

# STATES OF JERSEY



## **DRAFT COVID-19 (RESIDENTIAL TENANCY) (TEMPORARY AMENDMENT OF LAW) (JERSEY) REGULATIONS 202- (P.42/2020): COMMENTS**

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**Presented to the States on 8th April 2020  
by the Environment, Housing and Infrastructure Scrutiny Panel**

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**STATES GREFFE**

## COMMENTS

1. [P.42/2020](#) – Draft Covid-19 (Residential Tenancy) (Temporary Amendment of Law) (Jersey) Regulations 202- was lodged by the Minister for Children and Housing on 8th April 2020, in light of the ongoing Covid-19 pandemic.
2. The Panel would like to thank the Minister and his officers for sharing the draft Regulations with it prior to formal lodging. In addition, we would also like to thank the Minister and his officers for briefing the Panel on the draft Regulations on 7th April 2020.
3. As outlined in the report accompanying P.42/2020, if adopted, the draft Regulations would make temporary amendments to the [Residential Tenancy \(Jersey\) Law 2011](#) (“the Law”). It was advised during the briefing with the Minister that the draft Regulations proposed 3 main amendments to the Law:
  - To suspend rent increases during the period from which the draft Regulations are enacted up until their expiry date of 30th September 2020.
  - To extend tenancies, that were due to expire naturally, to the end of September.
  - To prevent a landlord seeking eviction under Article 12 of the Law where, as a result of financial hardship due to Covid-19, a tenant has failed to pay rent or any other sum to the landlord.
4. During the briefing the Panel raised a number of concerns, and identified, within the draft Regulations, two of the proposed new Articles of the Law which it felt needed to be amended. These were as follows:
  - Article 7D(1) should be amended to include the requirement for a tenant to provide evidence of hardship.
  - Article 7F should be amended to remove the ability of the Minister to amend Part 3A and to introduce further provisions by way of Order.
5. Article 7D(1) allows a tenant to breach a residential tenancy agreement in regard to the payment of rent or any other sum to the landlord if they have notified the landlord in writing that the breach was a result of financial hardship caused by the outbreak of Covid-19. The Panel was concerned that tenants may abuse the provision if they were not required to demonstrate that they were suffering from financial hardship. The Minister advised the Panel that, whilst it was not provided for within the draft Regulations, evidence of hardship would be required. For instance, Article 7E requires the Minister to issue guidance in relation to the termination of tenancies, increases in rent and eviction for arrears of rent or other sums due to the landlord caused by the Covid-19 outbreak. It was advised that such guidance would include examples of evidence that should be provided to the landlord in order to satisfy them that the tenant was unable to pay the rent at such time. For example, a letter from the tenant’s employer confirming loss of job or loss of working hours as a result of the pandemic.

6. The Minister also advised the Panel that if the draft Regulations were approved by the States Assembly, a strong message would be communicated, alongside the Regulations, that residential tenancy contracts were still valid and that both parties were still obligated to abide by the agreements already in place, if they were able to do so. Furthermore, it was noted that if a tenant was found to be abusing the new provisions, and was unable to provide appropriate evidence of hardship, then the Court would still find them in breach of contract under Article 12. The Minister was of the opinion that it was the responsibility of the Courts to determine whether the evidence provided to the landlord was reasonable.
7. In addition, it was noted that the guidance issued by the Minister would address both parties' rights and obligations, not just that of the tenants. For instance, it was accepted that there was the possibility that landlords, as well as tenants, may abuse the provision by acting unreasonably and not accepting tenants' evidence, even when financial hardship was demonstrated. In such cases, the Court would also be responsible for determining whether the landlord acted reasonably, in light of the evidence it was presented. Therefore, the Minister advised the Panel that both parties had a responsibility to work together and adopt a reasonable approach given the current situation.
8. Whilst the Panel agreed with the Minister that it was the Court's responsibility to determine the suitability of evidence, we were still of the opinion that a sentence should be inserted within Article 7D(1) that stipulated the requirement for tenants to provide appropriate supporting evidence of financial hardship, in line with the Minister's guidance, alongside the notification to the landlord.
9. Article 7F provides the Minister for Children and Housing the power to amend Part 3A and to make further provisions by Order. During the briefing, the Panel sought the Minister's opinion regarding this provision and its appropriateness. The Minister advised the Panel that the ability to amend the Regulations and make further provisions by Order allowed for flexibility in these uncertain times, and meant that amendments to the Regulations could be made swiftly, if necessary. It was further advised that any proposed changes to Part 3A or any further provisions would be shared with Scrutiny and other interested parties prior to being made. Despite these assurances, the Panel was still of the opinion that, given the nature of the draft Regulations, the power to amend or increase further provision should not lie solely with the Minister for Children and Housing. Furthermore, the Panel notes that following the decision of the States Assembly to approve [P.29/2020](#) – Draft Covid-19 (Enabling Provisions) (Jersey) Law 202- (*which has now been approved by the Privy Council, registered in the Royal Court and published in Jersey's Laws Enacted as [L.2/2020](#)*), any changes to emergency legislation by Regulations can now be enacted very quickly in order to respond to the current crisis.
10. The Minister advised the Panel that, following the briefing, consideration would be given to the Panel's two suggested amendments. It was later advised that the Minister for Children and Housing had agreed to amend Article 7D(1), prior to lodging, to include the requirement for a tenant to provide evidence of financial hardship, but had not supported the Panel's suggestion to remove the Minister's power to amend the draft Regulations by Order. The Panel has therefore brought its own amendment to the States Assembly in this regard, which it hopes Members will support.