

STATES OF JERSEY



Jersey

DRAFT PUBLIC HEALTH AND SAFETY (RENTED DWELLINGS) (LICENSING) (JERSEY) REGULATIONS 202- (P.40/2023): NINTH AMENDMENT

**Lodged au Greffe on 23rd October 2023
by the Environment, Housing and Infrastructure Scrutiny Panel
Earliest date for debate: 7th November 2023**

STATES GREFFE

DRAFT PUBLIC HEALTH AND SAFETY (RENTED DWELLINGS) (LICENSING)
(JERSEY) REGULATIONS 202- (P.40/2023): NINTH AMENDMENT

1 PAGE 18, REGULATION 2 –

Delete Regulation 2(5)(d).

2 PAGE 19, REGULATION 3 –

(1) After Regulation 3(8) insert –

“(9) If the Minister refuses to issue or renew a licence, or issues a licence subject to a condition described in paragraph (4)(c), the Minister must notify the owner of the dwelling to which the application relates, in writing, of –

- (a) the reasons for the decision; and
- (b) the applicant’s right to request a review and to appeal under Regulation 4.

(10) If the Minister decides to withdraw a licence, the Minister must notify the owner of the dwelling to which the licence relates, in writing, of –

- (a) the reasons for the decision;
- (b) the applicant’s right to request a review and to appeal under Regulation 4.”.

(2) After Regulation 3 insert –

“4 Review by Minister and appeal to the Royal Court

(1) A person entitled to be notified of a decision under Regulation 3(9) or (10) may, within 28 days of the notification, request a review of the decision by the Minister (the “initial decision”).

(2) A request for a review must contain –

- (a) the applicant’s name and address for correspondence;
- (b) the address of the dwelling in relation to which the decision was taken;
- (c) the grounds on which the request is made, including why the applicant disagrees with the decision and with the reasons given for it.

(3) The Minister must determine the request as soon as reasonably practicable and the determination of the Minister is substituted for the initial decision.

(4) If, on review, the Minister refuses to issue or renew a licence, or issues a licence subject to a condition described in Regulation 3(4)(c), the Minister must notify the applicant, in writing, of –

- (a) the reasons for the decision; and
- (b) the applicant’s right to appeal under paragraph (6).

(5) If, on review, the Minister decides to withdraw a licence, the Minister must notify the owner of the dwelling to which the licence relates, in writing, of –

- (a) the reasons for the decision;
- (b) the applicant’s right to appeal under paragraph (6).

- (6) A person entitled to be notified under paragraph (4) or (5) may, within 28 days of that notification, appeal against the Minister’s decision to the Royal Court.
- (7) Article 11 of the Law applies, with the necessary modifications, to an appeal under this Article as if it were an appeal under Article 11 of the Law.”,

and renumber the subsequent Regulations and cross-references accordingly.

ENVIRONMENT, HOUSING AND INFRASTRUCTURE SCRUTINY PANEL

REPORT

INITIAL REVIEW BY MINISTER AND ROYAL COURT APPEALS PROCESS

If adopted, this amendment will amend the proposed draft Regulations to include provision of an appeal to the Royal Court. Currently, there is only an appeal available through the Minister for the Environment or, as a last resort, by judicial review.

In the report to the proposition, the Minister for the Environment explains that concerns expressed around the prohibitive costs of appeals regarding the withdrawal or refusal of a licence will be addressed by having an option of appeal to the Minister and that persons aggrieved by the Minister's decision will still have the right of a judicial review.

It is further explained that there are plans for a Housing Tribunal to be created under the Residential Tenancy Law and it may be the case that, at some point in the future, this body is deemed to be best placed to determine such appeals. However, at present, and in the absence of such a tribunal, any appeal would be to the Minister.

Views gathered from several stakeholders¹ suggest the appeals process currently proposed under the draft Regulations is not deemed satisfactory.

Stakeholders commented that they would like to see a more independent appeals process, such as through the Royal Court, due to perceived concerns that the Minister for the Environment is too conflicted to adjudicate on an appeal as he will be receiving advice from his Officers within the Environmental Health team.

The Panel questioned the Minister for the Environment on this in the public quarterly hearing held on 11th October:

The Deputy of St. Mary:

As currently proposed in the draft regulations, any appeals will go to yourself as Minister. How do you intend to operate a fair and independent appeals process when you would be seeking advice from members of your own department?

The Minister for the Environment:

This does slightly amuse me, I guess, because this change was put in at the request of the J.L.A. (Jersey Landlords Association) who were unhappy with the previous versions of these proposals, which the only means of appeal was to the Royal Court, and the Royal Court is an expensive and time-demanding process. So they requested us to look for a simpler process. The Royal Court still remains as a backstop. If the decision that is made by the Minister is not considered to be fair or appropriate, or whatever, then the Royal Court is still there. But this is not too dissimilar from what operates in Planning where I sit as the ...

The Deputy of St. Mary:

I am not sure that is a good precedent, but there we are.

¹ Jersey Landlords' Association / CTJ Housing Trust / Jersey Homes Trust / Andium Homes all raised that the proposed appeals process is unsatisfactory.

The Minister for the Environment:

Well, the situation in law is that I determine planning applications that go to appeal. This is not too dissimilar from that. If there is a disagreement, the first port of call would be to me. The intention in the medium term, I think, is to see how the Minister for Housing and Communities' reforms go. It could be that if a tribunal is created there that, depending on the functions it takes on and so on, we have always said that it is entirely conceivable that that appeal function would go to a tribunal. But there is no other body in existence for which an appeal would be appropriate.

The Deputy of St. Mary:

Okay. These regulations are obviously associated with the 2018 Public Health and Safety (Rented Dwellings) (Jersey) Law, and there, there is a specific right of appeal to the Royal Court. Would it not have been consistent to have some provisions in this law?

The Minister for the Environment:

It still does exist. It is still possible.

The Deputy of St. Mary:

But there is a right of appeal in the 2018 law, not for judicial review. What I am asking is: if an appeal process could have been put in in the 2018 law, would it not have been consistent to put something similar in these regulations?

The Minister for the Environment:

As far as I understand it, it does still sit there because this is regulations relating to the 2018 law. That appeal to the Royal Court against the decision still sits there. I guess if they want to bypass the bit of going to the Minister, they can. But the Minister is there as a first port of call ... and this happens all the time, in planning terms, the Minister determines appeals. I am required to be impartial.

Deputy S.G. Luce:

I think to be fair, Minister, in planning terms, the Minister determines appeals, usually after an appeal has been heard by an independent planning inspector for the U.K.

The Minister for the Environment:

Fair enough. But the principle of a Minister sitting in determination of an appeal is accepted in law in terms of the planning system.

The Deputy of St. Mary:

Yes, but not accepted in other terms. But we must move on to that. I hear what you say about the judicial review and what you said in the 2018 Act. I still go back to my basic point as to appeal being set out in the regulations. I think you are aware, and I referred to it in a States debate recently, the report by the Law Commission, access to redress condemns the practice of conferring right of appeal to the Minister of their own department whose decision is being appealed against. From what you have just said now, do you accept what the Law Commission says?

The Minister for the Environment:

I am not so massively hung up on this. It was not my idea to put this in.

The Deputy of St. Mary:

No, I am talking about the general principle.

The Minister for the Environment:

The general principle, I think, is that a Minister is perfectly capable of sitting outside the immediate argument about something and saying: "Where does fairness lie in this case?" There is law advice in terms of the planning system, which says that it is very important to maintain political control over the decision-making process and the final decision-making process. In fact, that is a fundamental principle of law in terms of planning. This is not a strictly Planning function, but I think we are in an area where it is arguable either way, and I offer it as an opportunity for people, but it does not preclude the other option. If we take it out, fine. You have got the appeal to the Royal Court, just as you always had. If we leave it in, it is a first port of call, it is not going to cost you the money that it would do to go to the Royal Court. It is an option.²

The Panel is aware that an option for appeal through judicial review exists should the appellant not be satisfied with the outcome of an appeal to the Minister. However, the draft Regulations do not currently set out a process for appeal to the Royal Court. The procedure of a judicial review is not the same as that of a specific right of appeal to the Royal Court. A 2008 Jersey and Guernsey Law Review sets out the difference between the two as follows:

A judicial review function is a supervisory function, the purpose of which is to ensure that the exercise of administrative functions by public bodies is carried out within the framework of the law. A court exercising a judicial review function will therefore consider whether a decision may be challenged on grounds of illegality, procedural impropriety and irrationality, but will not undertake any assessment of the underlying merits of the original decision.

By contrast, a right of appeal to a court is a creature of statute. There is no inherent right of appeal. Where such a right has been conferred, the range of persons entitled to appeal, the permissible grounds of appeal and the jurisdiction of the appellate body are entirely matters of definition and interpretation of the relevant statute.³

As the Panel understands, judicial review has a very limited capacity to deal with disputed facts, can be an expensive pathway for all involved, and can take considerable time to be resolved. Whilst in some cases the possibility of bringing a claim for judicial review of the original decision may be sufficient so that no provision for a right of appeal is necessary, appeals can cover a wider range of grounds than can be raised in judicial review proceedings.

In consideration of the above the Panel proposes this amendment, the purpose of which is to set out a distinct right of appeal to the Royal Court should a more formal route wish to be sought by the appellant. In doing so, this would also make the draft Regulations consistent with the

² Transcript – Public Quarterly Hearing with the Minister for the Environment, 11th October 2023, p.5-7

³ [Jersey & Guernsey Law Review | The test for appeals against decisions of administrative bodies: unreasonable or just plain wrong? \(jerseylaw.je\)](https://www.jerseylaw.gov.je/jersey-law-review-the-test-for-appeals-against-decisions-of-administrative-bodies-unreasonable-or-just-plain-wrong/)

provisions for appeal made in the [Public Health and Safety \(Rented Dwellings\) \(Jersey\) Law 2018](#) (the primary law).

Financial and staffing implications

The Panel is not aware of any financial and manpower implications associated with this proposed amendment.