

Review: P.24/2025 - Draft Residential Tenancy (Jersey) Amendment Law 202-

Submission: Property and Conveyancing sub-committee of the Jersey Law Society

Dated: 23 May 2025

P.24/2025 – Draft Residential Tenancy (Jersey) Amendment Law 202- (the "Draft Law")

I refer to your letter of 08 May 2025 addressed to Nigel Sanders of the Law Society of Jersey, requesting participation in the review in respect of the Draft Law. This is a response from the Property & Conveyancing sub-committee of the Jersey Law Society in relation to such request.

These comments are intended to assist the Environment, Housing and Infrastructure Scrutiny Panel in its review of the Draft Law.

We start by noting that there is general consensus among the legal practitioners we have engaged with that Government intervention and further regulation of the landlord and tenant relationship in Jersey is not required - save where absolutely necessary in areas such as minimum accommodation standards and minimum notice periods.

There is also general consensus that the Government should be doing all it can to encourage and support a private rental market in Jersey. Increased regulation and interference will likely have the opposite effect. It deters potential future landlords, leads to a decrease in available private rental stock which in turn increases rents and will worsen the island's housing shortage. Anecdotally, we are seeing many private landlords not renewing leases and putting their properties on the market for sale and which will reduce the amount of private rental stock available. We are also seeing developers reconsidering development opportunities due to the lack of potential local buy-to-let investor purchasers. This is extremely detrimental to the wider Jersey economy. The introduction of increased stamp duty for buy-to-let purchasers has also had a hugely detrimental impact in the number of local residents looking to invest in Jersey property.

The key considerations which have been discussed in relation to the Draft Law can be summarised as follows (in no particular order):

- Parties should be permitted to enter into a further fixed term lease on the termination of an existing fixed term lease, rather than the default position being a periodic tenancy as proposed in the Draft Law. If the parties are not able to transact freely in this way, we think an unintended consequence will be that Landlord's will be reluctant to allow any tenant to stay in a property beyond a 3-year fixed term and will simply require vacant possession on termination. This will potentially lead to tenants having less security/certainty over their occupation of a particular property.
- Fixed term leases provide more certainty for tenants than periodic tenancies. Why is it deemed beneficial to have "periodic tenancies" as the norm? Further, landlords who are reliant on bank lending to support their investment will often require the certainty offered by fixed term leases, and so a statutory preference for periodic leases may have unintended consequences for the lending market for such properties.
- The parties should not have to provide written notice for a residential lease to terminate on an agreed/stated termination date and/or a break date, especially where such date(s) have been agreed between the parties at the outset. There does not seem to be any evidence of mischief or mistreatment in the local rental market that such a change would be targeting. If such notice is insisted upon, it must be equivalent – there is no justification for the notice periods for landlords and tenants in such circumstances to be different.

- Parties should be able to agree fixed term residential leases for periods >3 years, especially if there are notice provisions within the lease and/or pursuant to legislation and which protects both parties. There are numerous circumstances where the interest of the tenant is better served by allowing longer fixed terms, as securing a property for a longer term-certain.
- Notice provisions – parties should be able to agree mutual notice provisions during a fixed term lease. Why should parties be prevented from agreeing (say) a mutual 3-month break option and without the need for either party to provide reasons for wishing to exercise such break? This provides both parties with clarity and flexibility. It is a fundamental position under Jersey contract law that parties are free to agree the terms on which they transact with each other, and any proposed legislation which cuts across this fundamental freedom requires significant scrutiny.
- The introduction of a statutory right to terminate a tenancy during the initial (fixed) term adds unwarranted uncertainty for both landlords and tenants. The proposal is also at odds with the concept of imposing strict conditions under which periodic tenancies can be terminated.
- Tenants should be required to provide >1 months' notice to vacate. Two (2) months is more reasonable and would provide landlords with more time to make alternative arrangements.
- The proposal for rent increases to be no more than once per year appears reasonable and reflects market norm. A rent review cap of 5% increase per annum does not appear unreasonable, but the drafting will need to be carefully considered. What this doesn't allow for is the parties to agree fixed uplifts over the term of a lease. Also, many landlords in Jersey are not currently charging their tenants "market rent", especially where tenants have been longstanding/good tenants. The introduction of the Draft Law in terms of capping any future rent increase will likely force most landlords to bring rents in line with "market rent", and this to the detriment of sitting tenants. It must also be accommodated that if a concessionary or introductory rent is agreed for an initial period (e.g. a reduced rent for 3 or 6 months) the ability to increase the rent after expiry of such initial period must not be constrained by the 5% cap.
- Who will assess whether a tenant has "seriously breached" a lease for the purposes of a landlord providing notice to vacate? Will guidance be provided as to what is considered a serious breach? What happens if a tenant deliberately and repeatedly pays the rent late? Drafting will need to be very carefully considered.
- The proposed Draft Law appears skewed in favour of tenants, and has as its starting point that most landlords are "bad" – which we don't consider is a true reflection of the rental market in Jersey. Insufficient consideration has been given to including provisions to protect landlords from bad tenants.
- The requirement for increases in rent to be notified by the landlord at least 2 months in advance is unnecessary, if limits are being placed on the amount by which rent can increase. It is a further administrative burden that can have the unintended consequence of displacing rent review dates for the remainder of the term of the lease in question (as when, read in conjunction with the requirement for at least 1 year to have passed since the last increase in rent, such provision would mean that if the 2 month period is missed, the rent review cycle for the whole lease would be shifted).

- It is not clear why rent restrictions are able to be altered for social rented housing. As the island's biggest provider of rented accommodation, it surely must be the case that they should be held to the same regulatory standards as the private sector;
- The proposal that the Rent Tribunal must operate as a public tribunal is not considered appropriate. Jersey is a small community, and the implications of airing of such matters in a public forum must be very carefully considered. The publication of (redacted) decisions is supported, and considered necessary.
- The proposal for landlords to deliver information, the requirements of which (including frequency and detail) are to be confirmed by Order, is considered both unnecessary and unjustly burdensome. Through the existing channels of landlord licensing, income tax declarations and other regulatory schemes provide Government with adequate access to (or means of access to) such information. Such information concerning market rent and associated factors can be obtained from local surveyors/agents who work extensively within the private rental sector. If information sharing arrangements are required between Government sectors, then that is a matter for the machinery of Government to facilitate, not the private market. It is also queried what sense such data will produce, in the absence of context (e.g. a particularly high rent due to luxury fittings and high-value services, will be difficult to reconcile with a particularly low rent for premises that would otherwise be equivalent but may be in a more basic state, and may not benefit from the services in question).
- The administrative and regulatory burden of enforcing the additional obligations and restrictions proposed by the Draft Law will add strain to an already-under resourced regulatory sector, and will add layers of cost and formality to a market that does not, in the main, require such intrusive state intervention. The Draft Law seeks to impose a regulatory framework to cure problems which seemingly affect a very small minority of the rental market, largely based on anecdotal evidence of wrongdoing or mistreatment.

We trust the above will be given due consideration by the Scrutiny Panel. Please contact me if you wish to discuss any of the points raised in more detail.