

STATES OF JERSEY



Jersey

DRAFT DISCRIMINATION (AMENDMENT OF LAW) (JERSEY) REGULATIONS 202-

**Lodged au Greffe on 8th June 2021
by the Minister for Social Security
Earliest date for debate: 20th July 2021**

STATES GREFFE

REPORT

Introduction

The [Discrimination \(Jersey\) Law 2013](#) (“the Law”) currently contains an exception to the protected characteristic of age regarding the disposal and management of premises (Article 24 of the Law). The exception is found at paragraph 41, Schedule 2, Part 4 of the Law.

As it stands, this means that those who have responsibility for a child or children under the age of 18 are not protected from discrimination when seeking to occupy a residential property.

The Minister for Social Security recently concluded a consultation exercise, which sought views from interested parties on the proposal to amend the Law to prohibit discrimination of this kind. The Minister had previously asked for law drafting to amend this aspect of the Law, and the draft Regulations now lodged with the Assembly were used as the basis for the consultation exercise.

The effect of the amendments is to prohibit those offering residential premises from refusing to let or sell on the basis that a prospective occupier has responsibility for a child or children under the age of 18, except for certain defined circumstances. The amendments also prohibit those who market residential properties (for example, estate agents or property management companies) from refusing to provide details of such properties, or refusing to show such properties, to prospective occupiers with children.

This proposal is a commitment in the Government Plan and reflects previous debate and resolution in the States Assembly (most recently [P.31/2018](#)). The Minister now brings the draft Regulations for agreement by the Assembly.

Summary of responses to the consultation exercise and the position of the Minister

The consultation exercise took place from 6 to 30 April 2021. 13 responses were received from individuals and organisations. The Minister is grateful to those who took the opportunity to respond. In addition, the Health and Social Security Scrutiny Panel accepted the offer of an officer briefing. Members of the Panel indicated that they were content with the proposed amendments to the Law.

Among the organisations responding, the Jersey Community Relations Trust emphasised the need for the legislation to reflect the terms of the UN Convention on the Rights of the Child, to which Jersey has been a party since 2014. The Convention requires States Parties to prioritise the best interests of the child and promote and protect children’s rights. The Trust takes the view that these principles would be breached if there were discrimination against a child who wanted to live in a property which is safe and secure.

Citizens Advice Jersey told us it encounters issues to do with children and accommodation. While the Chief Executive acknowledged that such issues are relatively few in number, his view is that the effect on families in such situations can be significant.

The Jersey Landlords Association (JLA) submitted a detailed response, which focused on the reasons why private landlords might wish legitimately to refuse to let their properties to tenants with children. The Minister is grateful to the JLA for its response. She considers that the provision of a defence to a refusal as set out in the draft

Regulations is sufficient to meet most, if not all, of the concerns expressed. The explanatory note highlights the health and safety aspect of such a defence.

The JLA and other respondents raised the specific issue of the size of a property being appropriate (or not) for the number of people wanting to live in it. The Minister considers that the provisions in the [Public Health and Safety \(Rented Dwellings\) \(Jersey\) Law 2018](#) are sufficient to meet this point. The Environmental Health Team in the Government of Jersey use the comprehensive Housing Health and Safety Rating System (HHSRS) operated in the UK together with other guidance. Awareness of the potential for overcrowding, the potential physical and mental effects on occupants and action to prevent overcrowding are part of the HHSRS, followed in Jersey.

The organisations' detailed responses to the consultation exercise are annexed, with their agreement, to this Report.

Conclusion

The Minister considers that the draft Regulations are a fair, reasonable and proportionate attempt to eliminate discrimination on the specific issue of children and residential property. As part of the Government's commitment to putting children first, the Minister considers that every child is entitled to live in a safe and secure environment, and that the residential property sector has an important part to play in meeting that aim.

The Minister accepts that uncooperative landlords may be few and far between, but believes that this issue is of long-standing concern to those Islanders who have been affected, as well as to States Members who have consistently backed reform of the Discrimination Law, and that the draft amendments are necessary and desirable. The Minister commends them to the States Assembly.

Financial and manpower implications

There are no immediate financial or manpower implications arising from these Regulations.

Appendix – Organisations' responses

a) Jersey Community Relations Trust

The Trustees of Jersey Community Relations Trust support the draft Discrimination (Amendment of Law) (Jersey) Regulations 202- for the following reasons:

The draft amendment supports the following articles of the UN Convention on the Rights of the Child (UNCRC):

Article 3: (best interests of the child). The best interests of the child must be a top priority in all decisions and actions that affect children.

Article 4: (Implementation of the Convention). Governments must do all they can to make sure every child can enjoy their rights by creating systems and passing laws that promote and protect children's rights

Therefore, it would be against the UNCRC to discriminate against a child living in a property which is safe and secure for their occupation.

Currently families on lower incomes or those who have recently arrived in the Island are disproportionately affected.

b) Citizens Advice Jersey

Response to The Social Security Minister

Re. The Discrimination Law in the disposal and management of premises

Foreword

I am the CEO of Citizens Advice Jersey, a position that I have held for the last 10 years. We are pleased to respond to this review of the issue of the exception of age as a protected characteristic under the Discrimination Law in the disposal and management of premises.

Housing issues constituted a significant number of our caseload and in 2020 we recorded 2,134 client contacts that fell into the Housing category and this made housing issues the single biggest area of our work.

The specific issue of children having access to accommodation is something that we do encounter from time to time and while the numbers involved may be relatively low (two or three per month) the impact upon those individuals and families is huge. Particularly if they have already viewed the property and once they decide to go ahead the landlord declines them purely because they have children.

In relation to the specific areas highlighted by the proposed amendments to the current legislation, it is encouraging that this issue is being addressed by an amendment to Article 24 within the current Discrimination Law and having read and digested the proposals, I believe that this is a workable solution.

The justifiable defence contained in the amendment will solve the problem of forcing unsuitable accommodation being let to families with children and this is something that will ensure the health and safety of children, while still protecting the rights of families to rent appropriate and suitable accommodation.

c) Jersey Landlords' Association

Response to Deputy Judy Martin's public consultation entitled "Prohibiting discrimination in respect of the renting or purchasing of premises".

1. The Social Security Minister's consultation results from Deputy Tadier's proposition (P31 of 2018) which was to propose legislation to prevent landlords from discriminating against children. Deputy Tadier's two most significant observations were: (a) Most landlords (in Jersey) do not have a problem with families. (b) When a property is unsuitable for children, "this is perhaps the only reason, which might hold some credibility" for refusing to let a property to a family with children.

2. The JLA agrees with these sentiments. Most private landlords have no problem with renting to families, especially where the children are reasonably well-behaved and under the control of reasonably competent parents. Landlords who decline to accept children, almost invariably do so because they consider that either: (a) their particular property is unsuitable in its configuration (e.g. too small or dangerous) for children in some way; or (b) it is unlawful to house a child (or its parents) in the accommodation; or (c) that the parent(s) cannot provide references, confirming their general reliability and suitability as a tenant, financially and/or socially; or (d) that their other tenants (with no children) are not always keen to live in accommodation which is in close proximity to families with children; or (e) that, whilst happy to take children, the building currently has a lot of children in it (in different flats) and to take more would create problems with prams, bikes, etc overflowing storage areas and creating fire or health and safety hazards in communal areas or excess noise for other flats amongst other factors.

3. In any event, all parties appear to agree that this debate is about a very small minority of private landlords, who decline to take children for no apparent good reason. We therefore have to ask why it is necessary to pass yet more legislation aimed at "controlling" this issue. Yes, there is certainly a shortage of accommodation in Jersey suitable for housing children, especially children of families who have lived in the Island for less than 5 years. Indeed, there is a severe lack of housing in Jersey generally. This general lack of housing is presently one of our government's most pressing problems and the Government, through the Bridging Island Plan and Andium Homes, is trying to tackle this issue. The government needs assistance in this task from private landlords willing to invest in providing homes to rent, but the States Assembly keeps legislating in ways that discourage investment by private landlords. History has consistently shown, in many countries, that increased legislation exacerbates housing problems as private landlords leave the residential rental market and reinvest their funds in less-controlled areas of the economy. This exiting from the industry is happening in Jersey now.

4. Jersey law already controls the number and type of residents in registered lodging houses and other multiple occupation properties in the following ways: (a) It is unlawful, for example, to take children in a lodging house if the accommodation itself is not specifically registered for children. How is legislation, saying you must take children, going to fit with this existing legislation that prohibits children in certain flats? This does not seem to be carved out in the draft legislation. (b) Fire safety rules understandably preclude obstructions (such as prams and bicycles) from being stored in corridors which are also emergency exit routes. This alone precludes the housing of children, where an individual dwelling unit is too small for the storage of such items. This must be tackled in the draft legislation. (c) Some of the privately owned dwelling accommodation in Jersey may well be too small or insufficiently sound-proofed. But bigger dwelling units and better sound-proofing both mean more investment and thus higher rents.

5. The draft legislation as currently drafted does not “fit in” with the Public Health and Safety (Rented Dwelling) (Jersey) Law 2018 and its subordinate legislation. Minimum standards (which must be met under these laws) are assessed against criteria known as the Housing Health & Safety Rating System (HHSRS). This HHSRS does not set out minimum standards. It is concerned with avoiding or, at the very least, minimizing potential hazards. When Environmental Health officers inspect a dwelling they will look for any risk of harm to an actual or potential occupier of a dwelling, which results from any deficiency that can give rise to a hazard. The officer will make these judgments by reference to those who, **MOSTLY BASED ON AGE**, would be most vulnerable to the hazard. If the HHSRS requires all rented dwellings to be suitable for the most vulnerable (i.e. children and the elderly), the “defence” in the proposed substituted Article 41(4) of the Discrimination Law “It is a defence to a complaint in respect of an act prohibited by Article 24 and falling within sub-paragraph (2) of this paragraph, for the person alleged to have done the act to show that not doing so would create a hazard within the meaning of the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018”, is actually little defence at all.

6. However, our members tell us that Environmental Health officers will not allow certain properties to be let to families with children under 10 years because of the configuration of older properties or of certain elements within them. This appears to be a particular problem in properties where such internal elements are protected by a historic buildings listing.

7. Would the obligation to take children require private landlords to make their properties suitable (and safe) for children, which is likely to be required under the Health & Safety (Rented Dwellings) (Minimum Standards) laws? If so, any such expenditure would materially increase the landlord’s investment in the housing, making its rent less “affordable”. It is our submission, that protecting children from danger is surely primarily the job of parents. It is not reasonable to expect Landlords to fund the cost of removing all possible dangers in a dwelling, however remote. Children are curious; they fall down stairs and out of windows; they run out onto busy streets without looking and they are attracted to ponds and swimming pools. There will always be some dangers that cannot be removed e.g. houses with front doors directly on to roads; older houses with steep or round or historically protected uneven (tourelle) staircases, properties with a swimming pool, pond, reservoir on nearby curtilage. Tenants invariably have the chance to inspect accommodation before renting it. Parents should obviously rule out any property in which it might be dangerous for their children to live. It is not unheard of for parents, who have failed to protect their children from dangers, to blame their landlords and even sue for compensation.

8. The creation of enough homes in Jersey to house everyone adequately, is a commendable aim with which the JLA and pretty much everyone agrees. But achieving a reasonable balance is the key. One difference, here, is that those with a political leaning wish private dwelling accommodation to be seen as “a social commodity” instead of the owner’s personal asset (and in some cases livelihood), and that is a likely way to reduce private landlord investment in the rental housing sector., reducing supply and driving up rents.

9. It has been said that landlords should have no right to discriminate against tenants “... just because they have children.”. The JLA recognizes the general concept that there is likely to be a legitimate reason why a landlord considers his or her property unsuitable for children (see paragraph 2 above). We believe, however, that this decision must remain the prerogative of each property owner if our society is to avoid seriously harmful effects on the private rental market, as a whole. The relatively small minority of private landlords, who prefer not to accommodate children, for the reasons mentioned

above, have their own human rights. They should not have their right to own property (and to use it for housing whomsoever they wish), effectively over-ridden by counter-productive local legislation. This would especially apply to private individuals, who are willing to take a tenant in part of a home in which they also live personally. He or she should always be free to accept or decline children, without having to give any reason whatever.

10. In our respectful submission the only outcomes of the passing of the anticipated legislation in its current form would be: (a) a degree of virtually unprovable dishonesty by landlords in respect of tenancy rejections; (b) time-wasting for both landlords and prospective tenants in making and receiving non-productive phone calls and/or inspection visits; and/or (c) the complete loss of that accommodation from the rental market.

11. The proposition effectively invites inappropriate complaints against landlords from every disenchanted prospective tenant (with a child) where they have made an unsuccessful application for accommodation. Their complaint would inevitably be made on the grounds that the landlord had no exceptional or justifiable reason to refuse their application. If, therefore, a landlord considers a childless applicant with good references and the financial ability to afford the required rental, to be a more reliable prospect than an applicant with children BUT ALSO no references and a relatively low level of income, would these be considered “exceptional and justifiable grounds” on which to prefer the tenant with no children? Similarly, would it be considered unacceptable discrimination against children if a landlord asks for a higher deposit from prospective tenants with children because there is a materially greater chance of damage to when children are in residence? Who will receive and adjudicate upon such allegations and how long would that process take? Would accommodation have to be left empty whilst a decision is reached?

12. Political interference with markets, whether financial or social, will generate excessive red-tape controls. They will be wholly counter-productive, resulting in fewer privately rented housing units available at, consequently, higher rents. This is currently being experienced in Jersey as a result of the raft of legislation that has been brought into play in recent years concerning private rental dwellings. More legislation is not the way forward.

13. Finally - implementation administration and policing. What is the cost of implementing or subsequently monitoring, administering or policing this legislation? (a) How will the administration of this law be conducted and at what cost? (b) How will complaints received under this law be adjudicated and at what cost? (c) How will the policing of this law be conducted without and at what cost and what will constitute proof of an offence under this law without adequate policing and investigation? (d) Can there ever be a point in having a law without policing and with no teeth? And there would clearly be a material cost to doing this.

14. In conclusion, the draft legislation does not adequately consider all of the various reasons why a landlord might, quite legitimately refuse to enter into a lease with a family with children and there is a real risk of action being taken under discrimination legislation where a landlord is caught between such legislation and other legal obligations. The JLA would be pleased to discuss this further as part of this consultation.

EXPLANATORY NOTE

These Regulations, if passed, will outlaw discrimination against people with children in respect of finding places to live.

Regulation 1 indicates that it is the Discrimination (Jersey) Law 2013 that is being amended by the Regulations.

Regulation 2 amends Article 24 of that Law to widen the protection against discrimination in respect of the disposal or management of premises. The addition prevents a person promoting the disposal of premises from discriminating against someone in marketing the premises or negotiating in relation to them, including in providing any marketing or promotional material, or in its content.

Regulation 3 substitutes a new paragraph 41 in the part of Schedule 2 of the Law that provides exceptions to discrimination on grounds of age. The current paragraph permits discrimination on age grounds in relation to both access to and the use of public premises (Article 23) and disposal and management of premises (Article 24). The new provision creates an exception in respect of Article 24 to outlaw discrimination against a person who intends to live, or who is interested in living, in premises with a child under the age of 18. However, the new right does not apply to tourism premises, care homes or premises reserved or intended for particular categories of people, including on grounds of age. It is also a defence for a person to show that the discrimination is justified by the risk of harm to the health or safety of the occupier arising from a deficiency in the dwelling or its environs that would otherwise be present (in other words the premises are not safe for the child).

Regulation 4 provides for how the Regulations may be cited and for them to come into force 7 days after they are made.



Jersey

DRAFT DISCRIMINATION (AMENDMENT OF LAW) (JERSEY) REGULATIONS 202-

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Jersey

DRAFT DISCRIMINATION (AMENDMENT OF LAW) (JERSEY) REGULATIONS 202-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES make these Regulations under Articles 5 and 47 of the Discrimination (Jersey) Law 2013¹ –

1 Amendment of Discrimination (Jersey) Law 2013

These Regulations amend the Discrimination (Jersey) Law 2013².

2 Article 24 (disposal or management of premises) amended

In Article 24 –

(a) after paragraph (4) there is inserted –

“(4A) A person promoting the disposal of premises must not discriminate against the subject in marketing the premises or negotiating in relation to them, including in providing any marketing or promotional material or in its content.”;

(b) in paragraph (5) for “paragraph 13” there is substituted “paragraph 41”.

3 Schedule 2 Part 4 (exception to prohibited acts: age) amended

For paragraph 41 of Schedule 2 there is substituted –

“41 Age: premises

(1) An act of discrimination is not prohibited by Article 23 or Article 24 in relation to the protected characteristic of age.

(2) However, in relation to Article 24, sub-paragraph (1) does not apply to permit a person to discriminate against a person who intends to live, or who is interested in living, in premises with a child under the age of 18, whether or not that child lives part of the time elsewhere.

(3) Sub-paragraph (2) does not apply in respect of premises –

(a) registered under Article 5 of the Tourism (Jersey) Law 1948³;

- (b) used as part of a care home service (within the meaning of paragraph 1 of Schedule 1 to the Regulation of Care (Jersey) Law 2014⁴); or
 - (c) reserved or intended for particular categories of people, including on grounds of age.
- (4) It is a defence to a complaint in respect of an act prohibited by Article 24 and falling within sub-paragraph (2) of this paragraph, for the person alleged to have done the act to show that not doing so would create a hazard within the meaning of the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018⁵.”.

4 Citation and commencement

These Regulations may be cited as the Discrimination (Amendment of Law) (Jersey) Regulations 202- and come into force 7 days after they are made.

ENDNOTES

Table of Endnote References

1	<i>chapter 15.260</i>
2	<i>chapter 15.260</i>
3	<i>chapter 05.850</i>
4	<i>chapter 20.820</i>
5	<i>chapter 22.700</i>