

# STATES OF JERSEY



## **DRAFT PUBLIC HEALTH AND SAFETY (RENTED DWELLINGS) (LICENSING) (JERSEY) REGULATIONS 202- (P.33/2021): COMMENTS**

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**Presented to the States on 2nd June 2021  
by the Environment, Housing and Infrastructure Scrutiny Panel**

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**STATES GREFFE**

## COMMENTS

### Background

[P.33/2021](#) – the Draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 202- (hereinafter the “Draft Regulations”) was lodged on 16th April 2021 by the Minister for the Environment and scheduled for debate on 8th June 2021.

In 2018, the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 was introduced, setting out the requirements for landlords to meet minimum standards for their rental properties. The Law made provision, under Article 5, for the States, by Regulations, to establish a licensing scheme. Under such Regulations, the Minister for the Environment would have the ability to licence rented dwellings, impose charges in respect of those licences, create offenses for breach of licence, and make supplementary provisions that may be considered necessary.

On 1st October 2019, the Minister for the Environment lodged [P.106.2019](#) - the Draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 201- and sought to develop a database that would provide details about properties that are being rented out, their suitability, their location, and their occupancy. It was intended that the data be used to ensure that rental properties meet, or are brought up to, modest minimum standards.

Previously, the Environment, Housing and Infrastructure Panel (hereinafter the “Panel”) undertook a review to determine whether P.106/2019 was fit for purpose; fair and proportionate; whether appropriate consultation had been undertaken; and to ascertain the impact of P.106/2019 on both landlords and tenants. The Panel presented its report and recommendations, [S.R.1/2020](#) on 21st February 2020.

P.106/2019 was not adopted by the States Assembly. Subsequently, P.33/2021 was lodged ahead of the debate of [P.20/2021](#) – Public Health and Safety (Rented Dwellings): Request for New Regulations which was lodged on 10th March by Deputy Ward for debate on 11th May 2021.

As noted in the report attached to the Draft Regulations, if approved, the regulations would implement a suitable licensing scheme:

- with nil charge;
- requiring landlords to licence their properties as dwellings for the purpose of renting; and
- assist with achieving the purpose of the Law (Public Health and Safety (Rented Dwellings) (Jersey) Law 2018) to improve the quality of rented dwellings, ensuring they meet the minimum standards for accommodation as required by Law.

### Previous scrutiny work of P.106/2019 and cross-over with P.33/2021

In the report attached to the Draft Regulations, the Minister for the Environment notes that the Draft Regulations had been presented in a different form under P.106/2019 and that now the Draft Regulations incorporated the changes suggested by States Members.

The Panel's previous review into P.106/2019 had highlighted several concerns which brought rise to the Panel's ten recommendations in S.R.1/2020. In light of the Panel's review and the links between P.106/2019 and P.33/2021, the Panel sought to cross-reference its recommendations made in S.R.1/2020 with P.33/2021 to identify whether the Draft Regulations had considered its recommendations and had allayed any of the concerns previously highlighted by the Panel.

The Panel notes from the Ministerial Response to S.R.1/2020 that the Minister for the Environment accepted recommendations two, three and four only and rejected the remaining seven.<sup>1</sup>

At the time of the Panel's review of P.106/2019, the Panel received evidence from the Jersey Landlords' Association (JLA) to inform its review. Subsequently, the Panel sought to understand the views of the JLA and its Members on P.33/2021. The Panel also approached the Jersey Tenants' Forum for comment on the Draft Regulations, however, as at the time of writing, has not received a response. The Panel notes that at the time of its review into P.106/2019, it also received little representation from tenants.

#### **Recommendations made in S.R.1/2021 and areas examined by the Panel**

***R.1: The Minister for the Environment should explore the possibility of combining the Rent Safe Scheme and the proposed licensing scheme, following a bedding in period of the draft Regulations.***

The Panel notes that the Minister for the Environment, in the attached report to the Draft Regulations, states that the licensing scheme would be independent from any other scheme. Regarding P.106/2019, the Minister rejected the Panel's recommendation, noting that it would be essential for the Rent Safe scheme to run in parallel with the licensing scheme. Considering the evidence received, uncertainty exists regarding the future of the Rent Safe scheme, should the Draft Regulations be adopted.

***JLA: What is the future of the rent safe scheme? Landlords and agents have spent time and money on putting properties on to the scheme. Public money has been spent setting it up and maintaining it. Has that been a waste of time and money?***<sup>2</sup>

***R2: The Minister for the Environment must publish an annual report to the States Assembly, detailing the amount of income generated by the proposed scheme***

The Panel notes the intention for no fees to be charged on the introduction of the Draft Regulations and that the licensing scheme will not be generating income. However, should this change, it is the Panel's view that this recommendation would need to be considered further to detail the income generated by any proposed scheme going forward. The Panel notes that the Minister for the Environment states that, should the Draft Regulations be adopted, the data gathered after the initial period could be reviewed to allow for a reliable determination of a fee which is proportionate to the cost of licensing and equitable in regulating the activity.

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<sup>1</sup> [Ministerial Response – Minister for the Environment](#)

<sup>2</sup> [Submission - JLA](#)

***R3: Before the debate of the draft Regulations, the Minister for the Environment must provide the States Assembly with further clarity as to the costs of operating the scheme.***

The Panel notes that the cost to operate the scheme in respect of the Draft Regulations is not clear.

***R4: The Minister for the Environment must publish a report to the States Assembly per annum, detailing how the income generated from the scheme has been spent.***

The Panel notes that although the intention is for no fees to be charged on the introduction of the Draft Regulations and the licensing scheme will not be generating income, should this change, it is the Panel's view that this recommendation would need to be considered further.

***R5: The Minister for the Environment must consult with the Panel prior to setting and publishing the finalised fee structure for the licensing scheme. This will enable the Panel to ensure that the licensing scheme will not be generating more income than the amount it costs to operate.***

The Panel notes that, although the intention is for no fees to be charged on the introduction of the Draft Regulations, the Panel was not consulted on this decision. The licensing scheme will not be generating income, however, the cost to operate the scheme is not clear. With reference to P.106/2019, the Minister for the Environment rejected the Panel's recommendation and noted that the provision to set the fee was contained within regulation 3(5) of P.106/2019 and sat clearly with the Minister. In relation to the Draft Regulations, the Minister notes that legislation allows the Minister to impose a charge in respect of issuing licences and if in future the Minister decided to introduce a fee, this would require formal publication via a ministerial decision and accompanying report. The Minister further explains that, should the Draft Regulations be adopted, the data gathered after the initial period could be reviewed to allow for a reliable determination of a fee which is proportionate to the cost of licensing and equitable in regulating the activity.

***R6: The Minister for the Environment should undertake further work to ascertain the impact of the proposed licence fee on seasonal businesses and how the fee structure could be amended to ensure fairness and proportionately. The Minister must report back to the States Assembly with the outcome of the work prior to the implementation of the scheme.***

The Panel notes that the Minister for the Environment rejected this recommendation. Although the intention is for no fees to be charged on introduction of the Draft Regulations, should this change, it is the Panel's view that this would need to be considered further. The Minister notes in the report attached to the Draft Regulations that the Draft Regulations would apply equally, thus achieving a level playing field. However, the Panel raises concern that it is unclear whether any analysis has been undertaken to ascertain any impact on the operation of seasonal businesses.

***R7: To ensure a level playing field across all housing providers, the Minister for the Environment should ensure that rented dwellings defined as 'Social Housing Providers' under the proposed scheme are not exempt from being charged an annual licence fee if they are Rent Safe accredited. Similar to private landlords, social***

***housing providers should be awarded discounted licence fees depending on their star rating under the Rent Safe accreditation scheme.***

Although the intention is for no fees to be charged on introduction of the Draft Regulations, should this change, it is the Panel's view that this recommendation would need to be considered further. With reference to P.106/2019, the Panel notes that the Minister for the Environment disagreed with the Panel's recommendation and rejected it. The Minister noted that in the UK, under the Housing Act 2004, licensing exemptions applied to all tenancies and homes granted by a Registered Social Landlord. The Minister explained that he had chosen to include these in the proposed scheme but exempted them from the fees subject to meeting 3-star Minimum Standards according to the Rent Safe scheme rating. Considering that the Draft Regulations propose a licensing scheme that would be independent from any other scheme, the Panel notes that it is unclear how the Rent Safe scheme will work with the Draft Regulations, should the Draft Regulations be adopted.

***JLA: Equally there are no assurances given about whether Andium and social housing providers may be charged a lower fee than private landlords (as in previous iterations of the Draft Regulations). Such a move would put private landlords at a substantial disadvantage to the public sector.<sup>3</sup>***

***R8: The Minister for the Environment should amend the current fee structure to ensure a graduation of fee charges according to the size of the property and the number of occupants the property is capable of housing.***

Although the intention is for no fees to be charged on introduction of the Draft Regulations, should this change, it is the Panel's view that this recommendation would need to be considered further. With reference to P.106/2019, the Minister for the Environment rejected this recommendation as it was the Minister's view that the recommendation was not clear enough to provide a comprehensive response and it would raise complications. A Member of the JLA suggested the use of a sliding scale in their submission.<sup>4</sup>

***R9: The Minister for the Environment should amend the type of properties captured under the licensing scheme to include private house lodgings.***

The Minister for the Environment rejected this recommendation on the basis that it would require an amendment to the definition in Article 2 of the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018. The Panel notes that this position remains unchanged in the Draft Regulations. Under the Draft Regulations, all rented dwellings would be subject to the licensing scheme, however, the JLA believe that further clarity is required regarding how the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 defines a rented dwelling as referred to in their submission to the Panel.<sup>5</sup>

***R10: In order to reduce the level of bureaucracy and costs for landlords, the Minister for the Environment should amend the proposed licensing scheme and extend the***

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<sup>3</sup> [Submission - JLA](#)

<sup>4</sup> [Submission – JLA – Member Response 7](#)

<sup>5</sup> [Submission – JLA - Member Response 4](#)

*validity of a licence from one year to five years in line with the current practice in the United Kingdom.*

The Minister for the Environment rejected the Panel's recommendation based on numerous complexities that the Minister believed the recommendation would deliver including: the income received would no longer be able to cover the cost of the regulations, the register would be increasingly out of date, it would result in additional cost to the landlord, it would not be possible for an annual review of the scheme to be undertaken.<sup>6</sup> The Panel notes that should the Draft Regulations be adopted; the regulations will have a three-year validity. Therefore, the Panel raises concern as to whether the complexities that were highlighted by the Minister for the Environment with regards to P.106/2019 and a potential five-year term, would persist, should the Draft Regulations be adopted. This was echoed in a submission response from a Member of the JLA.<sup>7</sup>

### **Concerns of the Jersey Landlords' Association**

The JLA represents the interests of residential landlords in Jersey including 200 members which comprises landlords and letting agents responsible for the provision of over 3900 residential units including private rented accommodation and lodging houses.

In its submission to the Panel the JLA noted that it was broadly supportive of the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 and its aims to improve the housing standards in Jersey's rented sector. However, the JLA noted that it was not supportive of the licensing scheme that had been proposed in the Draft Regulations.

The JLA summarised the following reasons regarding why it was not supportive of the Draft Regulations.<sup>8</sup>

- **Similarity to P106/2019:** P33/2021 is virtually no different from P106/2019 which was not adopted by the States Assembly.
- **Fees and Inflationary Impact:** Despite the Environment Minister's assurances that no fees will be charged for a licence at the outset, the JLA are sceptical that a future Environment Minister will not seek to introduce fees (at levels which can be determined by Ministerial Decision). Any such fees will have an inflationary impact on Jersey's already overheated rental market.
- **Red Tape:** The licensing scheme will introduce new red tape/administrative burdens on landlords and letting agents, which will increase letting fees and therefore rents.
- **Government has Powers to Identify Rented Dwellings:** knowing where rental properties are located is already within the powers of the Government via the Control of Work and Housing (Jersey) Law 2012 and other legislation. Alternatively, a register of all commercial and residential properties in the Island such as that proposed by P.93/2020 would serve very well as a register of rented dwellings.
- **Inspection/Enforcement Legislation Already Exists:** Legislation already exists to combat sub-standard rental properties.

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<sup>6</sup> [Ministerial Response – Minister for the Environment](#)

<sup>7</sup> [Submission – JLA - Member Response 14](#)

<sup>8</sup> [Submission - JLA](#)

- **Concerns over Licence Conditions:** The suggested conditions to be attached to a licence issued pursuant to the Draft Regulations are ambiguous, reflect duties of landlords that already exist in law and can be changed or added to by a Ministerial decision with no oversight by the States Assembly.
- **Comparison to UK Schemes:** Similar licence schemes in local authorities in the UK have not met with great success, are often brought in to deal with specific social problems such as nuisance and are required to be reviewed and renewed by central government every 5 years.
- **Lack of Clarity on Inspection Regime:** Whilst the report to P.33/2021 says that no regime of inspections will be introduced, the Draft Regulations require inspections by the Minister of all licenced properties.

It is the view of the JLA that an alternative to the licensing scheme should be considered, namely, a Register of Property and Tenant Empowerment. The JLA believes that a register of all property in Jersey would fulfil all of the aims of the Minister for the Environment, without introducing as much inflationary red tape.<sup>9</sup>

The JLA noted that both P.82/2020 (Investigation into a digital register of Landlords and Tenants) and P.93/2020 (Establishment of a digital register of all commercial and residential properties) were passed by the States Assembly and have not been followed up by Government, whereas P.106/2019 was not adopted.

#### **Further evidence considered: Members of the JLA**

##### **Is further legislation necessary?**

The Panel notes that, in the main, the consensus presented in submissions from landlords who are members of the JLA was that the Draft Regulations are not necessary.<sup>10</sup> In addition, it was the view of many that the Draft Regulations would not be in the best interest of neither tenants, nor landlords. Members noted that other methods already existed to record data on properties, landlords and tenants. In particular, through the Rent Deposit scheme, Parish Rates, Income tax return and the licensing and inspection of lodging houses.<sup>11</sup>

##### **How is a rented dwelling defined?**

Concern was raised by Members regarding how dwellings were defined with reference to licensing, should the Draft Regulations be adopted, and the potential for the approach to change, should any new Minister decide it was appropriate. In addition, how a paying lodger would be defined under the Draft Regulations and the impact that would have on the provisioning of accommodation. Also, the potential for licensing to cause the most vulnerable of the community to seek unsuitable accommodation as a consequence.<sup>12</sup>

##### **Does the Government have the adequate resourcing?**

Capacity and resourcing were raised as a concern; JLA Members questioned whether adequate capacity of inspectors would be available to undertake the inspections and, if

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<sup>9</sup> [Submission – JLA](#)

<sup>10</sup> [Submission – JLA – Member Responses: 2, 3, 6, 11, 12, 16, 17](#)

<sup>11</sup> [Submission – JLA - Member Response 9](#)

<sup>12</sup> [Submission – JLA – Member Response: 4, 5, 6](#)

not, how that would impact the timely licensing of rented dwellings and the ability for letting to continue in the absence of timely inspections and the provision of licences.<sup>13</sup>

### **Is the appeals process adequate and fair?**

Concern was raised regarding the appeals process; it was explained that undertaking the Royal Court appeals process would be extremely costly.<sup>14</sup>

### **Should an alternative be explored?**

One Member proposed that an online landlords' register would be a more suitable approach, instead of the licensing regime, and that random inspections could be undertaken of the properties. In addition, a system put in place whereby tenants could request an inspection of a rented dwelling without reprisal from the landlord.<sup>15</sup> It was the Member's view that such a system would be more suitable than the managing of a licensing scheme.<sup>16</sup>

### **Reasons for supporting the Draft Regulations**

A couple of Members were supportive of the Draft Regulations. One welcomed the Draft Regulations and explained that, considering that approximately 150 new landlords entered the market annually, and that 97% of landlords were not members of the JLA, many properties did not meet the basic safety standards.<sup>17</sup> Another noted their full agreement with the Draft Regulations.<sup>18</sup>

### **Conclusion**

It is evident that several of the Panel's concerns raised during its review of P.106/2019 remain. Including concerns in relation to the licensing scheme fee structure going forward, the potential administrative and cost impacts on landlords and the consequential impacts on tenants. Also, the uncertainty regarding the income that the scheme would generate and the cost that would be incurred by the Government to operate the scheme. The Panel note that the concerns raised at the time of its review, in the main, have not been allayed by the Draft Regulations.

The Panel understands that the Draft Regulations propose that no fees would be charged on its adoption but notes that it would be under the discretion of the new Minister to alter that stance, should the Minister find that to be appropriate going forward. The Panel believes that this may instil a level of uncertainty as no clarity has been provided regarding any potential fee structure going forward after 2025, should the Draft Regulations be adopted. To allay this concern, the Panel suggests that further consideration be given to providing upfront commitment as to what the fee structure would be and how it would be controlled, should the Minister impose licensing fees, from 2025. The Panel questions whether a sliding scale would be a more proportionate approach based on a set of agreed criteria such as annual rent, property size, property value or bedroom numbers. This was reflected in the Panel's recommendations regarding its review of P.106/2019 and evidenced in Members' views.

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<sup>13</sup> [Submission – JLA – Member Response: 6, 7, 17](#)

<sup>14</sup> [Submission – JLA - Member Response 7](#)

<sup>15</sup> [Submission – JLA - Member Response 13](#)

<sup>16</sup> [Submission – JLA - Member Response 12](#)

<sup>17</sup> [Submission – JLA - Member Response 8](#)

<sup>18</sup> [Submission – JLA - Member Response 15](#)



Considering the evidence received, the Panel raises concern regarding the impact of fees on landlords and the consequential impacts on tenants, should fees be imposed going forward. The Panel notes that either party would need to absorb the cost, it would either be taken on by the landlord or passed to tenants. Bearing in mind the current position regarding the supply and affordability of housing, this is of particular concern to the Panel.

The Panel raises concern with regard to the numerous uncertainties of the Draft Regulations, including the cost to operate the scheme considering that no fees will be charged for the foreseeable future. In addition, the capacity available to run the scheme and issue licences in a timely manner. With reference to the inspection regime and how it would be approached under the Draft Regulations, the Panel notes that further clarity is needed in that regard. In addition, evidence suggests that uncertainty exists with regard to the licence conditions attached to a licence issued under the Draft Regulations which proposes that the conditions reflect duties on the landlord that already exist in legislation and could be amended by a ministerial decision with no oversight by the States Assembly.<sup>19</sup>

Regarding the three-year licence term, no clarity has been provided as to why a term of three years has been decided. With reference to P.106/2019, the Minister for the Environment rejected the Panel's recommendation to extend the licensing term to five years founded on numerous complexities that the Minister believed the recommendation would deliver if it were extended from one year. However, these complexities have not been highlighted by the Minister regarding the three-year term extension. Therefore, the Panel raises concern as to whether these complexities<sup>20</sup> would persist, should the Draft Regulations be adopted, considering the scheme would extend the validity of the licensing from one to three years. In addition, should three years be deemed appropriate, the Panel questions whether a five-year term would be more suitable, thereby reducing the red tape and the administrative burden all round.

Evidence received by the Panel suggests that methods already exist to identify rented dwellings and that existing legislation provides an inspection and enforcement mechanism. Therefore, the Panel questions whether a more tenant-focused approach to empower tenants through enabling a complaints system that would instil confidence in tenants to submit complaints without fear of repercussion should be explored. In doing so, inspections and penalties could be targeted to those landlords in breach of the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018, and assistance could be directed in a timely manner to those tenants that require it.

Considering that the proposed Draft Regulations are a reiteration of P.106/2019 which was not adopted by the States Assembly, and that numerous uncertainties regarding the proposed licensing scheme remain within the Draft Regulations, the Panel is unable to ascertain whether the Draft Regulations represent an improved position. Consequently, the Panel is unable to support the proposition in its current form.

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<sup>19</sup> [Submission – JLA](#)

<sup>20</sup> (the income received would no longer be able to cover the cost of the regulations, the register would be increasingly out of date, it would result in additional cost to the landlord, it would not be possible for an annual review of the scheme to be undertaken)