

SECURITY OF TENURE LAW - REPORT OF THE WORKING PARTY

**Lodged au Greffe on 1st December 1998
by the Housing Committee**



STATES OF JERSEY

STATES GREFFE

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PROPOSITION

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

to agree, in principle, that the “Loi (1919) sur la location des bien fonds”, as amended, and the “Loi (1946) concernant l’expulsion des locataires réfractaires”, as amended, should be repealed and replaced by a new Law which would provide *inter alia* -

- (a) for all issues relating to eviction and payment of rental to be heard by a division of a renamed Petty Debts Court to be known as the Magistrate’s Court (Civil Division);
- (b) a detailed statement of the factors which the Court may take into account when considering whether a stay from eviction should be awarded;
- (c) a new fixed period of notice of six months for all tenants;
- (d) a requirement for all tenants to be given a written statement of the main terms of their tenancy;
- (e) that unlawfully to exclude, or seek to exclude, a tenant from premises that he is entitled to occupy should become a criminal offence and a tort (a civil wrong);
- (f) that tenants be required to give landlords a period of notice;
- (g) for amended legal procedures for evictions; and
- (h) for a right of appeal by either landlord or tenant to the Royal Court.

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HOUSING COMMITTEE

Report

In December 1996 the Housing Committee appointed a Working Party under the Chairmanship of Senator Corrie Stein to primarily examine the respective rights of landlord and tenant when entering into a lease and to establish whether there were grounds for tenants to be entitled to greater security of tenure than was available under the current legislation. If it was established that tenants should be entitled to greater security of tenure, the Working Party was to submit proposals to the Housing Committee to amend legislation in order to achieve the greatest security of tenure considered appropriate.

After several months of consultation and a period of research into the application of landlord and tenant law in other jurisdictions, the Working Party submitted a report to the Housing Committee in January 1998. The Housing Committee fully supported the findings of the Working Party and the document was circulated to all States members in February 1998.

The Report which follows is that of the Working Party, with slight amendments agreed by the Housing Committee, following comments received since circulation.

WORKING PARTY ON SECURITY OF TENURE

Summary of proposals

- Repeal of the existing 1919 and 1946 statutes in relation to tenancies.
- A new fixed period of notice of six 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 or seek 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.

REPORT OF THE WORKING PARTY ON SECURITY OF TENURE

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1. General statement

1.1 *Why is a new law needed?*

The existing legislation relating to security of tenure was enacted in 1919 and 1946. It is submitted that the structure and basis of society in Jersey has changed dramatically since the beginning of the century. Equally the pressures on the housing stock have radically altered.

The value of Jersey residential property has dramatically increased, which has changed the nature and purpose of investment in such property. Increasingly certain types of property have fallen prey to speculative investment. In the residential sector in particular, lower priced units seem to have attracted the attention of speculators. As a result of such speculation large numbers of long-standing tenants **have been** threatened with eviction so that property could be sold with vacant possession. The cases of Troy Court and La Folie Estate caused public protest.

There is likely to be continued upward pressure on house prices in the short and long term. The Housing Committee has already acknowledged the shortage of available sites for new development. It is feared that continually rising house prices will increase speculative investment in residential property of all types.

To date, the Housing Committee has encouraged tenants to seek accommodation in the private sector, and in support of that policy the States have approved the establishment of the Rent Rebate Scheme. It may be argued that the States, while it is operating good social policy by ensuring the availability of good rental accommodation to people of all incomes, is nevertheless failing to ensure that the landlord in return will uphold his social duty to provide reasonable security of tenure to the tenant.

Approximate translations of the two existing statutes are attached hereto as Appendix 1. The present legislation is perceived as being defective in that -

- (i) The distinction created between leaseholders and tenants is confusing and unnecessary.
- (ii) It lacks certainty as the tenant will not know what period of stay (if any) from eviction he will be entitled to, or what matters the Court will take into account.
- (iii) It provides for proceedings before the Petty Debts Court, which is perceived by tenants as an inappropriate forum.
- (iv) The legislation is drafted in French and the procedure thereunder is difficult to understand without legal advice.
- (v) The 1919 legislation provides distinctions as to notice period between type and size of property which is considered to be inappropriate for present times.
- (vi) There is no right of appeal provided under the law.

1.2 *What is the proposed effect of the new law?*

New legislation in relation to eviction is proposed in order to fulfil the following objectives -

- (i) Clarity to the extent that the legislation may be readily understood by a tenant.
- (ii) Clarity as to what factors the Court may take into account when considering an application for stay from eviction.
- (iii) Simplicity of procedure so that the defence to an application for eviction or an application for stay thereof may be readily put forward by the tenant.
- (iv) Reduction or removal of the stigma attached to appearance before the Petty Debts Court.
- (v) Certainty as to length of the immediate stay of eviction available to a tenant in appropriate circumstances.
- (vi) Provision of a right of appeal.
- (vii) Creation of a body of precedent so that likely delay may be properly assessed in a given set of circumstance.

(viii) Introduction of offences to prevent a landlord from unlawfully depriving a tenant from occupying the whole or part of the premises which he is entitled to occupy under the tenancy agreement.

(ix) Creation of a requirement for written tenancy terms to be provided.

The new legislation is proposed to deal exclusively with eviction of tenants and leaseholders of residential property. At present no proposals are made to alter the position of licensees and only limited proposals are made in relation to tenants of commercial or agricultural property.

1.3 *How will the law achieve the proposed effect?*

In order to achieve the objectives identified in paragraph 1.2 above, the following aspects of the proposed new law are considered to be of particular significance -

(i) Clarity: It is hoped that the necessary legislation may be embodied in a single statutory instrument and a single set of regulations. The legislation should dispose of all previous statutory instruments and should be drafted in English.

(ii) Clarity: The legislation should provide for clear fixed periods of notice and should list in a clear and readily comprehensible manner those factors considered to be particularly relevant in assessing an extension of the length of stay from eviction.

- (iii) Simplicity of procedure: Regulations should provide for clear Court forms and procedure.
- (iv) Stigma: The legislation should refer to a renamed division of the Magistrate's Court for dealing with eviction matters.
- (v) Appeal: A right of appeal to the Royal Court from decisions of the new division of the Magistrate's Court should be provided.
- (vi) Precedent: The decisions of the new division of the Magistrate's Court would be distributed or available for inspection with the anonymity of the parties being maintained.

1.4 *How will the law affect existing law and practice?*

The law will refer to a division of the Magistrate's Court, to be known, subject to agreement, as the Civil Division, which will hear all cases arising from the new legislation. It is to be hoped that the Court will be administered as a division of what is now the Petty Debts Court Greffe, and alteration of the present administration will be limited. The present administrators will be known to the legal professionals and States Department who are currently involved in eviction procedures.

The proposed new legislation, although disposing of the majority of the provisions of the 1919 and 1946 laws, can be seen as a development and modernisation of the procedures created thereunder. The essence of the procedure, that is to say a procedure commenced by summons, leading to an appearance before a Magistrate, will remain. It is considered essential where the effect of a decision in relation to a stay from eviction may alter or extend a contract freely entered into between the parties, that the decision be made by a Court rather than a lay tribunal.

It is hoped that the new law will create, firstly, certainty as to an immediate period of notice required, and secondly, a better understanding of the issues that the Court will consider as relevant when asked for an extension of that period of notice. This will assist in the provision of legal advice in advance of proceedings. It will also create a body of precedent. Provisions for pleadings in the event of dispute will require parties to consider the relative merits of each other's case. Maintaining the absolute discretion as to which party should pay costs will also put a party at risk of an unfavourable costs order in the event that proceedings are inappropriately pursued.

A number of new procedural forms are proposed. It is submitted that the existing method where a summons is prepared by an individual lawyer leads to varying styles and forms which do not immediately assist a tenant to understand his position. The Working Party has considered the Forms prepared in matrimonial causes when proceedings are issued. A similar set of pre-printed standard forms is proposed.

2. Detailed proposals

2.1 *Proposed amendment to existing law*

- (a) It is proposed that the 1919 and 1946 statutes be repealed to the extent that they deal with residential property. Their provisions which relate to other types of property should be codified in the single new statute.
- (b) A new statute is proposed, the short and long title of which should reflect the intention of the law to create a fair balance between the rights of the landlord and tenant in relation to eviction from residential property. The title of the 1946 law, referring as it does to refractory tenants is perceived to be defective in that it does not properly reflect the protection given to tenants thereunder.
- (c) The new law should be drafted in English.
- (d) It is proposed to create a new fixed period of notice for all tenancies of residential property, whether for a fixed term or for a self-renewing term. It would expressly exclude licensees, that is to say lodgers. It may be considered necessary to include a statutory definition of "licensee" and "tenant", in particular to prevent a landlord from avoiding the provisions of the new law by describing a tenant as a licensee. The definition

should extend to encompass all those tenants who have exclusive occupation of a residential unit. It is intended that this include situations where occupation of the property is tied to employment or operation of a business including an agricultural business.

- (e) The new law will require all tenants of residential property to be given a written statement setting out the main terms of their tenancy, which main terms would be prescribed by regulations. The terms envisaged as being fundamental for inclusion in such regulations are set out in the report of the Working Party on Landlord and Tenant attached as Appendix 2 hereto. Failure to provide such written terms in advance of the commencement of the tenancy would be an offence. Any subsequent amendment or renewal of the terms of tenancy should also be made in writing. It was considered that the written terms should give to the tenant a clear indication as to when the tenancy may determine.
- (f) The new law should expressly state that all matters relating to eviction of tenants of all types of property will fall into the exclusive jurisdiction of the aforementioned separate division of the Magistrate's Court. The power to cancel paper leases should also fall into the jurisdiction of that same Court. Power to cancel contract leases will remain vested in the Royal Court.
- (g) It should be a prescribed criminal offence and a statutory tort to unlawfully deprive a tenant from occupying the whole or part of the premises which he is entitled to occupy under a tenancy agreement without an Order of the Court.
- (h) Save in the circumstances envisaged under sub-paragraph 2.1(o), all tenants who have taken a tenancy of residential property and who have continuously occupied that property as their principal residence, in accordance with the terms of the tenancy for a period of three months or more, shall be entitled to a minimum period of notice/stay from eviction of six months following service of a notice to quit in a form prescribed by Regulations, which form should include a statement of the tenants' rights under the new law.
- (i) A tenant of residential property shall be required to give notice to the landlord as follows -
 - (i) where the tenancy was a weekly, monthly or quarterly self-renewing term, one week, one month or one quarters notice respectively;
 - (ii) where the tenancy was for a self-renewing term in excess of one quarter, one quarter's notice;
 - (iii) no period of notice shall be required from the tenant to the landlord at the end of a fixed term lease. It is considered that there should be an implied duty upon the landlord to supervise whether the tenancy is to continue in such circumstances, and thus no notice period from tenant to landlord needs to be imposed.
- (j) The prescribed form of notice to quit should be served by the Viscount's Department (or in such other manner as the Court may require, upon application by the landlord).
- (k) In the event that the tenant has not given vacant possession of the premises after the six months period of notice/stay from eviction, the landlord shall be entitled to serve upon the tenant in the same manner as the notice to quit, a summons to appear before the Magistrate's Court to seek an order for the tenant's eviction. The period of notice for such appearance should be longer than at present; 14 days is considered appropriate. The summons should be in a form prescribed by regulations and should include a statement of the tenant's rights under the new law.
- (l) Upon an application for an eviction order, the Court should have the power to grant an order authorising the Viscount or his officers to evict the tenant. The Court shall further have the power to stay the execution of that Order for such period as it considers fit, to a maximum period of ten years.
- (m) The Court will be entitled in exercising its discretion to stay the execution of the eviction order to take in to account all the circumstances of the case including -
 - (i) Whether any rent lawfully due from the tenant has not been paid or any other obligation of the tenancy has been broken or not performed.
 - (ii) Whether there is suitable alternative accommodation available for the tenant, or whether such accommodation be available when the Judgement or order takes effect.

- (iii) Whether at the time the tenancy was created any deposit was paid or any other contract (including without prejudice to the generality of the foregoing any contract for the purchase of furniture or furnishings situate on the premises in question) was entered into by the landlord or tenant with each other or with a third party either directly related to or directly resulting from the creation of the tenancy.
- (iv) Whether the tenant or any person residing or lodging with him, has been guilty of conduct which is a nuisance or annoyance to the landlord or adjoining occupiers.
- (v) Whether the condition or value of the premises has in the opinion of the Court improved or deteriorated owing to the act, neglect or default of the tenant or of any person residing or lodging with him.
- (vi) Whether any financial or other commercial benefit will accrue to the landlord as a direct result of his obtaining vacant possession of the premises.
- (vii) Whether the landlord has sought or is likely to seek or is seeking to evict other tenants from other properties owned by him or in the same ultimate beneficial ownership.
- (viii) Whether the tenant has been using the premises or allowing the premises to be used for an immoral or illegal purpose.
- (ix) Whether the tenant has given notice or agreed to quit the premises, and in consequence the landlord has contracted to sell or let the premises, or has taken other steps in reliance of that notice or agreement as a result of which he would, in the opinion of the Court, be seriously prejudiced if he could not obtain possession.
- (x) Whether the premises consist of or include premises licensed for the sale of intoxicating liquor and the tenant or sub-tenant has committed an offence as holder of the licence, or has not conducted the premises to the satisfaction of the Court.
- (xi) Whether the premises are in such a condition so as to be dangerous or injurious to the health of the residents or the public, and whether the condition may be improved after the removal of any occupant.
- (xii) Whether generally any hardship would be caused to the tenant or any other person directly arising from the granting or delaying of the order sought; hardship will be regarded as the subjective effect of a detrimental nature upon the person concerned, whether physical, financial or otherwise.
- (xiii) Whether a lease was granted for a fixed period and whether the fixed period has expired.

These items should be expressly included in the new law.

- (n) The new Court should have a discretion to require the filing of pleadings in appropriate cases.
- (o) The new law will give to the landlord a power to apply for immediate eviction in the event that it is alleged that the tenant has not complied with the terms of the tenancy and has failed to rectify that non-compliance within seven days of receipt of notice in prescribed form from the landlord, or where the tenant has not continuously occupied those premises for a period of three months or more. In such a case no formal Notice to Quit will be required, and a summons of immediate eviction in a form prescribed by regulation may be issued with a notice period for appearance before the Court equivalent to that prescribed for the summons following the six month notice period referred in sub-paragraph 2.1(k) hereof. Thereafter the Court shall have the power to order the immediate eviction of the tenant, or to refuse to order the same, or to stay the eviction for such period as it may consider fit up to maximum period of ten years.
- (p) The Magistrate's Court (Civil Division) will have the same powers to grant judgments in respect of sums due between landlords and tenants as the Petty Debts Court.
- (q) A right of appeal to the Royal Court in respect of decisions of law of the Magistrate's Court (Civil Division) (but not of fact) should be created.
- (r) Hearings of the Magistrate's Court (Civil Division) will be held in camera but judgments thereof relating to stays from evictions referred to only by case number will be available for inspection as a public record. Judgments of the Court in respect of debt for rent and costs for example shall be available for inspection

separately and shall include the names of the parties. Provision will therefore need to be made for two judgments within the same proceedings.

- (s) A discretion to award costs on a taxed or indemnity basis should be given to the Magistrate's Court (Civil Division).

2.2 *Consideration of foreign legislation*

In considering its present proposals the Working Party has had regard to the legislation of a number of different jurisdictions.

The Working Party noted in particular the relative complexity of the English law and procedure and the varying type of fixed notice period given to different tenants dependent upon how the tenancy was created. The Working Party considered such distinctions to be both confusing and unnecessary. A fixed period of notice for all tenants of residential property followed by a period to be determined by Judicial discretion is preferred.

The Working Party also considered aspects of French, Australian, American and Scottish law.

The Working Party considered legislation from Guernsey in particular, whilst looking at the manner in which the Court should exercise its discretion in granting a stay from eviction. In particular the "Law giving the Court increased power to stay execution in actions for eviction" which was ratified on 2nd August 1946 was considered helpful in this aspect.

The English legislation contains a statutory tort of unlawful eviction. Consideration should be given to inclusion of this statutory tort in the new legislation to give a basis for a claim for damages, this over and above any new offence created. It is noted that the English Statutory tort relates to both 'actual' or 'constructive' evictions. It is proposed that the statutory tort extend to both.

2.3 *Sanctions for non-compliance*

It will be seen that a number of new offences are proposed for which sanctions should be provided -

- (a) Failure to provide written terms of tenancy: a fine or other sanction similar to that provided for the terms of employment law is considered appropriate.
- (b) Criminally depriving a tenant of rights to occupy: a serious sanction is proposed of a substantial fine and/or imprisonment to reflect the harm that can be caused by this offence. It is noted that substantial profits are available on obtaining of vacant possession, particularly in the light of increased tenants rights as proposed hereunder. An element of deterrent will be required in any sanctions imposed.
- (c) Consideration will need to be given as to which Court is to administer this matter.
- (d) Failure to use prescribed forms either in relation to notice to quit or summons will result in the purported proceedings being of no effect.
- (e) In the event that the tenant fails to give to the landlord the period of notice required under the new law, the landlord shall be entitled to action the tenant for damages.

2.4 *Transitional provisions*

It is acknowledged that it would be inappropriate for existing landlord/tenant relationships to be altered with immediate effect, and the following transitional provisions are therefore proposed -

- (a) That all existing tenants should be provided with a written statement of the main terms of their tenancy within 12 months of the coming into force of the new law. Any new tenancies created after the coming into force of the law will however be subject to the provisions of the new law.
- (b) That any proceedings issued under the 1946 law or dependent upon the 1919 law at the coming into force of the new law should proceed before the Petty Debts Court in accordance with existing procedure. Any proceedings issued after the coming into force of the new law will be within the jurisdiction of the new Court.
- (c) In the event that the tenancy was created before the coming into force of the new law, the tenant will not be

entitled to the fixed period of six months' notice as proposed in the new law. The landlord will be entitled to apply for immediate eviction, subject to the new Court's power to stay any order for eviction for such period as it thinks fit, up to a maximum of ten years, as previously proposed.

3. Conclusion

The Working Party acknowledge that from time to time eviction is an unfortunate but necessary part of the relationship between landlord and tenant. It is hoped that the new legislation proposed above will create a more just procedure for eviction and will give the tenant some certainty as to his security of tenure.

It is hoped that legislation may be prepared and brought before the States as swiftly as possible. The Working Party is keenly aware that should further eviction cases arise in similar circumstances to those at Troy Court or La Folie Estate, the States may well be subject to justified criticism in the light of any failure to resolve the concerns expressed by the public in relation to security of tenure.

The proposals made herein have excluded the position of licensees. Equally, the Working Party has not considered in detail the position of agricultural and commercial tenants, and simply propose that existing notice periods be clarified and codified under the new law.

The proposed legislation does not address the wider issues of landlord and tenant relationships. The Working Party expresses a hope that further legislation may be considered to permit the new proposed Magistrate's Court (Civil Division) to fulfil a role of adjudicating upon other aspects of the landlord/tenant relationship.

Membership of the Working Party

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Senator Corrie Stein, Chairman

Mrs. Gill Duhamel

David Trott

Philip Syvret

Deputy Henry Coutanche

David Letto

Eric Le Ruez

Mrs. Paula Evans (Clerk)

TRANSLATION

LAW (1919) ON THE LETTING OF PROPERTY

A LAW on the letting of property, sanctioned by Order of His Majesty in Council of the

25th day of JUNE 1919

(Registered on the 5th day of July 1919)

STATES OF JERSEY

The 15th day of May 1919

WHEREAS the custom and practice observed in this Island for the termination of leases of corporeal hereditaments are defective;

Whereas moreover it is necessary to protect the tenant of corporeal hereditaments subject to rights of usufruct;

THE STATES, subject to the Sanction of His Most Excellent Majesty in Council, have adopted the following Law -

ARTICLE 1

In the absence of any convention between the parties to the contrary, after the promulgation of the present Law, 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, and the tenant of the property shall have the right to have served on the owner, either through the said Department or personally in writing, a prior notice to quit possession of houses, offices and lands, as follows -

1. for houses and buildings of an annual rental of £20 Stg. or under, without garden, or with garden or land attached of not more than ten perches, three months' notice;

If the garden or land exceeds ten perches in extent, the notice shall be three months' notice expiring at Christmas;

2. for houses and buildings of an annual rental of more than £20 Stg. without garden, or with garden or land attached of not more than twenty perches, six months' notice;

If the garden or land exceeds ten perches and is less than two vergées in extent, the notice shall be six months' notice expiring at Christmas;

3. for a house, offices and lands exceeding two vergées in extent, the notice shall be two years' notice expiring at Christmas;

4. for all lands with or without buildings, but without houses, the notice shall be one year's notice when such lands do not exceed one vergée in extent, and two years' notice when they exceed one vergée in extent, such notice expiring at Christmas in both cases;

5. any agreement whereby the rent is payable monthly or weekly is terminable by one month's or one week's notice respectively.

ARTICLE 2

Persons in the enjoyment of the usufruct of corporeal hereditaments, whether as tenants by the curtesy, as dowagers, or otherwise, shall be on the same footing as actual owners, except that the extinction of the usufruct shall terminate any lease between the usufructuary and the tenant, but the latter shall be deemed to hold the property from the owner thereof and shall continue to be the lessee thereof, until such time as one of the parties gives notice to the other in conformity with the provisions of the present Law.

ARTICLE 3

The tenant and sub-tenant shall have reciprocally the same rights as those of the owner and tenant in virtue of this Law.

ARTICLE 4

This Law may be cited under the title of Law (1919) on the letting of property.

TRANSLATION

LAW (1946) CONCERNING THE EVICTION OF REFRACTORY TENANTS

A LAW to increase the powers of the Petty Debts Court regarding the eviction of refractory tenants and to modify the Law on the letting of property, sanctioned by Order of His Majesty in Council of the

29th day of NOVEMBER 1946

(Registered on the 21st day of December 1946)

STATES OF JERSEY

The 28th day of August 1946

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

ARTICLE 1

Any case for the eviction of a tenant shall be of the competence of the Petty Debts Court (hereinafter described as "the Court") unless the tenant occupies the property concerned by virtue of a contract passed before the Royal Court.

ARTICLE 2

(1) Should a tenant contend that the notice served on him to quit the property which he occupies is not in the proper form or has been unlawfully served on him, he may, in the course of one month after having received the said notice, summon the owner to appear before the Court in order that the validity of the said notice may be determined.

(2) The Court shall adjudicate summarily on the case and shall have power to condemn either party to costs, including those of the advocate and the solicitor.

(3) This Article is not applicable to weekly tenancies.

ARTICLE 3

(1) If, at the end of the tenancy, the tenant has not left the property, the owner shall summon him to appear before the Court in order that his eviction from the property may be ordered and, furthermore, that he be condemned to pay the costs of the proceedings and the rent which he may still owe to the owner.

(2) The summons shall be served as soon as possible after the end of the tenancy and at least two days before the day fixed for the appearance before Court.

(3) Subject to the terms of sub-paragraph (3A) of this Article, the Court, if necessary, in presence of the defendant, or in his absence by default, and after having ascertained that all the formalities prescribed by the Law have been duly fulfilled, shall authorise the Viscount or a sworn member of his Department to place the owner in possession of the property and summarily to evict the tenant therefrom.

(3A) The Court may defer the judgement or the execution of the judgement if the Court considers that the summary eviction of tenant could cause him a greater prejudice than that which would be caused to the owner if the tenant remained in possession and that the tenant deserves a delay.

It being provided that the terms of this sub-paragraph does not apply to the following -

- (a) to houses, outbuildings and lands with a total area in excess of two vergées; or
- (b) to lands with or without buildings but without dwellings with a total area in excess of one vergée.

(4) The powers of the Court to condemn the defendant to the payment of the rent shall not be limited by reason of the fact that the amount of the rent owed is in excess of the competence of the court regarding the recovery of debts.

ARTICLE 4

(1) The Act of the Court ordering the eviction shall be executed by the Viscount's Department on the application of the owner and, accordingly, an officer of the said Department shall proceed to the property and shall place the owner in possession thereof.

(2) If there is furniture on the property, the said officer shall arrange for its removal to an appropriate place and if, after fifteen days, the tenant has not claimed by paying the costs incurred and the rent owed by him, the said officer shall sell it publicly and shall pay, out of the result of the sale, the costs of the proceedings and the rent which might be owed to the owner, and he shall hand the balance, if any, to the tenant.

ARTICLE 5

The tenant and the sub-tenant shall have reciprocally the same rights and privileges as those of the owner and tenant in virtue of this law.

ARTICLE 6

(1) The Law on the letting of property, passed by the States on 15th May 1919, and confirmed by Order of His Majesty in Council, dated 25th June 1919, is modified as follows -

- (a) in Article 1, for the words "both the owner and the tenant of the property, shall have the right to serve reciprocally, either by means of the Officer in virtue of the Law on the Eviction of Refractory Tenants or personally in writing, a prior notice to retake or quit" shall be substituted with the words "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, and the tenant of the property shall have the right to have served on the owner, either through the said Department or personally in writing, a prior notice to quit";
- (b) for Article 3 shall be substituted the following Article -

"ARTICLE 3

The tenant and the sub-tenant shall have reciprocally the same rights as those of the owner and tenant in virtue of this Law.;"

- (c) after the said Article 3, the following Article shall be inserted -

"ARTICLE 4

This Law may be cited under the title of 'Law (1919) on the letting of property.'

ARTICLE 7

The Law authorising the eviction of refractory tenants, passed by the States on 7th February 1887, and confirmed by Order of Her Majesty in Council dated 7th March 1887, shall be repealed:

It being understood that the said law shall apply to all tenancies terminating in virtue of a notice served before the promulgation of this Law, the Court having notwithstanding, in all cases of eviction of a tenant, the discretion allowed to it by paragraph (3) of Article 3 of this Law.

ARTICLE 8

This Law may be cited under the title of "Law (1946) relating to the eviction of refractory tenants".

To be printed, published and posted.

(signed) **H. Le Riche Edward**
Greffier of the States.

Revised by the Legislation Committee at its Meeting on 4th June 1990

WORKING PARTY ON LANDLORD AND TENANT

Summary of proposals

1. The lease

Recommendations

The 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 lease agreements between landlords and tenants.

The agreement, which would apply to all tenancies except contract leases, whether a fixed term of an indeterminate lease, would contain certain standard clauses. It would, however, retain sufficient flexibility to enable the landlord and tenant to draw up other conditions by mutual consent.

Conditions of the tenancy agreement

The Working Party considered that the following conditions should be standard to all tenancy agreements -

- (a) Length and nature of the agreed tenancy.
- (b) The name and address of the owner to be included.
- (c) Rent payable and frequency of payment. Rent Book to be provided if requested by tenant.
- (d) Statement identifying to whom the rent is to be paid.
- (e) Periods of rent review and basis of review.
- (f) Insurance of property, fixtures and fittings to be the responsibility of the landlord.
- (g) Insurance of contents -
 - responsibility of landlord in furnished tenancy,
 - responsibility of tenant in unfurnished tenancy.
- (h) Inventory (if furnished) to be signed by landlord and tenant.
- (i) All internal and external repairs to be the responsibility of the landlord except when resulting from negligence or breakages by the tenant.
- (j) Foncier Rate to be the responsibility of the landlord.
- (k) Landlord to have the right of first refusal on the assignment of the unexpired portion of a lease.
- (l) No sub-letting or taking in lodgers without prior consent from the landlord.
- (m) Restrictive clauses to be confined to behaviour in and around the property. 'No children' clauses should not be written into lease, but provision to be made against overcrowding as defined by the Public Health Department.

(The Working Party considered that landlords could exercise discretion in assigning the lease and that the birth of a child during the period of the lease should not be grounds for eviction.)

And, as a matter of practice -

- (n) A formal receipt to be required for deposits stating purpose of the deposit.
- (o) minimum conditions of habitation laid down in the law over and above the 'wind and watertight' requirement.

Whilst acknowledging that the legislature could not enforce the adoption of a tenancy agreement, the Working Party believed that landlords and tenants should be encouraged to use it as the standard agreement would provide both landlord and tenant with a clear understanding of their respective rights and obligations.

The Working Party considered that a landlord should have the knowledge that the conditions laid down in a proper written agreement would be enforced by the Court. In the absence of such documentation any dispute between lessor and lessee would be resolved at the discretion of the Judge, who could take into account the refusal by either party to enter into a lease agreement.

2. Recovery of possession by landlord

The Working Party took into consideration the need to preserve the Landlord's inherent right to repossess his property, as and when the terms of the lease allowed, if private sector rental accommodation is to be encouraged.

Recommendations

- (a) All actions for evictions and the cancellation of leases should be heard in the Petty Debts Court, with the Judge being given discretion for them to be heard in private.
- (b) In the case of indeterminate tenancies or where no lease existed and tenancy was based on an oral agreement, the Judge should exercise his discretion according to the circumstances of the case.

The Working Party also considered that distinction should be drawn between personal and investment property in order to give protection against eviction in cases where property with sitting tenants was purchased. It believed that the Judge should exercise his discretion in such cases.

- (c) A tenancy should be terminated forthwith for non-payment of rent.

3. Landlord's obligations to the tenant

The Working Party considered that the jurisdiction of the Court should enable a tenant to seek redress from a landlord who failed to fulfil his obligations. At present, a tenant could only apply to the Court for a termination of the lease.

4. Harassment

Harassment should be a criminal offence.

English Law - "The acts of harassment are described as those calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistent withdrawal, or withholding of services'.

5. Premiums, ingoing and key money

Recommendations

- (a) Key money should be made illegal.
- (b) The payment of premiums should be restricted to contract leases and should not be permitted on paper leases.

The system whereby tenants paid an initial premium, representing part of the rental value capitalised over the term of the lease, and a reduced rent thereafter raised a number of problems, notably concerning the right of the tenant to assign the lease and the rateable value of the property.

- (c) Ingoing tenants should not be obliged to purchase contents.

6. Charges for facilities

The Working Party considered that controls should be introduced on check meters in rental property as it felt that some landlords exploited this facility by setting meters at rates above those justified by the cost of providing communal lighting and services.

Recommendations

- (a) Check meters should not be set at a rate higher than could be justified by the level of services provided in the property concerned. Appropriate differentials to reflect the level of services provided.
- (b) The landlord should be obliged to disclose the rate at which Check Meters are set to the tenant.