

# STATES OF JERSEY



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

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**Presented to the States on 26th October 2023  
by the Environment, Housing and Infrastructure Scrutiny Panel**

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**STATES GREFFE**

## COMMENTS

### Introduction

The Draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 202- [\[P.40/2023\]](#) were debated in the first reading by the States Assembly on 18<sup>th</sup> July 2023, with the principles adopted. Owing to concerns raised by key stakeholders, the proposition was referred to the Environment, Housing and Infrastructure Scrutiny Panel for further scrutiny. In conducting its review, the Panel has sought to gather views and insight from identified targeted stakeholders, with the aim of identifying proposed amendments and recommendations prior to the States' debate in second and third reading.

To seek a balance of views, the Panel reached out to several targeted stakeholders including:

- Andium Homes
- Caritas Jersey
- Christians Together in Jersey Housing Trust
- Citizens' Advice Jersey
- Clos de Paradis Housing Trust
- FB Cottages Housing Trust
- Jersey Estate Agents' Association
- Jersey Farmers' Union
- Jersey Homes Trust
- Jersey Landlords' Association
- Les Vaux Housing Trust
- Statistics Jersey

The Panel has considered all evidence gathered from those who were able to provide a written submission and/or meet with the Panel.

To further help inform its review, the Panel also engaged the consultancy services of [Justice for Tenants UK](#) who specialise in working with:

- The UK Department for Levelling Up Housing and Communities on improving the efficacy of licensing schemes via proportionate enforcement where appropriate; and
- Local authorities across England to improve the outcomes of their licensing schemes; and
- Relevant bodies (most notably the Chartered Institute of Environmental Health and the Association of Chief Environmental Health Officers) to share best practice regarding enforcement of breaches of licensing schemes.

Justice for Tenants UK help local authorities to identify what outcomes they seek from selective<sup>1</sup> licensing schemes, looking at practical ways of achieving those outcomes, as well as proportionate ways of deterring non-compliance.

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<sup>1</sup> [What is UK Selective Licensing?](#)

Under section 80 of the Housing Act 2004 a local housing authority can designate the whole or any part or parts of its area as subject to selective licensing. Where a selective licensing designation is made, it applies to privately rented housing in the area.

The Panel's review has also been informed by evidence obtained from the Minister for the Environment during the public quarterly hearing held on 11<sup>th</sup> October 2023.

### **Review outcomes**

The Panel's review has identified several proposed amendments. Further background and rationale for each proposed amendment is included in the reports accompanying each amendment and which can be accessed via the links below:

- **Second amendment**: inclusion of lodging houses within the draft regulations
- **Third amendment**: define when a licence application is considered to have been made and additional requirements for application – must be made and signed by dwelling owner
- **Fourth amendment**: replace the word “may” with “must” in regulation 3(1)
- **Fifth amendment**: clarify provision for licences to be granted subject to any necessary remedial works being carried out within a defined timeframe
- **Sixth amendment**: remove condition 2(e) from the schedule of standard licence conditions (regulation 3(5))
- **Seventh amendment**: remove scope for additional conditions to be placed on licences at the minister's discretion
- **Eighth amendment**: exemption of licensing fees for social housing providers
- **Ninth amendment**: initial review by minister and royal court appeals process
- **Tenth amendment**: remove references to “licence holder” and replace with “owner” (and clarify that regulation 2(3) applies to the owner)

The review has also identified several key recommendations, the evidence pertaining to which will be the focus of discussion in this comments paper.

### **The rationale for the introduction of licensing**

In the report to the proposition, the Minister for the Environment sets out his case explaining the need for licensing rented accommodation. To explore this further, the Panel sought the views of Citizens' Advice Jersey and Caritas Jersey, to better understand the extent to which issues with poor conditions and health and safety exists in rental accommodation in Jersey.

In a written submission, Caritas Jersey advised as follows:

*We note from the Minister's letter in the JEP on Saturday 15 July that there had already been 115 complaints by that stage of the year. This does not surprise us and that figure is considerably higher when you consider that many tenants will not go to government in the first instance or at all at present, such is their fear of reprisals. They come to Caritas and many other charities instead and despite encouragement to report onwards to GoJ, many feel frightened to do so at present. Annually we, Caritas, see on average about 200 reports from tenants, split quite evenly between worries about unhealthy conditions (e.g. mould, poor plumbing, etc;) and dangerous conditions (e.g. unfixed wiring, damaged windows, etc;). I know from speaking to partner agencies and*

*charities like Salvation Army, the foodbanks and Citizens Advice that they see similar numbers each year too.*<sup>2</sup>

Caritas Jersey further comment that, ten days after the case was reported of a 2-year-old boy in Rochdale who died from a respiratory condition caused by mould in the property he lived in, they were visited by three Jersey tenants concerned by mould growth in the bedrooms of their own rental property. Caritas Jersey stress the importance that *“landlords/residential properties are licensed so that standards can be improved across the board”* and there is *“no doubt many excellent landlords but this new scheme is needed to ensure that those who are not so excellent are subject to a mechanism which holds them to account.”*<sup>3</sup>

In correspondence with the Panel, Citizens’ Advice Jersey advised of the following types of cases they have seen this year to date:

- *One client came to us with unsafe water supplied to the property (from a borehole). Tests showed nitrate levels higher than the legal EU limit as well as an unsafe coliform bacteria. Client had been ill.*
- *Eleven cases of mould and damp in property (some clients have explicitly said that this is despite trying to ventilate) that are not being dealt with. One issue of damp caused by a leak in neighbouring flat. One damp issue cause a hole in the ceiling. One mould case affected tenant’s personal belongings.*
- *Two cases of faulty/illegal boilers. One leading to no hot water.*
- *Three cases of leaks in property.*
- *One client with a live electric wire coming out of the electric distribution board.*
- *Two cases of front doors not properly closing.*
- *In addition to broken front door, one client also with broken mixer tap, and a window that doesn’t open.*
- *One client asked to pay an additional month’s rent because the landlord was not happy with the condition they had left it in on vacating.*
- *One client moved into unclean property (expected to pay for professional cleaning on termination of lease); no access to garden despite mention of it on lease; no smoke detectors; no receipt for deposit; issues with lighting (though what these are are not clarified).*<sup>4</sup>

Noting the benefits of private rented sector licensing schemes, Justice for Tenants UK comment on the relationship between housing and health and that legislation aimed at improving housing also improves population health and reduces health inequality. Furthermore, that licensing of all privately rented properties is *“the only effective mechanism to determine whether properties are privately rented.”*

Licensing enables the collation of relevant information regarding the landlords of the rental properties, as well as information about the occupancy of the properties. Licensing is also deemed to drive better data-driven identification of rogue landlords, enabling a more targeted use of Local Authority resources against those who operate under-the-radar. Justice for Tenants UK stress that the minority of landlords who have

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<sup>2</sup> Caritas Jersey – [Written Submission](#) – 17<sup>th</sup> October 2023

<sup>3</sup> Caritas Jersey – [Written Submission](#) – 17<sup>th</sup> October 2023

<sup>4</sup> Citizens’ Advice Jersey – Email Correspondence – 25<sup>th</sup> September 2023

no intention of complying with the minimum standards may decide to leave the market and that “*removing rogue landlords who view minimum standards and legislative requirements as something to be avoided is a key benefit of licensing and effective PRS [private rented sector] regulation.*”<sup>5</sup>

Licensing schemes can also be used to add specific conditions which improve the renting experience for tenants, which may be above and beyond legislative minimum standards. This can include requirements for landlords such as giving written tenancy agreements or carrying out inspections at six-monthly intervals.

A further key benefit is that licensing is seen to facilitate better identification of criminal landlords in the UK and has enabled more enforcement options that are faster and more efficient for Local Authorities in the UK to use. Licensing schemes can also be used to add specific conditions which can improve the renting experience for tenants and which go beyond legislative minimum standards. This can include requirements for landlords to provide written tenancy agreements or carry out inspections at six-monthly intervals.<sup>6</sup>

### **The challenges of licensing**

In a written evaluation of the proposed licensing regulations, Justice for Tenants UK comment on the challenges which currently exist with the licensing of rented accommodation in the UK. Challenges which could be pertinent to Jersey are discussed further below.

#### *Staffing levels*

Staffing budgets for enforcement teams in the UK has decreased, the size of the private rented sector has increased and the cost of rent has risen above inflation and wage growth. Furthermore, there is a shortage of qualified staff able to carry out the regulatory functions required by licensing. Justice for Tenants UK further comment that with a team of six full-time equivalent officers this is expected to be sufficient to meet the demands of the licensing regime and therefore is not expected to be a significant issue in Jersey. However, the Panel considers that without robust data relating to the number, type and current condition of rented property across the Island, it is difficult to gauge how resource-intensive the inspection regime will be. If the draft Regulations are adopted, this is something which should be monitored closely to ensure that the scheme is adequately resourced with fully qualified and trained staff and in order for it to be effective.

#### *Inconsistent Local Authority enforcement*

Justice for Tenants UK stress the importance that once a licensing scheme is embedded and well-known those who continue to operate unlawfully should face consequences for doing so. Despite there being self-funding mechanisms, such as Civil Financial Penalties, to enforce against unlawful landlords, most Local Authorities carry out very little formal enforcement due to lack of confidence, training and experience. Out of 317 Local Authorities in England, only 20 are responsible for over 70% of the Civil Financial Penalties issued<sup>7</sup>.

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<sup>5</sup> Justice for Tenants UK – [Written Submission](#) – 21<sup>st</sup> September 2023

<sup>6</sup> Justice for Tenants UK – [Written Submission](#) – 21<sup>st</sup> September 2023

<sup>7</sup> Watkin, S. (2021). The Enforcement Lottery: civil penalty usage by local authorities. NRLA. <https://www.nrla.org.uk/research/special-reports/enforcement-civil-penalty-usage>

Justice for Tenants make the point that: “*law-abiding landlords can feel justifiably aggrieved when they pay to comply with their obligations and see criminal landlords operating with impunity, extracting greater profit by overcrowding properties, failing to get a licence, and declining to spend the money needed to bring their rental properties up to the minimum legal standard.*”

In UK Local Authorities there can be a lack of clear processes and workflows which can lead to inconsistent approaches from staff to regulating the private rented sector. Justice for Tenants UK advocate that “*a standardised and documented approach, where comparable offences are treated similarly, is vital to ensure landlords do not feel that they are being unfairly discriminated against, or that other landlords are receiving preferential treatment due to personal connections.*” They further stress the importance of resource-appropriate mechanisms to enforce against breaches in the law, and that the approach to enforcement is transparent, consistent and fair.<sup>8</sup>

A concern highlighted by the Jersey Landlords’ Association was whether inspections in Jersey would follow the Housing Health and Safety Rating System (HHSRS) used in the UK. Specific concerns were that this system was viewed as overly prescriptive and highly subjective, and some aspects were open to misinterpretation such as: exposure to noise and lack of adequate lighting. The Panel notes that without a code of practice in place there is uncertainty around how such a rating system would work in practice in Jersey and how the system would be reviewed to ensure that it was achieving the aims of the law and without resulting in unnecessary consequences.

The Rugg and Rhodes 2018 report entitled ‘[The Evolving Private Rented Sector: Its Contribution and Potential](#)’ discusses both the advantages and disadvantages to the HHSRS in the UK as follows:

<b>Advantage</b>	<b>Disadvantages</b>
<ul style="list-style-type: none"> <li>• System looks at potential harm to particular residents rather than viewing the building in isolation</li> <li>• Covers a wider range of issues than the old Fitness Standard</li> <li>• Sensitive to the vulnerabilities of the property’s residents (defined principally in terms of age)</li> </ul>	<ul style="list-style-type: none"> <li>• Based on an assessment of hazard risks compiled in the early 1990s; needs to encompass a wider range of property types.</li> <li>• Difficult for landlords and tenants to understand</li> <li>• Interpretation varies between EHPs</li> <li>• Can be difficult to defend on appeal of a decision: inconsistent tribunal and court judgments have been made</li> <li>• Does not necessarily correlate exactly with other property condition measures, for example, Energy Performance Certificate ratings, electrical safety testing, crowding and minimum space standards, and HMO licensing standards</li> </ul>
<p>Derived from: CIEH (2017) <i>HHSRS – 11 Years On Results from a survey of Environmental Health Practitioners Working in Housing</i>, London: CIEH.</p>	

It has also become apparent to the Panel in conversation with Jersey landlords that there appears to be a disconnect between new properties receiving building bye law approval but failing certain aspects of a health and safety inspection.

<sup>8</sup> Justice for Tenants UK – [Written Submission](#) – 21<sup>st</sup> September 2023

## Code of practice / landlord toolkit

Feedback from the Jersey Landlords' Association explains that there is significant uncertainty with how the licensing scheme will be operated and enforced in practice and that it is not ideal that the States Assembly will be debating and potentially adopting the draft Regulations without any published guidance.

Article 4(1) of the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 states that:

*The Minister may, after consultation with such persons or bodies as appear to the Minister to be representative of the interests concerned –*  
*(a) prepare and issue codes of practice for the purpose of providing practical guidance in respect of any provision of this Law or any Order made under this Law; and*  
*(b) revise any such code by revoking, varying, amending or adding to the provisions of the code.*

Jersey Landlords' Association state that the Public Health and Safety (Rented Dwellings – Minimum Standards and Prescribed Hazards) (Jersey) Order 2018 is the only document which sets out what the minimum standards are. The Order contains requirements about smoke detectors, gas and electrical safety and 29 'prescribed hazards' which landlords are required to ensure do not exist in their rented properties. They further assert that there is very little detail in the Order about these prescribed hazards and how they are to apply to rented dwellings. Furthermore, that:

*A detailed code of practice would give certainty to landlords, tenants and environmental health officers alike. The UK government has published a document setting out detailed requirements relating to the prescribed hazards.*

*We feel that it would be unfair for landlords to potentially be in the position of having relatively little information about how minimum standards will apply to their property.*

*The regulations should not come into force until a Code of Practice has been published and given a reasonable time to bed in. We would suggest that this be 1 to 2 years given the extreme difficulty in finding workmen in Jersey at the moment.<sup>9</sup>*

Justice for Tenants UK point out that under the draft Regulations, standard licence condition 3(7) 'information to occupiers' could lead to a vast difference in the content and quality of information provided from landlords to occupiers. In particular, it is noted that it would be helpful to:

- Provide an example of what 7(c) should look like (how the concern or complaint will be dealt with);
- Define exactly what information needs to be included to comply with 7(d) (a statement on the occupier's right to seek advice from or raise a complaint to the administration of the States responsible for environmental and

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<sup>9</sup> Jersey Landlords' Association – [Written Submission](#) – 10<sup>th</sup> July 2023



consumer protection, together with the up-to-date contact details for the said administration of the States.)

The Panel considers it would therefore be helpful for a ‘toolkit’ of pro-forma wording and template documents to be provided by Government to landlords.

Justice for Tenants UK states that to ensure that offenders are treated consistently and transparently, it would be effective to have a published policy regarding:

- *What informal efforts will be made to gain compliance from landlords of properties suspected of being rented who have not made an application.*
- *The point at which formal enforcement will commence.*
- *How formal action will continue for repeat offenders.<sup>10</sup>*

There should be a clear process for officers to follow to ensure equal treatment of offenders, along with standardised templates in respect to warning letters and formal letters relating to legal proceedings.

A code of practice should also set out what documents are required to be submitted with an application for a licence. Justice for Tenants UK advocate that:

*To understand risk profiles and learn about the private rented sector stock in Jersey, a floorplan, any necessary gas and electricity certifications and a copy of tenancy agreements for all tenants would be a sensible starting point, along with a signed declaration that the landlord will comply with all licence conditions and confirming an address to be used for service of official documents.<sup>11</sup>*

During the public hearing, the Panel pressed the Minister for the Environment on when the code of practice would be published and was advised as follows:

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

*It is being worked on. I think I will ask Kelly to give me the latest update on that. But so far as the workstream, I asked for it to come in time for when the legislation was originally going to be coming in, which would have been in the new year, so it would have been ready in November ... I think we had scheduled it for the end of November. Clearly, we now have a bit more time, so it will take ... we will use that time but it will be in good time. We will not be waiting right until the last moment.*

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

*The fact that you should or might well have been ready, if the debate had not been pulled in the Second Reading, we could be moving towards 1st January, one would have expected you at that point to be ready to go. Can we expect those guidelines to be ready for 1st January?*

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

*I am not going to guarantee 1st January but Kelly can fill you in.*

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<sup>10</sup> Justice for Tenants UK – [Written Submission](#) – 21<sup>st</sup> September 2023

<sup>11</sup> Justice for Tenants UK – [Written Submission](#) – 21<sup>st</sup> September 2023



**Group Director, Regulation:**

*No, so we have not published the guidelines because we are still in draft. We are still preparing them. We are working with an external consultant to prepare those guidelines. We have provided the policy principles around them. But the actual guidelines, in order to be able to be published, are not ready. We have other priorities, so we have shifted workloads to accommodate that. Essentially, as we have been given more time for this we have prioritised other pieces of legislation and guidelines. In the sense that it would not be ready for 1st January, but it would be ready before it was to be enacted.*

...

**Deputy S.G. Luce:**

*Will those guidelines include those proforma templates, the toolkit for landlords that we have been speaking about?*

**The Minister for the Environment:**

*I am not sure. The guidelines address ... very specifically flesh out what we mean when we set standards around damp or all the other various categories. I think the question of how the mechanics of the application process is a separate issue. But yes, that will be a proforma that is available beforehand.<sup>12</sup>*

The Panel considers it would have been beneficial for a code of practice to have been published prior to the lodging of the draft Regulations so that private landlords, social landlords and industries with worker accommodation could better understand how the law will be applied to them.

By example, the Jersey Farmers' Union (JFU) commented that there has been no engagement with the agriculture industry regarding the proposed licensing regulations for rented dwellings or consideration given to how the farming industry might be affected by the proposals. The JFU also made the point that all dairy and potato farms in Jersey have independent audits (such as Red Tractor, LEAF and Grasp) and worker accommodation is inspected as part of those audits.<sup>13</sup>

It would be beneficial for there to be better joined up working across Government to work with industries and to ascertain what official inspections/audits are already carried out on rented worker accommodation and whether the criteria for these audits align with the requirements for minimum standards. The aim of which would be to avoid duplication where they may already be robust inspection regimes in place and to target inspections (and the department's resourcing of these) most effectively.

**Recommendation 1:** The Minister for the Environment should publish a code of practice containing guidelines of how the law and proposed regulations will be applied in practice. In addition, a landlord toolkit should accompany the code of practice containing pro-forma templates of relevant documentation that landlords will be expected to provide to occupiers before the end of February 2024.

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<sup>12</sup> [Transcript](#) – Public Quarterly Hearing with the Minister for the Environment – 11<sup>th</sup> October 2023, p.2-3

<sup>13</sup> Jersey Farmers' Union – Email Correspondence – 10<sup>th</sup> October 2023

**Recommendation 2:** Should the draft Regulations be adopted, the Minister for the Environment should further explore, before the date of enactment, what existent inspection regimes take place by other accredited bodies in relation to worker accommodation. Consideration should be given to what extent the criteria of these audits align with the minimum standards and how this can be factored in to avoid duplication and unnecessary extra cost for the agriculture industry.

### **Support for both landlords and tenants**

Citizens' Advice Jersey highlighted that they would be seen as the first point of contact for tenants/landlords raising concerns and queries in relation to the licensing scheme and suggested that extra funding be provided to them from Government acknowledging the increased impact this is likely to have on the charity's case load. A similar arrangement is currently in place for how Citizens' Advice Jersey act as the first point of contact for the MyDeposits scheme.

The Panel questioned the Minister for the Environment on this during the public quarterly hearing held on 11<sup>th</sup> October 2023:

***The Deputy of St. Mary:***

*...Support for landlords and tenants, Citizens Advice Jersey have expressed concern. They were seen as the first point of contact for tenants and landlords as to concerns, mentioned the licence scheme and suggested extra funding be provided to them from government, acknowledging the impact this is likely to have on their own case load. A similar set of rules is in place for our Citizens Advice as the first point of contact for the mydeposit scheme. Do you have any views on this, Minister?*

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

*I spoke to Citizens Advice in the lead up to this. It is interesting, the question I guess is to what extent there is an increase here. They were very clear that they already deal, presumably under whatever funding they currently have, with considerable numbers of queries under the 2018 law, exclusively I think from the conversations I had with them from tenants, not from landlords. So tenants essentially complaining or saying: "I have a problem." They already do that, so I would have to have a conversation with them about the extent to which they have logged that activity. It is definitely logged because they provided me with a summary of the log. You could argue that some of that will disappear now because there is now a better mechanism for this to be dealt with through regulations. Their simple answer will be go to regulation. There may be a reduction in some places and an increase somewhere else. That is one to monitor. It feels premature to say we will have to fund...<sup>14</sup>*

**Recommendation 3:** Should the draft Regulations be adopted, prior to the date of enactment, a helpline should be provided by Government to support both tenants and landlords in relation to licensing queries and concerns raised regarding poor rental accommodation conditions. Alternatively, Government should explore and consult on the possibility of providing additional funds to Citizens' Advice Jersey to provide this service.

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<sup>14</sup> [Transcript](#) – Public Quarterly Hearing with the Minister for the Environment – 11<sup>th</sup> October 2023, p.33

## **Economic impact assessment on the private rented sector**

Evidence received from the Jersey Landlords' Association<sup>15</sup> and Sir Mark Boleat<sup>16</sup> suggested that an impact assessment should be carried out to determine what impact the introduction of a licensing regime may have on market conditions in the private rented sector in Jersey.

During the public hearing, the Panel questioned the Minister for the Environment further on the decision not to undertake an economic impact assessment:

***Deputy M.R. Le Hegarat:***

*Impact assessment, why was it not deemed prudent to carry out an impact assessment on the potential impact the introduction of a licensing scheme could have on the private rental market in Jersey?*

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

*For 2 reasons. The first reason, as I said before, these are fundamental standards. If you are measuring the impact of making sure that rental properties are safe, that is not negotiable. Properties have to be safe. These are not things that are fripperies. This is about the basics. You do not have an impact assessment on making sure that somewhere is fire safe; it has to be. That is the first reason. The second reason is that I do not accept that the implications of this are significant. If the sum total of the disruption or the burden, or whatever we want to call it, is to fill in a form every 2 years and pay £60, an impact assessment implies that we have significant potential impacts that could potentially be mitigated in some way. It is a basic standard and it is not a huge imposition.<sup>17</sup>*

To better understand the type of data/information that exists currently but also what is lacking, the Panel sought advice from Statistics Jersey who provided the following information:

- *Information / data exists in respect of the overall economy that could be used to as the basis of an economic impact assessment. This includes total number of rental properties (from the [2021 Census](#)) as well as estimates of the sectors GVA (from the [Measuring Jersey's Economy Report](#)). This could then be compared to the fee costs and an estimate for the administrative costs of compliance to provide an overall estimate of the impact to this sector.*
- *What is not readily available however is data that would enable a distributional analysis on different landlords. The nature of the proposed regulations means that the fee and administrative burden is applied per unit of accommodation. Therefore, it would be expected that landlords with smaller properties that attract a lower level of rental income, would be subject to a greater impact than those with larger properties that each*

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<sup>15</sup> Jersey Landlords' Association – [Written Submission](#) – 10<sup>th</sup> July 2023

<sup>16</sup> Sir Mark Boleat – [Written Submission](#) – 22<sup>nd</sup> September 2023

<sup>17</sup> [Transcript](#) – Public Quarterly Hearing with the Minister for the Environment – 11<sup>th</sup> October 2023, p.33-34

*attract a larger rental income. Data does not currently exist to quantify this distributional impact, nor is it likely to be capable of collection in the short term.*

- *Data that would likely be required to perform such an assessment would include:*
  - *Details of individual landlords and the number / size / type of properties they own.*
  - *Details of individual rents / lease agreements for rented dwellings.*

*Collection of this data is unlikely to be possible in the short term (such that it could feed into an assessment of this proposed legislation) as it would likely require changes to legislation, or a complex standalone data gathering exercise.*

*It is worth noting that the regulations themselves (once implemented) could potentially facilitate data gathering of this type. Whilst the proposal does not specifically address collection of this data, the existence of a register of rented dwellings would facilitate a survey-based approach to potentially gathering this data which would currently be very difficult (due to a lack of a sampling frame of landlords / registered dwellings).<sup>18</sup>*

**Recommendation 4:** The Minister for the Environment should commission a high level economic impact assessment based on the number of rental properties (from the [2021 Census](#)) as well as estimates of the sector’s Gross Value Added (GVA) (from the [Measuring Jersey’s Economy Report](#)) and comparing this to the fee costs and an estimate for the administrative costs of compliance. This initial assessment should be completed and provided to States Members prior to the enactment date. Should the draft Regulations be adopted and enacted, a more in-depth distributional analysis should be conducted ensuring that data is collected in relation to the details of individual landlords and the number / size / type of properties they own; and details of individual rents / lease agreements for rented dwellings. This distributional analysis should be completed and reported back to the States Assembly within 12 months of the scheme coming into force.

**Measuring the impact and value of the proposed licensing regime**

Evidence received from both the Jersey Landlords’ Association and Sir Mark Boleat stressed the need for data to be collated and published on a regular basis, reporting on how effectively the licensing scheme is operating and whether it is achieving its intended aims to improve rented property conditions.

<p><b><i>Sir Mark Boleat</i></b></p> <p><i>So as to be able to assess the impact of the scheme and therefore make any necessary modifications –</i></p> <ul style="list-style-type: none"> <li>• <i>Within one month of the start date an analysis of registrations should be published with a breakdown of how many units are owned by landlords</i></li> </ul>	<p><b><i>Jersey Landlords’ Association</i></b></p> <p><i>We feel that it is imperative that the Minister publish an annual report every year during the operation of the scheme, showing the relative success compared to previous years of the scheme so that progress and the performance of the Environmental Health Department can be monitored by the public. Such information</i></p>
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<sup>18</sup> Statistics Jersey – Email Correspondence – 18<sup>th</sup> October 2023

<p><i>with one property, 2-5 properties, 6-10 properties etc.</i></p> <ul style="list-style-type: none"> <li>• <i>Quarterly figures should be published on new registrations, registrations ended and enforcement action.</i></li> <li>• <i>After one year, an independent assessment of the effects of the regime should be undertaken.</i></li> <li>• <i>At the end of two years a second assessment should be undertaken covering in particular changes in the register.<sup>19</sup></i></li> </ul>	<p><i>might include the number of inspections undertaken and the results obtained. Landlords, tenants and the public will want to see value for money from such a scheme and we will be keeping a close eye on the results.<sup>20</sup></i></p>
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The Panel notes that a report following an independent review of UK selective licensing was published in June 2019. The report found that: “*selective licensing is an effective tool when implemented properly, and identifies a range of areas where the operation or implementation of selective licensing schemes could be improved.*”<sup>21</sup>

**Recommendation 5:** The Minister for the Environment should ensure that relevant data regarding the value and effectiveness of the licensing regime be collated and published on a quarterly basis such as (but not limited to): number of registrations and breakdown of types/sizes of rental accommodation / types of complaints and issues reported / enforcement action and number of prosecutions etc. This data should also be utilised, along with stakeholder engagement, to prepare and publish an annual report on the value and effectiveness of the licensing regime.

### Fees/charges

The Jersey Landlords’ Association raised concern that licensing fees could rise disproportionately in the future:

*There is no requirement in this iteration of the licensing scheme that any licence fee would be commensurate with the costs of the scheme – simply a public promise (which will not bind future Ministers) in the States that fees will not increase by more than inflation. The costs of the scheme could quite easily increase steeply in the hands of the current or a future Environment Minister, who might seek to pass these on to landlords. Take the example of fire certificates - these recently experienced an enormous increase from £80 every 3 years to £410 every 3 years. There is nothing to stop Government from increasing licence fees in a similar way. A way must be found to permanently limit increases to RPI.<sup>22</sup>*

The Panel is aware that when setting fees and charges, the Government of Jersey is bound under the principles of the Public Finances Manual, that a profit should not be made on the costs of providing a service. It is a further requirement of the Public

<sup>19</sup> Sir Mark Boleat – [Written Submission](#) – 22<sup>nd</sup> September 2023

<sup>20</sup> Jersey Landlords’ Association – [Written Submission](#) – 10<sup>th</sup> July 2023

<sup>21</sup> [Ministry of Housing, Communities and Local Government – An Independent Review of the Use and Effectiveness of Selective Licensing – June 2019](#)

<sup>22</sup> Jersey Landlords’ Association – [Written Submission](#) – 10<sup>th</sup> July 2023

Finances Manual that approval must be gained from the relevant Minister and the Minister for Treasury and Resources for all annual increases in excess of 2.5%.<sup>23</sup>

Whilst the Panel is sympathetic to the concern that there is a risk that licence fee costs could rise disproportionately in future if operating costs are substantially higher than first considered, there are means to challenge the Minister for the Environment's decision and the States Assembly could request a rescindment of the decision if it was considered a disproportionate or unjustified increase.

Justice for Tenants UK make the following observation in their written evaluation:

*Licence application fees tend to only impact landlord behaviour when the fee is high and the licensing scheme operates in an area of low housing demand. For example, the licence application fee of £750 for a 5-year licence in the Central London borough of Newham is unlikely to impact whether a landlord will continue to operate and/or grow their business in that area. However, in Blackpool, where there is low demand, low rental prices and a far higher-than-average proportion of tenants face addiction and mental health issues, an expensive licence fee may significantly impact the business assessment of whether it is worthwhile for a landlord to continue their business in that area. The proposed licence application fee in Jersey is significantly lower than any LA in England, and therefore should not be a significant factor for landlords, as it is very low compared with the rental prices on the island.*<sup>24</sup>

A further concern raised by landlords was the feeling that 'good landlords' will essentially be paying for the misdemeanours of 'bad landlords.' This point is also made by Justice for Tenants UK who advocate for additional charging mechanisms such as financial penalties where breaches in the law occur:

*If and when a housing tribunal is set up, it would be advisable to revisit the question of enforcement, as financial penalties operate in England as an effective and resource-efficient way to deter criminal behaviour from landlords. They also ensure relevant considerations are taken into account to reach a proportionate and appropriate financial penalty based on the severity of the housing offence, the culpability and track record of the offender, and the actual or potential harm experienced by the occupants.*

Justice for Tenants UK also advise having a cut-off date after which informal action will no longer be the first step: "If, for example, this point is twelve months after the imposition of P.40/2023, it is likely that the only landlords who would remain unaware of this new legislation are those who make little or no effort to understand their legislative obligations or those who believe that they will face no financial detriment if they ignore the law."<sup>25</sup>

**Recommendation 6:** The Minister for the Environment should consider, in consultation with all relevant stakeholders, the benefits or otherwise of introducing fixed penalty notices for landlords who fail to comply with the law and that the income generated from the collection of these financial penalties be used to subsidise the licensing scheme,

<sup>23</sup> [Public Finances Manual \(Income: Fees and Charges\)](#)

<sup>24</sup> Justice for Tenants UK – [Written Submission](#) – 21<sup>st</sup> September 2023

<sup>25</sup> Justice for Tenants UK – [Written Submission](#) – 21<sup>st</sup> September 2023



thus reducing the fees that are required to be paid by ‘good’ landlords who operate within the law. This should be implemented after an initial grace period of 12 months to allow time for landlords to become familiar with their obligations under the proposed draft Regulations. Further consideration should also be given to only pursuing prosecutions regarding offences under the draft Regulations in absolute exceptional circumstances within the first 12 months of the scheme coming into force.

Justice for Tenants UK further state that:

*An effective way to increase compliance is to publish the details of those who have committed offences. This publication penalty furthers the aims of enforcement without adding any further penal sums to landlords who operate unlawfully. It is anecdotally understood that this approach is more effective in smaller geographical communities, where more residents know each other; therefore, this is an approach that would seem particularly impactful in Jersey.<sup>26</sup>*

**Recommendation 7:** The Minister for the Environment should consider publishing the names of landlords who commit an offence under the Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) 2018 Law and/or under any subordinate legislation. The aim of which would be to increase the effectiveness of enforcement measures with minimal added resource or cost. This measure should be implemented after an initial ‘grace period’ of 12 months to allow time for landlords to become familiar with their obligations under the proposed draft Regulations, if adopted.

## Conclusion

There is little question in the Panel’s mind that poor conditions in rental properties do exist and that this should be addressed. The question we have sought to answer is whether the licensing regulations will achieve their intended aims and without adverse impact or unintended consequences for the private rented sector. We do not feel we have been able to answer this question with much certainty.

Whilst we understand a code of practice is currently being drafted, it is particularly unfortunate that this was not prioritised to be published in time for the debate. The absence of which makes it difficult to ascertain how the law will be applied in practice.

Notwithstanding whether all nine of our proposed amendments are adopted or not, our uncertainty remains as to whether the proposed licensing scheme will achieve its intended aims of making rented dwellings safer. However, if adopted, we hope that both our Proposed Amendments and recommendations will assist to some degree in ensuring that suitable mechanisms are in place to ensure that regulation is both ‘light touch’ but also has the best chance of achieving its intended aims.

Ultimately, it is for States Members to make an informed decision of whether to support the adoption of the draft Regulations in second and third reading and we hope that these comments, in addition to our Proposed Amendments, are helpful and informative to this process.

We wish to thank the Minister, his officers, and all stakeholders who have contributed views and evidence to our review.

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<sup>26</sup> Justice for Tenants UK – [Written Submission](#) – 21<sup>st</sup> September 2023