

STATES OF JERSEY



INVESTIGATION INTO THE ESTABLISHMENT OF A DIGITAL REGISTER OF LANDLORDS AND TENANTS (P.82/2020): COMMENTS

Presented to the States on 10th July 2020
by the Minister for the Environment

STATES GREFFE

COMMENTS

Summary

1. The information gathered under the quoted legislation cannot be used for the purposes of a landlord register – it can only be used for the reasons it was obtained.
2. There are no links between the quoted legislation and the standard of rented dwellings, no ability to enforce standards in rented dwellings and no ability to de-register properties not meeting minimum standards. Therefore the proposition would not meet the aims of the proposed licensing scheme.
3. The quoted legislation places an onus onto all islanders (not just landlords) to complete regular returns, therefore it is more bureaucratic than the proposed licensing scheme.
4. Under the quoted legislation landlords will have more regular and in-depth paperwork to complete and will have to carry out more visits to their properties, increasing costs.
5. Any investigation of the proposal would involve a significant resource input across a number of departments and organisations.
6. The discrete and anonymous helpline already exists with Environmental Health. Many will be reluctant to use such a helpline due to a fear of revenge evictions.
7. Consideration has previously been given to the use of other legislation to achieve the aims of the licensing scheme, and it arose during consultation for the licensing scheme. However no other legislation can achieve the aims of the proposed licensing scheme and the current proposal would involve the amendment of primary laws. The Public Health and Safety (Rented Dwellings) (Jersey) Law 2018, as voted for by the Assembly, specifically legislates for the creation of a licensing scheme.

Introduction

The Investigation into the establishment of a digital register of landlords and tenants ([P.82/2020](#)) (the “proposition”) has been lodged by Deputy R. Huelin of St. Peter (the “Deputy”) in response to the [Draft Public Health and Safety \(Rented Dwellings\) \(Licensing\) \(Jersey\) Regulations 201-](#) (“[P.106/2019](#)”) lodged by the Minister for the Environment.

The proposition asks Ministers to investigate the creation of a digital register of landlords and tenants using the Control of Housing and Work (Jersey) Law 2012 (Articles 9 and 16) (the “CHWL”) and the Lodging Houses (Registration) (Jersey) Law 1962 (the “LH Law”).

An [amendment](#) to proposition P.82/2020 was lodged by Deputy R. Huelin of St. Peter on the 1st July 2020. The Amendment widened the scope of the investigation to include any other data sources or legislation deemed to be relevant.

The register would be introduced in place of the licensing scheme proposed under P.106/2019. Provisions for the introduction of a licensing scheme are given in Article 5 of The Public Health and Safety (Rented Dwellings) (Jersey) Law 2018, namely that Regulations may make provision enabling the Minister to –

- (a) license dwellings to be used as rented dwellings; and
- (b) 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.

Should the licensing scheme Regulations be passed by the Assembly, it will allow the Government of Jersey to develop data on the condition, location and suitability of rented accommodation in the Island. This progressive step would enable risk assessments to be carried out to determine a priority list for Officers to inspect properties. The licensing scheme would ensure improvements were made to the rented dwelling stock in line with the minimum standards for rented accommodation contained in the Public Health and Safety (Rented Dwellings – Minimum Standards and Prescribed Hazards) (Jersey) Order 2018.

Additional Background

On 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](#)).

On 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 was lodged by the Minister for the Environment on 1st October 2019 and scheduled for debate 12th November 2019. Following 3 requests to defer the debate of the proposition, the Assembly begun a debate on the proposition on 25th February 2020, however, Deputy Huelin requested a vote to reference back the proposition ([24 Pour, 18 Contre, 7 Absent](#))¹

On 1st April 2020 the Minister for the Environment requested that the proposition be scheduled for 8th September 2020 following the emergence of the Covid-19 pandemic.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

These comments were submitted to the States Greffe after the noon 9th July 2020 deadline as set out in Standing Order 37A due to an administrative delay by the presenting Department.

¹ Hansard: https://statesassembly.gov.je/Pages/Hansard.aspx?docid=FA0D8DFF-1750-4CD6-AAF5-090DCE2A29E7#_Toc34312022

Control of Housing and Work (Jersey) Law 2012 (Article 9 and 16)

The [Control of Housing and Work \(Jersey\) Law 2012](#) (the “CHWL”) is a law to –

“...establish a registration process for residents of Jersey and to make provision for the control of work and housing and for related purposes.”

And is recognized that this is a provision needed for –

- “(a) the overall population density of Jersey; and
- (b) the availability of work and housing in Jersey for people with strong connections or associations with Jersey and, more generally, in such a way that is in the best interests of the community in Jersey –”

The aim of the CHWL is to help control the population of Jersey and the availability of work and housing for people with strong associations or connections with Jersey. It has no links to or powers to deal with standards of rental accommodation and the register relates to whether a property is Qualified or Registered only, not if it is rental or owner – occupied. The legislation puts an onus on the tenant / occupier of the property to comply.

There is a requirement under Article 16 of the CHWL for a register to be kept of all units of dwelling accommodation showing (a) the housing category of each unit; and (b) whether there are any conditions or concessions to which that categorization is subject. Further, under Article 9 of CHWL, upon change of address people are required to provide their full name, date of birth, address and date started living at new address. An important point with this is that the conditions or concessions referred to in Article 16 do not relate to housing standards, therefore this aspect could not be used to improve the standards of rented accommodation.

The requirements to register and to provide information applies to people living in all dwellings, not just rented accommodation. In addition, the Law requires the person in charge to notify of each change in occupancy. Therefore, this would be more bureaucratic than P.106/2019 as owner occupiers and lodgers would be required to register and provide information. As part of the consultation for The Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 and related Order, objections were raised over the possibility that owner occupiers and lodgers would be included within the law and therefore these were removed.

In comparison, the proposed in P.106/2019 requires the landlord to renew the licence once every two years and does not require the tenant to notify of change.

The CHWL does not join up the link between the condition of a property and the health of the occupant. Therefore, this register would not help to improve the conditions of rental properties, an aim of P.106/2019. There is no mechanism by which to de-register properties failing to meet minimum standards or prevent such properties being rented in the first place.

**Lodging Houses (Registration) (Jersey) Law 1962 /
Lodging Houses (General Provisions) (Jersey) (Order) 1962**

There is a requirement for the keepers of lodging houses to register their lodging houses under Article 2 of the LH Law. The registration expires on the last day of February, is renewable yearly with an associated fee and renewal applications have to be made in December (Articles 4 and 5). The keeper has to provide a full list of room charges with an application which would not be welcomed by landlords or non-lodging houses.

Under Article 13 the keeper is required to keep a register with the full name; place and date of birth; nationality; address prior to arrival; date of arrival and date of departure of all people living within the lodging house. These details relate to residents and therefore would not be of benefit to a licensing scheme. Further, this requirement could again be seen as over bureaucratic. Offences relating to breaches of the LH law rest with the keepers and residents.

Further, Article 6(2) provides that the Minister may refuse an application if the applicant is not a fit and proper person or the use as a lodging house is not in the public interest / may cause annoyance to those living nearby. The inclusion of a fit and proper person test would create a significant resource issue as applications would have to be checked. The fit and proper person test was not included in P.106/2019 as it was not felt to be necessary, would be overly bureaucratic and would not be popular with landlords.

Under Article 6 upon registration or renewal of registration an officer may inspect lodging houses. Similarly, under Article 15 officers can inspect lodging houses upon showing relevant identification Article 6(3) allows the Minister to attach such conditions as they see fit to the registration. However, restrictions placed on lodging house renewals largely relate to occupancy rates.

Lodging houses require to be furnished, individual rooms numbered, occupancy rates and charges listed on Green Cards inside each room and there is no specific enforcement action which can be taken other than refusing or cancelling a registration or application. As a result of these issues, it is not seen to be an efficient or modern way to deal with substandard housing and is much more bureaucratic than P.106/2-10. It is also likely to significantly increase the number of visits landlords will have to undertake to rental properties to check on these requirements.

Lodging houses are required to have a Disclosure and Barring Service (“DBS”) checked caretaker who resides on site, which would not translate to most rental properties. It would not be feasible to expect every landlord to have a caretaker, or indeed someone living on or near the rented property. Landlords would likely have to pay for someone to be the caretaker and pay for DBS checks, clearly increasing their expenditure and reducing income from the property.

Finally, Keepers / limited liability companies require to be residents / incorporated in Jersey, therefore if this were implemented across all rented dwellings it may lead to some landlords leaving the market, something which the proposition was supposed to avoid.

Rates (Jersey) Law 2005

The maintenance of the Rates List lies with each Parish as per Article 2. It is unclear how this information could be easily used by the Government of Jersey as there would be Data Protection issues with it being shared and used for different purposes.

Similarly, the responsibility for obtaining information lies with the Parish Connétable (Article 3) and it is the Parishes who people have to contact to discuss the requirements of the law. It is difficult to see how a scheme operated by the Government of Jersey could have parts operated by Parishes, particularly where the Parish would obtain the information and have the powers to enforce the provisions of the law. Such a system would be confusing for all and would potentially have resource implications for Parishes and well as the Government of Jersey.

Under Article 2 the rates list contains the following –

- Details of land ownership
- Rateable value of land
- Whether land is used for domestic or non-domestic purposes
- Any other information as the Supervisory Committee may direct.

Similarly, under the Rates Law Article 3, the Connétables are required to serve a written notice on every land owner, each December or January, requiring them to –

- Specify the land which they own and the name and address of anyone occupying the land who is not the owner
- Any changes to the attributes of the land
- Any other information required for the purposes of the law.

Neither the rates list nor the requirement to provide information have any links to housing conditions, therefore they are not suitable for the aims of the proposed licensing scheme. In no way could this legislation be used to help improve the condition of rented accommodation on the island.

The requirements under the Rates Law also apply to all landowners and much of the information obtained is irrelevant to housing. Therefore it would not only increase the burden on a greater number of people, it would also be more bureaucratic than the proposed licensing scheme. These drawbacks to the proposition are also seen in the fact that the parish need to be notified of any changes in occupation within 7 days of the change (Article 13).

In summary, the rates law is a mechanism for parishes to collect rates. It has no links to housing standards and is not administered by the Government of Jersey. It is completely unsuitable for the proposed use.

Register of Names and Addresses (Jersey) Law 2012

The Chief Minister has responsibility for maintaining a register of individuals, however the purposes for the establishment and maintenance of the register are confined to the statutory purposes (Article 2). The statutory purposes are –

- (a) to enable or facilitate public administration and customer service; and
- (b) such other purposes as the States may by Regulations specify under Article 5(2).

Information which is registrable includes name, address, date and place of birth, gender and social security number.

There are no links to housing standards within this legislation and much of the information which would be obtained is not relevant for a housing licensing scheme.

Article 4 places a requirement on those living in Jersey for more than 3 months to notify the Minister if they change their name. This is irrelevant from a housing standards perspective and includes the whole population of Jersey, something which the licensing scheme specifically aimed to avoid.

Article 5 outlines the situations where a Minister or Public Authority can access the registrable facts. The Minister can use them to assist in the development of public policy or to inform the public about social and economic matter (Article 5(4)). Public Authorities can use the facts to enable or facilitate a public administration or customer service, provided this is provided for in Regulations (Article 5(1 and 2)). There is nothing within the law to suggest that this could be used for the purposes of improving the conditions of rented dwellings.

Under Article 7 the supervision of the law lies with a Commissioner. It is unclear how this system could be integrated with others under different supervision.

The secondary legislation referred to in the report also does not link to Housing standards legislation and they place obligations on all residents of Jersey.

Public Health and Safety (Rented Dwellings) (Jersey) Law 2018

The report accompanying the proposition states that problems with a tenancy should be dealt with under this law. However, the law only deals with the health and safety of those living in rented properties, it does not deal with tenancy related matters such as issues with tenancy agreements / deposits and similar. These are dealt with under the [Residential Tenancy \(Jersey\) Law 2011](#) and subordinate legislation which is the responsibility of a different ministerial department.

Records of all inspections carried out under this law are recorded on a database.

The Law provides the mechanism for the creation of the proposed licensing scheme, and as it deals with the standard / safety of rented dwellings is the most appropriate piece of legislation for this.

Landlords Accreditation Scheme (Rent Safe)

As the Rent Safe Scheme is a voluntary landlord accreditation scheme, it is not legislated for. Any information gathered as part of the Rent Safe scheme or through tenancy related legislation is held on the Environmental Health database.

Links to the Rent Safe scheme were removed from the proposed licensing scheme due to feedback received.

General comments

- i. The proposition seeks to add properties where people are living in Lodgings in private dwellings to the requirement to register. This is seen as unnecessary as they are not covered under by the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 and this was something that was a significant concern for Islanders. One of the main criticisms of the initial plans to create a licensing scheme was that if those taking in lodgers were to be included it would lead to an overly bureaucratic and burdensome process. As a result this aspect was specifically removed from the proposed licensing scheme.
- ii. The inclusion of those taking in lodgers would place a burden on a wider group of people and would increase the levels of bureaucracy and costs involved. It is also possible that some people will stop letting our rooms if they are subject to greater regulation, thereby potentially reducing the level of accommodation available on the island.
- iii. Under the proposition the register would separate accommodation into 4 categories: Qualified, Registered, Lodging Houses and lodgings in private dwellings. Rented dwellings should not be separated into different categories, it is the condition of all rented dwellings which should be the focus.
- iv. The proposition and accompanying report are slightly contradictory in that the proposition seeks to amend existing laws, something which may take a significant amount of time and resource, whereas the report seeks to “use a register as already established in existing legislation”. The register does not currently exist in the proposed format and would be resource intensive to create and run. The laws would have to be amended where as there is already provision under the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 for a licensing scheme.
- v. The potential to use other pieces of legislation for the purposes of a landlord register / licensing scheme has been previously assessed, including as part of the consultation process for the licensing scheme. However there is no other legislation which can meet the aims of the licensing scheme and there is no justification in amending primary legislation when there are already specific provisions in law which will achieve the aims.

- vi. It seems unnecessary to carry out a further investigation given the amount of work which has already gone into establishing the proposed licensing scheme.
- vii. Having an open ended investigation into any other pieces of legislation and data sources will be resource intensive, it creates difficulties in planning timescales and resource input needed and it is unclear who would be tasked with an investigation across numerous departments where staff have specialised skills and knowledge.
- viii. The proposition involves various pieces of legislation spread across a number of ministerial departments. In order for the proposition to work, numerous staff working across the government would have to work together and feed data into a central database. This would be a logistical nightmare, particularly as different departments collect different types of data in different formats using various IT systems. The proposition also does not detail how enforcement of the register would be carried out. Something which could cause problems as the responsibility could come under a number of Ministers.
- ix. The integration of the IT systems alone would involve a significant spend and the whole proposition would be a significant piece of work, requiring a great input of resources, something which would be difficult to justify in the current climate. It is also unclear from the proposition where the funds for the initial investigation would come from, or indeed how the register would be funded.
- x. Clearly there would be a significant resource required to investigate this proposal. It would involve officers from various States departments and external organisations would need to be employed to explore the possibility of creating an IT system which could integrate data from various sources. Law officers would also need to be tasked with researching the implications of the proposal. It is difficult to justify putting resources into investigation this proposition given that a licensing scheme which has been properly researched is already being proposed and the current financial situation that the Government and Jersey finds itself in.
- xi. No detail has been given relating to potential Data Protection issues. Information can only be used for the purposes for which it was gathered, therefore there would be difficulties in sharing information across a number of different departments. Some of the information gathered as part of the proposition would sit with the Parishes, further complicating the proposal.
- xii. The information obtained under the quoted legislation is not relevant to the aim of the proposed licensing scheme. The proposition would lead to a significantly larger number of people having to submit information more regularly, increasing burdens on landlords and would be a more bureaucratic process.

- xiii. It is questionable whether some of the legislation quoted in the report is still relevant in 2020, and it's likely much will need to be amended in the near future. Of particular relevance is the [Lodging Houses \(Registration\) \(Jersey\) Law 1962](#). It is debatable whether a Law from 1962 is suitable for enforcing modern day housing standards and feedback from a number of landlords of lodging houses was that a number of the requirements in the law are no longer relevant and they only serve to increase the number of times they have to visit lodging houses and the amount of paperwork they have to complete.
- xiv. One of the aims of the proposition is to “ensure that the rental properties are safe and not damaging to the physical and mental health of the tenants”. However, the pieces of legislation proposed to be used either do not link in with housing conditions or are inadequate for modern day housing standards. There is nothing in the laws which allows officers to obtain further details about housing conditions, therefore a risk-based inspection scheme cannot be implemented. Poor quality housing will continue to be rented out as there are no provision which prevent it.
- xv. One of the concerns raised in the report is that there will be a financial burden on landlords in complying with license conditions which will in turn cause an increase in rents. It is important to highlight the fact that the minimum standards for rented accommodation are already in Law. Further, the proposed licensing conditions are highly unlikely to increase financial burdens.
- xvi. A further concern in the report relates to the fact that new purchasers may review tenancy agreements potentially to the detriment of tenants. Residential Tenancy matters fall out with the scope of the proposed licensing scheme and it is unclear how the new proposition would address this concern. The correct legislation for this would be the Residential Tenancy (Jersey) Law 2011.
- xvii. The suggestion of a “discrete and anonymous ‘help line’ ” in the report is similar to what already exists. The Environmental Health service has a phone number and email address for people to make contact in relation to housing issues. Matters will be dealt with anonymously where possible. However, unlike making a complaint about a workplace, where anonymity is easy to maintain, it is impossible to complain about one’s own home and remain anonymous. Unfortunately, a number of residents will not make contact due to a fear of revenge evictions, something which P.106/2019 aims to address. A licencing check, which identifies deficiencies in the property is very different to a visit in response to a complaint.
- xviii. The existing helpline leads to officer visits, risks identified and an inability to take the case forward because the tenant does not wish for the landlord to be informed.
- xix. Technology has been created for the proposed licensing scheme and related database. The proposition would involve the integration of

information from numerous databases / different IT systems, something which would be extremely costly and likely would not be possible in all circumstances.

- xx. The proposed licensing scheme will have a central database enabling officers to make informed decisions about risks and prioritisation of inspections. The various pieces of legislation quoted in the current proposition were not created to help improve the standard of rented accommodation and therefore do not collect the required information. Any database collated using these pieces of legislation would contain huge amounts of irrelevant data and it is difficult to see how it could be used to inform decision making.
- xxi. There are inconsistencies between the laws. For example, in the frequency with which people must register, the details to be provided, dates information has to be returned by, enforcement mechanisms and fee levels for breaching requirements. There would be no easy way to merge the two laws and related registers.
- xxii. There are on-Island examples of how a registration does not aid service users compared to similar requirements for a licence. [The Food Safety \(Jersey\) Law 1966](#) requires registration of a food business, whereas some businesses require a Places of Refreshment Licence.
- xxiii. The evolution of legislation and data collection led to the creation of the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018. This law and subordinate legislation is designed to tackle housing conditions in the modern day and it is the first piece of legislation in Jersey to specifically deal with the conditions of rented dwellings. The proposition seeks to take a step back from what has evolved to use some outdated and irrelevant (from a rented dwelling condition perspective) legislation.
- xxiv. It is unclear how the current proposition would help with population, immigration and housing control or indeed in the setting of budgets for Government.
- xxv. The report states the Deputy has not heard from the Minister in regards to the inflationary impact of P.106/2019. P.106/2019 Amd.(3)² (the “Third Amendment”) was lodged on 12 March 2020 and on page 4 of the amendment, advice from the Chief Economic Adviser regarding the inflationary impact of the licensing scheme is made available to the Assembly which, to summarise, is “the effect on inflation would be negligible”.

Note: this amendment will be withdrawn and replaced with a new amendment as the dates contained within which amend the original proposition can no longer take effect due to the deferring of the debate. However, the comments from the Government of Jersey’s Chief Economic Adviser on the inflationary impact will be reiterated in the

² P.106/2019 Amd.(3): [https://statesassembly.gov.je/assemblypropositions/2019/p.106-2019amd\(3\).pdf](https://statesassembly.gov.je/assemblypropositions/2019/p.106-2019amd(3).pdf)

accompanying report to the new amendment to ensure the Assembly have all information in a consolidated report.

Conclusion

The Minister for the Environment and the Minister for Children and Housing welcome the Deputy's comments as a landlord and committee member of the Jersey Landlords' Association. The Ministers agree that knowing the address, landlord, and tenants of all rental properties is a positive move but that P.106/2019's proposed licensing scheme is the ideal method to achieve this.

The current proposal of using CHWL and LH would not be suitable for meeting the aims of the draft licensing scheme. It would cause much confusion, be overly demanding on landlords and tenants and would not address housing conditions.

The Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 Article 5, permits the States by Regulation 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 Jersey and enables the Minister for the Environment to license dwellings to be used as rented dwellings. The draft licensing Regulations aim to establish data on rented dwellings in Jersey to help ensure that all rental properties meet the minimum standards and therefore the health and well-being of residents is ensured. This will be achieved through a risk-based approach, targeting the higher risk properties. The current proposal do not fit in line with these aims and will not assist in improving housing conditions for residents.

The Ministers trust that as they have shown here; and in previous discussions with the Deputy and the EHI Panel who have reviewed P.106/2019, the direction of travel in the Deputy's proposition is not preferable when considered against the proposals in P.106/2019.

The Ministers would urge members of the Assembly to reject the Deputy's proposition.