

# STATES OF JERSEY



Jersey

## **DRAFT PUBLIC HEALTH AND SAFETY (RENTED DWELLINGS) (LICENSING) (JERSEY) REGULATIONS 202- (P.40/2023): TENTH AMENDMENT**

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**Lodged au Greffe on 23rd October 2023  
by the Environment, Housing and Infrastructure Scrutiny Panel  
Earliest date for debate: 7th November 2023**

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**STATES GREFFE**

DRAFT PUBLIC HEALTH AND SAFETY (RENTED DWELLINGS) (LICENSING)  
(JERSEY) REGULATIONS 202- (P.40/2023): TENTH AMENDMENT

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**1 PAGE 18, REGULATION 1 –**

In Regulation 1, in the definition “licence” delete “and “licence holder” is construed accordingly”.

**2 PAGE 18, REGULATION 2 –**

In Regulation 2(3), for “A person must not allow a dwelling to which this Regulation applies” substitute “The owner of a dwelling or part of a dwelling to which this Regulation applies must not allow it”.

**3 PAGE 19, REGULATION 3 –**

In Regulation 3(4)(c) and 3(7)(c) for “licence holder” substitute “owner of the dwelling”.

**4 PAGE 21, SCHEDULE –**

In the Schedule –

- (a) in paragraph 1, for “The licence holder must ensure that the rented dwelling” substitute “The owner of a rented dwelling must ensure that it”;
- (b) in paragraph 2 –
  - (i) in the introductory words, for “The licence holder” substitute “The owner of a rented dwelling”,
  - (ii) in clauses (a) and (b), for “licence holder” substitute “owner”;
- (c) in paragraph 3(1) for “The licence holder must provide the occupier of the rented dwelling with” substitute “The owner must ensure that the occupier of the rented dwelling is provided with”;
- (d) in paragraph 3(2) for “The licence holder must provide the copy of the licence and written information” substitute “The owner must ensure that the copy of the licence and written information is provided”;
- (e) in paragraph 3(4) for “the licence holder must provide the existing or new occupier” substitute “The owner must ensure that the existing or new occupier is provided”;
- (f) in paragraph 3(8) for “The licence holder” substitute “The owner”.

ENVIRONMENT, HOUSING AND INFRASTRUCTURE SCRUTINY PANEL

## REPORT

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### REMOVE REFERENCES TO “LICENCE HOLDER” AND REPLACE WITH “OWNER” (AND CLARIFY THAT REGULATION 2(3) APPLIES TO THE OWNER)

The aim of this proposed amendment is to remove ambiguity over who can apply for a licence and be considered a licence holder and to clarify within the draft Regulations that a licence holder be required to be the owner of the rented dwelling.

The draft Regulations make clear in Regulation 1 (Interpretation) that it is the property which is licensed:

*“licence” means a licence in respect of a rented dwelling issued or renewed under Regulation 3 and “licence holder” shall be construed accordingly;*

The term “licence holder” compares with Article 1 of the [Public Health and Safety Rented Dwellings\) \(Jersey\) Law 2018](#) (the primary law) where the definition under Interpretation refers to a definition of a “person having control” which comprises: (a) the owner, (b) a person entitled to receive rent (c) a person responsible for repairs and (d) a person responsible for allowing persons to occupy the building for any period of time.

However, the term “licence holder” could lead to ambiguity in cases where, for example, a managing agent applies to be the licence holder on behalf of the property owner.

Justice for Tenants UK state in a written submission that, whilst there can be benefits to a property management agency being the licence holder, there are existent issues in the UK where the landlord nominates an agent to be the licence holder, but the agency is substandard. Where there is an issue with the property, the landlord repeatedly advises the Local Authority that they need to deal with the agency as the agency is the licence holder. This can lead to a situation where the landlord is receiving a rental income for the property but refusing to take proactive steps to rectify issues in the property.

Justice for Tenants UK suggest it would be advisable for the licence holder to be required to be the owner of the property and for a managing agent to be able to fill out the form on behalf of the owner/landlord as their client, but the landlord be required to sign the document and be the licence holder. The managing agent could be the main point of contact, but the authority would always have a serving address for the landlord who is the licence holder.<sup>1</sup>

The Panel questioned the Minister for the Environment further on this during the public quarterly hearing held on 11th October:

***The Connétable of St. Brelade:***

*...The draft regulation makes reference to a licence holder. To what extent do you consider issues could arise between who can apply for a licence? For example, the property owner nominates a managing agent as the licence holder, but that agency is substandard. Would it be available for the licence holder to be required to be the landlord of the property and for a managing agent to be able to fill out the form on behalf of their client or the landlord to be required to sign the documents and be the licence holder? A bit like you might make a planning application where the land owner has to sign it off. Who would be the person? Because that person in turn would be the one who might be culpable in law.*

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<sup>1</sup> [Written Submission – Justice for Tenants UK – 21 September 2023](#)

***The Minister for the Environment:***

*I do not remember the detail on that. I do not know if you do, Kelly. But there were some specifications about who could and who could not sign, as I recall.*

***Group Director, Regulation:***

*Yes, I think this would come forward in the guidelines and then the procedure notes essentially.*

***The Minister for the Environment:***

*Okay, so we can clarify that.*

***Group Director, Regulation:***

*This is the principle of the powers, and then we are coming forward with the guidance and how that would be essentially undertaken.*

***The Minister for the Environment:***

*Interpreted.*

***Group Director, Regulation:***

*Then we would have the procedure, which is: how do you submit a form? How do you pay? Who can, who signs? Things like that in terms of the procedure. It is intended essentially that an agent can apply on behalf of the landlord.*

***Deputy S.G. Luce:***

*Okay, but do you not think this is an important enough issue that it needs to be clarified in the law rather than in the guidelines? Because who the licence holder is, who the person with the responsibility is, who is going to court to face the sanction, that is a really important part of the legislation.*

***Group Director, Regulation:***

*In other pieces of legislation it is not necessarily specified to that degree. So it might say that it is an applicant with an owner consent, or something similar to that vein.*

***Deputy S.G. Luce:***

*You are aware that land agents will use the excuse that the landlord was responsible and the landlord will say: "I placed this with the responsibilities of the agent, he is responsible" and we will go backwards and forwards and we will not be able to decide who is the person that goes to court.*

***The Minister for the Environment:***

*It is not the landlord or the agent who is being licensed, it is the property.*

***Deputy S.G. Luce:***

*But the property does not go to the Royal Court and face a fine, Minister. Somebody has to go to court and face a fine. So who is the person who goes to court to face the fine for the infraction?*

***The Minister for the Environment:***

*Ultimately I would have said the owner, but they can nominate ... in terms of filling in the form they can nominate an agent.*

***Deputy S.G. Luce:***

*Do you think that needs to be made clear in the regulations, who the owner or who the registered holder is of the licence?*

***The Minister for the Environment:***

*I would take law officer advice on that. There may be reasons why it is kept deliberately vague in regulations. That seems to me to be a technical issue that we could discuss. If it is a useful improvement then we would be happy to do it. But I would want to take law officer advice.*

***Deputy S.G. Luce:***

*It is something which is used, as far as we are concerned, quite regularly. The excuse of the agent saying: "Well, sorry, it is the owner's property" and the owner is saying: "I am sorry, I put it in the responsibility of the agent" and nobody ultimately comes up as being responsible for the infraction.<sup>2</sup>*

Having considered the matter, the Panel proposes this amendment to remove references to "licence holder" and to substitute these with "owner" to make it clear that it is the owner who is ultimately responsible for the property and therefore liable for any infractions.

**Financial and staffing implications**

The Panel is not aware of any financial and manpower implications associated with this proposed amendment.

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<sup>2</sup> Transcript – Public Quarterly Hearing with the Minister for the Environment, 11th October 2023, p.18-20