

STATES OF JERSEY



Jersey

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

**Lodged au Greffe on 15th November 2023
by the Minister for the Environment
Earliest date for debate: 12th December 2023**

STATES GREFFE

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

1 PAGE 18, REGULATION 1 –

In Regulation 1 –

- (a) for definition “licence” substitute –
“ “licence” means a licence in respect of a rented dwelling issued or renewed under Regulation 3 and, if a licence is modified as a result of a review or appeal under Regulation 5, means the licence as modified;”;
- (b) after definition “minimum safety standards” insert –
“ “valid application” means an application –
 - (a) that complies with the requirements published under Regulation 2(3)(a) and (b);
 - (b) in respect of which all further information required by the Minister in accordance with Regulation 2(3)(c) is supplied;
 - (c) that is signed by the owner of the rented dwelling to which it relates or by a person acting on behalf of the owner; and
 - (d) that is accompanied by the fee (if any) published under Regulation 2(4).”.

2 PAGE 18, REGULATION 2 –

For Regulation 2 substitute –

“2 Licensing of rented dwellings

- (1) A person having control of a dwelling to which this Regulation applies must not allow it to be used as a rented dwelling unless the dwelling is licensed for use as a rented dwelling by the Minister in accordance with these Regulations.
- (2) This Regulation applies to any part of a dwelling other than –
 - (a) a registered lodging house within the meaning of the [Lodging Houses \(Registration\) \(Jersey\) Law 1962](#);
 - (b) premises registered under Article 6 of the [Tourism \(Jersey\) Law 1948](#);
 - (c) premises which are used or intended to be used as a nursing home within the meaning of Article 1A of the [Nursing Homes \(Jersey\) Law 1994](#); or
 - (d) residential accommodation that is a care home service, a children’s home service or a residential family centre service within the meaning of Schedule 1 to the [Regulation of Care \(Jersey\) Law 2014](#).
- (3) The Minister must prepare and publish information setting out the following –
 - (a) the manner in which an application for a licence is to be made;
 - (b) the information required to be contained in the application;

- (c) the further information, if any, the Minister may require in relation to the application.
- (4) The Minister may impose fees for the issue of a licence and, if fees are imposed, they must be published.”.

3 PAGE 19, REGULATION 3 –

For Regulation 3 substitute –

“3 Issue of licences

- (1) The Minister must license a dwelling to be used as a rented dwelling if –
 - (a) the Minister receives a valid application for a licence in respect of the dwelling; and
 - (b) the Minister is satisfied that –
 - (i) the dwelling meets the minimum safety standards, and
 - (ii) there is no prescribed hazard present in the dwelling.
- (2) A licence –
 - (a) commences on –
 - (i) the date specified by the Minister in the licence, or
 - (ii) if no date is specified, the day it is issued; and
 - (b) expires 2 years after it commences.
- (3) Before issuing or renewing a licence the Minister may inspect the dwelling.
- (4) If, as a result of an inspection or information provided on an application, the Minister believes that the dwelling does not meet the minimum safety standards or that there is a prescribed hazard present in the dwelling, the Minister must –
 - (a) refuse to issue or renew the licence; or
 - (b) issue or renew the licence subject to a condition that, by a specified date, specified actions are taken to meet the minimum safety standards or to address the prescribed hazard.
- (5) The Minister must determine a valid application in respect of a dwelling –
 - (a) if the Minister does not inspect the dwelling, within 20 working days after receiving the application; or
 - (b) if the Minister inspects the dwelling, within 20 working days after the inspection, which must be completed at the earliest reasonable opportunity.
- (6) A licence is subject to the standard licence conditions set out in the Schedule.
- (7) If the Minister refuses to issue or renew a licence, or issues a licence subject to conditions other than the standard licence conditions, the Minister must notify the person who applied for the licence or its renewal, in writing, of –
 - (a) the reasons for the decision; and
 - (b) the person’s right to request a review and to appeal under Regulation 5.

4 Withdrawal of licences

- (1) The Minister may withdraw a licence if –
 - (a) the Minister considers that –
 - (i) there is a prescribed hazard present in the dwelling, or
 - (ii) a standard licence condition set out in the Schedule has not been, or is not being, complied with; or
 - (b) the person having control of the dwelling requests that the licence is withdrawn.
- (2) If the Minister decides to withdraw a licence under paragraph (1)(a), the Minister must notify the person having control of the dwelling, in writing, of –
 - (a) the decision and the reasons for the decision; and
 - (b) the person’s right to request a review and to appeal under Regulation 5.
- (3) In establishing the identity of the person having control of the dwelling for the purpose of paragraph (2), the Minister is entitled to rely on information provided in an application for the licence or under paragraph (2) of the Schedule.

5 Review by Minister and appeal to the Royal Court

- (1) A person entitled to be notified of a decision under Regulation 3(7) or 4(2) (“a relevant person”) may, within 28 days of the notification, request that the Minister review the decision.
- (2) A request for a review must contain –
 - (a) the relevant person’s name and address for correspondence;
 - (b) the address of the dwelling to which the decision relates;
 - (c) the grounds on which the request is made, including why the relevant person disagrees with the decision and with the reasons given for it.
- (3) The Minister must determine a request from a relevant person that meets the requirements of paragraph (2) within 20 working days after receiving the request.
- (4) The determination of the Minister is substituted for the original decision.
- (5) The Minister may suspend the effect of a decision that is subject to review until the determination of that review.
- (6) If, on review, the Minister upholds the original decision in whole or in part, the Minister must notify the relevant person, in writing, of –
 - (a) the decision and the reasons for the decision; and
 - (b) the relevant person’s right to appeal under paragraph (7).
- (7) The relevant person may, within 28 days of that notification, appeal against the Minister’s decision to the Royal Court.
- (8) Article 11 of the Law applies, with the necessary modifications, to an appeal under this Article as if it were an appeal under Article 11 of the Law.”.

4 PAGE 19, REGULATION 4 –

For Regulation 4 substitute –

“6 Offences

- (1) A person who contravenes Regulation 2(1) commits an offence and is liable to a fine of level 3 on the standard scale.
- (2) A person has a defence to an offence under paragraph (1) if –
 - (a) the Minister has withdrawn a licence for a dwelling under Regulation 4(1); and
 - (b) the person is unable to lawfully end the use of the dwelling as a rented dwelling.
- (3) A person having control of a dwelling who does not comply with a condition of a licence in respect of the dwelling commits an offence and is liable to a fine of level 3 on the standard scale.
- (4) A person has a defence to an offence under paragraph (3) if the person has taken all reasonable steps available to them, if any, to ensure compliance with the condition.
- (5) Articles 15(2), 16(1) and (2) and 17 of the Law apply to an offence under this Regulation as they apply to offences under Article 15(1) of the Law.”.

5 PAGE 20, REGULATION 5 –

For Regulation 5 substitute –

“7 Transitional provisions

- (1) The Minister must issue a licence in respect of a dwelling if –
 - (a) when these Regulations come into force, the dwelling is a rented dwelling; and
 - (b) a valid application is made in respect of the dwelling before the end of 31st July 2024.
- (2) These Regulations apply to a licence issued under paragraph (1) as if it were issued under Regulation 3, but –
 - (a) despite Regulation 3(2)(a), the licence commences on 1st May 2024;
 - (b) despite Regulation 3(3), the Minister is not entitled to inspect the dwelling to which the licence relates;
 - (c) despite Regulation 3(4)(a), the Minister must not refuse to issue the licence.
- (3) A person is not liable to be convicted of an offence under Regulation 6 if the person’s application is made in accordance with paragraph (1).
- (4) Paragraph (3) ceases to apply upon the expiry of the licence issued under paragraph (1) or its withdrawal by the Minister.
- (5) Nothing in this Regulation limits the Minister’s powers under Regulation 3(4)(b) and 4(1).
- (6) This Regulation is revoked on 1st May 2026.”.

6 PAGE 20, REGULATION 6 –

In Regulation 6 –

- (a) change the Regulation number to 8;
- (b) for “January” substitute “May”.

7 PAGE 21, SCHEDULE –

In the Schedule –

- (a) in the sub-heading for “3(5)” substitute “3(6)”;
- (b) for the text of paragraph (1) substitute –
 - “(1) A person having control of a rented dwelling must ensure that the rented dwelling complies with the minimum safety standards whenever it is used as a rented dwelling.
 - (2) A failure to comply with a minimum safety standard is not a breach of sub-paragraph (1) if –
 - (a) the licence for the dwelling was issued with a condition requiring that, by a specified date, specified action is to be taken to meet the minimum safety standard;
 - (b) the failure is a continuation of the situation that gave rise to the requirement that the specified action was to be taken (as established by information provided on an application or by an inspection of the dwelling before the licence was issued) or arises as a result of taking that specified action; and
 - (c) the failure occurs before the specified date.”;
 - (c) for the text of paragraph (2) substitute –
 - “A person having control of a rented dwelling must ensure that the Minister is notified of the following changes within 28 days of their occurring –
 - (a) a change to their address, contact telephone number or email address;
 - (b) if there is a person acting on their behalf, a change to the address, contact telephone number or email address of the person acting on their behalf;
 - (c) a change to the emergency contact number provided to the occupier of the rented dwelling under paragraph 3(7)(b);
 - (d) the dwelling no longer being used as a rented dwelling.”;
 - (d) in paragraph (3) –
 - (i) for sub-paragraph (1) substitute –
 - “(1) A person having control of a rented dwelling must ensure that the occupier of the rented dwelling is provided with –
 - (a) a copy of the licence; and
 - (b) written information explaining how to raise a concern or complaint concerning the dwelling.”;

(ii) for sub-paragraph (2) substitute –

“(2) A person having control of the rented dwelling must ensure that the copy of the licence and written information is provided –

(a) within 28 days of the day the licence commences; or

(b) in the case of anyone already in occupation of the dwelling on, or before, the commencement of these Regulations, within 28 days of the day the licence is issued.”,

(iii) for sub-paragraph (4) substitute –

“(4) In a case falling under sub-paragraph (3), a person having control of the rented dwelling must ensure that the existing or new occupier is provided with the copy of the current licence and written information at the same time as the occupier is provided with the renewed or new agreement under which the dwelling is occupied.”,

(iv) in sub-paragraph (8) for “The licence holder” substitute “A person having control of the rented dwelling”.

MINISTER FOR THE ENVIRONMENT

REPORT

The Draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 202- ([P.40/2023](#)) were lodged on 5th June 2023 and the principles were adopted by the States Assembly on 18th July 2023.

The Environment, Housing and Infrastructure Scrutiny Panel called in the proposition to commence a review.

To reflect the new timeline following the forthcoming debate, the Minister for the Environment lodged [P.40/2023 Amd.](#) which propose some changes to dates in the Regulations so that the same periods of notice as would have applied if P.40/2023 had been adopted in July would apply should the Regulations be approved in November.

On 23rd October 2023, the Environment, Housing and Infrastructure Scrutiny Panel lodged [nine amendments](#) as detailed below.

Draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 202- (P.40/2023): second amendment .

Draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 202- (P.40/2023): third amendment .
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Draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 202- (P.40/2023): fourth amendment .

Draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 202- (P.40/2023): fifth amendment .
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Draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 202- (P.40/2023): sixth amendment .
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Draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 202- (P.40/2023): seventh amendment .
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Draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 202- (P.40/2023): eighth amendment .

Draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 202- (P.40/2023): ninth amendment .
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Draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 202- (P.40/2023): tenth amendment .
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On 26th October 2023, the Environment, Housing and Infrastructure Scrutiny Panel presented to the States, comments to the draft Regulations in [P.40 Com.](#)

In seeking to establish the running order for the debate, the Greffier of the States uncovered some incompatibilities with the Scrutiny Panel's proposed amendments which could lead to a number of inconsistencies, and parts of the Regulations/amendments falling away. The Minister for the Environment proposed to defer the debate to 28th November which was supported by Scrutiny and States Assembly members on 7th November 2023.

Following a number of discussions, the Minister for the Environment is now lodging this eleventh amendment which –

- incorporates the first amendment (changing implementation dates),
- seeks to incorporate in whole or part, the improvements or intentions contained within the Scrutiny Panel’s nine amendments (excluding Amendment numbers [2](#) and [8](#)),
- incorporates some drafting improvements following the standard legal review, and
- incorporates new provisions requested by Scrutiny at this time.

Summary of changes

If approved, this amendment will –

1. Amend dates within the Regulations. If approved, they would come into force on 1st May 2024, the transitional period to apply for a licence will then run to 31st July 2024. This will allow the Minister to withdraw amendment number [1](#).
2. Provided clarity in the drafting to make the Regulations easier to read by defining when a ‘valid application’ has been made and includes the reference to ‘the fee (if any)’.
3. Incorporates a requirement for the ‘owner or a person acting on behalf of the owner’ of the rented dwelling to sign the application. This removed difficulties that arose in amendment numbers [3](#) and [10](#) where there are several circumstances where the owner is unable to sign. Examples include share transfer properties, those held in trusts, curatorship’s, owners who are absent, unwell or in full time residential care.
4. Remove references to ‘licence holder’ throughout the draft, which was the intention of amendment number [10](#), and in doing so, provides clarity and certainty in respect of the obligations imposed by these Regulations and the scheme.

This approach uses the definition of a ‘person having control’ in Article 1 of the [Public Health and Safety \(Rented Dwellings\) \(Jersey\) Law 2018](#) which includes the ‘owner’ and other categories of persons connected to the dwelling.
5. Give effect to amendment number [4](#), replacing ‘may’ to ‘must’ in Regulation 3(1).
6. Give effect to amendment number [5](#), in providing greater clarity in circumstances whereby an application has been made but the rented dwelling does not comply with the [minimum safety standards](#) or that there is a [prescribed hazard](#).

This can be as a result of information received during the application process or an inspection.

The Minister can refuse to issue or renew the licence. The Minister can also issue a licence subject to placing a condition on that licence, that specified actions are taken by a specified date in order to bring the rented dwelling into compliance. Further clarity is then provided so the person having control of the rented dwelling is not in breach of the Schedule of Standard Licence Conditions (1), provided it is still within the specified time period.
7. Reduce the scope of the Minister’s power to attach conditions to a licence to the conditions contained within the Schedule of Standard Licence Conditions and those imposed as a result of non-compliance as detailed in point (6) above, which gives effect to the intention of amendment number [7](#).
8. Impose new requirements on the Minister to notify the person who made the application, of the decision and reason for refusing to issue or renew a licence or issue a licence subject to conditions and informing them of their rights of appeal. The Regulations then outline the new two-tier appeal route, first of review to the Minister and second of appeal to the Royal Court. Further details are included in a

new Regulation 5 about who can appeal, within what time frame and how. This is as a result of amendment number [9](#).

9. Create a new Regulation 4 detailing the specifics around the ‘withdrawal of licences’. It includes notification provisions as detailed in (8) above, giving effect to amendment number [5](#).

It also includes a new provision in Regulation 4(1)(b) where the ‘person having control’ can request that the licence is withdrawn. Examples include a rented dwelling becoming uninhabitable or no longer a rented dwelling as it becomes ‘owner occupied’. This is a compromise to the effect amendment number [6](#) would have, which was to remove the requirement in 2(e) in the Schedule Standards Licensing Conditions.

10. Improve the Regulations following the standard legal review, including –
 - a. The addition of a requirement for the Minister to prepare and publish information setting out the manner and information contained in the application and any further information they may require (Regulation 2(3)).
 - b. The addition of defences under Regulation 6 where the Minister has withdrawn a licence for a rented dwelling but the person is unable to lawfully end the use of the dwelling as a rented dwelling (Regulation 6(2)) and if a person has taken all reasonable steps available to them to ensure compliance with the licence conditions (Regulation 6(4)).
 - c. The addition of a provision that ends the application of the transitional arrangements upon the withdrawal or expiry of a licence issued under them (Regulation 7(4)).
11. Introduce new provisions as a result of recent discussions with Scrutiny since the delay of the debate on 7th November which –
 - a. Gives the Minister the discretion to suspend any decision until they have made a determination on appeal (Regulation 5(5)).
 - b. Introduces a 20 working day time limit within which the Minister is obliged to respond to an application for a licence (Regulation 3(5)).
 - c. Introducing a 20 working day time limit within which the Minister must conduct a review of a decision (Regulation 5(3)).

If approved, the amendment will not:

1. Bring registered lodging houses into the scheme as detailed in amendment number [2](#).
2. Introduce the changes as detailed in amendment number [8](#) which would exempt a Scheduled 2 list of Social Housing providers from paying a charge for their licences.

Financial and staffing implications

There would be no financial or staffing implications for the States arising from the adoption of this amendment.