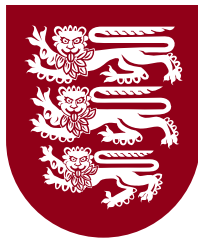


STATES OF JERSEY



Jersey

DRAFT RESIDENTIAL TENANCY (JERSEY) AMENDMENT LAW 202- (P.24/2025): AMENDMENT

Lodged au Greffe on 24th June 2025
by Deputy Sir P.M. Bailhache of St. Clement
Earliest date for debate: 8th July 2025

STATES GREFFE

**DRAFT RESIDENTIAL TENANCY (JERSEY) AMENDMENT LAW 202- (P.24/2025):
AMENDMENT**

1 PAGE 45, ARTICLE 3 –

- (1) In Article 3(1), delete the definition “initial term”.
- (2) In Article 3(1), delete the definition “Jersey Appointments Commission”.
- (3) Delete Article 3(2) and (3).
- (4) Delete Article 3(4).
- (5) In Article 3(6), delete the definition “social rented housing”.
- (6) In Article 3(7), delete the definition “total duration”.
- (7) Renumber the paragraphs accordingly.

2 PAGE 46, ARTICLE 4 –

- (1) In Article 4(1), delete “and (2)”.
- (2) Delete Article 4(2).

3 PAGE 46, ARTICLE 5 –

In Article 5, in new Article 4(1) and (2), for “made or varied” substitute “made, varied or renewed” in each place.

4 PAGE 47, ARTICLE 6 –

- (1) In Article 6 –
 - (a) delete “For Part 3 there is substituted –” and new Part 3;
 - (b) before the new Part 3A heading insert –
After Part 3 there is inserted –
- (2) In Article 6, for the new Part 3A heading substitute –

PART 3A

PROVIDING RENT INFORMATION

- (3) In Article 6, in new Part 3A, delete new Articles 7A to 7F.
- (4) In Article 6, in new Part 3A, for new Article 7G(1)(b) substitute –
 - (b) is required for the purpose of informing the Minister about the market for residential tenancies and rent amounts.
- (5) In Article 6, in new Part 3A, delete new Article 7G(3).
- (6) Renumber new Article 7G as Article 7A and renumber the paragraphs and cross-references accordingly.

5 PAGE 56, ARTICLE 7 –

Delete Article 7(1), (2), (4) and (5) and renumber the paragraphs accordingly.

6 PAGE 57, ARTICLE 9 –

Delete Article 9 and renumber the subsequent Articles accordingly.

7 PAGE 57, ARTICLE 10 –

Delete Article 10 and renumber the subsequent Articles accordingly.

8 PAGE 58, ARTICLE 11 –

Delete Article 11 and renumber the subsequent Articles accordingly.

9 PAGE 63, ARTICLE 13 –

Delete Article 13 and renumber the subsequent Articles accordingly.

10 PAGE 63, ARTICLE 14 –

- (1) Delete Article 14(2).
- (2) Delete Article 14(3).
- (3) Renumber the paragraphs accordingly.

11 PAGE 64, ARTICLE 15 –

Delete Article 15 and renumber the subsequent Articles accordingly.

12 PAGE 64, ARTICLE 17 –

Delete Article 17 and renumber the subsequent Articles accordingly.

13 PAGE 65, ARTICLE 18 –

- (1) In Article 18(1), new Article 23(2)(f), delete “the Rent Tribunal,”.
- (2) In Article 18(2), delete new Article 23(2)(la) and (ld) to (lg) and renumber the remaining new sub-paragraphs accordingly.
- (3) Delete Article 18(3).

14 PAGE 65, ARTICLE 19 –

- (1) In Article 19(1), delete new Article 24(1)(la).
- (2) In Article 19(1), delete new Article 24(1)(lb) to (ld).
- (3) In Article 19(1), delete new Article 24(1)(le) and (lf).
- (4) In Article 19(2), delete new Article 24(3)(ba) and (bb).

(5) Renumber the remaining new sub-paragraphs accordingly.

15 PAGE 67, ARTICLE 20 –

Delete Article 20 and renumber the subsequent Articles accordingly.

16 PAGE 67, ARTICLE 21 –

- (1) In Article 21(2), for “paragraphs 3 to 5” substitute “paragraphs 4 and 5”.
- (2) In Article 21(2), delete new paragraph 3 of Schedule 1.
- (3) In Article 21(3), delete new paragraphs 12 and 15 of Schedule 1 and renumber the remaining new paragraphs accordingly.

17 PAGE 67, ARTICLE 22 –

In Article 22(2), in new paragraph 5 of Schedule 2, for “total duration” substitute “duration”.

18 PAGE 68, ARTICLE 23 –

Delete Article 23 and renumber the subsequent Articles accordingly.

19 PAGE 70, ARTICLE 24 –

Delete Article 24 and renumber the subsequent Articles accordingly.

20 PAGE 70, ARTICLE 25 –

Delete Article 25 and renumber the subsequent Article accordingly.

DEPUTY SIR P.M. BAILHACHE OF ST. CLEMENT

REPORT

Introduction

1. These are substantial amendments to the Minister's amendments to the [Residential Tenancy \(Jersey\) Law 2011](#). They are substantial because most of the Minister's amendments are misconceived and potentially very damaging to the private rental sector and ultimately to Jersey's economy. The Minister's amendments seek to impose stringent new controls on the private rental sector, but little evidence is offered of the need for such controls. The Minister's amendments are ideologically driven by a conviction that the private rental sector is inherently undesirable. The Minister does not appear to be concerned that these measures are likely to drive some landlords out of the market, thereby creating an even greater shortage of rental property than currently exists and driving up rents. High property prices and rents are caused by an imbalance in supply and demand. The Minister's amendments do nothing to address the underlying cause. They do not satisfy the objective of ensuring Islanders' access to secure and affordable homes and indeed will make matters worse.
2. One of the fundamental principles of Jersey contract law is – *La convention fait la loi des parties* – the agreement makes the law between the parties. Interfering with private contractual relationships needs justification. Requiring landlords to set down that relationship in writing so that both parties understand their obligations is justifiable and was achieved by the Residential Tenancies (Jersey) Law 2011. That sets out clearly what a tenancy agreement must contain. The Minister's amendments make some sensible changes to those obligations – e.g. imposing a duty to insure the property against all the usual risks. Taken in the round, however, the Minister's amendments would fundamentally change the nature of the landlord/tenant relationship. In a real sense, tenanted premises would no longer be the property of the owner. That is especially important in the case of rented premises which form part of the landlord's own property ("granny" flats). Such a change needs justification and no evidence of that need has been supplied, as explained below.
3. My amendments therefore seek to delete much of what is proposed by the Minister. In summary they seek to remove –
 - (1) Provisions relating to the capping of rent increases and the related establishment of the Rent Tribunal.
 - (2) Provisions relating to periodic tenancies (including reasons for ending period tenancies and initial terms early) and orders for eviction.
 - (3) Provisions relating to civil penalties.

Capping of rent increases and establishment of Rent Tribunal

4. The Minister justifies the introduction of what is euphemistically called a "rent stabilisation" scheme – in reality "rent control" – by asserting that it is a "safety-net to protect tenants from incidences of excessive, unreasonable or unexpected rent increases". No evidence is however offered that such excessive increases are common. What is said is that the Jersey Opinions and Lifestyle Survey Report 2024 finds that half of renters had experienced a significant rent increase in the last 3 years. That is not surprising given that inflation has been running at more than 10%. 64% of renters were said to find it difficult to meet the cost of housing. But that is a consequence, not of landlords' rapacity, but of incomes failing to keep pace with the cost of living. The Minister himself reports that during this period "there is some evidence that landlords exercised restraint, and many increased their rents significantly below inflation, if at all".

5. What is the effect of the 5% cap on rent increases for landlords if the RPI again rises above that level? A subsidy for all tenants (whatever their means) would be introduced at the expense of landlords. That is unfair. Landlords' expenses on repairs and renewals, and indeed generally, are not capped at 5% during periods of high inflation. Many landlords with limited means rely upon rents to supplement their income. Not all landlords are faceless corporations.
6. The establishment of a Rent Tribunal is said to be a necessity if a rent stabilisation scheme is to operate. If the scheme is rejected, a rent tribunal is unnecessary. Such a tribunal has in fact been in existence for many years but has been inoperative for some two decades. It is inoperative because rent control does not work. Rent control causes much more inconsistency and unfairness than it resolves. It would also introduce a new form of expensive bureaucracy when the advice of high officials is that the number of such organisations ought to be reduced. In any event, a rent tribunal would operate, certainly for some years, in a fog of ignorance. As the Minister correctly states, "Without data on actual rents charged, our understanding of what is really going on in the rental sector is limited". Indeed. The introduction of a requirement for landlords to submit information on actual rents charged is therefore sensible and should conveniently be implemented as part of the landlords' licensing scheme. That needs to be done before any consideration is given to the controlling of rents and the establishment of an expensive rent tribunal.
7. No justification has been produced for the introduction of an unfair capping of rent increases and the resulting Rent Tribunal.

Periodic tenancies

8. The Minister proposes that a new type of residential tenancy should be introduced whereby an initial fixed term lease would have to be followed by an open-ended or "periodic" tenancy which could only be terminated on specified grounds. The justification for this considerable interference with the contractual freedom of landlord and tenant to make their own arrangements is that "tenants face uncertainty at each renewal period as to whether they will be able to remain in their homes for a further period." Again, no evidence is offered as whether this "uncertainty" constitutes an actual problem. It ignores the fact that, in many cases, an initial fixed term contract is followed by a monthly tenancy on essentially the same terms through a legal process known as *reconduction tacite* (tacit renewal).
9. Sometimes, however, tenants prefer the certainty of another fixed term lease which gives them far more security of tenure than a periodic tenancy. Under the Minister's amendments, that would not be possible even if it were the wish of both landlord and tenant. Why should their contractual freedom be interfered with in this way? It is difficult to see why the Minister's doctrinaire approach should override the wishes of a tenant.
10. From the landlord's perspective, the situation is worse. Even if a rolling tenancy may often be adopted by both parties as matter of choice, it is an arrangement which can be ended by either party on the appropriate notice being given. Under the Minister's amendments, the landlord will no longer have that freedom. The landlord will only be able to bring the tenancy to an end on specified grounds. There are at least two problems with this proposal. The first is that it is almost impossible to envisage all circumstances where an objective observer might consider the giving of notice to be "fair". The vagaries of life are too varied. The draft Articles 6F and 6G attempt this but it is easy to think of a situation falling outside the Minister's list. Suppose an elderly couple with a "granny" flat forming part of their property find the behaviour of their tenant unacceptable even if it is neither illegal nor a nuisance as defined. People living near each other do sometimes fall out. Is it "fair" that the elderly couple should be stuck for ever with a tenant living in their property who in their view is behaving unacceptably?

11. The second problem is more fundamental and goes to the issue of ownership, on which of course there may be more than one view. Is it fair that the tenant's "right" of possession should override the landlord's right of ownership? It is undoubtedly an issue which has caused considerable concern to many landlords and is a major factor in their consideration of whether they wish to remain landlords. Ownership which is subject to a tenant's right to remain in occupation of the property, effectively for ever, is to change the nature of ownership as understood for centuries by the law of Jersey. That is not to argue that a tenant who has been in occupation for years is not entitled to respect for his/her status. Another way of respecting that status would be to provide for an extended period of notice (of a year or more), other than in exceptional circumstances, where a tenant had been in occupation for an extended period. The reality is that such a tenant is very unlikely to be called upon to vacate the property. Tenants who have been in occupation for extended periods are, from a landlord's perspective, gold dust. The Minister's amendments are purporting to solve a problem which does not exist.
12. The Minister suggests that this protection is required because "tenants can be evicted from their home without reason, which therefore leaves them vulnerable to revenge evictions". No evidence is offered, however, that this happens frequently, or at all. Inquiries of officials in the Petty Debts Court indicate that revenge evictions are unknown. The reality is that the existing law provides, in the discretion afforded to the Magistrate to grant a stay, and to order payment of costs by the landlord, ample protection against contemptible conduct of that kind.
13. These amendments would reinstate the existing law which allows for eviction if the tenant has failed to give vacant possession upon termination of the residential tenancy. That power is subject, as stated above, to the court's jurisdiction to order a stay of the eviction order. A wide discretion is conferred upon the court which must consider, *inter alia*, the balance of hardship as between landlord and tenant.

Civil penalties

14. Surprisingly, neither the Minister's Report nor the Explanatory Note contains any reference to the proposed introduction of a regulation making power to establish a civil penalty regime. It is difficult to know, therefore, what are the reasons for this novel and wholly undesirable proposal. The only reference to it is to be found in the Human Rights Notes prepared by the Law Officers' Department. The Law Officers conclude that Article 6 of the ECHR (right to a fair trial) is not engaged because the issue would only arise when development and enactment of Regulations under the proposed power conferred by Article 24(3)(ba) and (bb) were under consideration. None of that helps to explain why or for what purpose the Minister proposes this power to give civil servants the authority to impose fines or penalties of up to £1,000 upon landlords. The complete absence of any explanation means, in my view, that the proposal should be rejected out of hand.
15. However, it might be added that the creation of a power for civil servants to impose penalties upon landlords (it is inconceivable that they would be imposed upon tenants) would alter significantly the dynamics of relationships between landlords and those who duty it is impartially to enforce the law. If there is a serious breach of an obligation, it should be prosecuted in the usual way before the criminal courts.

Voting on the amendments

16. In order to assist members, I give notice that I shall be requesting that votes on these amendments should be taken in 3 parts, corresponding with the sections of my report headed "Capping of rent increases and establishment of Rent Tribunal", "Periodic

tenancies”, and “Civil penalties” respectively. The amendments corresponding to each of those parts are for convenience set out below.

Capping of rent increases and establishment of Rent Tribunal

Amendment 1(2), (4), (5), (6), and (7)

Amendment 4(2) to (6)

Amendment 8

Amendment 11

Amendment 13

Amendment 14(2) and (5)

Amendment 19

Amendment 20

Periodic tenancies

Amendment 1(1), (3), (5), (6), and (7)

Amendment 2

Amendment 3

Amendment 4(1)

Amendment 5

Amendment 6

Amendment 7

Amendment 9

Amendment 10

Amendment 12

Amendment 14(1) and (5)

Amendment 15

Amendment 16

Amendment 17

Amendment 18

Civil penalties

Amendment 14(3) to (5)

Financial and staffing implications

There are no financial or staffing implications from these amendments which seek to maintain the status quo.

Children’s Rights Impact Assessment

A Children’s Rights Impact Assessment (CRIA) has been prepared in relation to this proposition and is available to read on the States Assembly website.