

21 May 2021

BY EMAIL TO: M.Magalhaes@gov.je

Dear Sir/Madam

ENVIRONMENT, HOUSING AND INFRASTRUCTURE SCRUTINY PANEL

REQUEST FOR VIEWS ON P.33/2021, THE DRAFT PUBLIC HEALTH AND SAFETY (RENTED DWELLINGS) (LICENSING) (JERSEY) REGULATIONS 202- (THE “DRAFT REGULATIONS”)

The Jersey Landlords’ Association (the “JLA”) would like to thank the Scrutiny Panel for its request for our views on the Draft Regulations.

The JLA is an organisation which represents the interests of residential landlords in Jersey. We now have over 200 members, which comprise landlords and letting agents responsible for the provision of over 3900 residential units (including private rented accommodation and lodging houses).

Many of our members are responsible for only one residential unit, whereas others are responsible for many more.

The JLA is broadly supportive of the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 (the “**Law**”) and its aims to improve housing standards in Jersey’s rented sector. We do not however support the introduction of the licensing scheme set out in the Draft Regulations for the following reasons and would propose that a register and a comprehensive scheme of tenant empowerment is adopted instead.

We also **attach** a list of views garnered from our (anonymised) members in relation to the Draft Regulations.

Summary of Views

1. *Similarity to P106/2019*: P33/2021 is virtually no different from P106/2019 which was not adopted by the States Assembly.
2. *Fees and Inflationary Impact*: Despite the Environment Minister’s assurances that no fees will be charged for a licence at the outset, the JLA are sceptical that a future Environment Minister will not seek to introduce fees (at levels which can be determined

by Ministerial decision). Any such fees will have an inflationary impact on Jersey's already overheated rental market.

3. *Red Tape*: The licensing scheme will introduce new red tape/administrative burdens on landlords and letting agents, which will increase letting fees and therefore rents.
4. *Government has Powers to Identify Rented Dwellings*: knowing where rental properties are located is already within the powers of the Government via the Control of Work and Housing (Jersey) Law 2012 and other legislation. Alternatively a register of all commercial and residential properties in the Island such as that proposed by P93.2020 would serve very well as a register of rented dwellings.
5. *Inspection/Enforcement Legislation Already Exists*: Legislation already exists to combat sub-standard rental properties.
6. *Concerns over Licence Conditions*: The suggested conditions to be attached to a licence issued pursuant to the Draft Regulations are ambiguous, reflect duties of landlords that already exist in law and can be changed or added to by a Ministerial decision with no oversight by the States Assembly.
7. *Comparison to UK Schemes*: Similar licence schemes in local authorities in the UK have not met with great success, are often brought in to deal with specific social problems such as nuisance and are required to be reviewed and renewed by central government every 5 years.
8. *Lack of Clarity on Inspection Regime*: Whilst the report to P33/2021 says that no regime of inspections will be introduced, the Draft Regulations require inspections by the Minister of all licenced properties.
9. *An Alternative – A Register of Property and Tenant Empowerment*: The JLA believe that a register (rather than a licencing scheme) of all property in Jersey will fulfil all of the aims of the Minister, without introducing as much inflationary red tape. Both P.82/2020 (Investigation into a digital register of Landlords and Tenants) and P.93/2020 (Establishment of a digital register of all commercial and residential properties) were passed by the States Assembly and have not been followed up by Government, whereas P106/2019 was not adopted.

1. Similarity to P106/2019

It is clear that the States Assembly rejected P106/2019 for a number of reasons, including the potential inflationary impact of this scheme and the recognition that a better alternative in the

form of a register would be more appropriate. Very little has materially changed in the way that the Draft Regulations are drafted. Only the policy report that accompanies P33/2021 offers some concessions and if passed these concessions may be ignored by a future Environment Minister.

2. Fees and Inflationary Impact

The report to P33/2021 states that *“The Law allows the Minister to impose a charge in respect of issuing licences. The Minister has decided that there will be no application or licence fees charge proposed on introduction of the regulations. This will remain the case unless a future Minister considers imposing a fee.”*

Issuing up to 20,000 licences is a huge bureaucratic process, requiring manpower. It will be costly. If existing landlords are not to pay for their original licence and future licenses may also be free, then only properties new to the rental market will be charged in the first three years. Therefore, the taxpayer will foot the bill for the license. Take the example of fire certificates where on a “user pays” basis: it costs £410 for a fire certificate every 3 years. Therefore, it could cost £2.7m per year for licensing (20,000 properties x £410/3 Years).

This said, the JLA has little doubt that if the Draft Regulations become Law, licence fees payable by landlords (rather than the taxpayer) will be introduced in the near to medium term, by a future Environment Minister.

We live in challenging economic times for governments around the world, many of whom are struggling with the costs of paying for their responses to the pandemic and may be in revenue-raising mode. We feel that landlords may be an ‘easy target’ in such a case and that it would be simple to raise revenue in this way. There is no requirement in the Draft Regulations that any licence fee would be commensurate with the costs of the scheme and in any event the costs of the scheme could quite easily increase steeply (please see more on this below).

If blanket fees are charged then we suspect that the majority of landlords will simply pass these on to tenants in the form of increased rents. This is against the current government’s stated aim of making Jersey housing more affordable across all sectors.

The other (albeit unlikely) option is that landlords will absorb these fees themselves – but this will mean less money being available for doing works to bring properties up to standard. This is particularly so given the high cost of undertaking any kind of building work in Jersey.

Regrettably, there is still no evidence that a cost/benefit analysis has been undertaken in relation to the proportionality of the Draft Regulations and the associated costs to the Jersey rented sector vis-à-vis the number of complaints received.

If the purpose of the Draft Regulations is to require “*that rented dwellings meet minimum standards*” then why charge a licence fee to those landlords who are compliant at all?

In fact, a mechanism to penalise non-compliant landlords already exists in the form of fines for breaches of existing legislation (notably the Law itself). The results of the Draft Regulations will be that compliant landlords are likely to be punished by paying substantial amounts of licence fees for the breaches committed by a small number of non-compliant landlords, when there is already a system for punishing those non-compliant landlords in place.

Equally there are no assurances given about whether Andium and social housing providers may be charged a lower fee than private landlords (as in previous iterations of the Draft Regulations). Such a move would put private landlords at a substantial disadvantage to the public sector.

Finally, the drafting of the transitional provisions of the Draft Regulations, does not currently carve out fees for an existing landlord’s first licence. We assume that this is an oversight and will be rectified in the legislative process.

3. Red Tape

Many of our members have stated that the additional administration required will either push them to using a letting agent (which will have a knock on effect on rents) or to sell up their rented units, which will be likely to go to owner/occupiers, thus removing more rented dwellings from the market and indirectly increasing rents.

The application for a licence is required to be in the manner and form and require such information as the Environment Minister requires.

There is no clarity as to what that information may be. The cost of providing, for example, professional reports for which landlords (and ultimately tenants) would have to pay and which would cause higher rents and general inflation.

4. Government has Powers to Identify Rented Dwellings

One of the main stated aims of the Draft Regulations is to “*provide Environmental Health Officers (‘Officers’) with a complete data set of licenced dwellings. Using this, Officers would be able to carry out proactive targeted inspections over an extended period...*”

This task should already be possible through information already held and collected by various government departments. Such information is already given to:

- (a) the Population Office pursuant to the Control of Work and Housing (Jersey) Law 2012 on change of tenants;
- (b) to the Parishes through rates registers; and
- (c) through the Rent Safe scheme (for those who have signed up to this).

5. Inspection/Enforcement Legislation Already Exists

Legislation already provides robust mechanisms (either through the criminal courts (e.g. the Public Health and Safety (Rented Dwellings) Law 2018, which covers areas such as: disrepair; overcrowding; amenity standards; fire precautions; and filthy and verminous premises) or by giving tenants the right to take landlords to the civil courts (e.g. Residential Tenancy (Jersey) Law 2011) to deal with such sub-standard properties or lettings.

The Law also gives Environmental Health officers wide powers to inspect properties (either of their own volition or on receipt of a complaint) and issue rectification notices. Article 6 of the Law provides that:

“(1) The Minister by any authorized person may, for the purposes of –

- (a) ensuring that minimum standards of health or safety of persons are met by a rented dwelling; or*
- (b) investigating any prescribed hazard to the health and safety of persons occupying a rented dwelling,*

carry out or cause to be carried out an assessment of that dwelling, including assessment of any prescribed hazards in the dwelling.

(2) Subject to the production, if required, of evidence of the authorized person’s authority, for the purposes mentioned in paragraph (1) the authorized person may –

- (a) at any reasonable time and upon notice to the occupiers of the dwelling in accordance with paragraph (3), enter a rented dwelling;*
- (b) on entering the dwelling be accompanied by –*
 - (i) any other person, and*
 - (ii) any equipment or materials,**that the authorized person considers necessary for any purpose for which the power of entry is being exercised;*
- (c) make such examination and investigation as may in the circumstances be necessary, including investigation about the identity of the person having control of the dwelling;*

- (d) *direct that the dwelling, or any part of it, or anything in it, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c);*
- (e) *take such measurements and photographs, and make such recordings, as the authorized person considers necessary for the purpose of any examination or investigation under sub-paragraph (c);*
- (f) *take and retain samples of –*
 - (i) *any articles or substances found in the dwelling, and*
 - (ii) *the atmosphere in, or in the vicinity of, the dwelling; and*
- (g) *require any person whom the authorized person has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) to answer such questions as the authorized person thinks fit to ask.”*

If tenants already have the right to complain to Environmental Health or take court action, it is unclear why further costly (for landlords, tenants and the taxpayer) legislation is needed.

6. Concerns over Licence Conditions

There are some serious concerns with some of the proposed licence conditions and with the ability of the Minister to bring in new conditions.

As currently drafted, the Minister will be able to impose any conditions (reasonable or not) on the grant of a new licence.

All new conditions should have to be agreed by the States Assembly, otherwise, there is a risk that out-of-scope conditions will be introduced that have little to do with Health & Safety e.g. rent control or European style tenancy agreements. There is also currently no mechanism within the Draft Regulations, to allow the landlord to appeal to the Royal Court in relation to the conditions added into the licence.

There are also serious concerns that the breach of the licence conditions as currently drafted, could easily lead to a landlord losing a licence or being charged with an offence (resulting in a substantial fine) for what could be a mistake or a minor infraction.

Currently if a landlord fails to comply with such legal obligations, a tenant or the relevant minister (who would need to submit a case to the Attorney General) may pursue matter through court. With licensing, the Environmental Minister could withdraw a licence, then the landlord is presumed guilty (without a court ruling) and has to go to Royal Court to get back his licence.

In addition, a number of these conditions already exist as rights in law and allow tenants (e.g. the general covenant of quiet enjoyment) or government bodies (under the Law) to bring

proceedings against a landlord and the States or Courts have seen fit to already provide reasonable remedies for such breaches.

Making these requirements conditions of a licence seems heavy-handed, where there is already legal recourse and especially where breaches may not be the fault of a landlord, be inadvertent or be relatively minor and would attract serious penalties and substantial fines.

It seems unreasonable for a landlord to lose a licence and be subject to a fine because, for example, an inspection has not been carried out when it should have (already an offence under the Residential Tenancy (Condition Reports) (Jersey) Order 2014).

It would be undesirable for a licence to be withdrawn for an inadvertent or minor breach. Take the following example:

A landlord owns a block of flats and lets flats out to different tenants. Two tenants in particular are arguing with each other, having loud parties and ignoring the landlord's requests to stop the anti-social behaviour. Both tenants are in breach of their leases and the landlord as owner of the property is in breach of his duty to ensure the tenants in the block have quiet enjoyment of their property (because of the loud parties). The landlord may end up having to evict one or both of the tenants, but in the meantime it is in breach of its licence condition and could technically have his licence withdrawn. This is obviously an undesirable outcome and an element of reasonableness should be introduced to reflect the light-touch approach mentioned in the Report to P106/2020 (the predecessor to P33/2021).

The introduction of a condition relating to due diligence checks is a presumably well-intentioned attempt to assist landlords in undertaking the correct checks on tenants. However, most landlords and agents will already undertake such checks. It is unclear whether this is a condition of the licence (breach of which would warrant the removal of a licence and/or a fine) or not. If not a condition, it should be removed from the list of conditions.

7. Comparison to UK Schemes

We understand that in England, many licensing schemes either fail or are ineffective at achieving their stated aims because of lack of funding. This is because Environmental Health officers are so busy issuing licenses that there are not enough resources for inspections and more particularly enforcement. So enforcements do not really increase.

The JLA feel that the same may occur in Jersey meaning more tax payer money or higher license fee (and therefore higher rents).

8. Lack of Clarity on Inspection Regime

It is still unclear how the inspection regime will be run (due to a lack of clarity in P33/2021). The report to P33/2021 states that the scheme will “*not introduce a mass regime of inspections*”, yet the Draft Regulations require that:

“Before issuing a new licence the Minister must –

(a) inspect the dwelling; and

(b) be satisfied that the dwelling meets the standards in respect of health and safety required under the Law.”

It is unclear how these two elements of P33/2021 fit together.

9. An Alternative – A Register of Property and Tenant Empowerment

The JLA proposed a better way forward than the Draft Regulations, being a compulsory registration scheme combined with a fit-for-purpose complaints scheme, under which tenants are empowered to complain, through education and appropriate guidelines issued to landlords and tenants and appropriate protections for tenants, if their property does not reach minimum standards.

What is the future of the rent safe scheme? Landlords and agents have spent time and money on putting properties on to the scheme. Public money has been spent setting it up and maintaining it. Has that been a waste of time and money?

Why have Propositions P.82/2020 (Investigation into a digital register of Landlords and Tenants) and P.93/2020 (Establishment of a digital register of all commercial and residential properties) not been followed up, but a new iteration of the failed Draft Regulations P.106/2019 is being brought back before the Assembly?

The JLA feels that a register of properties (perhaps with a one off, reasonable fee for initial registration coupled with a requirement to update the details on the register within a reasonable timeframe) would:

(a) accomplish the aim of providing “*Environmental Health Officers ... with a complete data set of licenced dwellings*”;

(b) be an easier and cheaper scheme to establish and maintain; and

(c) command the support of many of the JLA's members.

This would need to be coupled with a system of tenant empowerment and education to help and encourage tenants to enforce their rights. Tenants are effectively onsite inspectors that are perfectly capable on determining whether their accommodation is safe and fit for purpose.

To that end, there are things that could be done to help tenants to complain:

1. Protection from eviction

The Residential Tenancies (Jersey) Law 2011 already provides very substantial protection from eviction by landlords and that the courts are required to examine the surrounding circumstances before ordering an eviction. The court is specifically required to take into consideration "*the pattern of evictions in other residential units let by the landlord*". In addition, the court can order a stay of eviction indefinitely. If protection is not enough, more could be given in the form of a six- or twelve-month ban on eviction where a tenant's complaints are upheld.

2. Better leases

Leases should be drafted in such a way that tenants are completely clear about their rights and the telephone numbers of the bodies that are there to give advice and support (e.g. CAB, JLA and EH). Leases should also make clear that the property is fully compliant with regulations pertaining to electrical checks, smoke detectors etc.

3. Inspections

Environment officers already have the power under the law to inspect rental dwellings WITHOUT complaint. They could exercise this power using intelligence from the register or on complaint and/or on a random basis, to inspect an agreed limited percentage of rental dwellings per year, so as not to drive up costs in the Environment Department and also to not overly inconvenience tenants/landlords and respect the privacy of tenants. This would also stop so called 'revenge evictions' because the landlord would not know if the inspection had been a random one or via complaint.

Thank you for the opportunity to communicate our and our members' view to you.

Yours sincerely

The Committee
Jersey Landlords' Association

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