

STATES OF JERSEY



PROPOSED GOVERNMENT PLAN 2023- 2026 (P.97/2022): TWENTY-SIXTH AMENDMENT (P.97/2022 AMD.(26)) – AMENDMENT (P.97/2022 AMD.(26).AMD) - COMMENTS

**Presented to the States on 8th December 2022
by the Council of Ministers**

STATES GREFFE

COMMENTS

Summary

1. The amendment proposes to extend the requirements outlined within the Public Health and Safety (Rented Dwellings) Law 2018 (“the public health law”) so that a rent-a-room arrangement must adhere to the requirements set out within this law.
2. A rent-a-room arrangement, as proposed in an amendment to the Draft Finance (2023 Budget) (Jersey) Law 202-, is a tax arrangement that, in essence, exempts rental income up to £10,000 per annum for a room to be rented within a person’s main residence.
3. Other rental arrangements where a room is let to one or two persons in a private dwelling but are not a ‘rent-a-room arrangement’ (e.g., produce an income of more than £10,000 per annum or is not a taxpayer) would not be subject to the conditions of this amendment.
4. The Council of Ministers agree with the principle of this amendment - namely to raise standards of private rented dwellings. However, in practice the Council is concerned that this amendment will not deliver the objective of safer rental accommodation for all private dwellings, and that it represents a disproportionate response that applies to only a part of this sector of the rental market.
5. The amendment also proposes an option to allow for a tenant or landlord to confirm whether either party is subject to a notification requirement under the Sex Offenders (Jersey) Law 2010 or under the Domestic Abuse (Jersey) Law 2022 once it is in force.
6. In a similar fashion, this part of the amendment would create rights to share information based on the tax status of one of the parties. If it were to be appropriate for information of this nature to be shared between a homeowner and a tenant, this should be considered independently to any reference of the tax position of the parties.
7. The Council of Ministers urge Members to reject this amendment as it would give rise to specific legal obligations depending solely on the tax status of the homeowner or the lodger. If there is a case for introducing public health obligations and notification rights under the Sex Offenders Law (“safeguarding requirements”), they should apply to all rental arrangements between a tenant and a homeowner. This amendment, as it is proposed, does not achieve that result.

Scope of Public Health Law implications of the amendment

8. The Public Health and Safety (Rented Dwellings) Law 2018 does not currently cover arrangements where a homeowner rents out a room in their home to up to 2 persons for reward, whether that is under the proposed rent-a-room arrangement or any other arrangement.

9. The Deputy has proposed to amend the Law to include only the rent-a-room arrangement. However, the amendment, as proposed, does not cover other rental arrangements whereby the owner is not claiming the rent-a-room income tax exemption, thereby creating a divergence of treatment based on the tax position of the homeowner.
10. The scope of the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 would require a primary law amendment, as the proposition suggests. Primary law amendments require a States Assembly approval and Royal assent from the Privy Council before being enacted. As such, these amendments as proposed cannot come into force at the speed required to keep pace with the introduction of the proposed rent-a-room arrangement (1 January 2023).
11. The health and safety requirements, outlined within the public health law are to be borne by the owner of the rented dwelling to ensure the minimum standards are enforced. These minimum standards relate to the provision of adequate smoke and carbon monoxide detection, annual gas safety and 5 yearly electrical safety inspections. In addition, the owner must ensure the property does not present unacceptable levels of risk in relation to 29 hazards including, for example, damp and mould growth, excess cold, falls from stairs and between levels.
12. The Public Health and Safety (Rented Dwellings – Minimum Standards and Prescribed Hazards) (Jersey) Order 2018 specifies when the Electrical Safety Inspection should take place. Subject to several variations, in any event this should be done no later than 31 December 2023. The amendment would not allow a sufficient lead in time for owners to engage a ‘competent person’ as defined in the Order to complete works, which in some cases would have to be immediate before commencing a new rental period. As a result, this places further dependencies on the time in which a rent-a-room arrangement can commence.
13. Consideration would have to be given to amending the Public Health and Safety (Rented Dwellings – Minimum Standards and Prescribed Hazards) (Jersey) Order 2018 to make provision for an extension to the various deadlines in obtaining the Electrical Safety Inspection under Article 7.

Proposed amendment regarding notifications under Sex Offenders (Jersey) Law 2010

14. The amendment also recommends considering including a provision within the rent-a-room arrangement to allow for a tenant or landlord to check whether the other party is subject to notification requirements under the Sex Offenders (Jersey) Law 2010, or under the Domestic Abuse (Jersey) Law 2022 once it is in force.
15. This would be unlikely to meet the requirements of the Sex Offenders Law disclosure arrangements, which are intended to protect the public by allowing the release of information for the purposes of preventing or addressing crime. It is, therefore, probable that an amendment to the Sex Offenders Law would be required to facilitate this.

16. Release of information under the Domestic Abuse Law would be more likely to be lawful, as the Chief Police Officer can establish disclosure arrangements by guidance. No such guidance is currently in place, as the Law has not yet come into force, and the data protection and human rights implication of the guidance will need to be considered as it is developed.
17. If there is a desire to extend these disclosure arrangements to allow the release of information in connection with certain rental arrangements, then that would be best managed by proposing changes to the disclosure systems themselves. As drafted, this amendment would create an odd framework which would determine two parties' rights to information about each other based on one party's tax position on rental income.

Taxation implications of the amendment

18. It is understood that based on the drafting of this proposed amendment, the Deputy does not envisage making eligibility for the rent-a-room tax exemption conditional upon meeting additional safeguarding requirements. This has been inferred by the Council of Ministers from the absence of a corresponding amendment to the Draft Finance (2023 Budget) (Jersey) Law 202-.
19. In principle, the Council of Ministers is of the view that tax policy should not be used as a mechanism to enforce requirements outlined within the public health laws or other related laws e.g., Lodging Houses (Registration) (Jersey) Law 1962. The amendment, as proposed, creates ambiguity as to the eligibility for the proposed rent-a-room tax arrangement. Any interaction intended or unintended, between these obligations could create perverse consequences and ultimately undermine the policy objective.
20. In the short-term, there would be a disconnect between the ability for a homeowner to generate taxable income that could qualify for a tax exemption under the rent-a-room arrangement from 1 January 2023 and the time taken to enact the legislative framework for the necessary checks (as outlined above). While in the longer-term, the ongoing requirement to meet the proposed health and safety requirements could create monetary and time costs for homeowners.
21. Additional complexity could be created as homeowners move into or out of the rent-a-room arrangement as defined in the proposed changes to the Income Tax Law. A homeowner would be in scope of the safeguarding requirements if they had a qualifying rent-a-room arrangement but would not be in scope if they do not meet the eligibility criteria of the rent-a-room arrangement, for instance if they generate income over the proposed income cap of £10,000 per annum.

The combined effect of these issues could deter homeowners from utilising the proposed tax exemption which would limit the extent to which the underlying policy objective of the arrangement could be achieved.

Comment under Standing Order 37A

This comment was submitted after the noon deadline in order that final checks and due diligence could be undertaken, given the extensive number of Amendments to which due consideration was needed. We apologise to Members for this delay.
