

STATES OF JERSEY



DRAFT RESIDENTIAL TENANCY (JERSEY) LAW 200-

**Lodged au Greffe on 21st May 2009
by the Minister for Housing**

STATES GREFFE



Jersey

DRAFT RESIDENTIAL TENANCY (JERSEY) LAW 200-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Housing has made the following statement –

In the view of the Minister for Housing the provisions of the Draft Residential Tenancy (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator T.J. Le Main**

REPORT

A. Introduction

Over the last decade, concern has been raised over the lack of clarity and public understanding concerning the legal position that tenants have in Jersey law. This Draft Residential Tenancy (Jersey) Law 200- (“RTL”) is the culmination of the work that has been undertaken to review the position. The RTL is designed to provide a modern framework of principles which will provide a legal basis for the development of fair, transparent, well-regulated agreements between landlord and tenant.

This Report describes the background to the proposed legislation and demonstrates the extent to which the proposals of the Working Party, referred to below, and the results of the consultation, have been incorporated into the law drafting.

B. Background

- (i) Two Working Parties were established in the 1990s. The Legislation Committee considered the report of the first Working Party in 1990, which dealt with Landlord and Tenant obligations. Subsequent to that Report, in 1993 the Dwelling Houses (Rent Control) (Standard Tenancy Agreement) (Jersey) Regulations 1993 were introduced, which set out a standard form of agreement, which if used, exempts landlords from rent control¹.

The second Working Party (“the Working Party”), set up by the former Housing Committee in 1996, looked at issues surrounding eviction procedures and security of tenure for tenants. The Working Party considered the “Loi (1919) sur la location de biens-fonds”² as amended (in which distinctions as to notice periods are dependent on rental value, type and size of property); and the “Loi (1946) concernant l’expulsion des locataires réfractaires” as amended³ (which deals with eviction procedures). Both laws are short, written in French and not easily interpreted or understood without legal advice. However, they are still applicable, although since they came into force both Jersey society and the Jersey housing market have changed considerably.

Under the Chairmanship of Senator Corrie Stein the Working Party put forward a number of recommendations in *P.257/1998: Security of Tenure – Report of the Working Party*⁴ to resolve the issues. The key proposals are listed in Appendix 1 to this Report. On p.18, at the end of its Report, the Working Party did express “a hope that further legislation may be considered ... upon other aspects of the landlord /tenant relationship”.

- (ii) Subsequently, in 2002, Senator Stein lodged an amendment to P.2/2002 requesting that the States agree to the setting up of a Tenants’ Deposit Scheme

¹ See Article 2(d) of the Dwelling Houses (Rent Control) (Jersey) Law 1946 and paragraph C4 of this Report.

² Translates as: “Law (1919) on the Letting of Property”.

³ Translates as “Law (1946) Concerning the Eviction of Refractory Tenants”.

⁴ <http://www.statesassembly.gov.je/frame.asp> Propositions/1998/257.

to assist tenants in getting back deposit monies paid to landlords at the commencement of tenancy agreements⁵.

- (iii) In 2006, responsibility for progressing work on the RTL and the Tenant's Deposit Scheme was taken on by the newly established Population Office. The Office is responsible for the management and administration of the Regulation of Undertakings and Housing Laws and the development of new mechanisms to replace these Laws. The Migration Advisory Group was formed in 2005 to direct the Population Office. It is chaired by an Assistant Minister, Chief Minister's Department. Other members include the Minister for Economic Development and the Minister for Housing. The Migration Advisory Group have reviewed the development of the RTL.
- (iv) Public Consultation: 2008
In April 2008 a White Paper entitled "Draft Residential Tenancy (Jersey) Law 200-: Consultation Report" was released for public consultation. Full copies of both the Consultation paper and the Consultation response document are available at: <http://www.gov.je/ChiefMinister/PopulationOffice/>
- (v) Current Economic Climate
Over one third of the Island's population lives in rental accommodation⁶. This high proportion may increase still further as a result of the recent downturn in the economy. A trend may be appearing whereby some with money invested in the banks choose to invest in property and enter the rental market as landlords whilst some, unable to afford to buy the property they wish, choose to enter the rental market as tenants. If this trend does develop, the RTL will provide a framework of legal requirements and obligations for those who are inexperienced in the rental market as well as providing certainty for those already in it.
- (vi) The Working Party proposed the introduction of one Law to deal with key issues affecting landlords and tenants entering into residential tenancy agreements. The RTL achieves this, for it defines the essential provisions required of a tenancy agreement and it brings into the one Law the notice and eviction procedures currently dealt with in the separate 1919 and 1946 Laws.

C. Analysis of the Draft Residential Tenancy (Jersey) Law 200- ("RTL")

The Explanatory Note to the RTL provides a succinct explanation of the purpose of each Article, and this section further explains the provisions of the RTL which will regulate landlord and tenant relationships affected by the RTL.

⁵ Housing Committee Strategic Policy Report 2002–2006 (P.2/2002): amendment, lodged *au Greffe* 23rd April 2002.

⁶ Jersey in Figures, 2007 p.33, States Statistics Unit.

1. Article 1 – Interpretation

A number of definitions warrant mention:

- (a) Authority to deal with all matters falling under the Law is given to the Petty Debts Court

The Working Party recommended that the Petty Debts Court (“the Court”) be renamed “with all issues relating to eviction and payment of rental to be heard by a separate division of the Magistrates’ Court”.⁷ In 2004 the responsibilities of the Court were divided into 3 separate divisions, namely the Civil Claims Division (dealing with petty debts issues) the Family Division and the Tenancy Division. Rental arrears actions remain to be heard in the Civil Claims division, but cancellation and eviction cases are heard before the Tenancy Division.

Although the Court itself has not been renamed, this provision substantially meets the recommendation of the Working Party.

The Working Party proposed that hearings of the Court involving tenancy matters be held *in camera* (in private). This proposal has not been adopted, as the general rule is that courts sit in public, but there is always an option to apply to the Court for a matter to be heard in camera.

- (b) The Minister responsible for matters arising under the Law is the Minister for Housing.
- (c) The Law will apply to all residential tenancy agreements⁸ for the exclusive occupation of a residential unit by one or more natural persons who are party to the agreement, for value (i.e. consideration or payment) and for a period of 9 years or less and with or without a specified term.

Tenants in Jersey, as opposed to lodgers or licensees, occupy premises by virtue of a “periodic tenancy” agreement where rent is paid on a regular basis but the term of the tenancy is indefinite, but subject to a period of notice **or** an agreement for a specified or fixed period of time, often referred to as “a lease” (see C5). **The term “residential tenancy agreement” used throughout the RTL includes reference to either fixed term agreements or periodic tenancies, so long as the agreement entered into is one that satisfies the criteria of the RTL in Articles 1 and 2 (see C2).**

The RTL will apply to periodic residential tenancy agreements that have lasted longer than 9 years so long as the initial agreement was for not longer than 9 years.

A lease for a term exceeding 9 years can only be created by a contract passed before the Royal Court (“a contract lease”) and such leases will remain, as at present, under the jurisdiction of the Royal Court and unaffected by the RTL.

A residential tenancy agreement “for a specified term” means the same as an agreement for a fixed term (see C5).

Exceptions to the RTL are limited and are included at Article 3(4).

⁷ Security of Tenure Law – Report of the Working Party, P.257/1998 p.4.

⁸ For full definition see Article 1(1) of the RTL.

Article 1(1) states that a landlord means the “person who grants the right to occupy the residential unit”. The RTL will apply to residential tenancy agreements entered into, not only by private landlords, but also by Ministers of the States of Jersey; Housing Trusts or companies.

2. Article 2 – Premises to which this Law applies

- (a) The RTL deals only with residential tenancies. The current 1919 and 1946 legislation will continue in force and apply, where applicable, to agreements that fall outside of the RTL, such as agreements relating to commercial or agricultural property.

A residential unit is interpreted as a “self-contained dwelling”. As such, it must offer exclusive use to the inhabitants of a shower or bath; a washbasin; a kitchen; a sleeping space and a lavatory⁹.

- (b) However, the RTL will only apply to those qualified under the Housing Law. It will not apply to those classified as lodgers, because if lodgers were given the ability to enter into a residential tenancy agreement they would no longer be lodgers by legal definition. This cannot readily be remedied by amendment of the Housing Law, as the entire foundation of the Housing Law is the exclusion of unqualified persons from leasing and purchasing arrangements. Lodgers do not have security of tenure.

In other words, although a lodger may live in unqualified accommodation that satisfies the definition of a “residential unit” as described in Article 2, he or she will not be able to enter into a residential tenancy agreement for that accommodation.

The Working Party was of the view that new Law should only apply to tenants¹⁰ and not to lodgers or licensees. However, it is intended that the Housing Law will be replaced as part of the development of the Migration policy, which was adopted by the States in 2005. The provision of security of tenure for some unqualified persons is a clear objective of the new Migration Law, should that be at all possible. Consultation on Part 2 of the new Migration Law, which will deal with housing issues, is expected to begin in mid-2009 and final policy decisions will be made once consultation closes. The new Migration Law will then be debated by the States.

- (c) The exemptions in Article 2(3) are included to exempt situations where a tenancy would not be expected to be granted for a part of the premises. For example, a resident of a residential home or club living in a unit of accommodation satisfying the criteria of the RTL, or someone living in premises registered under the Tourism Law that satisfy the criteria of a residential unit, but which are intended for use as tourist accommodation. However, the Law will apply if the unit of accommodation is used solely as a place of residence by an employee of the hotel, club or residential home.

⁹ For full definition see Article 2 of the RTL.

¹⁰ Security of Tenure Law – Report of the Working Party, P.257/1998 p.11.

3. Article 3 – Agreements to which this Law applies

These Articles deal with the type of residential tenancy agreements that the RTL applies to.

- (a) Article 3(1) applies the RTL to all such agreements made after implementation of the RTL and those which, though made before implementation, are varied or renewed after the RTL's implementation.

This means that, although the RTL is not retrospective the provisions of Article 4 and Schedules 1 and 2, and also all the remedies in the RTL available to both parties will apply to any residential tenancy agreements created **before** the RTL came into force, **if** the agreement is varied or renewed **after** the RTL comes into force. For example, if a landlord agreed a tenancy agreement before the RTL came into force with a tenant and that agreement satisfies the criteria of the RTL, and he or she then includes a new term into the tenancy agreement **after** the RTL comes into force, the landlord will have “varied” the agreement. As a result, the tenancy agreement will fall under the RTL and the new agreement will have to comply with the terms of the RTL. Any terms of the former agreement that are not in compliance with the RTL will become void once the former agreement is varied.

Once the RTL has come into force, any tenancy agreement made before the RTL came into force and that is allowed to continue, without express agreement, after its termination date has passed, will not fall under the RTL until such time as it is varied or renewed.

- (b) Article 3(3) states that a residential tenancy agreement can be “partly or wholly implied, or partly or wholly oral”.

These provisions mean that an oral or implied agreement can be reached to enter into a residential tenancy agreement, and that agreement is still valid until such time as the landlord provides the tenant with a copy of the written and signed agreement as required by Articles 4 and 19. Until such time, the tenant can rely on the oral or implied agreement and seek the protection of the RTL if necessary¹¹.

- (c) Article 3(3) permits the parties to include additional provisions to those required by the RTL in a residential tenancy agreement, so long as nothing in the agreement contravenes the RTL. For example, a clause stating that the RTL did not apply to the agreement would be in contravention of the RTL.

- (d) Article 3(4) makes it clear that the RTL does not apply to agreements for the sale or purchase of a residential unit when the tenant is a party to that agreement; to agreements for a residence contract in either residential or nursing home accommodation (Article 2) nor to agreements for board or lodging or short lets.

¹¹ For example, if the premises become uninhabitable, the tenant could seek relief using Article 9 of the RTL, if appropriate.

4. Article 4 – Essential provisions

- (a) Article 4(1) states that the agreement must be in writing and signed by both parties (see C3(b)). Any variations to the agreement or renewals must also be in writing. *These provisions meet with the proposals of the Working Party.*
- (b) The provisions of Schedules 1 and 2 provide a clear framework of the essential information required by the RTL to be recorded in a residential tenancy agreement. The framework that is established will be of important benefit to both landlords and tenants with regard to the structure and management of such agreements. The importance of these Schedules is emphasized, for Article 4(2) states that, even if the provisions of Schedule 2 are not included in the written agreement, they shall be taken to form part of it; and Article 8(3) gives the tenant a specific right to seek the assistance of the Court if the details of Schedule 1 are not included.
- (c) The 1996 Working Party stated, at paragraph 2.1(e) of their Report, that the main terms of a tenancy agreement should be those set out in the Report of the 1990 Working Party on Landlord and Tenant. The Working Party had suggested that such terms be prescribed by Regulation, but the RTL is drafted in such a way that the majority of the provisions proposed by the 1990 Working Party are included in the Law itself in Schedules 1 and 2.

Schedule 1: What an agreement **must** specify:

- name and business address of the landlord *or* name of landlord and name and business address of the managing agent;
- definition of the property comprising the residential unit;
- length of the term of the agreement;
- provisions on payment of rent; deposit and rates;
- provision of a signed inventory of landlord's movables.

(d) Schedule 2: Provisions that an agreement **must** contain:

- allowing for a tenant to remove his own fixtures subject to making good any damage caused in so doing;
- allowing for the landlord's consent not to be unreasonably withheld in circumstances where it is required;
- tenants not to be required to purchase any fixtures or fittings or pay any premium or key money in respect of the residential unit.

As a result of comments received, the version of the RTL that was consulted upon has been changed so that the business address of the landlord is no longer required in cases where the landlord has appointed a managing agent to deal with the property. This retains the landlord's privacy.

It is important to note that other issues that would normally be addressed in residential tenancy agreements are not included in the RTL. This is because the RTL is intended to provide a framework of essential provisions whilst allowing the parties to retain their freedom to negotiate upon other matters such as, for example, insurance of the premises; rent rebate provisions; sub-

letting and assignments of the tenancy agreement; repairs and parking arrangements.

The parties to a residential tenancy agreement are free to include a term in the agreement that requires the landlord to give his or her consent before a tenant can do something affecting the premises. Paragraph 2 of Schedule 2 means that the landlord cannot unreasonably withhold that consent.

- (e) Article 23 gives the Minister an Order-making power to introduce certain extra provisions into the RTL. The version of the RTL that was consulted upon had no provision for the Minister to make Orders. The issues now listed in Article 23(2) as being matters suitable for addressing by the making of an Order were previously subject to the need for a Regulation agreed by the States. However, on further consideration, it is felt that an Order-making power is more appropriate to deal with these issues.

The issues covered in Article 23 include provisions relating to:

- the completion of reports about the condition of the property prior to a tenancy commencing or terminating;
- the provision of information or documentation to the tenant prior to commencement of a tenancy;
- the maximum charge for the preparation of a tenancy agreement;
- the service; contents and form of any notices to be served other than court documents;
- provision of a standard form of tenancy agreement;
- the status of and rights relating to –
 - (a) disposal of fixtures and fittings, and
 - (b) tenants' movables left in a residential unit once the tenant has departed;
- supply of services or imposing limits on charges for the supply of those services;
- requiring fees to be paid under the law and the amount and payment of such fees.

Issues raised during consultation included proposals that maximum charges be introduced for the preparation of agreements, and for checks on charges made for the supply of services. Article 23 will enable the Minister to make Orders relating to such matters. Article 23(2)(f) refers to the possibility that the Minister can make an Order relating to the service and content of notices, other than court documentation, under the RTL. For example, there is at present no specific form that the notice to quit from a landlord to a tenant should take. Article 23(2)(f) would enable the Minister to specify the form a Notice to Quit should take.

(f) Standard form of tenancy agreement

As advised above, attention has been paid, when drafting the RTL, to the desire to introduce a minimum of bureaucracy into the framework of obligations and responsibilities to be placed on both landlords and tenants. The provisions deal with the fundamental aspects of the landlord and tenant relationship whilst still allowing the parties freedom to negotiate their own terms.

The 1990 Working Party proposed that a standard tenancy agreement, written in English, should be made widely available at low cost, as it considered that the legal expenses involved had previously acted as a deterrent to the preparation of proper tenancy agreements between landlords and tenants¹². *The provisions of Schedules 1 and 2, together with the notice provisions in Articles 6 and 7 of the RTL, effectively provide the basis for such a standard agreement.*

It is believed that many landlords already use the Standard Form of Written Contract for Exemption from Rent Control (“the Standard Form Agreement”) issued under the terms of the Dwelling Houses (Rent Control) (Standard Tenancy Agreement) (Jersey) Regulations 1993. If used by the parties it exempts them from the provisions of the Dwelling Houses (Rent Control) (Jersey) Law 1946 which relates to the rent control tribunal.

The Standard Form Agreement is very comprehensive and includes the majority of the provisions in Schedules 1 and 2 of the RTL, as well as some additional terms favoured by the 1990 Working Party relating to – insurance; fixtures, fittings and contents; repairs; consent on sub-letting or assignment of a tenancy; restrictive clauses, e.g. “No children”; and a “wind and watertight” requirement. In addition, the agreement also includes additional covenants relating, for example, to the lopping of trees; ownership of pets; structural alteration of premises and the leaving of derelict vehicles, etc.

The Standard Form Agreement is already essentially compliant with the requirements of the RTL, although some revisions, in particular in relation to the notice period provisions, will be necessary in order to ensure compliance with the RTL when it comes into force.

Therefore, it is proposed to present Draft Regulations to the States, which would come into force at the same time as the RTL, to introduce the necessary amendments to the Standard Form Agreement to ensure compliance with the RTL. Any of these Standard Form Agreements in force prior to the implementation of the RTL will continue as before. However, as with any other residential tenancy agreement, any variation or renewal agreed after the RTL comes into force will result in the agreement becoming subject to the terms of the RTL¹³.

- (g) There are no current plans to introduce a further standard form of tenancy agreement under the RTL, nor to adopt the Standard Form Agreement as that to be used in connection with the RTL, using the Order-making power in Article 23(2)(g). It is proposed that consideration be given to either possibility, if appropriate, at some point after the implementation of the RTL.

¹² Security of Tenure Law – Report of the Working Party, P.257/1998 p.27.

¹³ See C3.

- (h) The tenancy agreement currently used by the Housing Department for States tenants occupying States rental accommodation managed by the Department is already essentially compliant with the terms of the RTL. However, the Department is already in the process of developing a new Tenancy Agreement, and this will incorporate the provisions of the new RTL in respect of notice periods¹⁴.

The Housing Trusts have also been consulted and they have not raised any objections to the requirements of the RTL.

5. Articles 6 and 7 – Termination of Periodic Residential Tenancies

- (a) There will be no requirement for notice to be given by either party to a residential tenancy agreement for a period of fixed duration to which the RTL applies.

A “fixed term tenancy”¹⁵ is one entered into by both parties with no expectation of it lasting any longer than the initial agreed period. The RTL introduces no change with regard to the notice required to be given in such circumstances, as there is currently no need to give notice in the case of “fixed term tenancies”.

However, although the notice provisions of the RTL will not apply to fixed term residential tenancy agreements falling under the Law, all other provisions of the RTL **will** be applicable to such agreements.

- (b) The RTL introduces **new notice periods of three months from landlord to tenant and one month from tenant to landlord** for all periodic tenancies to which the RTL applies.

A “periodic tenancy” is one which is for an indefinite period but which can be terminated by a period of notice. The word “periodic” refers to the recurrent interval on the basis of which the tenancy runs, e.g. a “weekly tenancy” is one where rent is payable weekly; a “monthly tenancy” where rent is payable monthly, and so on. Both parties expect such periodic tenancies to continue “rolling over” until notice is given so a periodic tenancy can last for years.

- (c) It should be noted that any fixed term residential tenancy agreement made after the RTL comes into effect, and that continues after the due date of its expiry, will become a periodic tenancy based on the “recurrent interval” period and the notice provisions of the RTL will start to apply¹⁶.
- (d) In order to give clarity and certainty to both landlords and tenants when entering into periodic residential tenancy agreements, the provisions of the RTL adopt a “flat” policy towards notice periods, i.e. notice periods are fixed without regard to the length of the tenancy; its recurrent interval, or the type and size of the property.

¹⁴ States tenants need take no action.

¹⁵ The wording “specified term” is used in the RTL to describe fixed-term tenancies.

¹⁶ For example, an agreement for a residential tenancy for a fixed term of 3 years with rent due on a weekly basis was entered into after the commencement of the RTL. Three years have passed, but the tenancy is continuing with rent still being paid weekly. The fixed-term tenancy has ended, but the tenancy agreement has now become a weekly periodic tenancy and 3 months’ notice will be required from the landlord to the tenant.

The Working Party had proposed that landlords be required to give a new fixed period of notice of 6 months to all tenants who had been in their accommodation for a minimum of 3 months, and that tenants be required to give their landlords a period of notice based on the length of their tenancy, but with a maximum requirement for 3 months' notice¹⁷.

- (e) It is important to recall that the Working Party was considering the issue of notice periods at the time of the public protest in response to the threatened eviction cases at the La Folie and Troy Estates. At the time, the lack of available public knowledge about eviction proceedings was a contributory factor to the distress caused, and the proposal for longer notice periods was considered a step towards greater security of tenure for tenants. However, the additional clarity surrounding eviction processes that is now provided by Articles 14 and 15 of the RTL, including details of the issues to be considered in orders for stays of eviction, should afford a greater sense of security of tenure than previously.
- (f) The “flat policy” approach gives clarity to both landlords and tenants as to the minimum period of notice required of either. The difference between the minimum notice periods required of landlords and tenants proposed by the Working Party was felt to be onerous on landlords, and unnecessarily complicated for tenants. Consideration was given to introducing a different sliding scale of notice periods to those proposed by the Working Party, and further research was carried out into the periods adopted in other jurisdictions¹⁸. The current proposals resulted, and were supported by a majority of those who answered the relevant questions in the consultation process. However, other views were expressed during the consultation process, with some respondents saying that 3 months was too long a period of notice for landlord to tenant, and others that notice periods should be the same for both landlord and tenant.
- (g) In recognition of these comments, the version of the RTL that was consulted upon has been revised so that Articles 6(3)(e) and 7(3)(f) state that the Minister can, by Order, prescribe a different period of notice from the 3 months for landlords or one month for tenants currently included in the RTL.

In addition, the Minister can, by Order under Articles 6(5) or 7(4), exclude “particular classes of cases” from the notice periods. For example, it may in future be decided that individuals living in certain types of lodgings should be granted security of tenure under the RTL, but not all, so an exclusion from the RTL would be required. Currently the notice provisions apply, even in the case of short lets, but they could, for example, be exempted by the Minister in future using this Order-making power.

- (h) Moreover, the RTL does give additional protection to both landlord and tenant to end a residential tenancy agreement without giving the 3 months' or one month's notice required by the RTL if either party is in breach of its terms

¹⁷ Security of Tenure Law – Report of the Working Party, P.257/ 1998 (details of the Working Party's proposals are contained in Appendix 1, paragraphs 2.1(h)–(i)).

¹⁸ Research has been carried out in England, Scotland, Guernsey, France, America, Australia, New Zealand and Canada during the development of the RTL.

(see C8, C9 and C10). In addition, Article 20 does allow the parties to end a tenancy agreement by mutual agreement.

- (i) Some concern was raised during consultation that greater clarity as to what would happen at the end of a fixed-term tenancy was needed. However, no additional provisions have been included as it should be clear when the agreement is entered into that a fixed-term tenancy is for a specified duration. Either party wishing to extend a fixed-term tenancy is free to try and negotiate a new agreement with the other party, and in cases of breach or eviction Articles 10 to 15 of the RTL now add clear guidelines as to the processes and considerations involved.
- (j) The proposed change in notice period provisions caused some respondents to the consultation to make suggestions and comments about the amount of deposit that could be asked for. Some landlords suggested that a “damage deposit” as well as a rental deposit might be necessary, in recognition of the fact that if damage has been incurred the rental deposit is often insufficient to recoup reasonable costs. These comments have been noted, but left over for further consideration until such time as a Proposition on a Tenants’ Deposit Scheme is prepared.
- (k) There is a requirement in both Articles 6 and 7 that a notice to terminate has to be signed by the person giving it, whether landlord or tenant. (Someone acting on behalf of a landlord, such as a managing agent, may sign for the landlord.) The provision has been included in order to clarify that such notice needs to be signed. The essential factor, so far as the RTL is concerned, is that there be a written record of the giving of notice that has been signed. Whether an electronic communication of the notice with a signature attached sent by text or e-mail is acceptable will be a matter left for the agreement of the parties.

The RTL provides that notice to terminate will be sent by the landlord to the tenant. This is a new practice for landlords as Article 1 of the 1919 Law states that the owner of a property “shall have the right to have served on the tenant, through the Viscount’s Department, a prior notice to retake”. (Under the 1919 Law, a tenant can notify a landlord of their intention to vacate, either personally or by notice served via the Viscount’s Department.)

6. Article 8 – Termination if service element fails, agreement not in writing, details missing or opportunity to read denied

- (a) Article 8 deals with a number of matters, including situations where the residential tenancy agreement includes a service element and that service element can no longer be provided. For example, if a tenant is removed from his job it may not be fair to expect the landlord to allow him to stay in his accommodation or, if a tenant was to be unable to carry out his or her employment which related to his accommodation, it may not be reasonable for the landlord to serve the tenant with notice immediately. In either case the Court, upon the application of either party, can consider the matter and either vary or terminate the agreement if, in all the circumstances, it considers it just to do so.
- (b) Article 8 also gives the Court, upon application by the tenant, powers to make an Order varying or terminating the agreement, if it considers it just to do so; where the residential tenancy agreement is not in writing, is not signed by or on behalf of the parties to the agreement, or fails to contain the details

specified in Schedule 1 of the RTL or where a tenant has not been allowed 24 hours to read a proposed tenancy agreement.

As a result of the consultation process, the provision allowing for a 24 hour notice period before signing has been changed to refer to “a working day”. (Article 8(4)). This will enable a prospective tenant to get professional advice if needed before signing the agreement. As a result of another suggestion, the RTL has been revised to include a definition of a “working day” (Article 8(6)).

7. Article 9 – Premises uninhabitable

The 1990 Working Party had suggested that “minimum conditions of habitation” should be “laid down in the law over and above the wind and watertight” requirement.¹⁹ The RTL does not refer to “minimum conditions of habitation”, as this is felt to be a matter better dealt with under Planning and Public Health legislation. However, the RTL does grant protections to any tenant where his or her residential unit becomes uninhabitable through any event other than his or her own “malicious act”. In such circumstances, Article 9(a) states the tenant will not be liable for rent and Article 9(b) allows for the Court to vary or terminate the agreement, upon application of either the landlord or tenant, if in all the circumstances it considers it just to do so²⁰.

8. Article 10 – Breaches by Landlord

A landlord has a requirement to give a tenant quiet enjoyment of the residential unit. Article 10 outlines for tenants what “the right to quiet enjoyment” comprises. “Quiet enjoyment” includes not doing anything that would prevent a tenant from occupying the whole or any part of the residential unit or enjoying use of that unit, so long as the tenant is not acting in breach of the residential tenancy agreement. Any breach of this requirement by the landlord is considered as a breach of the agreement, and the tenant can apply to the Court for assistance under Article 10(4). In addition, anyone contravening this provision of the Law will be guilty of an offence and liable to a fine. *These provisions meet the recommendations of the Working Party.*

9. Article 11 – Eviction where failure to give possession

Articles 11 – 15 are the Articles dealing with the issues raised by the Working Party on Security of Tenure. Paragraphs (9) – (15) highlight how the legal position and eviction processes involved have been clarified for the benefit of all parties and clearly recorded in the RTL.

Article 11 makes provision for a landlord to go to the Court and seek an eviction order in circumstances where the residential tenancy agreement has ended because the termination date in the agreement has been reached, but the tenant has not vacated the premises. These situations are not dependent on a breach taking place. They will arise either when a fixed-term tenancy has reached its agreed termination date, or when the landlord has served the correct notice on the tenant but the tenant has not vacated the residential unit.

¹⁹ Security of Tenure Law – Report of the Working Party, P.257/1998 p.29.

²⁰ Although the RTL does not make any reference to insurance requirements, it is normal practice for a landlord to insure his property against risks that might affect its habitable state. Such insurance protection would normally allow for loss of rental income.

10. Article 12 – Termination and eviction where failure to rectify breach

In contrast to Article 11, this Article introduces a new power for a landlord to serve notice on a tenant who has breached the residential tenancy agreement, asking him or her to cease the conduct that has caused the breach or to take reasonable steps to rectify it within 7 days. If the tenant has not complied within 7 days, the landlord can ask the Court’s assistance and the Court can terminate the agreement and order the eviction of the tenant if the breach is sufficiently serious to warrant such action. *This provision meets the recommendation of the Working Party.*

Currently, in such circumstances, unless a landlord and tenant have included such a clause in their agreement, the only option that a landlord has is to start proceedings to terminate the agreement. This new provision effectively puts the tenant on notice that he or she might be in danger of being evicted.

If the Court does make an eviction order, it will need to take into account the provisions of Article 14 relating to stays of eviction, which are discussed at C12 below.

11. Article 13 – Execution of order for eviction

The RTL provides that eviction orders made by the Court will be served by the Viscount’s Department, as is currently the case. However, the provisions of the RTL clearly outline the Viscount’s powers in such circumstances, including the manner in which any movable property left by the tenant on the property will be dealt with. This provision adds additional clarity to the position as described in the 1946 legislation. *This provision meets the recommendation of the Working Party.*

12. Article 14 – Stay of eviction

Article 14 enables the Court to stay or postpone the implementation of an eviction order of its own accord or upon application by either the landlord or the tenant. If a stay is ordered, the Court has the power to vary the rent payable or other conditions of the tenancy agreement as it considers just in all the circumstances. However, the Court cannot impose any condition that would be void or in breach of the RTL, e.g. it could not vary a tenancy agreement by ordering the tenant to purchase any fixtures and fittings, as this would be in contravention of Schedule 2 of the RTL.

13. Article 15 – Matters to be considered in deciding on stay

The Working Party made it very clear that any new Law should provide tenants with a better understanding of the sort of issues that the Court might take into account when ordering an eviction. Such detail would also “assist in the provision of legal advice in advance of proceedings”²¹. *A number of recommendations were made, all of which have been included in Article 15.*

The Working Party also made proposals in relation to the publication of judgments relating to tenancy matters. These proposals have not been adopted, but it is felt that the provisions of Articles 11 – 16 of the RTL clearly set out the processes that will be followed when an eviction order is applied for.

In reality, the recommendations are all of the type that the Court currently takes into consideration when dealing with eviction orders, but individuals are not necessarily aware of these grounds as they are not published. By recording the considerations in this way in the RTL, landlords, tenants and their legal advisers will have greater

²¹ Security of Tenure Law – Report of the Working Party, P.257/1998 p.10.

certainty as to their position in law, and as to what might happen in any court proceedings. *This provision meets the recommendation of the Working Party.*

Indeed, the RTL has gone further than the Working Party proposed, because Article 15 divides the list of recommendations into those matters which the Court **shall** consider before deciding whether to exercise its powers in Article 15(1) and, in Article 15(2), those matters that the Court **may** consider when considering an order to stay the execution of an eviction order.

Those matters that the Court **shall** consider include:

- whether any rent is outstanding;
- whether either party has breached any provisions of the tenancy agreement;
- whether they have continued or repeated the breach or taken reasonable steps to remedy the breach;
- if a stay were to be ordered, where the balance of hardship would fall as between landlord and tenant.

The issues that **may** be considered focus mainly on the practical and financial position of the parties were an eviction to be immediate, and also on the behaviour of the parties generally during the tenancy agreement.

Articles 8(1) and 8(2) referred to in C6 relate to the situations where an employee lives on the landlord's property.

14. Article 16 – Jurisdiction

Article 16 grants the Court exclusive jurisdiction of all matters relating to a residential tenancy or residential tenancy agreement.

The Court is also to be free of any financial limitations when dealing with such cases, and has authority to make an order as to arrears of rent, repayment of rent or repayment of any deposit, or for damages for any breach of the relevant residential tenancy agreement, or to generally adjust the rights between the parties to the tenancy agreement. *This provision meets the recommendation of the Working Party.*

This provision will simplify current processes whereby the cancellation of a tenancy agreement with an annual rental of more than £15,000 has to be dealt with by the Royal Court, which then refers the case back to the Petty Debts Court, where all remaining matters relating to the eviction are dealt with. This provision has been introduced in recognition of the fact that many tenancy agreements incur annual rentals in excess of £15,000 p.a., and that financial claims for arrears or damages can readily mount.

15. Article 17 – Appeals

Article 17 introduces a new right of appeal to the Royal Court by a party involved in proceedings concerning a residential tenancy agreement before the Court. Leave to appeal can be granted by either the Court or the Royal Court against any decision or order of the Court. If an appeal is made concerning an eviction order, the Royal Court can stay execution of the eviction pending resolution of the appeal. *This provision meets the recommendations of the Working Party.*

16. Article 18 – Housing Law and other enactments

Article 18 makes it clear that the provisions of the RTL are not intended to displace the requirements of certain other laws relating to housing, planning and other matters.

17. Article 19 – Documents to be provided to tenant

Article 19(1) requires a landlord to provide a tenant with a signed copy of a residential tenancy agreement and a signed copy of any varied or renewed agreement. *This provision meets the recommendation of the Working Party.*

Article 19(2) also requires the landlord to provide the tenant with a receipt for any deposit paid which should be provided as soon as possible after payment. *This provision meets the recommendation of the Working Party.*

Article 19(3) makes it an offence for anyone to fail to comply.

Articles 19 of the RTL has been revised to take account of comments received during the consultation period. The original proposal was for a landlord to be under an obligation to provide a tenant with a statement at least once every 6 months during the duration of the residential tenancy, showing the amounts and dates of payment of any monies paid to the credit of the landlord. Some respondents to the consultation felt this was an unnecessarily bureaucratic provision that might be difficult to put into practice, dependent on the way in which landlords record receipt of monies. Also, it was felt to be potentially unfair on some landlords who do not employ management agents or have “office-like” facilities for photocopying and so forth. It was also stated that the majority of tenants pay their rent by standing order and payments can be readily identified from the parties’ bank statements as a result. This was considered to be a change in practice from the mid-1990s when the Working Party had considered the issues.

It is acknowledged to be normal practice in the commercial world now to provide regular statements to the payee when regular payments are made, e.g. the Jersey Electricity Company sends out quarterly statements to all its customers who pay by direct debit showing the payments received by them. However, on balance it has been decided to remove this requirement from the RTL.

18. Article 20 – Termination by Agreement

Article 20 confirms that the parties are at liberty to agree to terminate a residential tenancy agreement by agreement of their own at any time. This is an exception to the general contracting out prohibition contained in Article 21.

19. Article 21 – Contracting out prohibited

Article 21 makes it an offence for anyone to try to enter into an agreement to avoid the provisions of the RTL.

20. Article 22 – General provisions as to offences

Article 22 makes those acting in certain capacities for limited liability partnerships or bodies corporate liable under the terms of the RTL for acts that they commit. Any such acts which are in breach of the RTL will be regarded as an offence.

21. Article 23 – Orders

This new Article has been discussed at C4.

22. Article 24 – Regulations

- (a) Article 24 enables the States to make Regulations for the purpose of carrying the RTL into effect. It also allows for offences to be punishable by a fine not exceeding level 3 on the standard scale (£2,000 at current scale rates).

The Minister for Housing advised, on 10th October 2008 when the Consultation Findings Report was released, that he thought it likely that he would be bringing forward proposals for a Tenants' Deposit Scheme if the RTL was debated and adopted. Article 24(a) to (e) deals with this issue specifically.

The issue of a Tenants' Deposit Scheme attracted considerable comment during the consultation on the RTL. Some landlords felt that a scheme was unnecessary and would be overly bureaucratic, whilst there was evidence from organisations such as the Citizens Advice Bureau and the Consumer Council and Jersey Rights Association that many tenants do encounter problems when trying to obtain the return of their deposit monies. However, others felt that as long as a scheme was fair and not overly bureaucratic it would be acceptable.

Additional research was carried out through questions posed in the 2008 Jersey Annual Social Survey. The results did not support the view that the issue was of big concern, with only 5% of people reporting an issue with the return of a deposit in the last 5 years²². However, on balance it is deemed appropriate that proposals for a scheme be brought to the States for a debate to establish a deposit scheme by means of a Regulation.

Although the current mediation facilities offered in the Petty Debts Court were commented on favourably by respondents, there was a view that an independent scheme, with the possibility of an arbitrated settlement if mediation were to fail, was favoured. Respondents felt it important that any scheme should not be publicly financed.

Preparations are ongoing with a view to a Proposition for Regulations to establish a Tenants' Deposit Scheme being brought to the States upon implementation of the RTL, if the RTL is adopted. The present intention is that the scheme will be compulsory, managed by a third party and funded through interest received on deposits retained in the scheme, albeit this funding proposal may need further consideration in the current economic downturn.

- 23. Articles 25 and 26** – These Articles include provisions dealing with amendments to enactments and citation and commencement of the RTL. Schedule 3 refers to the amendments that will be necessary to the 1919 and 1946 legislation so that it is clear that those Laws will now remain in force only so far as they relate to premises or tenancies not affected by the RTL.

²² Jersey Annual Social Survey 2008 p.25.

Financial and manpower implications

Financial and manpower implications for the States in connection with the RTL are expected to be minimal, as this Law will introduce a framework for landlord and tenant relations without requiring any additional States administrative function. The Housing Department has already reviewed its tenancy agreements to ensure that compliance with the RTL will be possible, and minor amendments will be needed to other Housing Department forms and to the Standard Tenancy Agreement issued under the terms of the Dwelling Houses (Rent Control) (Standard Tenancy Agreement) (Jersey) Regulations 1993. The Housing Department has already reviewed its tenancy agreements to ensure that compliance with the RTL will be possible.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 19th May 2009 the Minister for Housing made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Housing the provisions of the Draft Residential Tenancy (Jersey) Law 200- are compatible with the Convention Rights.

Working Party on Security of Tenure

P.257/1998

Summary of Proposals

- Repeal of the existing 1919 and 1946 statutes in relation to tenancies.
- A new fixed period of notice of 6 months for all tenants.
- A requirement that all tenants be given a written statement of the main terms of their tenancy.
- The renaming of the Petty Debts Court, with all issues relating to eviction and payment of rental to be heard by a separate division of the Magistrate's Court.
- Creation of a criminal offence and a tort (a civil wrong) to unlawfully exclude a tenant from premises that he is entitled to occupy.
- New periods of notice that tenants are required to give to landlords.
- Amended legal procedures for evictions.
- A detailed statement of the factors which the Court may take into account when considering whether a stay from eviction should be awarded.
- Creation of a right of appeal to the Royal Court.

APPENDIX 2 TO REPORT

Summary of changes made to the draft Law in response to comments received during consultation and further discussion

(i) Article 4(1) and Schedules 1 and 2

Paragraph 4 of Schedule 1 has been changed so that the business address of the landlord is not required unless there is no managing agent in which case the landlord's business address is required under paragraph 5.

Paragraphs 1 and 2 referred to in Schedule 2 have been deleted as the provisions of the Rates (Jersey) Law 2005 establish criteria with regard to payment of the foncier and occupiers' rates.

(ii) Articles 6 and 7

Articles 6(3)(e) and 7(3)(f) state that the Minister can, by Order, prescribe a different period of notice from the 3 months for landlords or one month for tenants currently included in the RTL.

In addition the Minister can, by Order under Articles 6(5) or 7(4), exclude "particular classes of cases" from the notice periods.

(iii) Article 19

The requirement that a landlord be under an obligation to provide a tenant with a statement at least once every 6 months during the duration of the residential tenancy showing the amounts and dates of payment of any monies paid to the credit of the landlord has been removed.

(iv) Article 23

Order-making powers are introduced to deal with most of the issues previously listed as to be dealt with by Regulation.

Explanatory Note

The object of the proposed Law is to set out a number of principles relating to residential tenancy agreements in Jersey and to confer jurisdiction on the Petty Debts Court to hear residential tenancy disputes and to make orders to resolve them.

Part 1 sets out how the proposed Law is to be interpreted (*Article 1*) and specifies that it is to apply to self-contained residential premises (*Article 2*).

Article 3 applies the Law to –

- (a) residential tenancy agreements of 9 years or less in duration, or without a specified term, made after the Article comes into force; and
- (b) existing residential tenancy agreements of 9 years or less in duration, or without a specified term, that are varied or renewed after the Article comes into force.

Article 3 makes it clear that the Law does not apply to sales, agreements for residential or nursing home accommodation, agreements for board or lodging, short lets, or indeed the mere tacit reconduction (i.e. continuation without express agreement) of a lease that started before *Article 3* came into force.

Part 2 deals with the content of residential tenancy agreements.

Article 4 requires a residential tenancy agreement to be in writing and signed by the landlord and tenant, to set out the details mentioned in *Schedule 1* and to contain the provisions set out in *Schedule 2*.

Article 5 makes it clear that a residential tenancy agreement can contain other terms.

Part 3 deals with the termination of residential tenancies that are tenancies from week to week (or any other recurrent period) when the tenancies are not subject to any specific term.

Article 6 requires a landlord to give written notice to a tenant in terminating such a periodic tenancy.

Article 7 requires a tenant to give written notice to a landlord in terminating such a periodic tenancy.

Part 4 sets out remedies.

Article 8 allows the Petty Debts Court to make orders to vary or terminate a residential tenancy agreement if –

- (a) the agreement (or a related agreement) includes provision for services or for other matters that are not part of the relevant residential tenancy, but the provision cannot be implemented; or
- (b) certain formalities have not been followed.

Under *Article 9* if residential premises become uninhabitable through no deliberate act of the tenant, the tenant does not have to pay rent and the Court may vary or terminate the agreement.

Article 10 requires a landlord to give the tenant quiet enjoyment of premises.

Under *Article 11*, the Petty Debts Court may order the eviction of a tenant who fails to leave when a residential tenancy comes to an end.

Under *Article 12*, the Petty Debts Court may, if a tenant fails to remedy a breach of a residential tenancy agreement and if the Court thinks the matter serious enough, order the termination of the agreement and the eviction of the tenant.

Article 13 sets out how an order for eviction is given effect. The Viscount puts the landlord back in possession of the premises and may remove the tenant's movable property and dispose of it by sale or otherwise if the tenant does not claim it.

Part 5 deals with proceedings under the proposed Law in the Petty Debts Court.

Under *Article 14*, the Petty Debts Court may stay an eviction order, and impose conditions on the stay.

Article 15 sets out the matters that the Petty Debts Court must (and the matters that it may) take into account in deciding whether to stay an eviction. Broadly speaking, those matters are the behaviour of the landlord and of the tenant as well as their circumstances and the state of the premises. Note that *cause* (used in this Article and Article 16) in Jersey law corresponds broadly to contractual consideration under the common law.

Article 16 gives the Petty Debts Court exclusive original jurisdiction in all matters relating to any residential tenancy to which the proposed Law applies, and makes it clear that the Court has power to adjust the rights between parties.

Article 17 provides for appeals to the Royal Court.

Article 18 makes it clear that the proposed Law is not intended to displace the requirements of certain other Laws relating to housing, planning and other matters.

Part 6 contains miscellaneous provisions.

Article 19 requires a landlord to give a tenant a copy of a residential tenancy agreement, as well as copies of updates of it. A landlord must also give a receipt for a tenancy deposit.

Article 20 makes it clear that the proposed Law is not intended to prevent the parties to a residential tenancy agreement from agreeing to terminate it.

Article 21 prohibits attempts to prevent the Law from applying to a residential tenancy agreement.

Article 22 is a general provision against assisting in the commission of an offence against the proposed Law.

Article 23 allows the Minister for Housing to make Orders in aid of the proposed Law, including Orders dealing with exemptions from the Law, and with reports, documentation, charges, fittings and fixtures and tenants' movable property.

Article 24 allows the States to make Regulations in aid of the proposed Law, including Regulations dealing with charges and deposits (including the possibility of a tenancy deposit scheme), Regulations amending Part 1 or Schedule 1 or 2 of the Law, and Regulations making savings and transitional provisions.

Article 25 and *Schedule 3* amend consequentially 2 other Laws about tenancies, so that they will no longer apply to residential tenancies that fall within the scope of this Law.

Article 26 sets out the name of the Law and when it is to come into force.

Note

The proposed Law refers to certain penalties. Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, level 1 is £50, level 2 is £500, level 3 is £2,000 and level 4 is £5,000.

Article 13 of the Interpretation (Jersey) Law 1954 has the effect that –

- (a) where the penalty for an offence is expressed as a specified term of imprisonment or specified fine, a penalty not exceeding the specified term or amount may be imposed for the offence;
- (b) where no amount or level on the standard scale is specified for a fine, the fine is to be construed as a fine of an unlimited amount;
- (b) where the penalty for an offence is expressed as a term of imprisonment and a fine, either or both of the term of imprisonment and the fine may be imposed for the offence.



Jersey

DRAFT RESIDENTIAL TENANCY (JERSEY) LAW 200-

Arrangement

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Jersey

DRAFT RESIDENTIAL TENANCY (JERSEY) LAW 200-

A **LAW** to make more detailed provision about residential tenancies of 9 years or less; and for other purposes.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

INTERPRETATION AND APPLICATION

1 Interpretation

(1) In this Law, unless the context otherwise requires –

“breach” includes failure to comply;

“Court” means the Petty Debts Court;

“landlord” means, in relation to a residential unit, residential tenancy or residential tenancy agreement, the person who grants the right to occupy the residential unit that is the subject of the residential tenancy under the residential tenancy agreement;

“Minister” means the Minister for Housing;

“period” means, in relation to a residential tenancy, the recurrent interval (if any) on the basis of which the tenancy runs (for example a week in relation to a residential tenancy that is weekly or runs from week to week);

“rent” means a sum payable by a tenant under a residential tenancy agreement in respect of a period, or the term, of the residential tenancy under the agreement;

“residential tenancy” means the right to occupy a residential unit under a residential tenancy agreement;

“residential tenancy agreement” means an agreement –

- (a) for the exclusive occupation, by one or more natural persons who are party to the agreement, of a residential unit as a dwelling;
- (b) for value; and
- (c) for a specified term of 9 years or less, or without a specified term;

“residential unit” has the meaning set out in Article 2;

“tenant” means, in relation to a residential unit, residential tenancy or residential tenancy agreement, the person who has the right to occupy the residential unit that is the subject of the residential tenancy under the residential tenancy agreement.

- (2) A reference in this Law to a landlord includes –
 - (a) the landlord’s heirs, executors, administrators and assigns; and
 - (b) a tenant who has granted the right to occupy a residential unit to a sub-tenant by an agreement that is for the purposes of this Law a residential tenancy agreement.
- (3) A reference in this Law to a tenant includes –
 - (a) the tenant’s heirs, executors, administrators and assigns; and
 - (b) a person who is the sub-tenant of a tenant because the tenant has granted to the person the right to occupy a residential unit by an agreement that is for the purposes of this Law a residential tenancy agreement.

2 Premises to which this Law applies

- (1) In this Law, “residential unit” means a self-contained dwelling, that is, a dwelling that has, for the exclusive use of the inhabitants of the dwelling, a minimum of all of the following, whether or not in separate rooms –
 - (a) a shower or bath (or other facility, no less convenient than those, in which a person may wash);
 - (b) a washbasin;
 - (c) a kitchen;
 - (d) a sleeping space; and
 - (e) a lavatory.
- (2) For the purposes of paragraph (1), the fact that a dwelling has (or is associated with the use of) a garden, a swimming pool, a parking space, a garage or other space or facility does not make the dwelling any less a residential unit.
- (3) For the purposes of paragraph (1), any of the following parts of premises is not a residential unit unless used solely as a place of residence by a person employed on the premises –

- (a) any part of a hotel;
- (b) any part of premises ordinarily used for holiday purposes;
- (c) any part of an educational institution, or of a hospital, hospice, nursing home, shelter, or residential home;
- (d) any part of a club offering sleeping accommodation to its members.

3 Agreements to which this Law applies

- (1) This Law applies only in respect of –
 - (a) residential tenancy agreements; and
 - (b) residential tenancies under residential tenancy agreements, being residential tenancy agreements that –
 - (i) are made after the commencement of this Article, or
 - (ii) though made before that commencement, are varied or renewed after that commencement.
- (2) The continuation of a residential tenancy, or of a residential tenancy agreement (either in a case where any specified term of the tenancy has expired or in a case where there is no specified term) by tacit reconduction shall not, for the purposes of this Law, constitute a making, variation, or renewal, of a residential tenancy agreement.
- (3) For the purposes of this Law, an agreement is no less a residential tenancy agreement just because –
 - (a) it is partly or wholly implied, or partly or wholly oral;
 - (b) it contains provisions that are additional to those required for the creation of a residential tenancy;
 - (c) it or another agreement purports to exclude or limit the operation of this Law; or
 - (d) it fails to comply with Article 4(1).
- (4) Despite paragraphs (2) and (3), this Law does not apply to a residential tenancy agreement –
 - (a) if the agreement has been made in good faith for the sale or purchase of a residential unit and the tenant is a party to that agreement;
 - (b) if the agreement is a residence contract for the occupation of a residential unit within any premises to which the Nursing and Residential Homes (Jersey) Law 1994¹ applies;
 - (c) if, under the agreement, the occupier of a residential unit occupies it only as a boarder, lodger or other licensee; or
 - (d) if the agreement is made in good faith for the purpose of giving a person a right to occupy a residential unit (not being premises ordinarily used for holiday purposes) for not more than 3 months for the purpose of a holiday.

PART 2

CONTENT OF AGREEMENTS

4 Essential provisions in agreements

- (1) A residential tenancy agreement, as made, varied or renewed, shall –
 - (a) be in writing;
 - (b) signed by or on behalf of the parties to the agreement;
 - (c) set out the details specified in Schedule 1 as that Schedule is in force at the date of the making, variation or renewal (as the case requires) of the agreement; and
 - (d) set out provisions to the effect of those specified in Schedule 2 as that Schedule is in force at that date.
- (2) The provisions specified in Schedule 2 (as that Schedule is in force at that date) shall be taken to form part of the agreement (as made, varied or renewed) even if the agreement fails to set them out or purports to limit or exclude their application to the agreement.
- (3) To the extent of any inconsistency between those provisions and the purported provisions of the agreement, the purported provisions shall be void.

5 Other provisions in agreements

The parties to a residential tenancy agreement are not prevented by Article 4 from including provisions in the agreement that are not inconsistent with the provisions set out in Schedule 2.

PART 3

TERMINATION OF PERIODIC TENANCIES

6 Periodic tenancy: requirement by landlord to quit

- (1) This Article applies to a residential tenancy under which the tenant occupies a residential unit on the basis of a recurrent period, either in a case where any specified term of the tenancy has expired or in a case where there is no specified term.
- (2) A landlord shall not, except by a requirement that is in accordance with this Article, require a tenant to quit the residential unit that the tenant has occupied under a residential tenancy to which they are both parties and to which this Article applies.
- (3) A requirement is in accordance with this Article if it is –
 - (a) in writing;
 - (b) signed by or on behalf of the landlord;
 - (c) in the case where the Minister has by Order prescribed a form for such a requirement, in such form;

- (d) served on the tenant; and
 - (e) so served at least 3 months (or, where Minister has by Order prescribed some other period, that other period instead) before it is to take effect.
- (4) A residential tenancy to which this Article applies shall terminate when a requirement that is in accordance with this Article takes effect.
- (5) For the avoidance of doubt, it is hereby declared that a period prescribed for the purposes of paragraph (3)(e) may be so prescribed generally or in relation to particular classes of cases (including differently in relation to different classes of cases).

7 Periodic tenancy: notice by tenant to terminate

- (1) This Article applies to a residential tenancy under which the tenant occupies a residential unit on the basis of a recurrent period, either in a case where any specified term of the tenancy has expired or in a case where there is no specified term.
- (2) A residential tenancy to which this Article applies shall terminate according to notice given by the tenant to the landlord if the notice is in accordance with this Article.
- (3) A notice is in accordance with this Article if it is –
- (a) notice by the tenant;
 - (b) notice that makes it clear that the tenant is terminating the tenancy;
 - (c) in writing;
 - (d) signed by or on behalf of the tenant;
 - (e) served on the landlord; and
 - (f) so served at least 1 month (or, where Minister has by Order prescribed some other period, that other period instead) before it is to take effect.
- (4) For the avoidance of doubt, it is hereby declared that a period prescribed for the purposes of paragraph (3)(f) may be so prescribed generally or in relation to particular classes of cases (including differently in relation to different classes of cases).

PART 4

REMEDIES

8 Termination if service element fails, agreement not in writing, details missing or opportunity to read denied

- (1) If a residential tenancy agreement contains provisions about –
- (a) the provision of labour or other services;
 - (b) employment;
 - (c) the letting of movables;

- (d) the letting of any immovable property for business purposes (other than any business purpose that is implicit in the letting or sub-letting of a residential unit for use simply as a dwelling); or
- (e) the letting or use of a garden, a swimming pool, a parking space, a garage or other space or facility,

or there is another agreement that purports to make fulfilment of any of those matters a term or condition of the residential tenancy agreement or purports to make the latter dependent on the fulfilment of any of those matters, and the matter becomes impossible to fulfil, the residential tenancy agreement shall not to be taken to have been frustrated or to be at an end just because of that impossibility.

- (2) However, in the case of such impossibility, the Court may on the application of a party to the residential tenancy agreement make an order varying or terminating the residential tenancy agreement if in all the circumstances the Court considers it just to do so.
- (3) If a residential tenancy agreement is not in writing, is not signed by or on behalf of the parties to the agreement or fails to contain the details specified in Schedule 1, the Court may, on application by the tenant, make an order varying or terminating the agreement if in all the circumstances the Court considers it just to do so.
- (4) A person who is to be (or is) the landlord under a residential tenancy agreement shall allow the person who is to be (or is) the tenant under the agreement at least one working day in which to read the agreement (or any variation or renewal of the agreement) before the person who is to be (or is) the tenant signs the agreement (or variation or renewal).
- (5) If the person who is to be (or is) the landlord does not do so, the Court may on application by the person who is to be (or is) the tenant make an order varying or terminating the agreement (or agreement as varied or as renewed) if in all the circumstances the Court considers it just to do so.
- (6) In this Article, “working day” means a day other than Christmas Day or Good Friday, and other than a Saturday, Sunday or bank holiday.

9 Premises uninhabitable

If a residential unit that is the subject of a residential tenancy agreement becomes uninhabitable through any event other than a malicious act of the tenant –

- (a) the tenant is not required to pay any rent or other amount payable under the agreement in respect of any time during which the residential unit is uninhabitable; and
- (b) the Court may, on the application of the landlord or tenant, make an order varying or terminating the agreement if in all the circumstances the Court considers it just to do so.

10 Breaches by landlord

- (1) A landlord shall not, without lawful reason, prevent a tenant from occupying the whole or any part of a residential unit that is the subject of

a residential tenancy agreement to which they are both parties, or otherwise interfere with the tenant's enjoyment of the residential unit, being enjoyment that is not inconsistent with the agreement.

- (2) A person who contravenes paragraph (1) shall be guilty of an offence and liable to a fine.
- (3) Any contravention of paragraph (1) shall, for the purposes of Article 16, be taken to be a breach of the residential tenancy agreement.
- (4) In the case of such a contravention, the Court may on application by the tenant make an order varying or terminating the agreement if in all the circumstances the Court considers it just to do so.

11 Eviction where failure to give vacant possession

The Court may, on application by a landlord under a residential tenancy agreement, order the eviction of the tenant if the Court is satisfied that the tenant has failed to give vacant possession of the residential unit to which the agreement applies and that the residential tenancy has terminated.

12 Termination and eviction where failure to rectify breach

- (1) Except in accordance with this Article, a breach by the tenant of a residential tenancy agreement shall not of itself cause, or give grounds for, the avoidance or termination of the agreement, notwithstanding any law or the agreement itself.
- (2) A landlord under a residential tenancy agreement may apply to the Court for an order for the termination of the agreement and the eviction of the tenant if –
 - (a) the tenant has breached one or more provisions of the agreement;
 - (b) the tenant has been served with notice to cease the conduct that constitutes the breach, or to take reasonable steps within 7 days after the service to rectify the breach, or to do both those things; and
 - (c) the tenant has failed to comply with the notice.
- (3) This Article does not depend for its operation on the service on the tenant of a notice to quit.
- (4) The Court may order the termination of the agreement and the eviction of the tenant if satisfied of the matters set out in paragraph (2)(a) to (c) and that the breach is sufficiently serious to warrant termination and eviction.

13 Execution of order for eviction

- (1) If the Court orders the eviction of a tenant under this Law and does not stay the execution of the order, the Viscount shall execute that order by going to the residential unit that is the subject of the order and putting the landlord in possession of the residential unit.

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- (2) In order to do that, the Viscount may exercise the same powers of entry in respect of the residential unit as he or she could if executing an order by the Court for distraint on movable property in the residential unit.
 - (3) If –
 - (a) the tenant does not at or before the time when the landlord is put in possession remove the tenant’s movable property from the residential unit;
 - (b) the tenant has not entered into any agreement with the landlord about disposal of that property;
 - (c) the landlord has not applied for an order under Article 1 of the Loi (1867) sur la cour pour le recouvrement de menues dettes² in respect of the property; and
 - (d) no such order has been made in respect of the property,the Viscount may remove the property and keep it in any place that he or she thinks fit.
 - (4) If –
 - (a) the tenant has not within 15 days after that removal claimed and removed the movable property from that place;
 - (b) the landlord has not applied for an order under Article 1 of the Loi (1867) sur la cour pour le recouvrement de menues dettes in respect of the property; and
 - (c) no such order has been made in respect of the property,the Viscount may sell or otherwise dispose of the property.
 - (5) The proceeds of any such sale shall be credited to the consolidated fund.

PART 5

JURISDICTION AND PROCEEDINGS

14 Stay of eviction

- (1) The Court may, of its own accord or on application by a party to a hearing under Article 11 or 12, by order stay the execution of an eviction order that the Court has made under that Article until a specified condition is satisfied or a specified period has passed.
- (2) If the Court stays the execution of an eviction order, it may make the order for the stay subject to conditions as to the review and variation of rent payable under the tenancy and any other conditions that it considers just in all the circumstances.
- (3) The Court may impose those conditions at the time when it orders the stay or in accordance with paragraph (4).
- (4) The Court may, on application by the landlord or tenant, by order vary, revoke or impose conditions on the order for the stay from time to time while the order for the stay is in force.

- (5) A condition to which an order for a stay under this Article is made subject cannot be a condition that would, if a residential tenancy agreement were subject to the condition, be void because of this Law nor a condition whose inclusion in a residential tenancy agreement would be in breach of this Law.

15 Matters to be considered in deciding on stay

- (1) The Court shall consider the following matters before deciding whether to exercise its powers under Article 14 in relation to a residential tenancy under a residential tenancy agreement –
- (a) whether there is still rent that remains unpaid under the residential tenancy;
 - (b) whether the landlord or the tenant has breached any provision of the agreement;
 - (c) whether the landlord or the tenant has continued or repeated the breach or has not taken reasonable steps to rectify the breach;
 - (d) if a stay were ordered, where the balance of hardship would fall as between the landlord and the tenant.
- (2) The Court may consider the following matters before deciding whether to order the stay –
- (a) whether the residential tenancy was for a fixed term and whether that term has expired;
 - (b) whether other accommodation is available to the tenant;
 - (c) whether the tenant has looked for other accommodation;
 - (d) whether a deposit has been paid in respect of the residential tenancy by the tenant;
 - (e) whether there is a contract in force concerning movables in the residential unit that is the subject of the residential tenancy (or a contract in some way made in contemplation of or in connection with the tenancy or having the tenancy or the residential tenancy agreement as *cause*), being a contract between the tenant and the landlord, between the landlord and another person or between the tenant and another person;
 - (f) whether the tenant has used the residential unit for immoral or illegal purposes or has caused or permitted its use for immoral or illegal purposes;
 - (g) whether the tenant has caused or permitted a nuisance in the residential unit or caused or permitted any interference with the reasonable peace, comfort or privacy of any neighbour of the tenant;
 - (h) whether the condition of the residential unit has deteriorated, or been maintained or improved, during the tenancy, and whether that change is attributable to the conduct of the tenant or to conduct caused or permitted by the tenant;
 - (i) whether the tenant has given notice to terminate the residential tenancy agreement (or has agreed to the termination of that

agreement) and the landlord has acted in reliance on that fact, so that a failure to obtain vacant possession of the residential unit would seriously disadvantage the landlord;

- (j) whether, in a more general way, vacant possession of the residential unit could reasonably be expected to benefit or disadvantage the landlord;
- (k) the pattern of evictions in other residential units let by the landlord;
- (l) whether the residential unit is dangerous to, or bad for the health of, its occupants or of the public;
- (m) whether rectification of any matter referred to in sub-paragraph (l) would be easier if the residential unit were vacant;
- (n) whether hardship would be caused to persons other than the landlord and the tenant if the stay were not ordered;
- (o) such other matters as the Court considers relevant.

16 Jurisdiction

- (1) The Court shall have exclusive original jurisdiction over any matter relating to a residential tenancy or to a residential tenancy agreement, and shall have power to hear and determine any such matter and to make orders relating to any such matter, including orders for the termination of a residential tenancy agreement.
- (2) The Court may –
 - (a) in deciding any matter relating to a residential tenancy or to a residential tenancy agreement, being a matter that has come before the Court on an application, summons or other instrument that relates expressly to the tenancy or residential tenancy agreement; and
 - (b) if satisfied that it would in all the circumstances be just to do so, make an order –
 - (i) as to arrears of rent, repayment of rent, or repayment of any deposit, relating to the residential tenancy or the residential tenancy agreement,
 - (ii) for damages for any breach of the residential tenancy agreement or of a contract in some way made in contemplation of or in connection with the tenancy or having the tenancy or the residential tenancy agreement as *cause*, or
 - (iii) generally adjusting the rights between the parties to any such agreement or contract.
- (3) Paragraph (2) shall have effect whether or not the order, or the effect of the order, referred to in that paragraph had been mentioned in the application, summons or other instrument by which the matter came before the Court.
- (4) The jurisdiction of the Court with respect to residential tenancies or to residential tenancy agreements shall not be subject to the monetary limitations (whether on the matters that the Court may hear or on the orders that the Court may make) that apply, under Article 1 of the Petty

Debts Court (Miscellaneous Provisions) (Jersey) Law 2000³, to the jurisdiction of the Court in other matters.

17 Appeals

- (1) A party to proceedings before the Court in respect of a residential tenancy or residential tenancy agreement may, with the leave of the Court or of the Royal Court, appeal to the Royal Court against any decision, determination, or order, of the Court.
- (2) In the case of such an appeal that concerns wholly or partly an order for eviction, the Court or the Royal Court may order the stay of the execution of that order pending the Royal Court's hearing of the appeal and judgment on the appeal.

18 Housing Law and other enactments

- (1) Nothing in this Law shall affect the operation of, or requires or permits a court to make, an order that would require or permit the occupation of premises in breach of the Housing (Jersey) Law 1949⁴ or the Planning and Building (Jersey) Law 2002⁵.
- (2) Nothing in this Law shall affect the operation of the Building Loans (Jersey) Law 1950⁶, of the Separation and Maintenance Orders (Jersey) Law 1953⁷ or of any Regulations made under the Agriculture (Loans and Guarantees) (Jersey) Law 1974⁸.
- (3) Paragraph (1) is included only for the avoidance of doubt.

PART 6

MISCELLANEOUS

19 Documents to be provided to tenant

- (1) The landlord under a residential tenancy agreement shall serve on the tenant under the agreement a copy of the agreement as made, varied, or renewed (as the case requires), as soon as reasonably practicable after the residential tenancy agreement, or an agreement for its variation or renewal, has been signed by or on behalf of the parties to the agreement.
- (2) The landlord under a residential tenancy agreement shall provide the tenant under the agreement with a receipt for the deposit (if any) paid by the tenant in respect of the residential tenancy as soon as possible after it is paid.
- (3) A person who fails to comply with this Article shall be guilty of an offence and liable to a fine of level 3 on the standard scale.

20 Termination by agreement

Nothing in this Law shall prevent the parties to a residential tenancy agreement from terminating it by agreement.

21 Contracting out prohibited

- (1) The provisions of this Law shall have effect despite anything to the contrary in any contract, agreement or other arrangement and no residential tenancy agreement (and no other contract, agreement or other arrangement), whether oral or wholly or partly in writing, and whether made or entered into before or after the commencement of this Article shall operate in respect of a residential tenancy agreement to annul, vary or exclude any of the provisions of this Law.
- (2) A person shall not enter into any contract, agreement or other arrangement with the intention, either directly or indirectly, of defeating, evading or preventing the operation of this Law in respect of a residential tenancy agreement.
- (3) A person who contravenes paragraph (2) shall be guilty of an offence and liable to a fine.

22 General provisions as to offences

- (1) Where an offence under this Law committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
 - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.
- (3) Any person who aids, abets, counsels or procures the commission of an offence under this Law shall also be guilty of an offence and liable in the same manner as a principal offender to the penalty provided for that offence.

23 Orders

- (1) The Minister may by Order make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for prescribing any matter that may be prescribed under this Law by Order.

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- (2) Orders may be made, in particular, for or with respect to the following matters –
- (a) the completion by a landlord and a tenant of reports about the condition of a residential unit (including movables that are the property of the landlord and are in a residential unit) at or before the commencement, or at or after the termination, of a residential tenancy that relates to that unit, or at both those times or any other time;
 - (b) the content of those reports;
 - (c) the provision of information or documentation to the tenant by the landlord before, at the time of, or after entering into a residential tenancy agreement or at any other time;
 - (d) the content of that information or documentation;
 - (e) the maximum charge for the preparation of a residential tenancy agreement or any other matter connected with the preparation of a residential tenancy agreement;
 - (f) the service (and content) of notices or other documents under this Law other than any application, summons, notice or other document that is filed in the Royal Court or the Court or issued from the Royal Court or the Court;
 - (g) a standard form or standard forms of residential tenancy agreement or of other instruments that relate to residential tenancies;
 - (h) the forms to be used under this Law, other than the form of any application, summons, notice or other document that is filed in the Royal Court or the Court or issued from the Royal Court or the Court;
 - (i) the status of, rights relating to, and removal and disposal of, movables that a tenant leaves in a residential unit when the tenant leaves the residential unit after the termination of a residential tenancy;
 - (j) the status of, and rights relating to, and removal of, fixtures and fittings in a residential unit, being a residential unit that has been or is subject to a residential tenancy;
 - (k) the supply of services under or in relation to residential tenancies or in residential units subject to residential tenancies;
 - (l) imposing limits on charges for the supply of those services, or otherwise with respect to charges for those services;
 - (m) requiring fees to be paid under this Law;
 - (n) the amounts and payment of those fees.
- (3) The reference in paragraph (2)(k) and (l) to the supply of services includes a reference to the supply of electricity, gas, water, drainage and other services, whether those services are re-supplied under the control of the landlord or are supplied in any other way.
- (4) An Order may do any one or more of the following –
- (a) authorize any matter or thing to be from time to time determined, applied or regulated by any specified person or body;

- (b) exempt from the operation of this Law, or any specified provision of this Law, either unconditionally or subject to conditions –
 - (i) any person, residential tenancy, residential tenancy agreement or residential unit, or
 - (ii) any class of persons, class of residential tenancies, class of residential tenancy agreements or class of residential units;
- (c) create an offence punishable by a penalty not exceeding level 3 on the standard scale;
- (d) contain such transitional, consequential, incidental or supplementary provisions as appear to the Minister to be necessary or expedient for the purposes of the Order.

24 Regulations

- (1) The States may by Regulations make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for or with respect to the following matters –
 - (a) deposits or guarantees in relation to residential tenancies;
 - (b) setting up a scheme for the safe-keeping or investment of deposits paid in respect of residential tenancies;
 - (c) requiring the payment of deposits into such a scheme;
 - (d) the recovery of those deposits;
 - (e) the resolution of disputes as to deposits, including conferring jurisdiction on the Court in relation to those disputes;
 - (f) making provision of a saving or transitional nature consequent on the enactment of this Law.
- (2) The States may, by Regulations, amend Part 1, Schedule 1 or Schedule 2.
- (3) Regulations may do any one or more of the following –
 - (a) authorize any matter or thing to be from time to time determined, applied or regulated by any specified person or body;
 - (b) create an offence punishable by a penalty not exceeding level 3 on the standard scale;
 - (c) contain such transitional, consequential, incidental or supplementary provisions as appear to the States to be necessary or expedient for the purposes of the Regulations.
- (4) A provision of Regulations made under paragraph (1)(f) may, if the Regulations so provide, come into force on the day on which this Article comes into force or on a later day.
- (5) To the extent to which any such provision comes into force on a date that is earlier than the date of its promulgation, the provision shall not operate so as –
 - (a) to affect, in a manner prejudicial to any person (other than the States or an administration of the States), the rights of that person existing before the date of its promulgation; or

- (b) to impose liabilities on any person (other than the States or an administration of the States) in respect of anything done or omitted to be done before the date of its promulgation.

25 Amendments to enactments

Schedule 3 shall have effect.

26 Citation and commencement

- (1) This Law may be cited as the Residential Tenancy (Jersey) Law 200-.
- (2) This Law shall come into force on such day or days as the States may by Act appoint and different days may be appointed for different provisions or different purposes.

SCHEDULE 1

(Article 4(1))

WHAT AN AGREEMENT MUST SPECIFY

1. A description sufficient to identify the residential unit that is the subject of the residential tenancy agreement.
2. The date when the residential tenancy commences.
3. The date (if any) when the residential tenancy comes to an end, or term (if any) at the end of which that residential tenancy comes to an end or the condition (if any) on the fulfilment of which the residential tenancy comes to an end.
4. The name of the landlord.
5. If there is a managing agent in relation to the residential unit, the name and business address of the managing agent, or, if there is no managing agent, the business address of the landlord.
6. The rent payable under the agreement and its frequency of payment.
7. The name of the person to whom the rent is to be paid.
8. How the rent is to be paid.
9. The amount of any deposit or guarantee in respect of the residential tenancy, and how and when any deposit is to be repaid.
10. When the rent is to be reviewed (if at all) and the basis of the review.
11. An inventory of the movables in the residential unit to the extent that the movables are the property of the landlord.

SCHEDULE 2

(Article 4(1))

PROVISIONS THAT AN AGREEMENT MUST CONTAIN

1. The tenant may detach and remove anything that the tenant has fixed to the residential unit, subject to the tenant's making good any damage caused by the tenant's so doing.
2. To the extent that the residential tenancy agreement (or another agreement between the landlord and the tenant) requires the tenant to obtain the landlord's consent before the tenant does something in respect of the residential unit, that consent shall not be unreasonably withheld or delayed by the landlord.
3. The tenant is not required to purchase any fixtures, fittings, or movable property in general, in, for, or in respect of, the residential unit.
4. The tenant is not required to pay any premium, or key money, in respect of the residential unit.

SCHEDULE 3

(Article 25)

AMENDMENTS TO ENACTMENTS

1. In the Loi (1919) sur la location de bien-fonds⁹, after Article 3 there shall be inserted the following Article –

“3A

Cette Loi ne s’applique ni à un ‘residential tenancy agreement’ ni à un ‘residential tenancy’ auxquels la Residential Tenancy (Jersey) Law 200-¹⁰ s’applique.”.

2. In the Loi (1946) concernant l’expulsion des locataires réfractaires¹¹, after Article 5 there shall be inserted the following Article –

“Article 6

Cette Loi ne s’applique ni à un ‘residential tenancy agreement’ ni à un ‘residential tenancy’ auxquels la Residential Tenancy (Jersey) Law 200-¹² s’applique.”.

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- ¹ *chapter 20.725*
 - ² *chapter 07.175*
 - ³ *chapter 07.615*
 - ⁴ *chapter 18.315*
 - ⁵ *chapter 22.550*
 - ⁶ *chapter 24.090*
 - ⁷ *chapter 12.800*
 - ⁸ *chapter 01.400*
 - ⁹ *chapter 18.405*
 - ¹⁰ *P.74/2009*
 - ¹¹ *chapter 07.350*
 - ¹² *P.74/2009*