

STATES OF JERSEY



DRAFT RESIDENTIAL TENANCY (AMENDMENT) (JERSEY) LAW 201-

Lodged au Greffe on 13th July 2012
by the Minister for Housing

STATES GREFFE



Jersey

DRAFT RESIDENTIAL TENANCY (AMENDMENT) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Housing has made the following statement –

In the view of the Minister for Housing the provisions of the Draft Residential Tenancy (Amendment) (Jersey) Law 201- are compatible with the Convention Rights.

(Signed) **Deputy A.K.F. Green of St. Helier**

REPORT

Introduction

P.74/2009, the Draft Residential Tenancy (Jersey) Law 201- (“the principal Law”) was adopted by the States on 14th July 2009 and subsequently sent to the Privy Council for sanction.

The Privy Council sanctioned the principal Law on 16th November 2011. The lengthy delay was largely due to the fact that Ministry of Justice (“MoJ”) officials reviewing the principal Law noted and pointed out some provisions which might not have been entirely compatible with the European Convention on Human Rights. Having further considered these matters, the Law Officers’ Department agreed with the assessment. It was therefore subsequently agreed with MoJ that the principal Law could be submitted for Royal sanction, but some fairly minor amendments would be made, on human rights compatibility grounds, to some provisions regarding notice periods and eviction processes, and that the provisions affected would not be brought into force before having been amended.

Hence, the Draft Residential Tenancy (Amendment) (Jersey) Law 201- (“the amending Law”) has been prepared to effect the necessary amendments. The opportunity has also been taken to introduce some additional amendments to the principal Law as explained below.

It is not intended to bring any part of the principal Law into force until such time as the amending Law is also brought into force; firstly, because it is not felt appropriate to introduce the principal Law until all parts can be implemented and secondly, because delaying commencement enables a co-ordinated approach to be taken with regard to the potential introduction of a number of Orders and Regulations that may be introduced under the provisions of the principal Law as explained below.

The proposed amendments to the principal Law

During the time that the principal Law has been awaiting sanction, further progress has been made in connection with the general programme of work that is being undertaken in the area of landlord and tenant legislation.

This includes the drafting of Regulations to introduce a Tenants’ Deposit Scheme and the compulsory use of condition reports; the issue of a standard form of tenancy agreement and standard forms of notice to be used in connection with the principal Law; and the addition of some further landlord/tenant obligations to the principal Law.

A need to make additional amendments to the principal Law has arisen as a result of the progress of this ongoing work, and both these amendments and those arising from the MoJ comments are included in this amending Law, and their background is explained below.

Article 1:

The Residential Tenancy (Jersey) Law 2011 (registered in the Royal Court on 9th December 2011) is defined for the purposes of the amending Law as “the principal Law”.

Article 2: amendments to Article 1 of the principal Law

Further clarity is added to the principal Law by these amendments and, in particular, they will assist with the introduction and management of any Tenants' Deposit Scheme.

- (i) Two additional definitions are included to add clarification to the provisions of the principal Law:

A "deposit" is defined as being:

"a payment of money intended to be held (by the landlord or otherwise) as security for, or for guaranteeing or ensuring the performance of any obligation of the tenant or the discharge of any liability of the tenant arising under or in connection with the residential tenancy agreement".

This means, for example, that deposit monies can be used to account for unpaid rent or damage to property and that they could be held by an agent or in accordance with any deposit scheme requirements.

The term "money" is defined to mean money "*whether in the form of cash or otherwise.*"

For example, a deposit must be paid in money, and, under this definition this would include, for example, a cheque or bank transfer. However, payment in kind, for example offering to do some housework or gardening in lieu of a payment of money, would not be covered by this definition.

- (ii) Two other amendments affect the previous definitions of "landlord" and "tenant".

The first is the change to the definition of landlord and tenant to include persons acting on their behalf.

The second is the omission in the previous references to "landlord" and "tenant" to situations of sub-letting, because sub-letting is, for the purposes of the principal Law, indistinguishable from letting.

Article 3: amendment to Article 6 of the principal Law

The draft version of the principal Law that was released for consultation in April 2008 stated in Article 6(3)(d) that a landlord would need to give a tenant 3 months' notice to terminate a periodic residential tenancy. As a result of feedback received during the consultation this provision was revised; and in the final version of the principal Law debated by the States the Minister was given an Order-making power enabling him to prescribe "*some other period*" which could be a period of less than 3 months.

However, the MoJ raised a concern that human rights issues¹ may arise if the Minister, using this Order-making power, were to reduce the required notice period from a landlord to a tenant to a period of less than one month. Therefore the amendment in Article 2 of the amending Law accordingly ensures that the Minister cannot prescribe a period of less than a month's notice.

¹ Human Rights (Jersey) Law 2000: Schedule 1: Part 1 – The Convention: *Article 8 – Right to respect for private and family life*; and Schedule 1: Part 2 – The First Protocol: *Article 1 – Protection of property*.

Article 4: amendment to Article 7 of the principal Law

This amendment simply makes a correction by inserting the missing word “the” before the word “Minister.”

Article 5: substitution of new Article 13 in the principal Law

The Viscount currently has the responsibility of carrying into effect eviction orders made by the Court² and this practice continues under the principal Law. The Viscount’s Department acts in a manner consistent with human rights policies when carrying out eviction orders, and the changes generally bring Article 13 into line with what the Viscount already does in practice in tenancy cases.

When reviewing the principal Law, the MoJ recommended that the process around gaining entry to premises should be clarified further, and that the issue of repayment of tenants’ monies upon a Viscount’s sale of any movable property be further considered.

(i) Powers of entry

Article 13(2) of the principal Law gave the Viscount “*the same powers of entry in respect of the residential unit as he or she could if executing an order by the Court for distraint on movable property in the residential unit*”.³

The actual power to enter premises remains the same, both in the principal Law and the amending Law, in that a Court Order is needed, as is currently the case, to allow entry to premises to take place and for movable property to be taken. All such entries are carried out appropriately and reasonably by Viscount’s departmental officers and with human rights principles in mind.

However, the new drafting clearly sets out and confirms this process by specifying that when the Court makes an eviction order it may also, at the time of making the order or afterwards, make a further order, or orders, allowing the Viscount to –

(a) *enter the residential unit to execute the eviction or remove movable property;*

and

(b) *use reasonable force if necessary to make the entry.*

An additional provision relating to the Viscount’s costs is also included:

(c) *that the Court may make an order that the landlord and/or tenant under the tenancy pay the Viscount’s reasonable costs.*

(ii) Proceeds arising from sale of tenant’s property

The MoJ suggested that Articles 13(4) and 13(5) of the principal Law as originally enacted could potentially raise human rights issues⁴ as, subject to the requirements stated in Article 13(4), there was no mechanism to allow for the proceeds of any sale of the tenant’s goods to be returned to the tenant. Article 13(5) instead allowed for any monies raised to be paid into the States Consolidated Fund.

² *Loi (1946) concernant l’expulsion des locataires réfractaires.*

³ A “dstraint of movable property” is when the Court allows an individual’s movable property to be taken and sold as a means of cancelling his/her debts.

⁴ Human Rights (Jersey) Law 2000: Schedule 1: Part 2 – The First Protocol: *Article 1 – Protection of property.*

Accordingly, Articles 13(4) and (5) of the amending Law now specify a process for the handling of any monies raised by a sale of an evicted tenant's discarded property by the Viscount.

The proposed changes to the principal Law are as follows:

- (i) **Article 13(4)(a)(i)** makes it clear that the evicted tenant has a responsibility to pay the Viscount's reasonable expenses incurred as a result of his duties arising from the eviction process, including removal and storage of the tenant's movable property⁵.
- (ii) As previously provided for in the principal Law, if the tenant does not pay these expenses or remove his movable property from storage within a period of 15 days from the date his property was removed and stored by the Viscount, then the Viscount can dispose of the tenant's property (so long as the landlord has not got a court order for outstanding rent against the tenant's property in which case the landlord has first claim).
- (iii) **Article 13(5)** now adds clarity to the manner in which the Viscount may use his discretion to dispose of the tenant's property. In recognition of the fact that movable property left behind by a tenant often has no value, the Viscount is given a discretion to distinguish between property that has a realizable value and that which has no value. When disposing of the former, the Viscount should take reasonable steps to sell it whereas he can dispose of the latter as he sees fit.

Article 13(6) then allows the Viscount to retain from the proceeds of sale any of the Viscount's reasonable expenses that have been incurred⁶.

Article 13(7), in order to ensure compliance with human rights principles, places a new and specific obligation on the Viscount to take reasonable steps to pay the evicted tenant any monies remaining.

However, if the Viscount, having taken all these steps, cannot locate the evicted tenant then, at that stage, **Article 13(8)** provides that the Viscount must pay any monies remaining that belong to the tenant into the Consolidated Fund.

Article 6: amendment of Article 16 of the principal Law

The amendment of **Article 16(2)(a)** is included to improve and simplify the wording of the principal Law. This amendment does not result in any substantive change to the effect of Article 16(1) of the principal Law, which already gives the Petty Debts Court jurisdiction over all matters relating to residential tenancies.

Article 16(2)(b)(i)–(iii) of the principal Law authorizes the Court, when deciding any residential tenancy matter brought before it, to make orders on a number of matters such as rental arrears; deposit repayment and damages as well as adjusting the rights between the landlord and tenant to a residential tenancy agreement.

⁵ If, however, the Court has made an Order under Article 13(2)(c) making the landlord liable for any of the eviction expenses then the tenant's liability under this Article would be adjusted accordingly.

⁶ **Note:** as in footnote 5, if, the Court has made an Order under Article 13(2)(c) making the landlord liable for any of the eviction expenses then the tenant's liability under this Article would be adjusted accordingly.

The proposed amendments in new **sub-paragraphs (ia) and (ib)** further authorize the Court to modify expressions of time, or to dispense with notice requirements, applying under the principal Law to a residential tenancy or to a residential tenancy agreement.

Therefore, for example, under sub-paragraph (ib), although the Minister cannot prescribe a notice period from landlord to tenant to be a period of less than one month⁷ the Court, in exceptional circumstances, could.

It should be remembered that the Court must at all times apply human rights principles when making its decisions. Therefore, if a human rights issue regarding, for example, a right to respect for private and family life, arose in an eviction case, it would be for the Court to consider the application of human rights considerations.

The addition of **Article 16(5)** is a technical one that confirms that nothing in the principal Law confers any criminal jurisdiction on the Court. Any criminal matters will still fall to be heard in the Magistrate's Court.

Article 7: amendment of Article 23 of the principal Law

The introduction of condition reports; standard forms of tenancy agreement and forms of notice to be used under the principal Law are all matters upon which consultation is has been undertaken. Looking ahead it is felt appropriate to make the proposed amendments to the principal Law in order to add clarity to the terminology used and to facilitate the introduction of any Orders made as a result of the consultation process.

Article 8: amendment of Article 24 of the principal Law

These amendments provide the necessary enabling powers for the Minister to introduce a scheme to safeguard deposits by Regulations, for example, concerning –

- the investment of deposits held;
- the use of interest on deposits held;
- provision to be made to ensure that only a deposit can be used as a security or guarantee against the performance of any obligations, or the discharge of any liability, of the tenant arising in connection with the tenancy agreement;
- unless the States agree otherwise, deposit monies held in a scheme are not available to pay the debts, expenses or obligations of the person administering the scheme;
- exempting any person, deposit, residential tenancy, residential tenancy agreement or residential unit, or any class of persons, class of deposits, class of residential tenancies, class of residential tenancy agreements or class of residential units.

Financial and manpower implications

There are no anticipated financial or manpower implications arising from these proposed amendments to the principal Law.

⁷ Amended Article 6(3)(e)

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 12th July 2012 the Minister for Housing made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Housing the provisions of the Draft Residential Tenancy (Amendment) (Jersey) Law 201- are compatible with the Convention Rights.

Explanatory Note

This Law amends the Residential Tenancy (Jersey) Law 2011.

Article 1 provides that the Residential Tenancy (Jersey) Law 2011 may be referred to in the amendment Law as the “principal Law”.

Article 2 amends Article 1 of the Residential Tenancy (Jersey) Law 2011 –

- (a) to insert definitions of “deposit” and “money”;
- (b) to change the definitions of “landlord” and “tenant” to include persons acting on their behalf; and
- (c) to omit reference in the definitions of “landlord” and “tenant” to situations of sub-letting, because sub-letting is, for the purposes of the Law, indistinguishable from letting.

Article 3 amends Article 6 of the Law to ensure that, if the Minister prescribes a notice period (instead of the 3 months prescribed by that Article) for a notice to quit served on a tenant under a periodic tenancy, the prescribed period cannot be less than one month.

Article 4 amends Article 7 of the Law to insert a missing “the”.

Article 5 substitutes Article 13 of the Law –

- (a) to set out in more detail the procedure to be followed when the Viscount is required to remove furniture and other belongings from premises vacated by a tenant;
- (b) to allow the Petty Debts Court to make orders as to entry by the Viscount and the payment of the Viscount’s expenses;
- (c) to ensure that if the Viscount is forced to sell a tenant’s furniture or belongings, reasonable steps are taken to pay the tenant the proceeds of the sale after the deduction of the Viscount’s expenses; and
- (d) in other ways to bring Article 13 into line with what the Viscount already does in practice in tenancy cases.

Article 6 amends Article 16 of the Law –

- (a) to allow the Petty Debts Court to modify expressions of time, or to dispense with notice requirements, applying under the Law to a residential tenancy or to a residential tenancy agreement; and
- (b) to make it clear that the Law does not purport to confer jurisdiction in criminal matters on the Petty Debts Court.

Article 7 clarifies a number of heads of power under which the Minister may make Orders under the Law.

Article 8 makes amendments to Article 24 of the Law to allow Regulations about deposits –

- (a) to include certain anti-avoidance provisions, certain safeguards and certain limitations on deposits;

- (b) to require the payment of fees in relation to a scheme for the protection of deposits;
- (c) to allow those fees to be prescribed by the Minister by Order;
- (d) to allow the Minister to give directions to a scheme administrator;
- (e) to make various other provisions not currently provided for in Article 24.

Article 8 also adds a provision to prevent generally the use of deposits held in such a scheme for the payment of the debts or expenses of a person administering the scheme and adds a provision to allow the Minister to prescribe exemptions from the Regulations about deposits.

Article 9 sets out the name of the Law and brings it into force a week after it is registered in the Royal Court.



Jersey

DRAFT RESIDENTIAL TENANCY (AMENDMENT) (JERSEY) LAW 201-

Arrangement

Article

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Jersey

DRAFT RESIDENTIAL TENANCY (AMENDMENT) (JERSEY) LAW 201-

A LAW to amend the Residential Tenancy (Jersey) Law 2011.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law, “principal Law” means the Residential Tenancy (Jersey) Law 2011¹.

2 Article 1 amended

In Article 1 of the principal Law –

(a) after the definition “Court” in paragraph (1) there is inserted the following definition –

“ ‘deposit’, in respect of a residential tenancy agreement, means a payment of money intended to be held (by the landlord or otherwise) as security for, or for guaranteeing or ensuring –

- (a) the performance of any obligation of the tenant; or
- (b) the discharge of any liability of the tenant,

arising under or in connection with the residential tenancy agreement;”;

(b) after the definition “Minister” in paragraph (1) there is inserted the following definition –

“ ‘money’ means money whether in the form of cash or otherwise;”;

(c) for paragraphs (2) and (3) there are substituted the following paragraphs –

“(2) A reference in this Law to a landlord includes –

- (a) a landlord’s heirs, executors, administrators and assigns; and
- (b) a person acting on behalf of a landlord in respect of a residential tenancy or residential tenancy agreement.

(3) A reference in this Law to a tenant includes –

- (a) a tenant’s heirs, executors, administrators and assigns; and
- (b) a person acting on behalf of a tenant in respect of a residential tenancy or residential tenancy agreement.”.

3 Article 6 amended

In Article 6(3)(e) of the principal Law, for the words “(or, where Minister has by Order prescribed some other period, that other period instead)” there are substituted the words “(or, where the Minister has by Order prescribed some other period, being a period of not less than one month, that other period instead)”.

4 Article 7 amended

In Article 7(3)(f) of the principal Law, for the word “Minister” there are substituted the words “the Minister”.

5 Article 13 substituted

For Article 13 of the principal Law the following Article is substituted –

“13 Execution of order for eviction

- (1) If the Court orders the eviction of a tenant under this Law and does not stay the execution of the order, the Viscount shall execute that order by going to the residential unit that is the subject of the order and putting the landlord in possession of the residential unit.
- (2) The Court may, when it makes an order under this Law for the eviction of a tenant from a residential unit or after making such an order, make an order to one or more of the following effects –
 - (a) that the Viscount may, for the purpose of executing the order for eviction or for the purpose of removing movable property as referred to in paragraph (3), enter the residential unit;
 - (b) that the Viscount may use reasonable force if necessary in order to make that entry;
 - (c) that the landlord, or the tenant, under the relevant residential tenancy agreement (or both of them) shall be liable to pay

the reasonable expenses incurred by the Viscount in performing the Viscount's functions under this Article.

(3) If –

- (a) the tenant does not, at or before the time when the landlord is put in possession, remove the tenant's movable property from the residential unit;
- (b) the tenant has not entered into any agreement with the landlord about disposal of that property;
- (c) the landlord has not applied for an order under Article 1 of the Loi (1867) sur la Cour pour le recouvrement de menues dettes² in respect of the property; and
- (d) no such order has been made in respect of the property,

the Viscount may remove the property and keep it in any place that the Viscount thinks fit.

(4) If –

- (a) the evicted tenant has not within 15 days after that removal –
 - (i) (except to the extent that an order under paragraph (2)(c) makes the landlord liable for those expenses) tendered to the Viscount payment of the reasonable expenses incurred in performing the Viscount's functions under this Article, and
 - (ii) claimed and removed the movable property from the place referred to in paragraph (3);
- (b) the landlord has not applied for an order under Article 1 of the Loi (1867) sur la Cour pour le recouvrement de menues dettes in respect of the property; and
- (c) no such order has been made in respect of the property,

the Viscount may dispose of the property.

(5) Such disposal shall be carried out –

- (a) by taking reasonable steps to sell any part of the property that has a realizable value; or
- (b) by any other means in the case of any other part of the property.

(6) The Viscount may (except to the extent that an order under paragraph (2)(c) makes the landlord liable for those expenses) retain from the proceeds of any such sale the Viscount's reasonable expenses incurred in performing the Viscount's functions under this Article.

(7) The Viscount shall take reasonable steps to pay to the evicted tenant any balance of the proceeds of such a sale.

(8) However, if, after taking those steps, the Viscount has been unable to pay the balance to the tenant, the Viscount shall pay the balance to the consolidated fund.”.

6 Article 16 amended

In Article 16 of the principal Law –

- (a) for paragraph (2)(a), the following sub-paragraph is substituted –
 - “(a) in relation to a residential tenancy or a residential tenancy agreement; and”;
- (b) after paragraph (2)(i), the following sub-paragraphs are inserted –
 - “(ia) modifying the wording, or application, of any expression of time as it applies to the residential tenancy or the residential tenancy agreement, being an expression that is prescribed by any provision of this Law or by any provision made under this Law,
 - (ib) dispensing with any requirement for notice that applies in relation to the residential tenancy or the residential tenancy agreement, being a requirement that is prescribed by any provision of this Law or by any provision made under this Law,”;
- (c) after paragraph (4), the following paragraph is added –
 - “(5) Nothing in this Article shall be taken to confer jurisdiction in criminal matters on the Court.”.

7 Article 23 amended

In Article 23 of the principal Law –

- (a) in paragraph (2)(a) before the words “the completion” there is inserted the word “requiring”;
- (b) in paragraph (2)(c) before the words “the provision” there is inserted the word “requiring”;
- (c) in paragraph (2)(e) for the words “the maximum” there are substituted the words “imposing a maximum”;
- (d) in paragraph (2)(g) before the words “a standard form” there are inserted the words “requiring the use of”;
- (e) after paragraph (2)(g) the following sub-paragraph is inserted –
 - “(ga) the content of such form or forms or instruments;”.

8 Article 24 amended

In Article 24 of the principal Law –

- (a) for paragraph (1) the following paragraphs are substituted –
 - “(1) The States may by Regulations make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for or with respect to the following matters –

- (a) the requiring or giving of security, guarantees or other things (other than deposits) for the purposes of securing, guaranteeing or ensuring –
 - (i) the performance of any obligation of the tenant, or
 - (ii) the discharge of any liability of the tenant, arising under or in connection with a residential tenancy agreement;
- (b) restricting or prohibiting the requiring or giving of anything (other than deposits) referred to in sub-paragraph (a);
- (c) limiting the requiring or giving of deposits or imposing limits on their amounts;
- (d) enabling the Minister, or any person appointed by the Minister, to set up and administer a scheme for the safe-keeping or investment of deposits paid in respect of residential tenancies;
- (e) enabling the person administering such a scheme to determine the rules for its operation;
- (f) making it an offence –
 - (i) for a landlord not to pay a deposit into such a scheme, or
 - (ii) for a landlord or tenant to do anything, in relation to a residential tenancy or a residential tenancy agreement, that is not in compliance with the rules of such a scheme;
- (g) the investment of funds of such a scheme;
- (h) the use of the interest on any such investment;
- (i) requiring the operation of such a scheme, the use of the funds in such a scheme, and such a scheme generally, to be in accordance with directions given by the Minister to the person administering such a scheme;
- (j) requiring the payment of fees in relation to payments into or out of such a scheme, or generally in relation to such a scheme, those fees being in amounts that the Minister prescribes by Order;
- (k) the recovery of deposits paid into such a scheme by persons entitled to those deposits;
- (l) the resolution of disputes as to deposits, whether by conferring jurisdiction on the Court in relation to those disputes or enabling other means of dispute resolution, or both;
- (m) the giving of notice for the purposes of this Law or for the purposes of any Regulations made under this Law;
- (n) making provision of a saving or transitional nature consequent on the enactment of this Law.

(1A) Except to the extent that the States by Regulations otherwise provide, a deposit paid into a scheme referred to in paragraph (1)

shall not be available to pay (whether in full or in part) any debts or expenses, or to discharge (whether in full or in part) any other liability or obligation, of the person administering the scheme.

(1B) The Minister may, by Order, exempt from the operation of any Regulations made under this Article, or of any specified provision of those Regulations, either unconditionally or subject to conditions –

- (a) any person, deposit, residential tenancy, residential tenancy agreement or residential unit; or
- (b) any class of persons, class of deposits, class of residential tenancies, class of residential tenancy agreements or class of residential units.”;

(b) for paragraph (4) the following paragraph is substituted –

“(4) A provision of Regulations that make provision of a saving or transitional nature consequent on the enactment of this Law may, if the Regulations so provide, come into force on the day on which paragraph (5) comes into force or on a later day.”.

9 Citation and commencement

- (1) This Law may be cited as the Residential Tenancy (Amendment) (Jersey) Law 201-.
- (2) This Law comes into force on the seventh day after it is registered.

¹ *L.31/2011*
² *chapter 07.175*