

STATES OF JERSEY



RENT CONTROL MEASURES

**Lodged au Greffe on 11th April 2023
by Deputy S.Y. Mézec of St. Helier South
Earliest date for debate: 2nd May 2023**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

that the Residential Tenancy (Jersey) Law 2011 should be either amended or replaced, in order to –

- (a) provide for rent control measures to be introduced, including, but not limited to –
 - (i) banning rent increases from being imposed in the first 3 years of a tenancy, and thereafter no more than once a year;
 - (ii) requiring a minimum 3-month notice period before a rent review can be implemented; and
 - (iii) capping the amount that rent may be increased in a rent review by a measure of affordability, such as the increase in the Average Earnings Index or the average of the Retail Prices Index over the 3 preceding years, or an alternative effective measure which the Minister for Housing and Communities may deem appropriate;
- (b) provide for the abolition of ‘no fault evictions’ by –
 - (i) establishing ‘open ended’ tenancies as the default tenure, where notice to quit may not be issued to a tenant who has not breached their contract, except under defined circumstances as to be proscribed in legislation; and
 - (ii) requiring enhanced notice periods for tenants based on how long they have lived in the property;
- (c) provide for the establishment of a body, such as a Rent Tribunal or Housing Commission, to adjudicate on disputes arising from rent control or breaches of contract which may necessitate the termination of a tenancy;

and to request the Minister for Housing and Communities to bring forward for consideration by the Assembly the necessary legislation to give effect to these decisions by the end of 2023.

DEPUTY S.Y. MÉZEC OF ST. HELIER SOUTH

REPORT

Summary

If adopted, this proposition would provide a mandate for several key changes to be delivered in any upcoming reform of the [Residential Tenancy \(Jersey\) Law 2011](#). These changes would include a form of rent control and a move to open-ended tenancies, providing long term security and guarantees on affordability for tenants. It would also see the establishment of a body for both landlords and tenants to appeal to receive quicker adjudication on disputes arising in tenancies.

This proposition seeks to ensure that the Assembly can resolve on these matters one way or another, so that resources are not wasted by expending them on establishing a way forward which has not been endorsed by the States and could end up being lost at the last moment.

Background

In the last three years, several reports have been published by various Jersey governments and Housing Ministers which propose action to resolve Jersey's housing crisis. This includes the [Housing Policy Development Board](#) report, the [Creating Better Homes](#) report, the [Fair Rents Plan](#) and now we are due to receive the current Housing Minister's 'white paper' on rental reform.

The Housing Policy Development Board was the biggest exercise in examining Jersey's housing situation that has been undertaken in recent years. The board was set up to include States Members from across the political spectrum and independent members. It consulted widely with all parts of our community who are involved in providing housing. It made clear recommendations aimed at addressing supply, affordability, and regulation.

Despite these reports which all talk about action, in reality very little action has actually been taken. The previous government left the HPDB report on a shelf for half a year before considering it. Where nominal action has been taken subsequently, the timelines have either not been met or the policy has been seen to unravel before our eyes (such as the recent attempt to re-establish the Rent Control Tribunal).

In the 2022 election, Reform Jersey proposed a [Housing Crisis Action Plan](#), making it clear that work to implement this plan would begin in the first week of a government being formed which was led by the party. In the absence of this result, the party nevertheless brought forward an [amendment](#) to the Common Strategic Policy to allow the Assembly to approve the actions contained in this plan and give a clear mandate to the government for which policies they should implement. This amendment was not even allowed to be debated, as a [wrecking amendment](#) was adopted which removed all of the substance and provided no clarity on what action the government would take.

Now, in April 2023, over three years after the Housing Policy Development Board first proposed some key reforms to the Residential Tenancy Law, we will imminently have a white paper providing some direction on these policies, but no opportunity for the States Assembly to actually vote on those proposals and give instructions to the Housing Minister and law drafters to proceed with.

This proposition provides the Assembly with that opportunity to indicate with our votes what we want to see contained in a reform of the Residential Tenancy (Jersey) Law 2011.

The proposition helps provide the quickest route to improvements being delivered for our constituents. The Housing Minister's current roadmap provides more opportunities for prevarication and watering down of potential plans.

Rent Control

Rent controls come in all shapes and sizes, with varying degrees of success, depending on the model adopted and the context in which it is applied. Many European countries have models that have widespread support and are credited for providing a rental market which is secure and affordable for tenants, whilst providing certainty for landlords.

Whilst some may make ideologically motivated critiques of rent control in the absence of evidence to support their positions, anyone taking an objective view of Jersey's rental market cannot honestly conclude that our system of a lack of any rent regulation has been anything other than a catastrophe for renters and is having a harmful macroeconomic impact on the whole Island.

In Jersey's case, the only thing worse than having rent control is having no rent control. If market-based approaches to rent stabilisation worked, we would have seen it already. But the current market-based approach has created a market failure. Any plan based purely on increasing the supply of rental housing will have no tangible positive impact for years and, even then, will do little for those who already have homes in which they are long-term renter, unless they are prepared to abandon them and upheave their lives in the hope they can find somewhere cheaper.

As every report referenced thus far indicates, the solution is to introduce a form of rent control.

The model which this proposition proposes is that which was endorsed in the Housing Policy Development Board and is apparently due to be confirmed in the rental white paper – third generation rent control, i.e. 'Rent Stabilisation'. The section on Rent Stabilisation from this report has been attached as Appendix 1 to this report.

Unlike other forms of rent control which may be considered more contentious, this proposed model is not based on a strict capping system, where the government sends a bureaucrat to inspect every rental property and dictate what level of rent can be charged. Instead, this seeks to dampen rental inflation by capping how much rents can be increased by.

This will see the most exploitative practices in the rental market effectively outlawed. No property investor will be able to seek to increase their profits by taking advantage of tenants who are either stuck in a long fixed-term tenancy with no option to leave early, or whose life circumstances mean moving home will cause them hardship, by imposing an inflationary rent increase on them just because they can.

Consideration will have to be given as to what is the best formula to use to calculate what level the cap on rent increases should be set to. Using RPI on its own may be effective in years where RPI is low but could be devastating in years when it is high. It

may also not accurately reflect the landlord's increased costs, especially if they are not actually spending anything in that year to maintain the property.

Other cost of living metrics should be considered. The Index of Average Earnings would at least be based on how much better off the tenant may be, and more closely reflect their circumstances. An alternative could be to cap it based on the average of RPI over three years. This would shelter tenants from the full impact in an outlier year when RPI was high. This proposition allows the Assembly to agree to this principle, but still allow the Housing Minister the freedom to consider the finer details on this.

Secure tenancies

Alongside rent control, providing enhanced security of tenure to renters is vital.

'No Fault Evictions' (which can easily also meet the definition of a 'Revenge Eviction') are completely legal under the current Residential Tenancy Law. Renters who have periodic tenancies can be issued notice to quit with just three months warning at any time and with no reason given. There is no mechanism to appeal this.

This means that many renters, no matter how long they have lived in their homes, are just three months away from having their whole lives turned upside down, having massive costs put on them or facing becoming homeless. This also means that they have almost no negotiating power at all in fighting unjustifiable rent increases or seeing that their rights under the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 are upheld. If they complain or cause a fuss, they can simply be kicked out and replaced with a tenant who is more compliant. This leads many to suffer in silence.

The UK Conservative government has pledged that in England and Wales it will abolish No Fault Evictions (which are currently enabled by Section 21 of the [Housing Act 1988](#)) with a 'Renters Reform Bill' it plans to bring forward. This was detailed in their '[A Fairer Private Rented Sector](#)' white paper. This proposal commands cross party support and the acceptance of National Residential Landlords Association. No Fault Evictions have already been abolished in Scotland.

Jersey's Housing Policy Development Board proposed legislating to enhance security of tenure for renters, specifically by moving to open-ended tenancies as the default tenure. The section from their report is attached as Appendix 2 to this report.

Open-ended tenancies should not be able to be unilaterally ended by the landlord without reasonable grounds. Legislation should set out what constitutes reasonable grounds. However, the tenant would still retain the right to end their tenancy with reasonable notice.

A fit-for-purpose Rent Tribunal

Finally, a new body must be established to provide both tenants and landlords with an outlet to resolve any disputes which arise because of the intricacies of rent control being introduced.

Currently, if a tenant or landlord find themselves in a dispute which they cannot resolve through negotiation, they can go to the Petty Debts Court. This is undesirable for multiple reasons. Firstly, in the pre-action negotiation there is a great imbalance of

power between the parties, where the tenant has far more to lose. But the court itself does not provide a specialist service for housing and there are few resources accessible to tenants to understand what purpose the court could have in supporting them. More broadly, the public do not like going through the court system, and there is a great lack of understanding on what rights tenants have to stand up to any action which is taken against them. Sometimes the mere threat of a Petty Debts Summons can provoke a tenant into giving up standing up for themselves.

A specialised body with a clear remit could make both tenants and landlords feel empowered to take action to uphold their rights or seek an independent adjudication if a disagreement arises over how a rent review can be implemented or how a property must be maintained.

The [most recent attempt](#) to set up a Rent Control Tribunal was an unmitigated mess. It relied on the use of a out-of-date law, which would have rendered the body almost powerless to help tenants facing unjustifiable rent increases. It was a sad waste of time and public resources that this was pursued.

However, a wholesale reform of the Residential Tenancy Law provides an opportunity for redundant legislation to be repealed and replaced with something that consolidates all its functions into one source, with correct citations, and give a new Rent Tribunal the vires to do its job effectively.

The Housing Minister has already indicated his intention that the new RTL should include establishing a new body such as this.

Children’s Rights Impact Assessment

Article 27 of the [United Nations Convention on the Rights of the Child](#) promotes the “right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development”.

Article 27(3) of the United Nations Convention on the Rights of the Child places an obligation on States Parties to assist those responsible for children to implement this right, including by providing material assistance to access support, including housing. It is clearly fundamental to children’s wellbeing that they are able to grow up in a stable home environment where their needs can be met, and they have the foundations to thrive. The cost of that housing is a key part of this. By legislating to introduce rent control and open-ended tenancies, the States of Jersey will effectively be providing “material assistance” to households to maintain their child’s home and protect the household budget from further pressure. This will enable families to provide greater support for their children.

Article 12 of the UNCRC provides that there must be respect for views of the child in all matters affecting them.

In 2021, the Children’s Commissioner published the [‘Life on the Rock’ report](#), after an extensive consultation process with children from all walks of life in Jersey. The issue of housing featured as one of the top concerns that children have. Page 10 of the report contains a powerful testimony from one young person about how the cost of housing had affected her and her family.

Financial and manpower implications

Successive Government Plans have already provided the resources required to reform the Residential Tenancy Law and establish a new Rent Tribunal.

Appendix 1 – Housing Policy Development

Board report extract on Rent Stabilisation

7.3. R2 - Rent Stabilisation

7.3.1. Policy Recommendation: Rent stabilisation legislation and a Rent Commission or Board to monitor and decide on annual rent increases should be introduced.

7.3.2. Context and Drivers

7.3.3. Currently, 43% of people in Jersey rent their home from private and social landlords. Jersey's rental market is predominantly comprised of private landlords, letting to both qualified and unqualified tenants, who make up approximately 70% of the rental market. Social landlords, namely Andium, the housing trusts, and parishes, comprise the remaining 30%¹.

7.3.4. Compared to other tenures in Jersey, rental tenures are characterised by high absolute housing costs. Rent for qualified individuals is the most expensive tenure and rent for non-qualified individuals is the third most expensive, as detailed in Appendix 4. Qualified renters have the highest absolute housing costs at a median of £910 per month. Non-qualified renters have lower housing costs but, also having lower net household incomes, a significant proportion of their household income (25%), is still spent on housing.

7.3.5. There is precedent for rent stabilisation in Jersey through tenancy agreements between landlords and tenants. Data on the number of tenancies subject to rent stabilisation is currently unknown, however Citizens Advice Jersey advises that most leases contain clauses which propose that annual private rent increases are normally aligned to the annual change in the Retail Price Index (RPI), since they are aligned to the Jersey Model Residential Tenancy agreement, which states at Clause 5:4:

7.3.6. 'The Landlord may review the rent payable on the first anniversary of the start of the Tenancy and each anniversary of that date thereafter. In the event that the landlord proposes to increase the rent payable by the Tenant, the increase shall not exceed the percentage change in the Jersey Retail Price Index (if any) since the date of the agreement or, as the case may be, the last review'.

7.3.7. Whilst use of such a clause in tenancy agreements can provide stability and certainty to renters during their tenancy, it does not

¹ Households and dwellings statistics from 2011 Census, Statistics Jersey

prevent rents rising significantly between tenancies. A comparison of RPI and the Rental Price Index (using advertised rental prices) shows that whilst RPI has increased by 47% between 2005 and 2019, rents have increased by 91% over the same period.

7.3.8. Policy Description

7.3.9. Rent stabilisation limits how much a rent can be increased by restricting increases in rents to a defined rate, rather than define rents in absolute terms, as forms of rent caps seek to do. Clause 5:4 of the Jersey Model Residential Tenancy agreement is an example of a non-mandatory rent stabilisation policy.

7.3.10. This policy intervention recommends a simple mandatory system that legislates that rents should be stabilised in line with an inflation metric, such as Jersey's Retail Price Index (RPI) or similar. In similarly small and homogenous rental markets, like San Francisco, rent stabilisation rates are also tied to cost of living indexes.

7.3.11. To develop the policy and supporting legislation, several steps should be undertaken. These include:

- Further Research on key policy areas
- Legislative Process
- Establishing a Rent Commission / Board

7.3.12. *Further research on key policy areas*

7.3.13. As most tenancies already limit in-tenancy increases to RPI, the GoJ should consider using this as the metric for increases to be introduced as a mandatory limit.

7.3.14. This rental growth should be a choice for landlords, not a requirement, to avoid rental growth that is not planned to occur – although if increased, it should not exceed this limit (RPI). Having this choice may mean that when the annual RPI change is negative, rents would not have to decrease, and thereby in effect, increase. This issue should be considered further as part of the detailed policy development.

7.3.15. The Board recommends that rent stabilisation should apply both between and during tenancies. This helps ensure market-wide stability, as without it the market could inflate rents between tenancies (as the evidence referred to above demonstrates).

7.3.16. During further development of this policy, the GoJ may wish to consider allowing rent increases between tenancies to have more flexibility, for example, a percentage increase of between RPI plus 0.5-2.0%.

7.3.17. In order to simplify its application, it is recommended that landlords are only entitled to raise rents once a year, either during a tenancy or between two tenancies.

7.3.18. Rent stabilisation policies tend to include a number of exceptions to protect landlords, and so these should be considered so as not to disincentivise landlords from providing much-needed private rental housing, or from maintaining this housing. These may include temporary exceptions to rent stabilisation / broader rent review, if changes to the property or its costs have been made (i.e. major renovations or increases in property taxes to the landlord).

7.3.19. *Legislation*

7.3.20. This policy recommendation assumes that rent stabilisation will be introduced into legislation designed to apply to all private sector tenancies including qualified rental homes and registered rental homes that are let via a tenancy agreement.

Rent Commission / Board

7.3.21. To monitor this policy, the GoJ should establish a Rent Commission / Board that provides a body for tenants to challenge rental increases and has power to enforce landlords to adhere to rent stabilisation. It may also engage with wider stakeholders on stabilisation measures.

7.3.22. This is the least resource-intensive method of monitoring rent stabilisation. It avoids the GoJ having to collect and manage rental data annually and empowers the tenants who are financially incentivised to monitor their rent. Similar Rent Commissions / Boards are integral elements of numerous rent stabilisation policies internationally, such as those found in the Netherlands and Ireland.

7.3.23. The Rent Commission / Board should also have procedures to assess the exceptions for improvement works.

7.3.24. Policy Objectives and Benefits

7.3.25. The policy intervention aims to improve the affordability of renting in the private market (without significantly impacting the attractiveness of the sector for landlords and developers) by preventing large and unmanageable rent increases to tenants and providing a greater degree of cost certainty to tenants.

7.3.26. By stabilising market rents, this policy intervention also impacts other rented tenures which are pegged to the market rate (such as Jersey's social rented tenure).

7.3.27. Cost implications

7.3.28. Income Support costs for tenants may increase less than they would have otherwise, thereby generating a saving for the GoJ over the longer-term.

7.3.29. Challenges

7.3.30. By potentially making it less attractive for landlords to let accommodation, rent stabilisation could encourage landlords to sell, thereby bringing greater supply of homes for owner occupation on the market. However, this could exacerbate the shortage of rental accommodation.

7.3.31. The quality of rental properties could decrease as landlords are disincentivised from investing in their properties. Hence, it is crucial that the rent stabilisation is moderate to retain a reasonable return for landlords. Property quality standards and having policy exceptions for improvement works also positively mitigates this risk.

7.3.32. A significant risk is that rental growth becomes the norm and, therefore, rent increases could occur, where historically landlords have not uplifted rental values.

7.3.33. Policy Interactions

7.3.34. The policy intervention ensures that other rental policy interventions do not have adverse effects on affordability. It works in parallel with:

- *R1 - Utilising GoJ legislation to improve security of tenure and tenant rights:* Tenancy security is necessary for rent stabilisation policy to be effective, since it ensures tenants benefit from annual rent settlement within their tenancy. If tenants are forced out of their tenancy, they may not benefit from rent stabilisation. It also benefits landlords, who will see rent stabilised at a predictable rate, and who will benefit from greater certainty that longer tenancies will reduce void-related rental loss.

Appendix 2 – Housing Policy Development

Board report extract on Security of Tenure

7.2. R1 - Utilising GoJ Legislation to Improve Security of Tenure and Tenant Rights

7.2.1. Policy Recommendation: Security of tenure and tenants' rights should be enhanced by reviewing, amending or creating new legislation and enforcing changes made through a resourced programme.

7.2.2. Context and Drivers

7.2.3. In Jersey rental leases are governed by the Residential Tenancy Law 2011 (RTL). The RTL provides for leases of up to 9 years and periodic tenancies can be created as part of the law. Among other requirements, the RTL introduced fixed notice periods of three months for the landlord, and one month for the tenant, although these do not apply to fixed term tenancies of less than five years. The tenancy must also specify the rent review date, and the basis of the review. If a lease is for more than nine years it is a contract lease, and requires registration in the Royal Court of Jersey, and stamp duty is payable by the tenant.

7.2.4. While the RTL introduced notice periods for periodic tenancies, these are not in place for fixed term tenancies, creating an incentive for landlords to let using shorter fixed term leases. This increases the power of the landlord relative to the tenant, as at the end of the fixed term, they are able to demand a higher rent to issue a new lease or may refuse to issue a lease where the tenant has complained about the property condition.

7.2.5. Scotland implemented a similar model in December 2017, with important differences. The tenancy (called the 'private residential tenancy') contains the following provisions:

- It is open-ended, which means a landlord will no longer be able to ask a tenant to leave simply because the fixed term has ended
- It provides more predictable rents and protection for tenants against excessive rent increases
- It includes the ability to introduce local rent caps for rent pressure areas
- It provides comprehensive and robust grounds for repossession that will allow landlords to regain possession in 18 specified circumstances

7.2.6. Policy Description

7.2.7. This policy intervention acknowledges that the rental tenure should be an attractive alternative to owner occupation and that the 'lived experience' for tenants should be comparable to that of owner occupation. This policy intervention consists of:

- *Tenancy Terms* - Strengthening current legislation to create different leases with no fixed end date as standard and/or extending the current requirements of three months for the landlord, and one month for the tenant to tenancies of less than 5-years.

Tenancies with no fixed end date can only be ended by the tenant, or if the landlord has reasonable grounds (which should be clearly set out). This measure could in effect end 'no fault' evictions and means the presumption is in favour of the tenant that the tenancy will continue.

- *Security of Tenure* - Strengthening current legislation to specify when landlords may or may not evict tenants, in effect ending no-fault evictions which increases stability for tenants and reduces the need for costly unplanned moves – matched with robust grounds for repossession that will allow landlords to regain possession
- *Tenants' Rights* - Codifying best practice tenancy standards and responsibilities to landlords and tenants in legislation to promote greater tenants' rights, e.g. by enabling tenants to redecorate properties and keep pets, which would improve the lived experience of those living in rental homes. The GoJ may also wish to consider if the RTL is the appropriate law to make such provisions.

7.2.8. Policy Objectives and Benefits

7.2.9. The primary goal of the policy is to enact or amend legislation to make renting in Jersey a better experience, to ensure that the lived experience is not compromised by a decision to enter or remain in the rental tenure as opposed to owner occupation.

7.2.10. There are two main benefits of the policy:

- It improves the rental experience for tenants, and ensures affordability is not driven at the cost of rental insecurity or low-quality rental experience
- It contains provisions which provide greater certainty to landlords on rental income, and thereby potentially reduces voids

7.2.11. Cost implications

7.2.12. The main cost implications of the policy are:

- Legal costs of reviewing and amending current legislation, and consultancy costs to engage the market and individuals on the potential outcomes of new legislation
- Administrative resource of registration and/or ongoing

enforcement. For example, it may require a team of individuals (c. 2-3 FTE) within GoJ to actively register landlords (if the option is pursued), investigate complaints, and enforce the law

- A loss of stamp duty payable on longer leases

7.2.13. Challenges

7.2.14. Some of the challenges to this policy could be:

- If enforced without rent stabilisation policy, landlords may use rent increases to force tenants to leave
- Less flexibility for landlords may mean they are unwilling to let their property and reduce supply on the market
- May reduce mortgage availability for buy-to-let landlords as mortgage providers want to be able to recover the asset quickly. As a result, this may reduce private rented supply
- May not be sufficient tenant demand or ability to commit for longer tenancies
- There may be sectors where there is a need for short-term tenancies to ensure the sector works properly (for example with seasonal workers), which requires legislation to consider these exceptions
- Potential resistance from letting agents if they have fewer opportunities to charge fees as a result of any legislative changes (we understand that there is a separate project to regulate letting agent fees already planned for 2020).

7.2.15. Policy interactions

7.2.16. This policy intervention is closely linked to one other policy intervention in the package.

7.2.17. To ensure improved tenancy rights are not met with increased cost of rental housing, the GoJ will need to implement: *R2 - Rent stabilisation*: The policy works to ensure landlords may not use rental increases as a means to force tenants from their tenancy protections guaranteed by '*R1 – Utilising GoJ legislation to enhance security of tenure and tenants' rights*'.

7.2.18. For this reason, it is important that these policies are considered together during further policy development.