

STATES OF JERSEY



Jersey

DRAFT PUBLIC HEALTH AND SAFETY (RENTED DWELLINGS) (LICENSING) (JERSEY) REGULATIONS 201- (P.106/2019): FOURTH AMENDMENT

**Lodged au Greffe on 28th July 2020
by the Minister for the Environment**

STATES GREFFE

**DRAFT PUBLIC HEALTH AND SAFETY (RENTED DWELLINGS)
(LICENSING) (JERSEY) REGULATIONS 201- (P.106/2019):
FOURTH AMENDMENT**

1 PAGE 18, REGULATION 3 (licences) –

In Regulation 3(2) –

- (a) for “1st January” substitute “1st November”;
- (b) for “anniversary” substitute “2nd anniversary”.

2 PAGE 18, REGULATION 6 (transitional provisions) –

In Regulation 6(1) for “31st March 2020” substitute “1st May 2021”.

3 PAGE 19, REGULATION 7 (citation and commencement) –

In Regulation 7 for “1st December 2019” substitute “31st October 2020”.

MINISTER FOR THE ENVIRONMENT

REPORT

Foreword

Following changes to the proposed licensing scheme since its initial lodging, the Minister would ask that members disregard the following reports and their Appendices –

- Report and appendices accompanying P.106/2019;
- Report accompanying first amendment;
- Report accompanying third amendment.

Furthermore, the Minister would ask that members **consider this report as the primary document** supporting the proposition as well as the fourth amendment.

Background

History

[P.66/2017](#)

- 13th December 2017 the Assembly voted unanimously in support of the Draft Public Health and Safety (Rented Dwellings) (Jersey) Law 201- ([37 Pour, 12 Absent](#))

[P.95/2018](#)

- 11th September 2018 the Assembly voted unanimously in support of the Draft Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 (Appointed Day) Act 201- ([39 Pour, 10 Absent](#))

[P.106/2019](#)

- 1st October 2019 the Minister lodged the Draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 201- and was scheduled for debate 12th November 2019;
- 10th October 2019 the Minister received a request from the Chair of the Environment, Housing and Infrastructure Scrutiny Panel (the “EHI Panel”) to defer the debate as the Panel were commencing a full review. The debate was subsequently deferred until 21st January 2020;
- 26th November 2019 the Minister received a request from the Chair of the EHI Panel to defer the debate. The debate was deferred until 4th February 2020;
- 14th January 2020 the Minister received a request from the Chair of the EHI Panel to defer the debate. The debate was deferred until 25th February 2020;
- 21st February 2020 the EHI Panel published their review into P.106/2019 ([S.R.1/2020](#));
- 25th February 2020 the Minister published their response to the EHI Panel’s report ([S.R.1Res./2020](#));
- 25th February 2020 Deputy R.E. Huelin of St. Peter requested a vote to reference back the proposition ([24 Pour, 18 Contre, 7 Absent](#));
- 1st April 2020 the Minister requested that the proposition be scheduled for 8th September 2020 following the emergence of the COVID-19 pandemic.

Minimum Standards

Minimum standards within the rental sector are prescribed to be the minimum accepted level to avoid harm to the tenant. They are not designed to influence decoration or interior design. Minimum standards fall into 3 loose categories of –

- health and safety;
- fire, gas and electrical safety;
- and furnishings (where supplied).

They are designed to reduce the risk of illness or injury within a rental property, based on the assessment of potential risks to the health and safety of occupants of, and visitors to, rented residential properties.

The minimum standards are detailed in the Public Health and Safety (Rented Dwellings – Minimum Standards and Prescribed Hazards) (Jersey) Order 2018.

Research¹ has demonstrated that children’s life chances (the factors that affect their current and future well-being) are affected by the standard of their housing.

Licensing

The Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 made provision, under Article 5, for the States by Regulations to establish a scheme for the purpose of further ensuring the safety of rented dwellings, and the health and safety of persons occupying such dwellings.

In accordance with this Law, and without prejudice to that general purpose, such Regulations may make provision including, but not limited to, provision enabling the Minister –

- (a) to license dwellings to be used as rented dwellings; and
- (b) to impose charges –
 - (i) in respect of the issue of licences for rented dwellings, and
 - (ii) in relation to enforcement action arising out of a breach of the Regulations or a requirement of any licence.

Regulations under this Article may further –

- (a) create offences of, and impose penalties for, breach of a provision of the Regulations or of any licence; and
- (b) make such transitional, consequential, incidental or supplementary provisions as the States may consider necessary or expedient.

The draft Regulations, if passed by the Assembly, will ensure that the Government of Jersey, for the first time ever, develops data about what property is being rented out, and its suitability, occupancy and location, for the purposes of ensuring that it meets, or is

¹ Chance of a lifetime – the impact of bad housing on children’s lives – Shelter – September 2006
Brick by brick – A review of mental health and housing – Mind – November 2017
A licence to rent – A joint research project between Chartered Institute of Environmental Health and Chartered Institute of Housing – January 2019

being brought up to, modest minimum standards. Using this data, more accurate risk assessments can be carried out to prioritise and target inspections. This data will also be of use in informing future policy developments.

It is intended that, as with all regulation in this area, a light touch will be adopted. The Environmental Health Team will work with landlords and managing agents to achieve compliance within an agreed timetable, being cognisant of difficulties in procuring tradesmen, and the nature of the work; for example, larger-scale roof repairs carried out in good weather, or the immediacy of providing adequate heating in the winter.

Licences will be issued via an online process. It is being specifically designed to ensure subsequent annual renewals require little input, other than reviewing the previous year's data, adding, amending or deleting properties. 'Rent Safe' accredited properties also require less input. There will also be a dedicated process for landlords or managing agents with large-scale portfolios.

Drawbacks of a Register

It has been suggested that a register could be implemented in place of a licencing scheme. However, registration has been shown not to work, for example, through the Food Safety (Jersey) Law 1966. Despite being a legal requirement to register food premises, the number of food businesses in the 'Eat Safe' scheme rose from 800 to around 1,100 when there was consumer demand to check ratings. Other jurisdictions have similar outcomes. Registration data becomes out-of-date very quickly. Where registration may inform the Government that an activity is taking place, licensing is the Government of Jersey permitting that activity to take place. In time, after any 'grandfather rights' have expired, this ensures that an activity is compliant before it takes place.

It has been proposed that a register could be established via the Control of Housing and Work (Jersey) Law 2012. However, there are several issues with this approach –

- the Law provides no ability to prevent a property which does not meet minimum statutory requirement being rented;
- the offences in the Law relate to the occupier, and not the landlord who is ultimately in charge of the property;
- there is no historic requirement in the Law as it relates only to those that arrived in Jersey after 2012. My proposals would address all the relevant properties;
- the register relates to whether a property is Qualified or Registered only, not if it is rental or owner – occupied. The Law puts all onus on the tenant / occupier of the property as well as the owner. To regulate this, officers would require all Islanders to complete the information, not just those in rental accommodation. This approach is overly bureaucratic, and the changes made to the original proposals within P.106/2019 were made to address such issues identified by the EHI Panel and members.

Note: following the debate of [P.82/2020](#) lodged by Deputy Rowland Huelin of St. Peter and its subsequent adoption by the States Assembly, a report is due from the Council of Ministers by 1st September 2020 on the topic of establishing a register of landlords and tenants.

Proposed Licencing Conditions

Notification of changes

The Licence Holder, or nominated other, must inform Environmental Health directly, using the online portal or in writing, of any changes listed below within 28 days of the change occurring –

- (a) Licence Holder change of address, contact telephone number or e-mail address;
- (b) manager change of address, contact telephone number or e-mail address;
- (c) change of emergency contact number provided to the tenant.

Information to occupiers

The Licence Holder must, within 28 days of a request, supply the occupiers of the property with a copy of the licence for the property they occupy.

A copy of the licence should be sent to the address the licence is in respect of, or electronically to the tenant's e-mail address.

This condition is fulfilled if a copy of the licence is provided to the tenant a maximum of 2 times per licensed year.

Within 28 days of the commencement of any new tenancy, or within 28 days of the first licence coming into force for tenants already in occupation on that date, the Licence Holder must provide the occupier(s) with written information explaining how they can raise an issue or make a complaint to the landlord or nominated other in relation to matters concerning their occupation, such as disrepair, pests, and emergency issues relating to the security of the property.

This must include –

- a contact address;
- a daytime telephone number;
- an emergency out-of-hours telephone number;
- how the Licence Holder or nominated other will deal with such issues;
- a statement on the occupier's right to complain to Environmental Health, together with contact details.

It is recommended that this information is included as a supplement to the Tenancy Agreement.

This information can be provided in hard copy or electronic format (including notices displayed in communal areas, handbooks, e-mails, SMS, apps, websites and other bespoke systems) being fully accessible to the occupier. Consideration should also be given to occupiers who may have difficulty in accessing some forms of electronic communication.

Occupiers should be advised in advance of any changes to the above information and must be advised within 28 days of changes taking place. This can be communicated electronically or in writing and a record should be kept.

References

It is recommended that the Licence Holder or nominated other obtains references from persons who wish to become tenants before entering into any tenancy agreement with them.

Property inspections

There is a legal requirement on Licence Holders or nominated others to inspect the property at the start and end of a tenancy agreement, in order to inform the Conditions Report.

It is recommended that the Licence Holder or nominated other carries out inspections at appropriate intervals. Any records made should be kept for the duration of the tenancy.

It is suggested that a record contains details of –

- who carried out the inspection and other persons present;
- date and time of the inspection;
- a breakdown of each room, including the common parts and external curtilage of the property, with any issues identified;
- changes in any equipment, furniture and furnishings supplied as part of the tenancy;
- the number and location of each smoke and carbon monoxide (if applicable) detector in the property;
- confirmation that each detector in the property has been tested, and whether it is in working order;
- action(s) taken or to be taken as a result of any issues identified during the inspection.

Occupier's right to quiet enjoyment

The Licence Holder or nominated other must ensure that the occupier's right to quiet enjoyment of the property is respected.

Where entry is required to the property, the Licence Holder or nominated other must ensure that any notice requirements contained in a lawful tenancy agreement are complied with.

Where the tenancy agreement does not contain any such requirements, the Licence Holder or nominated other must ensure that the tenant receives at least 24 hours' written notice of intention to enter the property during reasonable hours. They must specify the reason entry is required, save where it would not be reasonable to give such notice, such as a genuine emergency.

Minimum property standards

The Licence Holder will ensure that the rental property to which the licence relates meets those standards maintained within the [Public Health and Safety \(Rented Dwellings – Minimum Standards and Prescribed Hazards\) \(Jersey\) Order 2018](#).

Equipment, furniture and furnishings

The Licence Holder or nominated other must ensure that any goods they make available to the occupier(s) as part of their residential tenancy are safe and in full working order. They should check these goods during inspections.

Proposed Charging Regime

Staff and Hostel type accommodation

Staff and hostel type accommodation will be charged on a 'total maximum occupancy rate'*

Up to 10 persons	£100
11-20 persons	£150
21 and over	£200

* the total maximum occupancy is determined by the sum of the maximum occupancy of any number of rented dwellings owned by the licence holder used to accommodate their employees or workers within their same industry. Persons over 10 years of age = 1 person

Licence Fee

Existing landlords will not have to pay any fee prior to 1st November 2022 if they apply during the grandfathering period.

The proposed licence fee will be £100 for a two-year licence and this will be a flat rate to ensure administrative simplicity.

Grandfathering Period

The 'grandfathering' rights period will be for 6 months, within which a landlord will automatically be issued a licence.

Separation of Licensing Scheme from Rent Safe scheme

Following comments and further discussions with the Scrutiny Panel and States Members, the proposed licensing scheme will not be linked with the Rent Safe scheme and will not have any effect on the proposed fee schedule.

Inflationary Impact

Following a request for information regarding the inflationary impact of the proposition, the Minister has received the following advice from the Chief Economic Adviser based on the new fee proposed:

Inflation is the increase in the typical basket of goods and services purchased and consumed by households. In this case, the licensing fee would be paid by business and not households directly.

For firms facing an increase in costs, they can broadly choose to –

1. Pass the increase on in prices.
2. Absorb the increase in lower profits.
3. Purchase less of the factor rising in cost.

The annual fee for each landlord is proportionate and set appropriately and it is not a revenue measure nor is it designed to discourage landlords. The fee is very small compared with the rents received by most landlords.

It should be noted that as a fixed cost the fee will be relatively smaller as the number of properties increases. For professional landlords with more than one property the cost will be negligible.

We expect the cost of the fee to be largely borne by landlords and not tenants. In the scenario that the cost was passed on in full, the effect on rents would be limited, and the effect on inflation would be negligible.

Period	£
Fee (2-year licence)	£100.00
Fee per year over 2 years	£50.00
Fee per month over 24 months	£4.17
Fee per week over 104 weeks	£0.96

Other Terms

- Change of name or address details of any existing licence holder or managing agent – No fee
- Variation of licence instigated by Government – No fee
- Change of licence holder – New application fee
- Revocation of licence – No fee
- Application to licence following revocation of licence – Application fee and licence fee
- Application refused by Government – Application fee with no refund
- Application withdrawn by the applicant – Application fee with no refund
- Application made in error – Application fee with no refund
- Licence lapsed, and new licence required – Application fee and licence fee.

Late applications and failing to attend pre-arranged inspections

Where Government has to contact property owners that are required to licence their property and have not done so within the prescribed period, a fee of £150 may be added in addition to the application fee and licence fee. When considering whether a charge is appropriate, mitigating factors are taken into account; for example, whether the person hadn't realised they should be licensed, or has repeatedly evaded all calls to licence their known rental property.

Where a licence holder or nominated person fails to turn up for a pre-arranged inspection without reasonable excuse, a missed appointment fee of £50 may be charged. When considering whether a charge is appropriate, mitigating factors are taken into account; for example, a fee may be considered if the landlord has repeatedly failed to attend at pre-arranged times.

Separation of the Licencing Scheme from Rent Safe

Rent Safe, the voluntary rating scheme, no longer has relevance to any licence under this scheme nor will it determine the amount a landlord pays for their licence. Rent Safe has been successfully adopted by a majority of property management companies and so will continue to be maintained separately as a voluntary scheme available for landlords to provide a mark of confidence in their ability to manage their property and that the property meets or exceeds minimum standards.

Resource Implications

Financial and manpower implications

There are no manpower implications arising from this decision.

There are financial implications arising from this decision. With the current estimated income based on the new fee structure, the service will not fully cost recover in the first five years of the scheme. However, it should be noted that as more data becomes available and as financial forecasts become clearer, this will need to be reviewed.