



BY POST AND EMAIL 

Chairman
Environment, Housing and Infrastructure Scrutiny Panel (the "Panel")
States Greffe: Scrutiny
Morier House
St Helier
Jersey JE1 1DD

18 November 2019

Dear Sirs

MINIMUM STANDARDS FOR RENTED DWELLINGS: LICENSING REGULATIONS (THE "SCHEME")

I refer to your letter dated 25 October 2019.

I confirm that I sent a response to the public consultation relating to the draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 201- (the "**Regulations**") in June 2019. I **attach** a slightly edited copy of this response hereto (the "**Original Response**").

Following the submission of my Original Response, I have now had an opportunity to read the draft Regulations lodged au Greffe on 1 October 2019, together with the accompanying report.

My criticisms of the Scheme have not changed since my Original Response, as very little has changed with the Scheme in the intervening time and none of my objections have been taken on board. I would therefore urge you to read my Original Response which sets out my criticisms and concerns in detail.

My original criticisms were essentially that the Scheme is not required because:

- (a) knowing where rental properties are located is already within the powers of Government; and
- (b) modern legislation already exists to combat sub-standard rental properties.

Enacting the Regulations in their current form must therefore be seen as a revenue raising exercise which will have little impact on the proposed rationale for the Scheme.

Your letter sets out the Terms of Reference of the Panel's review of the draft Law and asks for further comment. I have therefore responded to each of the Terms of Reference individually below, although I refer to my Original Response frequently.

1. To determine whether the draft regulations are fit for purpose, as well as fair and proportionate.

My view is that the draft regulations are not fit for purpose, fair or proportionate.

Fitness for purpose

Poor legislative practice

Article 2(1) of the Regulations establishes the Scheme but the details of the Scheme are not included in the Regulations themselves and have not, as far as I am aware, been provided to the public or to States Members.

The details that are missing are presumably details of the inspection regime (when, how and if inspections will take place) and the details of the fees payable on the grant of a licence (and the discounts available thereunder), although we do not know what else the Scheme may involve, as we have not seen the documentation establishing it.

Although some of these details appear in the Report, they do not appear in the Regulations and will presumably be established in a separate policy document. This is problematic as:

- (a) there is a lack of certainty for the public and States Members at the outset of the Scheme as to its details; and
- (b) such provisions may be subject to change at a later date without States members' scrutiny, since the scheme documentation will not form part of the Regulations and will instead form part of the policy of the Environment Department, changeable at by Ministerial decision.

Such provisions are known technically as 'Henry VIII' clauses and Lord Judge spoke strongly against such clauses when he was Lord Chief Justice of England and Wales:

"You can be sure that when these Henry VIII clauses are introduced they will always be said to be necessary. William Pitt warned us how to treat such a plea with disdain. "Necessity is the justification for every infringement of human liberty: it is the argument of tyrants, the creed of slaves"

This is an extremely poor way to legislate and gives too much power to Government to change important parts of the Scheme going forward, without the scrutiny of the States Assembly.

Fee increases

Of particular concern is the fact that the provisions relating to licence fees may be changed by Ministerial decision and that these will be increased substantially in coming years, as we have seen recently and are continuing to see with Fire Certification fees. These fees are going to have a **more than 400% increase** in the next couple of years. There are no assurances that the licencing fees for the Scheme will not rise substantially in coming years. These substantial goalpost moves and lack of detail are a hallmark of poor government.

A linked concern is the Rent Safe scheme, which, for example, awards 5 stars for properties that have "Energy efficiency measures in place." I understand that there is little detail about what such efficiency measures will qualify for 5 stars and no assurances that such details will not change in future.

It is proposed in the Report that discounts will be given on licence fees for Rent Safe ratings (with different ratings giving different levels of discounts). However, given the lack of clarity in the criteria for qualifying for different star ratings under the Rent Safe scheme, the criteria may be subject to change too easily (whereas a rented property may stay in the same condition). This may mean that a property which benefits from a full 5 star rating one day and which pays

a lesser fee, may on a change of policy suddenly need to pay continuing yearly fees at double or triple the rate. This cannot give any certainty to Jersey landlords.

It is unacceptable in a modern parliamentary democracy that legislation is passed in such a way. The Scheme details must be set out in the Regulations themselves so that further changes thereto must be approved by the States Assembly.

Fairness

The Scheme is unfair and has all the hallmarks of a stealth tax on landlords, as it focusses on one single part of society, i.e. Jersey landlords.

The Scheme punishes all landlords with fees (many of whom are already compliant with legislation) for the foreseeable future with the aim of dealing with the relatively small number of landlords who are not already compliant with Jersey's modern health and safety legislation.

Two better ways to fund the scheme would be to:

- (a) fund the Scheme from general taxation, since it is meant to be for the benefit of all tenants in Jersey (apparently roughly 15,000 households as at the 2011 Census); or
- (b) to punish only non-compliant landlords by:
 - i. better utilising the system of fines set out in the Public Health and Safety (Rented Dwellings) Law 2018 (and related secondary legislation); and/or
 - ii. charging only landlords who do not meet the Rent Safe scheme at a level of 3 stars (being compliance with minimum legal standards).

The fairness of exempting social housing providers and parishes from the licence fee whilst private landlords pay fees is also highly questionable. Surely, if fees are to be paid, then these should be apportioned fairly across the private and social housing sectors, so that there is a level playing field. This is especially important given that one hears so much anecdotal evidence of poor housing stock in the social housing sector too.

Proportionality

Modern laws already exist to combat poor housing

Perfectly adequate and modern legislation exists to combat sub-standard rented properties, including:

- (a) the Public Health and Safety (Rented Dwellings) Law 2018 (and related secondary legislation) (the "**Law**"), which covers areas include: disrepair; overcrowding; amenity standards; fire precautions; and filthy and verminous premises) - Article 6 of the Law already provides wide ranging powers to environmental health officers giving them a right to enter and inspect properties and to provide rectification notices and ultimately fines, at their own instance or following a tenant complaint; and
- (b) the Residential Tenancy (Jersey) Law 2011 (and related secondary legislation) which gives tenants the right to take landlords to the civil courts for breaches of a lease.

Information on rented properties is already held and collected by various government departments (e.g. the Change of Address Notification Forms sent to the Population Office on the change of tenants, rates returns made to the Parishes, the Public Register of Contracts

and information submitted through the Rent Safe scheme (for those who have signed up to this)).

Given that mechanisms already exist to find out the location of rented properties and to deal with sub-standard properties, the establishment of the Scheme would be disproportionate to the needs of the Island. It is a waste of Government time and taxpayers' and landlords' money to set up an entirely new system to obtain information that the Government already holds and enforce a Law that it can already enforce.

Disproportionality of fees

There is no explanation as to how the fees set out in the Report have been arrived at and they appear entirely arbitrary.

The fact that fees are not based on the size of properties is also a concern, as a one bedroom flat will attract the same fee as a 5 bedroom house.

Furthermore, there has been no indication at all of how the revenue raised through the Scheme will be used. No financial workings-out or cost-benefit analyses have been provided to the public at all. Where will this revenue go and how can we be sure that it is spent solely on the Scheme and not used in other ways?

Without such information, we cannot know whether anticipated funding of the Scheme is proportionate to the needs of the Scheme itself.

Finally, it is unclear whether the ongoing fees set out in the Report are substantiated by the ongoing funding needs of the Scheme, because we do not have any financial projections from the Environment Department.

2. To assess how and to what extent the Department has considered feedback gathered in the consultation and whether any legitimate concerns from stakeholders have been adequately addressed.

My feedback has been almost entirely ignored, I have had no feedback to the questions and points raised in my Original Response and I feel that none of my legitimate concerns have been adequately addressed publicly or privately.

3. To consider the impact the proposed regulations will have on landlords, tenants and letting agents.

As explained in my Original Response, this Scheme will have a harmful effect on landlords, tenants and letting agents. It will materially increase red-tape for landlords with few new benefits. It will also force inspections on the many tenants who do not need them and would rather be left in peace. As it is, tenants already have yearly inspections by letting agents, plumbers and fire safety specialists, amongst others.

It is unclear how widespread the problem of poor rented accommodation is. No statistics have been published in terms of complaints to Environment Health that have actually been upheld or how many successful prosecutions there have been under relevant legislation. Legislation with material implications for landlords and tenants should not be passed, without a full public study of the truth behind the claims over the rationale for the Scheme.

It is also unclear how much of a problem 'no fault' and 'revenge evictions' are. It is very unclear how if at all the Scheme will achieve the aim of reducing such evictions. There is already robust legislation in force (namely the Residential Tenancy (Jersey) Law 2011) which requires

evictions to pass through the courts. In the case of a residential tenancy, the landlord has no right, even on a material breach by the tenant, to bring the tenancy to an end unilaterally by, for instance, rescinding the agreement: the landlord must apply to the court for termination and eviction. The Residential Tenancy (Jersey) Law 2011 also contains provisions allowing the tenant to apply to the court for the stay of any eviction on grounds of hardship.

4. To consider how the draft regulations will work in conjunction with the draft legislation, in addition to the current non-compulsory 'rent-safe' scheme.

As previously mentioned herein and in my Original Response, the Regulations were meant to supplement the Law, but the way in which they are intended to be enacted seems to be more a costly exercise in gilding the lily and gold-plating of what is already in existing legislation. The Environment Department should use the powers already available to them to put in place a register of rented properties and police the Law, without putting into place a costly and details-lite scheme such as this.

5. To determine how and to what extent licensing fees will affect the cost of renting.

As I say in my Original Response, many landlords (although not all) will inevitably pass the licence fees on to tenants in one way or another. Those who do not pass this on, will do so eventually as higher rents become market standard.

What is more, the higher fees charged to landlords with 3-star or 4-star properties or non-Rent Safe accredited properties will be passed on to those tenants who are living in less compliant accommodation. 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.

6. To further understand how the inspection regime will work in practice and to assess whether it is workable, proportionate and that there is adequate provision in place to resource it.

There is virtually no detail in the original consultation documentation, the draft Regulations or the Report, about the inspection regime that Environmental Health officers will undertake. States Members and the Public have the right to know what the plans are.

It is not clear, how often inspections will take place, if they will take place and whether the inspection regime is fit for purpose. There was a suggestion at one public meeting during the consultation period that there would be a level of self-assessment and that Environmental Health would only inspect under the Scheme if a complaint was made by a tenant. This would essentially be paying for no inspections at all.

On one hand, I would expect yearly inspections by Environmental Health officers as a means of obtaining value for the substantial sums being paid to the Environment Department. This will also assist in identifying potential areas of concern at my property.

If no mandatory inspections are planned at all, then the Scheme would be even more open to criticism as a stealth tax on one small section of society – a way of collecting tax without providing any service to the persons from whom those taxes come.

As mentioned before, such inspections would, represent an unwelcome intrusion in tenants' private lives and in any event, Article 6 of the Law already provides wide ranging inspection powers to environmental health officers giving them a right to inspect properties.

Conclusion

In summary the Scheme is unfair, disproportionate and not fit for purpose, being as it is:

- (a) poorly drafted;
- (b) unsupported by any public evidence as to its rationale;
- (c) an unnecessary and costly repeat of already existing legislation,

and, as such, I object to it.

My strong preference would be for the Environment Department to use the powers that they already have at their disposal to police the existing modern legislation that Jersey has. The Scheme should be replaced by a public awareness campaign drawing tenants' attention to their right to make a complaint about sub-standard accommodation to Environmental Health.

If some version of the Scheme must be brought into force then all units that are compliant with legislation (i.e. Rent Safe 3 star) should be free from any licence fees, so that those landlords who are compliant with legislation are not punished for the misdemeanours of the few who are not complying.

I would be more than happy to attend one of your hearings (if required to give further evidence in person).

Please do read my Original Response attached hereto.

Yours faithfully



Guy Morris

ORIGINAL RESPONSE TO CONSULTATION

BY POST AND EMAIL TO: environmental.health@coo.je

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25 June 2019

Dear Sirs

CONSULTATION ON RENTED DWELLINGS LICENCING SCHEME (THE "SCHEME")

I have read with interest the documentation relating to the above-mentioned consultation on the gov.je website, the coverage in the media and have attended a recent roadshow.

I am a Jersey landlord and am broadly supportive of all of the recent legislation dealing with the regulation of rented property in Jersey. Since my father's passing, I have willingly spent a great deal of time and money checking and upgrading the properties I inherited to ensure that these are compliant with relevant legislation (particularly in relation to fire certification).

I am however dismayed to learn about the latest plans for regulation set out in the draft Scheme and strongly oppose these.

I have little issue in Jersey housing stock being brought up to an acceptable standard (where this is needed), but cannot see how the Scheme will make a material difference to this aim, since:

- (a) knowing where rental properties are located is already within the powers of the States;
and
- (b) legislation already exists to combat sub-standard rental properties.

Furthermore and most importantly, charging landlords (most of whom are compliant or are trying very hard to become compliant) for such a licencing system is unfair and has all the characteristics of a stealth tax on landlords.

I set out my reasons for these conclusions in more detail below:

General

1. I and other landlords I know all want tenants to be happy in our properties. It is in my interests that my tenants stay in as safe and welcoming an environment as possible, as this means that they will stay where they are for as long as possible meaning fewer costly voids.

2. Lack of Clarity over Rationale for Scheme - It is unclear from the published documentation relating to the Scheme what the rationale for the Scheme is. Whilst I have no doubt that there are rented properties in Jersey which fall below the required standard set out in law and regulation, such law and regulation already provide 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; filthy and verminous premises; and persons responsible) 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.
3. Main Scheme Points Already Covered in Other Legislation - 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 States) legislation is needed. **The Minister should explain clearly what substance this Scheme will add to the legislation that is already in force and protecting tenants in this area.**
4. Lack of Supporting Evidence for Scheme Aims - There is no supporting evidence in the Scheme documentation as to whether the Scheme is justified in terms of how many environmental health complaints there are in any one year. How many complaints have been received in the last 5 years?
5. There is no evidence that a cost/benefit analysis has been undertaken in relation to the proportionality of the Scheme and its costs to the Jersey rented sector vis-à-vis the number of complaints received. This analysis must be undertaken and made publicly available before the Scheme is brought into force. **The Minister should explain clearly what the number and severity of environmental health complaints is and provide details of any cost/benefit analysis that has been undertaken in relation to the proportionality of the Scheme.**
6. Information relating Rented Property Already Available - Apparently one of the main aims of the Scheme is to identify the whereabouts of all rented property in the Island through the licensing system. Again this task should already be possible through information already held and collected by various government departments. Such information is already given to the Population Office on change of tenants, to the Parishes through rates registers and through the Rent Safe scheme (for those who have signed up to this).

I note in particular the 14 June 2018 Government Press Release 'Public sector restructuring plans finalised' in which it was stated that "*the focus remains on collaborative working, eliminating silos and improving services, effectiveness and value for money.*" It is a waste of Government time and taxpayers' and landlords' money to set up an entirely new system to obtain information that the Government already holds. **The Minister should explain clearly why the information he is seeking cannot be obtained from other sources.**

7. Data Protection Concern - If data protection legislation is a concern in terms of obtaining this information from other Government departments, then it would be a better use of Government/States time to include an exception in such legislation to allow the sharing of such information. **The Minister should explain clearly why this data protection exception option has not been properly assessed.**

8. Reduction of 'No Fault' and 'Revenge' Evictions – It is very unclear how if at all the Scheme will achieve the aim of reducing such evictions. There is already robust legislation in force (namely the Residential Tenancy (Jersey) Law 2011) which requires evictions to pass through the courts. In the case of a residential tenancy, the landlord has no right, even on a material breach by the tenant, to bring the tenancy to an end unilaterally by, for instance, rescinding the agreement: the landlord must apply to the court for termination and eviction. The Residential Tenancy (Jersey) Law 2011 also contains provisions allowing the tenant to apply to the court for the stay of any eviction on grounds of hardship.

Licence Fees

9. Fees Generally - There is no justification in any of the Scheme documentation for charging landlords for the licencing of properties and no justification for the level of fees proposed or for why the fees will be charged on an ongoing, yearly basis.
10. Basis for Licence Fee Unjustified - It has not been made clear in the Scheme documentation or at the roadshow why fees need to be charged for a licencing process in the first place and what will be done with the money raised from these fees. The costs of the scheme should be supported from the Environment Department's budget, particularly given the above-mentioned points relating to the lack of a need for such Scheme in the first place. **The Minister should publish a full rationale for the charging of fees to landlords in relation to the Scheme, together with an explanation as to why the costs of the Scheme should not be covered by the Environment Department's budget.**
11. Destination of Fees Unclear - It became clear during one of the roadshows that the fees raised will not be put towards additional staff for Environmental Health department. There is no explanation about where the money raised from the fees will be spent. **The Minister should publish a full explanation (with workings out) of how the money raised from the licence fees will be used.**
12. Ongoing Fees Unjustified - Even if the initial application fees could be justified by an additional level of administration for the Environmental Health department, the level of the ongoing yearly fees proposed cannot be justified by the ongoing administration of the Scheme.
13. Level of Fees Unjustified - The level of the initial application fees and ongoing fees proposed are entirely arbitrary and unsupported by any evidence or workings out. **The Minister should publish a full explanation (with workings out) as to how the level of the fees that are proposed to be charged have been arrived at and importantly the rationale for charging ongoing fees.**
14. Lack of Assurances about Rising Fees - Furthermore the level of fees is likely to rise substantially in coming years, as I have found to my detriment with Fire Certification fees. These fees are going to have a **more than 400% increase** in the next couple of years. There are no assurances that the licencing fees will not rise substantially in coming years. Presumably this is because there is a high likelihood that these fees will rise substantially too. This is essentially like writing a blank cheque to the Environment Department. **If the Scheme is approved in its current form, the**

Minister should provide assurances that the licence fees will not rise by any more than the cost of living in any one year.

15. Scheme Will Result in Higher Rents - If blanket fees are charged in the way proposed then the majority of landlords will simply pass these on to tenants in the form of increased rents. The higher fees charged to landlords with 3-star or 4-star properties or non-Rent Safe accredited properties will be passed on to those tenants who are living in less compliant accommodation. 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.

16. Unfairness of Licence Fees – If the purpose of the Scheme is to “*address health and safety deficiencies within the private rental sector*” then why charge a licence fee to those landlords who are compliant at all? Surely it should be the non-compliant landlords who need to pay.

In fact, this mechanism to penalise non-compliant landlords already exists in the form of fines for breaches of existing legislation. The results of this proposed legislation will be that compliant landlords will be punished by paying substantial amounts of licence fees for the breaches committed by a small number of non-compliant landlords, where there is already a system for punishing those non-compliant landlords in place. If the licence fees will go towards funding more inspections then why are no new environmental health officers not being employed? **The Minister must explain why licence fees should be paid at all by landlords who are complying with their legal obligations (to at least 3-star Rent Safe Standard).**

17. Exemption of Social Housing Providers – It is unclear why social housing providers are exempt from paying licence fees under the Scheme. Surely if fees are to be paid then these should be apportioned fairly across the private and social housing sectors, so that there is a level playing field. It is unfair and disproportionate that the private sector should be singled out and punished with high licence fees when the social housing sector should have the same responsibilities as the private sector. This is especially important given that one hears so much anecdotal evidence of poor housing stock in the social housing sector too. The exemption of the social housing sector is unfair and disproportionate. **If the Scheme is to continue as planned then the Minister should confirm that social housing sector will not be exempt.**

I also have tenants who are on benefits, but prefer the private rental sector because the properties are of a better quality and rents are very similar between the sectors, contrary to what was said at one of the roadshows.

18. Proposal – If the Scheme continues in its current form, all units that are compliant with legislation (i.e. Rent Safe 3 star) should be free from any licence fees, so that those landlords who are compliant with legislation are not punished for the misdemeanours of the few who are not complying.

19. Conclusion – It was admitted at one of the roadshows that it is a political decision to charge for the licensing Scheme. This is a stealth tax on Jersey landlords. **The Minister (and Assistant Minister) should admit this publicly so that they can be judged on this decision at the next election.**

Inspections

20. What are appropriate levels for inspections? – If the Scheme is to go ahead with the fee structure in its current form (which I strongly object to for the reasons set out in this letter) then, on one hand, I would expect yearly inspections as a means of obtaining value for the substantial sums being paid to the Environment Department. This will also assist in identifying potential areas of concern at my properties.
21. Intrusion into tenants life – This said, such inspections would, I suspect from conversations with tenants, represent an unwelcome intrusion in tenants' private lives and also an additional workload for environmental health officers (which I suspect will be unwelcome given the lack of plans to hire more staff).
22. No Inspections - If no mandatory inspections are planned at all, then the Scheme would be even more open to criticism as a stealth tax on one small section of society – a way of collecting tax without providing any service to the persons from whom those taxes come.
23. Tenants Can Already Request Inspections – Article 6 of the Public Health and Safety (Rented Dwellings) Law 2018 already provides wide ranging powers to environmental health officers giving them a right to enter and inspect properties and to provide rectification notices. This can be at their own or following a tenant complaint. **The Scheme should be replaced by a Public Awareness campaign drawing tenants' attention to their right to make a complaint about sub-standard accommodation to the environmental health officers.**

Miscellaneous Concerns

24. Henry VIII Clause – The draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 201- (the “**Regulations**”) are poorly drafted. Article 2 of the Regulations refers to a “scheme”, but provides few further details of the Scheme. The way that Article 2 is drafted also means that the Scheme can essentially contain any details that the Minister decides should be in the Scheme. This means that the Scheme could be drafted and then subsequently changed as the years go on without any Public, States, Scrutiny or Government oversight.

Such clauses are anathema to the functioning of a democratic society and go “*right to the heart of the key constitutional question of the limits of executive power*”.¹ Lord Judge spoke strongly against such clauses when he was Lord Chief Justice of England and Wales:

“You can be sure that when these Henry VIII clauses are introduced they will always be said to be necessary. William Pitt warned us how to treat such a plea with disdain. “Necessity is the justification for every infringement of human liberty: it is the argument of tyrants, the creed of slaves””

The Minister must provide a redrafted version of the Regulations without such sweeping powers or at the very least provide full details of the scheme limited to the matters set out in the consultation documentation and provide that such details cannot be altered without a further vote of the States.

25. 28 Days Appeal – Article 4(1) of the Regulations provides a 28 day period in which to appeal against a decision of the Environment Department not to grant a licence thereunder. The Collective Investment Funds (Jersey) Law 1988 provides a 30 day appeal period in which to appeal a decision of the Jersey Financial Services Commission under that law. It is unjust to provide a longer appeal period to international, sophisticated and often legally advised fund management companies than unsophisticated Jersey-based landlords who are often individuals. **The Minister must change the appeal period in the Regulations to at least 60 days.**

Conclusion

In short, the proposed Scheme and legislation is half-baked, poorly thought out and not in keeping with government policy because:

- (a) knowing where rental properties are located is already within the powers of the States;
- (b) legislation already exists to combat sub-standard rental properties; and
- (c) the Scheme bears all the hallmarks of a stealth tax on a small section of society that has been singled out for punishment regardless of whether it is in compliance with the law or not, which tax will almost certainly be passed on to the tenants it has been designed (poorly) to protect.

I strongly object to the Scheme as set out in its current form.

The Minister must make himself available to defend and debate the Scheme at a public meeting.

Yours faithfully

Guy Morris

[http://www.jerseywatersupply.com](mailto:info@www.jerseywatersupply.com) [group#2003-01-14x165.2]