

STATES OF JERSEY



RENT CONTROL TRIBUNAL: NOMINATION OF CHAIR AND MEMBERS (P.106/2022) – AMENDMENT

**Lodged au Greffe on 3rd January 2023
by the Minister for Housing and Communities
Earliest date for debate: 17th January 2023**

STATES GREFFE

RENT CONTROL TRIBUNAL: NOMINATION OF CHAIR AND
MEMBERS (P.106/2022) – AMENDMENT

1 PAGE 2, PARAGRAPH 1 –

Delete the words:

“Ian Gray – Member”

MINISTER FOR HOUSING AND COMMUNITIES

Note: After this amendment, the proposition would read as follows –

THE STATES are asked to decide whether they are of opinion –

in pursuance of paragraph (1) of Article 3 of the Dwelling Houses (Rent Control) (Jersey) Law 1946, as amended, to appoint the following persons to act as Chair and Members of the Rent Control Tribunal for a period ending on 12th April 2023, namely –

Simon Burgess – Chairman

Guy Aubin Morris – Member

Neil Andrew Buesnel – Member

Rose Colley – Member

MINISTER FOR HOUSING AND COMMUNITIES

REPORT

The Minister for Housing and Communities is amending his proposition to nominate members for the Rent Control Tribunal in light of one nominee's withdrawal.

The Minister for Housing and Communities is taking this opportunity to respond to the reference back during the States Assembly on 24 November 2022, and hopes that the information will clarify any uncertainty. Having provided these answers, which have been produced in collaboration with the Attorney General, the Minister would like to call on the Assembly to avoid delaying the establishment of this much-needed statutory mechanism to protect tenants.

The table below summarises the detail set out in the Reference Back to P.106/2022, regarding leases in Jersey that can be considered by the Rent Control Tribunal (RCT), under the [Dwelling Houses \(Rent Control\) \(Jersey\) Law 1946](#).

In summary, the RCT cannot consider leases that are **under 9 years AND** conform with the [Standard Tenancy Agreement](#) (STA). But leases of any length that do not use a STA can be reviewed, as can those of 9 years or more that use the STA. The STA was introduced under Regulations in 1993, as it was considered to be the best practice agreement between landlord and tenant at that time. It was therefore made exempt from consideration by the RCT to encourage its use in Jersey's rental market.

The table is not intended to be exhaustive but, rather, illustrative.

The leases in the table **shaded green are in scope** for consideration by the RCT. The leases **shaded red are exempt** from consideration by the RCT.

The table does not reference commercial leases. Although the Dwelling Houses Law exempts commercial leases from the RCT, there are currently no plans to bring commercial leases into scope for any future Rent Tribunal-related legislation.

[The three main types of residential leases available in Jersey are Periodic, Fixed term and Contract leases](#). Leases from **any** of these categories **could be considered by the RCT** if they are not exempt from the Dwelling Houses Law.

TYPE OF LEASE	IN SCOPE
Written or verbal lease under 9 years that does not use the STA	YES
Written or verbal lease over 9 years (i.e. contract lease) that does not conform with STA	YES
Written or verbal lease of any length that does not use the STA	YES
Written lease ¹ that conforms with the Residential Tenancy (2011) Law but does not use the STA	YES
Lease that includes Board where value of Board is not a substantial proportion of rent	YES
Lease from recognised social housing supplier (i.e., Andium Homes / Housing Trusts) that does not conform with STA	YES

¹ A lease must be in writing in order to conform with the Residential Tenancy (2011) Law

Written or verbal lease over 9 years (i.e. contract lease) that does use the STA	YES
Written or verbal lease under 9 years that does use STA	NO
Written lease under 9 years that uses the STA but inserts additional agreements as necessary (under Part 4 of STA) that allows it to meet the requirements of the Residential Tenancy (2011) Law.	NO
Lease that includes Board where value of Board is a substantial proportion of rent	NO
Property leased by/to the States (or any administration of the States) e.g. Jersey Property Holdings	NO
Lease on property that includes land exceeding 2 vergées (0.8888 acres or 3,597.21 m2)	NO

Conclusions

- Even without any update of the RCT legislation, it is anticipated that many existing residential leases in Jersey **will be in scope** for the RCT to consider. Or, to put it another way, there will be **many leases prevalent** in Jersey that will be different to the [Standard Tenancy Agreement established under the 1993 Regulations](#) of the Dwelling Houses Law.
- For the avoidance of doubt, any lease that is not included in the list of exemptions under Article 2 of the Dwelling Houses Law **can be considered** by the RCT.
- One of the tasks of the re-appointed RCT will be to turn as many red (Exempt) leases in the table to green (In Scope), as is appropriate. This is consistent with the strategic objective (set out in the Fair Rents Plan) of extending the coverage of the RCT in Jersey's private residential rental market. Ultimately, a future Rent Tribunal should be able to consider **all leases** that will come under the remit of the new Residential Tenancy Law.

FULL RESPONSE TO REFERENCE BACK

Requirement of Law

The appointment of a Rent Control Tribunal (RCT) is a legal requirement.

Article 3 of the [Dwelling Houses \(Rent Control\) \(Jersey\) Law 1946](#), as currently constituted, requires the States to appoint the Rent Control Tribunal, consisting of a Chair and not fewer than 3 nor more than 4 other members.

The States Assembly does not have authority to decide not to follow the Law and not to set up the Tribunal.

The Assembly does not confer powers on the RCT through its appointment. The powers already exist and are provided through the Dwelling Houses Law.

For the Assembly to meet its obligations under the Law, the Minister for Housing and Communities is required to nominate the RCT through a proposition to the States Assembly, with the Assembly then required to approve a quorate Tribunal, as nominated by the Minister for Housing and Communities, so that the Rent Control Tribunal can fulfil its statutory responsibilities. The Minister for Housing and Communities presents his nominees in this amendment to P.106/2022.

If the Assembly chooses, at a future date, to change or repeal the Law, then it has the power to do so following the normal procedures.

Leases Covered by the RCT

The Rent Control Tribunal **can** consider a lease:

- made verbally or in writing for any duration (including both less than and more than nine years in duration);
- that grants the right to occupy as a residence a house or part of a house in consideration of a rent (a “house” includes any property used for residential occupation, for example, flats);
- whether or not rent includes payment for use of furniture or for services and/or any common parts.

The Rent Control Tribunal **cannot** consider leases under Article 2 of the Law that are:

- a) let in conjunction with land exceeding two vergées in area; or
- b) forming part of premises used for commercial or industrial purposes and let in conjunction therewith; or
- c) let at a rent which includes payment in respect of board unless the value of the board to the lessee does not form a substantial proportion of the whole rent;
- d) written leases for less than nine years which use the Standard Tenancy Agreement prescribed by Regulations made under Article 7 of the Law².
- e) leases over property that is leased by or to the States (or any administration of the States).

With respect to Article 2 (d) of the Law, both aspects must be satisfied. In other words, under nine years **and** using the contract laid down in the Regulations. **The Law would, therefore, apply to tenancies under nine years** that uses a contract that differs from the Standard Tenancy Agreement under the 1993 Regulations (1993 STA).

RCT Coverage

During the P.106/2022 debate it was suggested that the RCT would only be able to consider a negligible number of leases within Jersey’s rental sector. There is no evidence to support that this would be the case. On the contrary, it is more likely that because the RCT has not been in operation for many years, most lease contracts in Jersey will not

² The form of Standard Tenancy Agreement is set out at the Schedule to the Dwelling-Houses (Rent Control) (Standard Tenancy Agreement) (Jersey) Regulations 1993.

be on terms that conform to the Standard Tenancy Agreement contained in the Regulations, therefore falling within the RCT's jurisdiction (on this criterion).

It is also worth clarifying that Dwelling Houses Law and the [Residential Tenancy \(Jersey\) Law 2011](#) are two separate pieces of legislation. Although the two Laws stand side by side in their application, the Residential Tenancy Law has no bearing on the application of the RCT. Therefore, leases that are under 9 years in length, which conform to the requirements of the Residential Tenancy Law, can still be considered by the RCT if the leases do not conform to the Standard Tenancy Agreement (1993 STA) under the Dwelling Houses legislation.

The Housing and Nuisance team of Environmental and Consumer Protection (Regulation) support the view that many rental agreements in Jersey that conform with the Residential Tenancy Law will not conform, at least completely, with the 1993 STA and could therefore be considered by the RCT.

However, it is also possible for a lease to conform with the provisions of the Residential Tenancy Law **and** those of the 1993 STA. In these circumstances the lease would be exempt from the RCT.

In summary, rather than there being a negligible number of tenancies in Jersey that would fall under the remit of the RCT, there could in fact be many (or a majority) of tenancies that would fall within its jurisdiction.

It would be a relatively straightforward matter for the RCT to determine whether a lease conforms with the 1993 STA, taking legal advice as necessary.

Social Rental Sector

Under Article 2(e) of the Dwelling Houses Law, the RCT would not be able to consider leases over property that is leased by or to the States (or any administration of the States).

Andium Homes, and the housing trusts, are separate legal entities to the States, so there would be no restriction on the consideration of leases from social housing based on Article 2(e) of the Law.

The social rental sector already benefits from the social rents policy, which caps rents for social tenants at up to 80% of the market rate. With respect to Andium Homes, there is also a cap on the amount by which rents can increase on an annual basis.

The RCT would take these factors into account should it ever be called upon to consider a lease from a social housing landlord under the existing legislation. This would be made clear in guidance on the website that is planned for the RCT.

Anticipated use of RCT

The policy intent for re-introducing (and reforming) the RCT is to introduce additional protection for private residential tenants.

According to the 2021 Jersey Census results there are 13,800 private sector tenants in Jersey.

There is no data available on the proportion of private residential leases that conform with the 1993 STA (and that would fall under the remit of the RCT). But a reasonable assumption to make is that the RCT would be able to consider many leases in Jersey because they will not conform to the 1993 STA.

It is impossible to estimate how many rents are likely to be referred to RCT. The RCT will have a website that will offer guidance to Islanders on how to refer cases and what leases fall under the jurisdiction of the Tribunal.

The Housing and Nuisance team of Environmental and Consumer Protection (Regulation) believe most leases in Jersey are 1 to 2 years in length. Housing and Nuisance have observed some incidences of tenants on short-term leases that have expired, without a new agreement in place (a periodic tenancy), being subject to rent increases that exceed RPI (sometimes captured within a new agreement). Housing and Nuisance assesses that these are the types of cases that are more likely to be referred to the RCT.

Housing and Nuisance believes there are many landlords in Jersey who prefer +3 year rental agreements, which tend to specify rental increases within the contract (often increases by RPI). Housing and Nuisance assesses that these types of agreements are less likely to be referred to the RCT.

Many rental agreements in Jersey are likely never to be referred to the RCT for a range of reasons. However, the very presence of a RCT could act as an incentive for landlords to keep rents at a level acceptable to the tenants, with the amplifying effect of fewer rents being referred to the Tribunal.

RCT Powers and Scope

The RCT adjudicates on whether a rent that is referred to it is reasonable. It does not adjudicate on rent increases generally.

The RCT has the power to approve, reduce or increase rents that have been referred to it, to such sum as the Tribunal judges to be reasonable in all circumstances. The re-appointed RCT will complete some work, and take relevant advice as needed, in determining what is a reasonable rent.

Once the RCT has determined the reasonable rent, full details are provided to the Minister for Housing and Communities, who is required to keep this information in a Register of Rents for a period of three years from the date of the Tribunal's decision. The RCT may also reconsider rents that the Tribunal has previously considered where there has been a change of circumstances.

The offences in the Dwelling Houses Law are quite specific (e.g., a landlord charging rent for a property that is more than the rent for the property as it is marked in the Register of Rents). Under Article 8 of the Dwelling Houses Law:

“a person who requires or receives any payment or any consideration in contravention of Article 6 [rents in excess] shall be guilty of an offence and be liable to imprisonment for a term of 6 months and to a fine, and, without prejudice to any other method of recovery, the Court by which the person is found guilty may order the amount paid or

the value of the consideration given to be repaid to the person by whom the payment was made or the consideration given.”

These offenses stand alone from, and can operate alongside, the provisions in the Residential Tenancy Law.

The RCT does not have jurisdiction to rule on the behaviour and conduct of landlords (or tenants). Its job is to determine the rent that is reasonable in all the circumstances. If a contract to a tenant in a lodging house meets the definition of a contract described in the Dwelling Houses Law, then it can be considered by the RCT.

According to the Housing and Nuisance team, the term ‘lodger’ has different meanings in different Jersey laws. Housing and Nuisance classes someone renting a room in the owner’s property as a lodger, rather than focusing on whether they live in a lodging house. However, only self-contained units in lodging houses require tenancy agreements (under the existing Residential Tenancy Law). Therefore, Housing and Nuisance have often found that those living in non-self-contained units in lodging houses will either not have a tenancy agreement or the agreement will be very basic³. This could mean, in effect, that the RCT will not be able to consider these types of rent referral.

Resourcing

There is funding allocated under the Government Plan to support the RCT - £90,000 pa until 2024. Bids for funding for a Tribunal will be forthcoming under future Government Plans.

The Government Plan allocation will be used to pay the salary of a Specialist Officer (Rent Control Tribunal), with the balance available to cover reasonable expenses for the RCT in the conduct of its work.

The Specialist Officer is a new civil service role that fulfils the role of Clerk to the Tribunal, as mentioned in the Dwelling Houses Law. The Officer will support the Tribunal in the delivery of its statutory functions and in investigating how the RCT can be modernised. A candidate for the role has been identified following an open recruitment.

The RCT will be able to call on relevant GoJ officers to support its work as needed. However, in considering rent referrals, the RCT may at times require third party advice or expertise that is not available within GoJ. Once the Tribunal is re-appointed there will be an active process of identifying what external support may be needed.

RCT Role and Remit

The Minister for Housing and Communities is putting forward Tribunal nominees who, as a group, will be capable of conducting research and proposing the technical changes necessary to modernise the Tribunal and any related legislation, as well as discharging the statutory functions of the RCT.

³ These circumstances can also apply to boarders. A boarder generally stays at another person's house paying rent with meals supplied by the landlord. As distinct from a lodger who generally stays at another person's house and pays rent but is generally not supplied with meals.

Whilst the Minister for Housing and Communities could equally take advice from such people in a non-statutory capacity, the advantage of appointing a Tribunal is that it will be accountable and will benefit from the first-hand experience of operating a service, which will also allow it to gauge demand for its services.

The Tribunal nominees do not consider their appointment to be a wasted endeavour. They are keen to be appointed and are committed to making a valuable contribution that will be to the benefit of their fellow Islanders.

For the avoidance of doubt, the Tribunal **will not draft legislation**. Law drafting is the preserve of Law Drafting Officers, who act on the policy direction set by the Minister for Housing and Communities.

In terms of legislative direction, the existing Dwelling Houses Law could either be amended or repealed. If the latter, it is anticipated that a modernised RCT would come under the new Residential Tenancy Law. The Law Drafting Instructions for the new Residential Tenancy Law include order making powers that would allow a Rent Tribunal to come under the legislation.

It is anticipated that the new Residential Tenancy Law will be drafted during 2023 and will be debated in the States Assembly no later than 2024. This timeframe would allow the RCT, in parallel, to initiate and develop its service and take the necessary actions required to bring forward recommendations to improve how it functions.

It is anticipated that any modified and/or new legislation pertaining to the RCT would require the final approval of the States Assembly, before progressing on to privy council in the usual way.

Revenge Evictions

The Dwelling Houses Law does not refer to the matter of revenge evictions.

The RCT can only consider rents that are referred to it. It cannot consider issues pertaining to the behaviour of landlords or tenants.

Evictions are addressed under the Residential Tenancy Law and will also be covered by its successor legislation. With respect to the latter, the Law Drafting Instructions for the new Residential Tenancy Law contain measures to enhance the protections available to tenants, including around notice periods and evictions (including revenge evictions).

[Guidance on lawful evictions in Jersey](#) is published on the GoJ website.

As confirmed by the Attorney General during the P106/2022 debate, the Minister for Housing and Communities can, by Ministerial Order, increase the 3-month notice period on tenancies under the Residential Tenancy Law.

RCT Specific Roles

The Minister for Housing and Communities' nominees for the RCT applied against the following job role:

- Convene as a Tribunal to hear and determine eligible referrals for reconsideration of rent payable in accordance with the Dwelling Houses (Rent Control) (Jersey) Law, 1946, as amended.
- Visit private residential properties as appropriate to support decision-making on rent review cases referred to the Tribunal.
- Develop an understanding of the role and remit of the Tribunal as set out under existing legislation.
- Investigate how the Tribunal might operate more effectively/appropriately to support a fair private sector rental market, with particular focus on offering recourse to private tenants who consider rent increases to be excessive or unfair.
- Commission research and/or engage with relevant local stakeholders as needed to investigate how the role and remit of the Tribunal can be updated.
- Submit recommendations to the Minister for Housing and Communities on how the role and remit of the Tribunal can be updated, within 12 months of the Tribunal's appointment.
- Work effectively and collaboratively with the Tribunal members and the Tribunal officer and other government officers as needed.
- Apply a good working knowledge of the private rental sector to all aspects of the Tribunal's work.

In addition to the duties set out above, the Chairperson was also expected to:

- Chair Tribunal meetings
- Provide leadership of the Tribunal, including through representation as needed.
- Ensure the Tribunal functions effectively and in accordance with regulations.
- Make the most of the Tribunal's collective talents and have oversight of the Tribunal's performance.
- Ensure relevant decisions are recorded in minutes of Tribunal meetings.
- Act as the Tribunal's main point of contact with the Minister for Housing and Communities and relevant government officers.
- Have lead responsibility on the Tribunal for liaising with the government-appointed tribunal officer's work in support of the Tribunal.

The Specialist Officer (Rent Control Tribunal) applied against the following job specification:

- Act as first point of contact for all rent referrals and queries from the public to the Tribunal, dealing with communications in a professional and calm manner, and ensuring communications and referrals are brought to the attention of the Tribunal as appropriate and in a timely manner.
- Become familiar with legislation that underpins the Tribunal as well as typical market rents charged in Jersey. Identify early if a rent referral is likely to be in scope for the Tribunal.
- Support the Tribunal as needed in evaluating rental cases, including with visits to residential accommodation if appropriate. Notify applicants about the decisions reached by the Tribunal.
- Co-ordinate responses to complaints, comments, and questions from interested parties, pressure groups, professional bodies, and members of the public. This will enhance the transparency of Tribunal-related processes.
- Assist the Chair in convening meetings of the Tribunal (virtual or in person). Participate in all Tribunal meetings, which will include preparing and distributing agendas; collating, checking, and circulating papers; producing minutes or action notes, and ensuring communications and meetings arrangements are effective, timely and accurate.
- Assist the Tribunal in gathering information, conducting research and consulting stakeholders as part of its mandate to bring forward recommendations for the modernisation of the Tribunal under future legislation.
- Represent the department at Tribunal meetings, which may include preparing case referral papers, to support the Chairperson in ensuring that decisions are defended based on legislation, policy, consistency of approach and appropriate use of public money.
- Responsibility for analysing and evaluating data related to demand for the Tribunal's services, so that informed judgements are reached around the future service provision.
- Accountable for periodic updates for developments in the Tribunal, taking responsibility to monitor that the Tribunal complies with legislation, policy and customer needs.
- Create, update, improve and monitor performance measurement tools and provide advice and support to relevant managers and stakeholders to ensure the integrity, data quality and production of management information is accurate.
- Proactive in terms of spotting opportunities where improvements can be made to the Tribunal services, promoting a culture of continuous improvement, high quality service and efficiency.

- Brief Tribunal members, politicians and senior stakeholders on all matters pertaining to the Tribunal for the purpose of informing the public and other stakeholders on the performance and development of the Tribunal.
- Produce content for a planned Tribunal web page on the Government of Jersey Website.
- Maintain a register of assessed rents and ensure that the register is available for public inspection as and when required (a requirement of the existing Tribunal regulations).
- Process claims for reasonable expenses incurred by Tribunal members in discharging their responsibilities.

Financial and manpower implications

There are no new financial and/or manpower implications.