Although there was a minimum tax requirement it was at £3,000 in 1972 and £4,000 in 1973, not too much of a restriction.

3. In 1974 there was the first of a succession of reports on immigration policy and population growth restraint produced by the Policy Advisory Committee initially and subsequently by the Policy and Resources Committee.

4. In 1974 it was decided that the number of the new 1(1)k's should be restricted to 15 a year, and to help to secure this limit the tax requirement was raise to £10,000 per annum. During the debate by the States in February, 1974 of the Policy Advisory Committee's Report and Proposition on the scale and pattern of development in the Island over the next five years (P2/74) an amendment to one of the Propositions was approved in the following terms –

   "Before directing the Housing Committee in respect of the admission of wealthy immigrants, the States called for a Report and Recommendations from that Committee."

A Report and Proposition regarding wealthy immigrants was presented to the States in May 1974, together with a note by the Economic Adviser on the "costs" of wealthy immigrants. That note concluded that "with proper restrictions over the type of property that can be acquired and over the redevelopment and extension of properties it is difficult to argue that 15 consents a year (in addition to the straight forward replacement of former wealthy immigrants who have died or left the Island) would be unacceptable, provided all those receiving consent have a certain minimum potential local tax liability which at the present time would be a figure of £10,000 per annum".

5. In 1979 the States approved a report of the Policy Advisory Committee and agreed that a greater degree of restraint should be exercised over the number of 1(1)k consents. The number of consents considered appropriate was closer to 10 a year rather than the 15 previously accepted, and the tax yield required was increased to some £20,000 per annum.

6. In 1987 in the Economic Adviser's Annual Report on the Budget reference was made to the package of proposals adopted by the States in January 1987 which included a significant reduction in the number of consents to be granted by the Housing Committee under Regulation 1(1)k. Whereas for many years the policy had been to grant 10-15 consents a year, the policy then introduced restricted the number of consents to 5 a year.

7. In 1989 the number of consents remained at 5 a year and the Housing Committee in deciding whether or not to grant a consent took account of the following factors –

   (i) the extent and nature of assets held, and the degree of certainty with which a substantial income liable to Jersey tax would arise;
   (ii) the applicant's business and personal background;

(iii) the number of children likely to establish residential qualifications in the future;
(iv) the age of the applicant;
(v) the likelihood and nature of any active involvement in business interests including business within the Island.

To ensure that the number of consents remained at around 5 a year the minimum tax requirement was increased at the end of the 1980's and into the 1990's firstly to £50,000 and then to £100,000.

8. In the early 1990's when a recession was experienced there was some flexibility introduced into the 1(1)k policy. The States in June 1992 adopted a proposition of the Policy and Resources Committee requesting the Housing Committee to adopt a more flexible policy in considering applications for consent under Regulation 1(1)k with the number of additional consents no longer being limited to 5 per annum.

9. The Budget Report presented to the States by the Chief Adviser in 1993 referred to the 1(1)k policy as follows: –

"The number of immigrants granted consent under Regulation 1(1)k's was limited in number. In the past this policy was designed to limit the pressure on the Island from the demands those immigrants placed on the construction industry and other service trades in the Island which , in conditions of overfull employment, could only be satisfied by further immigration. In the current climate however the impact of the purchasing power of those concerned, and in particular the support given to the employment of local persons in the construction industry, retail distribution and service trades such as vehicle maintenance, should be more welcome.

There is sometimes criticism of a process of selection of new immigrants according to their wealth, although the fact that businesses new to the

Island are also selected on grounds of economic benefit appears to be readily accepted. If however there are considered to be benefits from the granting of consents under Regulation 1(1)k in terms of the contribution to tax revenues and the "multiplier" effect of the spending power of those concerned, and at the same time there is a wish to limit the number of immigrants, it would seem to follow that other things being equal the higher the likely taxable income the greater the net advantage to the Island. It is on this basis that existing policy is founded.

The present requirement is for an applicant to have sufficient assets to yield an income liable to Jersey tax of £500,000 or more per annum. This has the effect of limiting the number of consents to a level consistent with current States' policy.

While there have been one or two examples where adverse market conditions have affected the value of an individual's assets and the return obtained on those assets, the evidence shows clearly that in almost all cases the contribution made to tax revenues significantly exceeds that expected when consent was originally granted."

10. As the economy picked up again and the immigration pressures recurred so a tougher policy on 1(1)k's was re-established. The Housing Committee in 1998 considered the tax benefits received by the Island which resulted from the granting of consents under Regulation 1(1)k. The Committee noted that of the 21 consents granted between 1992 and 1995 only 1 resident had underperformed. In total, for the year of assessment in 1996, the 21 1(1)k residents had paid tax of £2.5 million. Of those who had taken up residence in 1996, and had finalised their 1997 tax, all had paid sufficient tax apart from 1 who was about 10% below target. The Housing Committee was advised at that time that there were no grounds for withdrawing a consent, as it was granted for a property, but that a person's tax contribution could be reviewed if they applied to move to another property. The Committee was also informed

that 1(1)k residents were not legally required to make the tax requirement, which was then £200,000 per year, but that the majority were keen to meet the obligations and that any exceptions were reported to the Comptroller of Income Tax. The Committee noted that the minimum annual income which each applicant undertook to meet was expected to be adjusted upwards each year in line with the increase in the Retail Prices Index plus 2.5%. This ensured that, where a consent was granted on the basis of an undertaking from an individual's trustees that the required level of income would be paid to the 1(1)k resident, the Island benefitted from an adjustment which not only ensured that the sum involved increased in line with inflation, but also incorporated some element of real growth.

11. Throughout the 1970's, 1980's and 1990's the tax requirement was used for the main part as a "rationing tool". The idea was that if the States only wished to have, say, 15, 10 or 5 consents granted the tax requirement should be set to achieve this number. That is, those who were granted consent were those most likely to make the biggest contribution to the Island's tax revenues. The principle was that if only 5 consents were to be granted they should be the best in terms of the tax contribution to be made.

12. There has been some misleading language used in describing the policy adopted in the 1970's, 1980's and 1990's. There were no "deals" struck or negotiations that led to any agreement that a person paid less than 20% on the income they received that was liable to tax in accordance with the provisions of the Income Tax Law. All applicants were required to show that they would have sufficient income liable to Jersey tax at 20% to more than meet the minimum requirements set. That requirement was set as the basis for limiting the number of consents each year. Generally speaking the "hurdle" heights set had the desired effect of producing the number of applications and subsequent consents in line with the States' policy of limiting the total number of consents in

each year. All applicants had to satisfy the Housing Committee, with advice from the Economic Adviser and subsequently the Chief Adviser, that they would have sufficient taxable income to meet the requirements. The objective was also to seek to establish a degree of certainty by looking for a sufficient capital base which applying a conservative rate of return yielded a sufficient income liable to Jersey tax. Applicants whose income was in the form of employment or trading income which was susceptible to the influences of trading conditions were unlikely to obtain a consent. Most applicants were seeking to avoid a capital gains tax liability in the United Kingdom at a time when they were seeking to retire from business and sell their businesses or property assets. Because those individuals could not sell their assets before they took up residence if they were going to escape the UK tax liability the housing consents issued had to rely upon a written undertaking from the individual applicant that they would dispose of their assets and create the taxable income required. From the analysis that was undertaken subsequent to consents having been granted there were few cases where this undertaking was not met.

13. Some applicants had structured the disposition of their assets prior to applying for a consent to limit their exposure to UK tax. For example, many years before thinking of taking up residence in Jersey some UK residents had established an offshore trust in a jurisdiction other than Jersey into which they had placed a substantial proportion of their assets of which they and their family were beneficiaries. The Comptroller of Income Tax had no ability to tax the income of the offshore trust which was established well before an individual had thought of taking up residence in Jersey unless the income of the trust was distributed to the individual concerned when resident in Jersey. The effect of this was that the income received in Jersey would have been relatively low unless the trustees of the offshore trusts gave an undertaking to pay an amount from the trust to the individual applicants sufficient to meet the Housing Committee's minimum tax requirements. The trustees were called upon

to give a letter of undertaking that they would make the required income payments. This arrangement was often better in some respects than where an individual did not have an offshore trust because the undertaking from the trustees ensured that the income payments were made and the income received was less likely to be affected by the impact on an individual's assets and income arising from changes in the economic climate, falling interest rates etc.

14. In the recent years the policy has shifted to one of being more encouraging of 1(1)k applicants and the previous approach of relying on undertakings has been replaced by a statutory requirement whereby those granted 1(1)k status are taxed at the following rates:

- the first £1 million of foreign income at 20%;
- the next £500,000 of foreign income at 10%;
- the balance of foreign income at 1%;
- all Jersey's source income at 20%.

It is too early to say what the impact of this will be on each individual's contribution to tax revenues in comparison with the position prior to 2005 when the new arrangements came into force. Certainly the position remains that if an individual has legitimate ways of reducing foreign source income the tax yield could be lower than that being paid by many who gave undertakings in previous years.

15. When looking at the tax receipts obtained from those granted consent under Regulation 1(1)k since 1970 account must be taken of the undertaking that those individuals were required to give at the time the consent was granted. Thus, for example those granted consent in the 1970's faced the requirement of £3-£4,000 of tax initially and £10,000 subsequently. As many of those who were taking up residence were doing so on the back of the realisation of capital gains, and were in receipt of income derived from a certain capital sum, it should not be of

surprise if a number of those who came in the 1970s are now paying tax of little if any more than that promised at the time. However, what the tax figures showed for 2007 was that 30 1(1)k's who were granted consent in the 1970's produced tax of £1.75 million, an average of £58,000 per individual. This shows that many of those concerned were paying a sum in tax significantly greater than that which they gave an undertaking to do when they were first granted consent. There were only 7 paying tax of less than £10,000, and if some of those came in the early 1970s they were only require to pay £3-4,000 per annum when granted consent. A number of those will have seen their capital eroded over time through factors outside their control, and have seen their income eroded by falling interest rates. Having been resident in the Island for more than 30 years it may also be questioned whether they should still be considered as 1(1)k's rather than residentially qualified.

16. In the 1980's the tax requirement increased from £10,000 to £20,000 and subsequently to £50,000 at the end of the decade. The tax figures for 2007 showed that the 34 1(1)k's granted consent in the 1980's produced tax of £1.34 million, an average of some £40,000 of tax per individual. The figures show that the average was ahead of the undertakings given. Of the 34, there were 12 who were possibly falling short of their initial undertaking.

17. In the 1990's the tax undertaking increased from £100,000 to £150,000 and at the very end of the decade to £200,000. The tax figures for 2007 show that the 38 1(1)k's granted consent in the 1990's produced tax of £3.77 million, an average of £100,000 per individual. Some 50% of those concerned fell short of the undertaking but the economic conditions prevailing since they were granted consent could be expected to have had the effect of reducing their taxable incomes. For those granted consent in the 2000's the tax figures for 2007 show an average tax payment for the 14 concerned of £120,000.

18. It is to be expected that among those granted a 1(1)k consent over the past 40 years there will be those who performed extremely well with tax returns very substantially greater than the undertakings given at the time consent was obtained, and those who will have seen their circumstances change for the worst particularly in the light of recent events and whose taxable income will have reduced below that required to yield the tax that they gave an undertaking to meet.

19. There is no reason to suppose that in nearly all cases the undertakings given were not given in good faith. However, at the end of the day an individual cannot be taxed other than on that income that is liable to Jersey tax of 20%. The capital sum in the possession of many individuals may not have changed but the return on that capital sum can have reduced quite significantly because of lower interest rates and dividend payments A reduction in the capital values from which income was generated could also have had an effect on an individual's liability to Jersey tax. The fact that on average the figures for tax in 2007 showed that the majority of those granted consent were more than meeting their undertakings should be seen as indicative of the success of the policy pursuit over the past 40 years. In the past consideration was given to the adoption of a different approach to the granting of consents, such as identifying a limited number of properties that could be purchased on the basis of first come first served, but it was thought unlikely that this would have yielded a tax contribution from the 1(1)k's as good as that obtained through the policy pursued over the past 40 years.

20. Through the 1970's, 1980's and 1990's there were no "deals" struck. The undertakings sought, and the evidence that had to be provided to support the undertakings, was intended to achieve the States policy of limiting the number of consents against the background of a wish to ensure that those granted consent were those most likely to make a significant contribution to the Island's tax revenues. A gentleman's undertaking was given by the individuals concerned that they would

meet that obligation but this was no legal requirement. The figures show that for the most part the undertakings were honoured by those concerned. Individual cases can no doubt be referred to as evidence that an undertaking was not complied with but it would be wrong to use the particular as evidence of a general failure on the part of those granted consent under 1(1)k. In addition, before criticising those who have fallen short of their undertaking, regard should be had for the reasons for this outcome. For example, it is known that some granted consent in the early years were Lloyds names who suffered from major calls on their assets as a result of major insurance claims; others suffered from stock market collapses as in 1987; and one or two saw their capital reduced through divorce settlements.

21. Future policy regarding 1(1)k consents should be determined having regard to the costs/benefits of those making application currently. The fact that information provided with regard to past 1(1)k's shows the following picture on the payment of tax –

Up to £20,000	-	32
£20-£50,000	-	29
£50-£70,000	-	5
£70-£90,000	-	13
£100,000 plus	-	38
Total	**-**	**117**

needs to be related to the fact that of those covered by this analysis –

30 were granted consent in the 1970's

34 were granted consent in the 1980's

38 were granted consent in the 1990's

14 were granted consent in the 2000's

and account taken of the undertakings required, and given, at the time a 1(1)k consent was granted and the personal experience of the individuals concerned subsequent to their being granted consent.

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