

STATES OF JERSEY



SOCIAL HOUSING IN JERSEY: INTRODUCTION OF A REGULATORY FRAMEWORK (P.120/2017) – AMENDMENT (P.120/2017 Amd.) – COMMENTS

**Presented to the States on 23rd January 2018
by the Minister for Housing**

STATES GREFFE

COMMENTS

The Minister for Housing is pleased to support the amendments lodged by Senator P.F.C. Ozouf ([P.120/2017 Amd.](#)).

First amendment

The first amendment seeks to ensure that the proposals for social housing regulation set out in the Proposition, and the subsequent legislation that would be brought forward by the Minister should the Proposition be approved, include provision of an appropriate power of direction to the regulator by the Minister for Housing.

The Minister accepts this amendment.

A regulator must, of course, be seen to demonstrate integrity and independence in performing its functions in order to uphold confidence in the objectivity and impartiality of its decisions.

The Minister therefore proposes the establishment of an arm's length social housing regulator whose autonomy will be safeguarded in legislation.

However, a regulator will exist to achieve objectives deemed by the Minister and, indeed, the States Assembly to be in the public interest, namely to –

- protect the rights and interests of current and future social housing tenants; and
- safeguard public and private investment in social housing provision.

Accordingly, a balance is required between, on one hand, the independence of a regulator and, on the other, the need to ensure that a regulator acts in an accountable and transparent manner.

The institutional and governance arrangements for regulation will contain measures to support a regulator's good behaviour and which enable its performance to be assessed. For example, a regulator would be required in law, as far as reasonably practicable, to perform its functions in a manner that is accountable and transparent and targeted only where action was needed. Social housing providers would also have a right to appeal decisions of the regulator through the Court.

In designing the regulatory framework, the Minister believes it is also appropriate to include a provision enabling the Minister for Housing to give a regulator direction where it is necessary in the public interest. The Minister could, for example, issue guidance to a regulator regarding the policies that it must follow in relation to the oversight of social housing providers, and how its functions should be performed. As the Senator states, this power is equivalent to that which already exists in other laws such as the [Financial Services Commission \(Jersey\) Law 1998](#).

The power for the Minister for Housing to give direction is an important check and balance so that there is democratic oversight of a regulator in the performance of its functions. The power for the Minister to direct the regulator needs to be clearly set out in legislation, including what can be directed and when, and the requirement for any directions to be published.

The Senator also notes that the Minister should have the power to issue an urgent direction that would take immediate effect in response to a serious issue, and uses the example of the Grenfell Tower fire where immediate action may be required in order to check the fire-safety of buildings in response to issues known to be affecting the social housing sector.

In these circumstances, it is very important to note that the proposed regulatory framework will include measures that deal with urgent situations such as the one highlighted above.

In the first instance, it will, of course, be incumbent upon the governing bodies of social housing providers to identify and respond to urgent issues that arise. In the wake of the Grenfell Tower fire, for example, all the Island's social housing took immediate actions to allay the concerns of their residents and check the fire safety of their housing portfolio. As the Inquiry into the fire is ongoing, social housing providers continue to monitor best practice in respect of fire safety and will await the Inquiry's final recommendations to see what further action is required.

This is co-regulation in practice: where social housing providers take responsibility for the day-to-day responsibility for the performance of their organisation. A regulator, in exercising a risk-based approach to regulation, would take into consideration a range of factors when determining whether to take action, including –

- its confidence in the governing body and senior management to deal with identified risks;
- the significance of the risks for tenants; and
- the track record of the organisation in handling risks and challenging issues.

The proposed regulatory framework will therefore be able to deal with urgent cases where there are serious risks to the interests of tenants. However, it would be prudent to include an additional power for the Minister for Housing to give direction where it is in the public interest to do so.

If the Proposition is approved by the Assembly, these issues will be considered in more detail as the regulatory framework is developed with advice from the Law Officers' Department.

Second amendment

The Senator's second amendment is concerned with the supply of housing and aims to ensure that prominence is given to the issue within the proposed regulatory framework, including the appointment of a housing commissioner as separate or concomitant to the role of regulator.

The Minister accepts this amendment on the basis that this important role – to act as a champion for affordable housing supply – should be connected to the role of the regulator. The Senator's amendment is non-prescriptive and would therefore enable this to be captured as one of the key functions of the proposed regulator or commissioner (depending on the title that is adopted).

The Minister has been clear at the outset of the Proposition that regulation must add value – it must support a sustainable affordable housing sector and encourage an environment in which housing providers are able to grow and innovate in order to meet the changing nature of housing need in Jersey. This reflects a similar view expressed by the former Health, Social Security and Housing Scrutiny Panel ([S.R.6/2013](#)) which stated that “*growing the sector should be the goal for regulatory activity.*”

The Minister had therefore envisioned the role identified by the Senator as being implicit as one of the key functions of the proposed regulator, and sees the role of a regulator (or commissioner) as including functions to –

- promote the development and supply of affordable housing;
- facilitate long-term strategic thinking and collaboration between stakeholders;
- create and uphold an enabling environment for affordable housing provision;
- address issues that affect the growth and development of affordable housing;
and
- explore support mechanisms aimed at facilitating affordable housing development.

These activities are consistent with the functions of equivalent regulators in other jurisdictions such as South Africa and, indeed, the newly created Government-agency, Homes England, which has been set up to facilitate the supply of sufficient homes and deliver sustained improvements in affordability.

The Minister believes there is clear public benefit in combining a regulatory role with that of a supply-side champion for housing.

Financial and manpower implications

The proposed amendments will not create additional resource implications.

The role that Senator Ozouf envisages for a regulator in the second amendment (that it should have a role in creating an enabling environment for affordable housing supply) is one that had already been factored into the Minister’s proposals – the amendment makes it a more explicit requirement.

As such, the role can be met from within the £100,000 p.a. that a regulator is estimated to cost.