

STATES OF JERSEY



DRAFT PUBLIC HEALTH AND SAFETY (RENTED DWELLINGS) (JERSEY) LAW 201- (P.66/2017): COMMENTS

**Presented to the States on 6th December 2017
by the Environment, Housing and Infrastructure Scrutiny Panel**

STATES GREFFE

COMMENTS

1. On 31st October 2017, the Draft Public Health and Safety (Rented Dwellings) (Jersey) Law 201- ([P.66/2017](#)) was proposed for debate by the Minister for the Environment in the States Assembly. The principles of the draft Law were agreed by States Members, with 42 votes in favour and no votes against. Following the vote, the Chairman asked that the primary legislation be referred to the Panel for further consideration and Scrutiny. The Chairman advised the Assembly that the Panel would aim to report back to the Assembly at the States Sitting on 12th December.
2. The purpose of the Panel requesting the legislation to be referred to Scrutiny was not to question the principles of the Law, which it wholeheartedly supports, but to ensure that the primary legislation was fit for purpose and would achieve its objectives.
3. On 14th August 2017, the Panel was briefed on the draft Law by the Minister for the Environment and his Officers from Environmental Health. Following the decision to refer the Law to Scrutiny, the Panel met again with the Minister and his Officers on 13th November to discuss the primary legislation and to ask any questions it had on details of the draft Law. Our Comments will address each of these points in turn.
4. The Panel also contacted the Chairman of the Jersey Landlords' Association for any additional comments on the draft legislation but did not receive a response.

'Revenge Evictions'

5. In the UK, the housing charity 'Shelter' reported that 300,000 renters were threatened with eviction in 2014 for highlighting poor conditions in their homes. The possibility of this also happening in Jersey, if the draft legislation is adopted, was something of great concern to the Panel and an issue which they wished to query with the Minister.
6. The Panel was advised that the Minister and his Officers are not discounting the possibility that the introduction of the legislation could result in some instances of 'revenge evictions'. However, the Department hopes that, to some extent, the new Law will discourage evictions because the landlord or person in control of the dwelling will be aware that they will have to undertake the work required before they can put someone back into the property. If they evict a tenant, they will not receive rent in the period it takes to complete the work, and it would therefore be more financially beneficial to keep them in the property in the first instance.
7. The Director of Environmental Health advised the Panel that the number of evictions of tenants from rented dwellings in the UK varied considerably depending on the area of the country, making it harder to predict how Jersey will fare in comparison. The Panel was told that the legislation would have to be in force for around 6–12 months for the Department to determine whether it was necessary for the Minister for Housing to give greater consideration to 'revenge evictions'.

8. It is worth noting that the law in England changed in October 2015 to make ‘revenge evictions’ illegal. Under the new rules, the court can refuse to make a possession order against the tenant if the landlord served the tenant with a Section 21 Notice after a complaint was made about the condition of the property in writing or to the local authority.
9. The Panel would recommend, if the legislation is approved, that the Minister for the Environment undertakes a review, in collaboration with the Minister for Housing, of the impact of the draft Law on tenant evictions 12 months following its implementation and then reports back to the States Assembly.

The role of Social Security

10. Prior to the debate on the principles of the Draft Public Health and Safety (Rented Dwellings) (Jersey) Law 201-, the Panel requested information from the Strategic Housing Unit in respect of the current figures provided to private and social rented properties under the Income Support provisions. According to [R.92/2017](#) (Social Security Department: Minister’s Report 2016), £9,520,000 of Income Support provisions was spent on housing individuals in the private rental sector in 2016.
11. The reason the Panel was interested to learn of this information was to try and determine what role the Social Security Department could play in protecting tenants from sub-standard accommodation and the possibility of ‘revenge evictions’, were they to complain about the condition of the property. It is recognised that there are many vulnerable families in receipt of the accommodation component for Income Support who are potentially living in sub-standard accommodation. It is also acknowledged how difficult it may be for such individuals to complain to their landlords out of fear of what might happen to themselves and their families. Thus, the Panel has suggested that rather than the tenants complaining directly to the landlord, they should advise Social Security, who would then raise the matter with the landlord and approach the Environmental Health Team.
12. The Panel raised this point with the Minister and his Officers at the meeting on 13th November. We were advised that similar schemes are currently in place in which the Environmental Health Team and the Social Security Department work together to try and resolve housing issues. One of those mentioned is called ‘Staying Put’ – Social Security offer the Environmental Health Team an appointment to visit those over the age of 65 who live in rented accommodation, and are receiving some housing element to their benefit, to ensure that the property is fit for them to live in. We were told that because Social Security had made the arrangements for the Environmental Health Team to access the property, the landlord did not consider the tenant as the complainant.
13. The Panel was also advised that a system was currently being developed where, if a tenant was to request a different property at Social Security, because their current accommodation was sub-standard, the Environmental Health Team would be asked to write a report. If the findings of the report demonstrated that the property was indeed sub-standard, then Social Security would take it up directly with the landlord. According to the Director of Environmental Health, where such schemes have been undertaken elsewhere, there have been fewer cases of ‘revenge evictions’

because the landlord just considers themselves unlucky to have their property assessed rather than suspecting that the tenant complained.

14. The Panel is extremely supportive of the use of such schemes to protect vulnerable people living in sub-standard accommodation. The role of Social Security in helping to assist those who receive Income Support and are living in poor accommodation is paramount, and will become even more crucial if this legislation is adopted by the States Assembly. The Panel would therefore encourage both Departments to continue to work closely in developing similar schemes which will hopefully encourage vulnerable people to come forward if they feel their accommodation is in poor condition.
15. It is important to note that, whilst the abovementioned schemes help to support individuals in receipt of Income Support who find themselves living in poor housing conditions, it does not assist those who are unqualified and living in similar conditions. It is acknowledged that individuals who have been living in the Island for less than 5 years are not eligible to receive financial support from Social Security. It is therefore of paramount importance that work is undertaken by the Department of the Environment to determine a platform which would allow such individuals to be heard, and to express their concerns about their sub-standard accommodation without fear of being evicted by the landlord.

The Right of Appeal through the Royal Court

16. Article 2(6) of the draft Law provides that a person may appeal against a determination of the Minister for the Environment as to whether or not a dwelling is a rented dwelling. Article 11 of the draft Law provides detailed grounds on which an appeal can be made against a notice served by the Minister. In both cases, right of appeal lies to the Royal Court to determine the outcome.
17. At the meeting with the Minister and his Officers, the Panel wished to address the report that was published by the Jersey Law Commission¹ in October 2017 and, in particular, its recommendation in respect of appeals to the Royal Court. The report recommended that most of the 9 separate tribunals should be amalgamated into a single tribunal known as the Jersey Administrative Appeals Tribunal (“JAAT”), managed and funded through the Judicial Greffe. The report recognised that many different laws create a right of appeal against the public body directly to the Royal Court, and many of those appeals have never, or only occasionally, been used. As such, the Commission also recommended that many rights of appeal under such Laws that currently go to the Royal Court should be transferred to the JAAT.
18. With regard to the Draft Public Health and Safety (Rented Dwellings) (Jersey) Law 201-, the Minister and his Officers advised the Panel that they would be happy to support the use of a tribunal, rather than the Royal Court, to appeal against determinations and notices, if and when this option was available. The Panel would support this view, and would recommend for the draft Law to be amended accordingly if the JAAT were created in the future. It is hoped that a change such as this would help improve the accountability of landlords in providing improved accommodation.

¹ Improving Administrative Redress in Jersey – Topic Report 2017, Jersey Law Commission, 18th October 2017

Enforcement, manpower and resources

19. At the first briefing that the Panel received on the draft Law, we queried the sufficiency of resources within the Department of the Environment, and the potential impact this could have on the delivery of the legislation and its enforcement. On various occasions in the past, the Panel has raised concerns as to the adequacy of available manpower within the Department and the impact of this on the Minister's extensive work programme. Whilst we consider the draft legislation as extremely important, we believe it will only succeed if there are sufficient Enforcement Officers available to ensure compliance with the Law.
20. In response to our concerns, the Minister advised us that, since moving to the Environment Department, Environmental Health has gone through a period of reorganisation – partly to ensure that the right people are in place to effectively deliver the draft Law. It was noted that, in addition to the existing Environmental Health Team, the Minister's intention was to recruit 3 further permanent members of staff to assist in this area; one full-time and 2 part-time. However, we were informed that the 3 new members of staff would not be additional to the Department's existing headcount.
21. Whilst the Minister expects to manage the Law from existing resources, he advised the Panel that any additional headcount or funding required would be funded from the associated licensing revenue, and therefore would not have a negative impact on agreed Department cash limits.
22. With particular regard to the cost of property inspections, the Panel referred to the recent announcement that the price of a fire certificate would increase from £80 to £400 by 2020. According to the Fire Service, the increase in charges reflects the direct and indirect costs associated with the issuing of fire certificates. The Panel questioned the Minister and his Officers about the difference between the inspections carried out by the Fire Service and those by the Environmental Health Team, and the resulting disparity of associated costs. The Director of Environmental Health advised the Panel that there is a huge amount of work involved in a fire audit, compared to the inspections that would be carried out by the Environmental Health Team. He told the Panel –

“They are doing the fire audit and they are putting their signature on the bottom to say it is safe. We are looking at hazards, hazard awareness, which is a far lower standard of proof. We are looking at smaller buildings, smaller units, domestic units. We are talking about: “Have they got a smoke alarm? Well, put one in.” We do look at means of escape, but it is not the same as the full fire audit that they will do. They will take far longer. But also they are looking at places with many different tenants, with many different fire doors, with multiple responsibilities.”²

² Transcript, Meeting with the Minister for the Environment, 13th November, p.57

Licensing Regulations

23. It was noted by the Panel that during the debate on the principles of the draft Law, a number of States Members raised concerns regarding the proposed licensing scheme. Article 5 of the draft Law, for instance, provides that the States may by Regulations establish a scheme for the purpose of further ensuring the health and safety of rented dwellings and, among other things, make provision enabling the Minister to licence dwellings and impose charges in respect of the issues of licences for rented dwellings. The details of the licensing scheme will therefore not be available to scrutinise until the draft Regulations are brought to the States Assembly.
24. The Panel was of the opinion that the Minister for the Environment should endeavour to bring the draft Regulations to the Assembly for debate before the elections in May 2018. The Minister agreed to the Panel's request and, if the draft Law is adopted by the States on 12th December, the Panel has committed to reviewing the Regulations next year. As part of its review, the Panel will ensure that the concerns previously raised by States Members on the licensing Regulations and the codes of practice are considered. Furthermore, the Panel's review will provide further opportunity for Members to raise any issues with the Panel on the Regulations, once the details are available.

Enforcement action and power of Minister to undertake work

25. Articles 7 and 9 of the draft Law enable an authorised person to issue improvement notices requiring a person to take action to remove a hazard or reduce the risk posed by the hazard to an acceptable level. Article 12 of the legislation provides that the Minister may take emergency remedial action where there is a hazard in or about a rented dwelling that involves an imminent risk of serious harm to the health and safety of the occupier of the property, and action is immediately necessary to remove the risk of serious harm. In both cases, the Panel is concerned about the protection of the tenant if they have to vacate the property as result of either of these Articles.
26. For instance, the Panel questioned the Minister as to whose responsibility it would be to ensure the tenant had somewhere to live if indeed this situation were to arise. We were advised that further discussions needed to take place with the Minister for Housing and the Strategic Housing Unit on this matter. However, we were told that the Department would negotiate with the landlord and try to persuade them to find alternative accommodation for the tenant(s). They would also try to ensure that a written agreement was in place between the landlord and tenant which stated that the tenant could go back into the property once the work had been completed.
27. According to the Director of Environmental Health, in the UK the responsibility is placed on the landlord to make sure that they continue to provide somewhere for the tenant(s) to stay. However, before that step is taken, the local authority has a mandatory duty to determine the most appropriate course of action ("MACA"). In some cases, it may be found that it is not the most appropriate course of action to remove the tenant from the property. Alternatively, it may be more appropriate to secure the hazard temporarily until the tenancy changes and then request the landlord to undertake the work. The Director advised the Panel that his team would always be after the best result for the tenant, landlord and the property.

28. The Panel acknowledges that the draft Law that it is reviewing is primary legislation and the details of how exactly the Law will work in practice are not yet available. However, the Panel would hope to see further explanation of how tenants will be housed if asked to vacate their accommodation, when the Regulations are brought to the States Assembly for approval.

Listed Buildings

29. During the debate on the principles of the draft legislation, a number of Members raised concerns regarding how this Law would impact on listed buildings which are rented out as private accommodation. There was a concern that, due to the current planning restrictions on listed buildings (e.g. not permitted to replace single-glazed windows with double-glazing), such properties may not meet the standards that would be required under the draft legislation.
30. In a meeting, the Panel raised this matter with the Minister and his Officers. The Director of Environmental Health advised the Panel –

“There is not a problem with historic buildings. People always come up with windows. Quite often you do not need to put double-glazing in to get the necessary thermal comfort, you need to get the insulation right and you need to get the heating system right. But there are a lot of products now that we can use and we can advise. We will not be asking people to rip out staircases because we can change the way buildings are tenanted; we can change the type of tenant; we can advise. There are lots of fire-proofing products that can be used on mouldings, on doors, on other things that can stop fire spread. It is something that came up in the UK and I have not known anything where we have not been able to find a solution.”³

31. On the subject of permitted developments, the Panel also enquired when the review on listed buildings was due to be completed. The Minister informed the Panel that the review was progressing, and that the intention was to bring proposed changes to the States Assembly shortly. In order to provide further clarity, the Panel would encourage the Minister to bring the review on permitted developments for listed buildings to the States Assembly alongside the Regulations for the draft Law.

Relationship with other legislation

32. At present, there are very few powers available to Officers to elicit improvements to sub-standard rented accommodation in Jersey. The [Statutory Nuisances \(Jersey\) Law 1999](#) allows Officers to ensure rented accommodation is “wind and water tight” and the [Loi \(1934\) sur la Santé Publique](#) has provision for closing housing under certain very serious circumstances.
33. During the meeting, the Panel was advised that the Statutory Nuisances (Jersey) Law 1999 (“the Nuisances Law”) would continue to work alongside the proposed draft Law, if adopted. For example, the Nuisances Law would be used in instances where a property has a leaky gutter that is causing the home next door a problem. Similarly, we were told that, for now, the [Loi \(1934\) sur la Santé Publique](#) would also remain in place. However, the Director of Environmental Health informed the

³ Transcript, Meeting with the Minister for the Environment, 13th November, p.41

Panel that the legislation would be replaced in due course with a new Public Health Law, because the current Law can no longer be used for unfit, sub-standard housing, following a ruling from a previous Attorney General in 1996 about the definition of Public Health. It is likely that the Law will not be replaced before 2019.

34. We were told by the Minister for the Environment that if the draft Law and Regulations are adopted and come into force, the intention would be to revoke the [Lodging Houses \(Registration\) \(Jersey\) Law 1962](#) to ensure that there were not 2 competing licensing schemes in existence at the same time.
35. The [Residential Tenancy \(Jersey\) Law 2011](#) (“RTL”) applies to all leases which are changed or renewed, and to all new leases. We were informed that, although the responsibility of this Law falls under the Minister for Housing, the Environmental Health Team are responsible for the enforcement of the legislation by delegation of the Minister for Housing. If the Draft Public Health and Safety (Rented Dwellings) (Jersey) Law 201- is adopted, the Environmental team will be checking all the things that fall under the RTL at the same time as inspecting housing standards. According to the Director of Environmental Health, this could result in an increase in the case files going forward to the Attorney General for potential prosecution. This point in itself again raises concerns for the Panel as to the resources available within the Environment Department to enforce the draft Law, as well as other legislation that falls under its remit.
36. Due to the fact that the proposed legislation and the RTL are closely tied, the Panel was curious as to why they had different definitions for properties under Article 2. For instance, under the draft Law a property is defined as a “rented dwelling”, and under the RTL as a “residential unit”. The Panel was advised that the reason for this is that a rented dwelling might contain more than one residential unit. Furthermore, the rented dwelling also includes external land and structures – such as gardens and outhouses. The Panel is concerned that having 2 different definitions in 2 Laws, that work so closely together, could cause confusion and ambiguity for both landlords and tenants. The Panel is of the opinion that the definition “rented dwelling” is a lot clearer and provides greater clarity than the definition “residential unit”.
37. The Panel wrote to the Minister for Housing, following the meeting with the Minister for the Environment, raising our concerns in respect of the 2 definitions. In response to the letter, the Minister for Housing advised –

“It is my opinion that the definition in the draft Law is far better, and I have asked my officers to seek further Law Officers’ advice with a view to amending the definition in the Residential Tenancy Law in order to ensure consistency between the two pieces of legislation. This is a concern that I have had for a while, particularly in respect of tenancy deposit protection. It is common in all rental arrangements for a landlord to take a deposit from a tenant but – as a consequence of the legal parameters of the Residential Tenancy Law – the tenancy deposit scheme applies to self-contained accommodation only.”⁴

⁴ Correspondence from the Minister for Housing, 27th November 2017

38. The Minister for Housing also told the Panel that she did not foresee any conflict between the provisions of the 2 Laws because, although they both relate to residential rented accommodation, their purposes are different. The RTL, for instance, is concerned with the legal ‘tenancy’ relationship between a landlord and tenant, establishing legal rights and responsibilities for the parties. In contrast, the draft Law, if approved, will provide a framework for the introduction of minimum health and safety standards and intervention powers where accommodation does not meet these standards.
39. The Panel also notes that it is the Minister for Housing’s intention to present a Report to the States before the end of this year which will make recommendations about the RTL.
40. The Panel has agreed to review the RTL as part of its wider review of the Regulations to be made under the draft Law, if the Law is approved by the States Assembly. The purpose of the review will be to determine whether the 2 pieces of legislation will indeed work together without any conflicts or issues arising, that may impact on landlords and tenants.

Protection for landlords

41. Currently, where ‘in-tenancy’ problems arise, a landlord has the ability to terminate a tenancy through the Royal Court under the RTL. The RTL is a framework of rights and obligations for both landlords and tenants. For instance, if a tenant is in breach of the lease, a landlord may commence eviction proceedings as set out under Article 12 of the RTL. However, a breach of the lease by itself does not give grounds for a landlord to terminate a lease immediately, and a tenant must be served a notice to cease the conduct that constitutes the breach. The notice must be complied with within 7 days. Where the landlord has complied with this procedure, he/she may apply to the Royal Court to terminate the lease and seek the eviction of a tenant.
42. In addition, from November 2015, any deposits placed to rent a home must be protected in the States’ approved tenancy deposit scheme, ‘mydeposits Jersey’. The Strategic Housing Unit (“SHU”) recommend that landlords take deposits in order to protect themselves against the risk that a tenant does not meet the obligations under the lease. Unfortunately, SHU has advised the Panel that, since the introduction of the tenancy deposit scheme, some landlords have decided to stop requesting deposits from their tenants. Whilst this is ultimately a landlord’s choice, it does create a risk that he/she will not be protected in the event that a tenant causes damage or leaves the accommodation with rent arrears.
43. It is recognised that the primary purpose of the draft Law is to ensure the health and safety of those living in and visiting rented dwellings and, by extension, the neighbours of those living in rented dwellings. However, the Panel was advised that there are benefits to landlords that will accrue from the draft Law, should it be approved. For instance, according to the Department, the improvement of standards of all rented dwellings will ensure that claims against landlords and tenants are reduced. Additionally, Environmental Health staff will be available to comment on deficiencies caused by tenant behaviour, and they may be called to give evidence in cases of dispute.

44. Ultimately, however, both SHU and the Environment Department stressed the importance of landlords undertaking sufficient due diligence in order to best protect themselves against ‘bad tenants’. The landlord should, at the outset, perform a comprehensive tenant reference and credit checks before proceeding with a let. Furthermore, if a let is agreed, the landlord should undertake a condition survey (including photographs), take a protected deposit from the tenant, undertake at least twice-yearly inspections with notice, and ensure that a well-written lease or rental agreement is in place.

Responsibility for repairs to the property

45. Article 1 (Interpretation) defines a “person having control”, in relation to a dwelling, as any of the following –

- “(a) the owner;
- (b) a person entitled to receive rent for use of the property by another, or who would be entitled to receive rent if the dwelling were let under any agreement by the terms of which rent were due;
- (c) a person responsible for repairs to the property;
- (d) a person responsible for allowing one or more other persons to occupy the building for any period of time, whether or not such person acts under an agreement or arrangement with any of the persons described in paragraph (a) to (c);”.

46. At the meeting, the Panel sought to establish whether paragraph (c) of the definition of a “person having control” – a person responsible for repairs to the property – would include managing agents if there was a contract between themselves and the landlord of the property. The Panel was advised that they would be included if they were indeed “true” managing agents. According to the Director of Environmental Health, one of the issues that currently exists in Jersey is that individuals call themselves managing agents until they are required to actually manage the property, and suddenly they become letting agents. In the Director’s opinion, a true managing agent would be receiving rent from the occupiers of the property on behalf of the landlord. We were informed that under the draft Law, if, by definition, you are a managing agent, you will be required to undertake repairs to the property if requested to do so.

Zero-hours contract

47. Article 2(2) of the draft Law states that reference to a “rented dwelling” may include, but is not limited to – “... (ii) *a dwelling occupied as living accommodation by a person in connection with that person’s employment (whether the employment is permanent or temporary, whether or not under a contract, including a zero-hours contract, and whether or not the employment is with the person having control of the dwelling).*”.

48. The Panel notes that zero-hours contracts are not currently defined in legislation, and we therefore questioned the appropriateness of referencing them within this draft legislation. When we asked the Minister whether this particular reference was necessary, he advised –

“Yes, because what we find people will do, they will change their contracts to zero hours. If they thought for some reason zero-hour contracts were not going to be covered under this, you will find all of a sudden hundreds of people who are staying in staff accommodation are working zero-hours contract because they know their accommodation will not be caught.”

49. Notwithstanding the Minister’s response, following the meeting, the Panel was advised that the Department’s intention was to propose an amendment to paragraph (ii) of the definition of “rented dwelling” within Article 2(2) of the draft Law, in order to remove the phrase “*including a zero-hours contract,*” from the paragraph. Having sought advice from the Law Draftsman, the Department advised the Panel that the words “whether or not under a contract” should encompass all types of working contracts in any case and, therefore, did not consider the inclusion of this reference entirely essential.

Powers of investigation

50. Article 6(3) of the draft Law provides that –

“(3) An authorized person shall not seek access to any rented dwelling unless the authorized person has given 24 hours’ notice of the proposed entry to the occupier or, if the authorized person thinks fit, the person having control of the dwelling, if different, except –

- (a) in an emergency;*
- (b) where the occupier or person having control of the dwelling consents to entry by the authorized person without prior notice; or*
- (c) where notice was given but the occupier or person having control of the dwelling consents to entry by the authorized person at the end of a period of less than 24 hours.”.*

51. In respect of Article 6(3), the Panel questioned whether it should be amended so that the authorised person has to gain consent from both the occupier *and* the person having control of the dwelling (rather than just one of those) to enter the property with or without prior notice. There was a concern, for instance, that the person in control of the dwelling could authorise entry without the occupier being aware. The Department advised the Panel that it would also raise this matter with the Law Draftsman.

52. Following the meeting, it was confirmed to the Panel that the Minister would lodge an amendment to the draft Law in order to provide clarity that the occupier, where there is one, will always be given notice of the proposed entry. The subsequent amendment, brought by the Minister for the Environment, proposes the following changes –

- Article 6(3) – to substitute the words “occupier or” with “occupier and”;
- Article 6(3)(b) and (c) – to substitute the words “or person having control of the dwelling” with “or, in the absence of the occupier, the person having control of the dwelling”.

53. The Panel is satisfied that the suggested amendments in respect of Article 6(3) provide the assurances that the Panel was seeking, and thus support the changes that have been proposed by the Minister.

Timetable

54. The Panel was advised that, if the Minister is successful in having the draft Law adopted by the States on 12th December 2017, it will go to Privy Council for approval. Without wishing to anticipate such approval, work would then begin on drafting the Regulations for subsequent lodging and approval. The Minister told the Panel that – *“he would have a reasonably good crack at getting this through before the elections.”*⁵

55. The Panel is fully supportive of the Minister’s intention to bring the Regulations to the States Assembly for approval before the elections in May 2018. We are currently in discussions with the Environment Department regarding the timetable for this work, and will keep abreast of developments following the debate on 12th December. The Panel will dedicate its time to reviewing the Regulations next year, if the draft primary legislation is approved by States Members.

⁵ Transcript, Meeting with the Minister for the Environment, 13th November, p.52