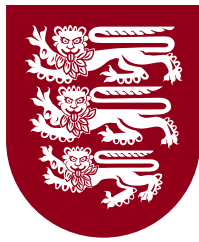


# STATES OF JERSEY



Jersey

## **DRAFT PUBLIC HEALTH AND SAFETY (RENTED DWELLINGS) (LICENSING) (JERSEY) REGULATIONS 202- (P.40/2023): SEVENTH AMENDMENT**

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**Lodged au Greffe on 23rd October 2023  
by the Environment, Housing and Infrastructure Scrutiny Panel  
Earliest date for debate: 7th November 2023**

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**STATES GREFFE**

DRAFT PUBLIC HEALTH AND SAFETY (RENTED DWELLINGS) (LICENSING)  
(JERSEY) REGULATIONS 202- (P.40/2023): SEVENTH AMENDMENT

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**PAGE 19, REGULATION 3 –**

Delete Regulation 3(5), and renumber the subsequent paragraphs and cross-references accordingly.

ENVIRONMENT, HOUSING AND INFRASTRUCTURE SCRUTINY PANEL

## REPORT

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### REMOVE SCOPE FOR ADDITIONAL CONDITIONS TO BE PLACED ON LICENCES AT THE MINISTER'S DISCRETION

Regulation 3(5) states: “A licence is subject to the standard licence conditions set out in the Schedule and may contain additional requirements that the Minister thinks fit.”

The Jersey Landlords' Association raises concern with the wide discretionary power this gives to the Minister for the Environment and/or future Ministers.<sup>1</sup> The Panel agrees that this provision within the draft Regulations is too wide and considers that licence conditions or requirements should be clearly set out in the Schedule. Furthermore, that any future additional conditions which are deemed necessary to include should be brought back to the States Assembly by way of a proposed amendment to the Schedule.

It is conceivable there would be examples where placing additional requirements on licence conditions could lead to better enforcement, particularly, in bringing together the requirements of other relevant legislation. For example, views provided by Citizens' Advice Jersey suggested that it should be made a condition of granting or renewing a licence that a landlord must comply with registering rental deposits in the MyDeposits Jersey scheme, which is already a legal requirement under the [Residential Tenancy \(Deposit Scheme\) \(Jersey\) Regulations 2014](#) which were enacted under the [Residential Tenancy \(Jersey\) Law 2011](#).

The Panel considers that additional requirements such as this would have their merits. However, to consider and amalgamate licence conditions which link to the requirements of other legislation is a task which falls out of the scope and time constraints of the Panel's review. It is acknowledged that such work would require further exploration and consideration with key stakeholders and therefore the Panel has not sought to propose these amendments to the schedule of licence conditions at this time.

The Panel is, however, proposing this amendment to remove the current ambiguity and uncertainty around the types of license conditions that could be imposed at the discretion of current and/or future Ministers, without first bringing this to the States Assembly for debate.

During the public quarterly hearing held on 11th October, the Minister clarified the rationale for the inclusion of these discretionary powers:

***Deputy S.G. Luce:***

*...Minister, we have had a bit of concern raised under proposed Regulation 3(5), which states: “A licence is subject to the standard licensing conditions set out in the schedule and may contain additional requirements that the Minister thinks fit.” Could you just explain the rationale for including such a wide discretion?*

***The Minister for the Environment:***

*Yes, it is a slight misunderstanding that, I think, because that is designed to enable ... in a situation where an inspection has happened and, let us say, a series of problems have been identified or a problem has been identified, it allows a condition to be placed on the licence, to allow the licence holder to continue operating. So they have still got a licence but there is a condition on it which may say something like: “The broken banister needs to be fixed within 6 months” or: “This room needs to be closed off until it has been made habitable.”*

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<sup>1</sup> [Written Submission – Jersey Landlords' Association – 10 July 2023](#)

*It is not a blanket provision for all licences. It is designed to vary that particular licence in certain circumstances.*

**Deputy S.G. Luce:**

*Do you think we need to change the wording then to accommodate what you have just described?*

**The Minister for the Environment:**

*I would be happy to look again at the legal reasons why it was worded like that, but I suspect it was worded like that precisely to achieve the objective I have just explained, and it is a problem of interpretation. It might need the notes to explain that.*

**Deputy S.G. Luce:**

*Okay, I think the Constable is just about to ask you a couple of questions in that.*

**The Deputy of St. Mary:**

*It would be helpful on this point. I was wondering if that 3(5) might be linked in with 3(4)(c) to show that is what it really means, but we will perhaps come on to that in another question.*

**Deputy S.G. Luce:**

*From the other side of the fence, Minister, a regulation which states that anything may contain additional requirements that the Minister thinks fit is also extremely vague and would allow you to go just about anywhere.*

**The Minister for the Environment:**

*Yes, it is the Minister understood here in terms of the chief officer or rather whoever is delegated by me. I am very rarely going to be involved in this, I would have thought.*

**Group Director, Regulation:**

*The interest is in the public interest. Again, there is that right of appeal and judicial review if there was considered that such a condition was unreasonable or unfair. It will always be in the public's interest.*

**The Minister for the Environment:**

*That is the legal test. I cannot just do what I want.*

**Deputy M.R. Le Hegarat:**

*Somewhere it needs to say that, probably.*

**The Minister for the Environment:**

*It does, I think.*

***Deputy S.G. Luce:***

*I mean, Ministers change and different Ministers have different attitudes toward different subjects.<sup>2</sup>*

The Panel considers that the very scenario the Minister has alluded to above can be achieved by clarifying this provision under Regulation 3 (and as the Panel sets out in its proposed Fifth Amendment). Doing so would remove the need for such a wide discretionary power which is deemed too ambiguous and open to interpretation.

### **Financial and staffing implications**

The Panel is not aware of any financial and manpower implications associated with this proposed amendment.

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<sup>2</sup> Transcript – Public Quarterly Hearing with the Minister for the Environment, 11th October 2023, p.14-16