

STATES OF JERSEY



SOCIAL HOUSING IN JERSEY: INTRODUCTION OF A REGULATORY FRAMEWORK (P.120/2017) – COMMENTS

**Presented to the States on 16th February 2018
by the Environment, Housing and Infrastructure Scrutiny Panel**

STATES GREFFE

COMMENTS

1. On 7th December 2017, [P.120/2017](#) – ‘*Social Housing in Jersey: introduction of a regulatory framework*’ – was lodged in the States Assembly by the Minister for Housing. Prior to the lodging of the Proposition, and subsequently, the Panel met with the Minister and her Officers on a number of occasions to discuss the proposals and to address some of the concerns raised. The Panel also raised questions via written correspondence to the Minister, the responses to which are appended to these Comments (*see Appendix 1*).
2. During discussions with the Minister for Housing, we also considered concerns that had been raised by Andium Homes in a written submission to the Panel in respect of the proposed regulatory framework for social housing (*see Appendix 2*). A number of these concerns are reflected in our Comments below.

The necessity for regulation

3. The Panel’s main concern regarding P.120/2017 is whether there is enough evidence to support the need for the introduction of statutory regulation and the establishment of an arm’s-length regulator, at this time.
4. ‘*The Reform of Social Housing*’ ([P.33/2013](#)), which included proposals to introduce a regulatory framework for social housing, was adopted by the States Assembly on 16th May 2013. Furthermore, as noted in the Report within P.120/2017, draft legislation to establish a social housing regulator was developed as part of the Housing Transformation Programme, but was not brought forward due to a concern that the proposals lacked detail concerning how a regulator would work in practice.
5. However, at the time when P.33/2013 was adopted by the States Assembly, it was not envisaged that the Draft Public Health and Safety (Rented Dwellings) (Jersey) Law 201- ([P.66/2017](#)) (the “Rented Dwellings Law”) would be developed and subsequently approved. This piece of legislation, which was adopted on 13th December 2017, will put in place a modern and appropriate legal regime for the regulation and maintenance of the standard of rented dwellings in Jersey. Essentially, the Law will place the social and private rental sector on an equal playing field by introducing “Decent Home Standards” for all rented dwellings. During the States debate, many argued that the Law was fundamental for ensuring the protection and safety of all of those renting properties in the Island. In addition, the “Rent Safe Landlord Accreditation Scheme”, which is operated by the Environmental Health Team, is intended to ensure the provision of good standard and well-managed social housing, in both the social and private rented sectors.
6. In view of the above, the Panel questions whether the need for a regulatory framework and a regulator for social housing is justified, given the added protection that the new Rented Dwellings Law will provide. In addition, the Panel notes existing legislation that currently regulates residential rented accommodation in Jersey. For instance, social housing providers must comply with the [Residential Tenancy \(Jersey\) Law 2011](#) and establish tenancies in accordance with the provisions of that Law.

7. In a written submission that the Panel received from Andium Homes, it was advised that during consultation dialogue with the Minister for Housing over the regulation framework proposals, it had been suggested that regulation of the private rented sector was not a priority, as private sector tenants would be adequately protected through the combination of the Residential Tenancy (Jersey) Law 2011 and the Rented Dwellings Law. Andium Homes has therefore argued that, as both Laws apply equally to all properties in the rented sector, the social housing tenants also benefit from that level of protection.
8. Another reason cited by the Minister for introducing social housing regulation is to ‘maintain the necessary levels of confidence for government and private investors’. In respect of this objective, Andium Homes is of the opinion that this degree of confidence could be generated through non-statutory, contractual agreements. In the written submission it is noted that –

“Such contractual agreements are exemplified in the arrangements between Andium Homes and the States of Jersey. Amongst other things, these arrangements define the extent of the Company’s activities, the significant annual return made by the Company each year, and the manner in which the company provides the States as sole shareholder or Guarantor, with confidence.”¹

9. Andium Homes has argued that the same contractual arrangements could be mirrored across the entire social housing sector, which would allow the States to have similar oversight of those organisations, and would mean that any additional legislation or regulation would be wholly duplicative and unnecessary². Similarly, within its 2017 Annual Report, the Jersey Homes Trust noted that it had hoped that the Minister for Housing would avoid the delay of legislating and the cost of implementing a statutory-based alternative, with all its *“undesirable and unnecessary bureaucracy and cost”*, and instead resolve this policy by entering into bilateral agreements with each social housing provider.
10. At the various meetings with the Minister and her Officers, and within the written correspondence, the Panel raised both of these issues. We will address the response to each of these in turn. With regard to the existing legal framework for rented accommodation, the Minister for Housing argued that it would not adequately meet the objectives of the regulation. The Minister advised that legislation is intended to regulate the business activities of social housing providers in individual cases, whereas the proposed social housing regulation would provide a broader system for monitoring, assessing and reporting on the performance of the sector as a whole. For instance, the Minister told the Panel –

“Social housing regulation is an overarching framework to oversee the performance of social housing providers. In this respect, regulation goes beyond housing standards – it also includes matters such as communication and engagement with tenants, support for vulnerable persons and making sure that social housing providers contribute towards enhancing the local community. Regulation also takes into account financial management and

¹ Andium Homes, Written Submission, 24th November 2017

² Andium Homes, Written Submission, 24th November 2017

governance arrangements to ensure a sustainable and viable social housing sector.”³

11. With regard to the use of contractual arrangements rather than statutory regulation, the Minister for Housing disagreed with the views of the social housing providers, referred to above, in recent correspondence. Whilst accepting that contractual and statutory regulation could both establish various performance requirements for social housing providers and the rights and obligations of the parties, the Minister is of the opinion that contractual regulation would not provide sufficient powers to direct or enforce the behaviour of those providers. As stated on page 11 of [R.132/2017](#) – ‘*Social housing in Jersey: introduction of a regulatory framework – consultation response and policy position of the Minister for Housing*’ – it is the Minister’s view that a statutory form of regulation should be introduced, as was the expectation of the Housing Transformation Programme. The consultation response also states that the Minister is encouraged that the principle of regulation has been supported as a result of the consultation process.

12. In March 2017, the Panel was provided with a draft consultation response to the introduction of a regulatory framework for social housing. The response states that social housing providers supported the introduction of a contractual form of regulation, which was tailored to meet the circumstances of individual social housing providers, and took into account the level of financial support provided by Government. Furthermore, it was observed that a number of separate agreements relating to specific developments had been entered into between social housing providers and the Treasury and Resources Department, and that these agreements could be incorporated under a new single contractual arrangement. The draft response states that, as a result of these findings: *“the Minister for Housing will adopt a contract-based approach to the co-regulation of social housing”* and will work closely with social housing providers to introduce the agreements. It continues –

“The Minister will carry out a review of the operation of these arrangements within three years of their commencement in order to determine whether the contract approach is working effectively, or whether the introduction of a statutory framework is necessary.”⁴

13. The Panel was concerned to find such disparity between the draft consultation response, which was made available to us in March 2017, but was not published, and the consultation response that was presented to the States as R.132/2017 on 7th December 2017. As far as the Panel is aware, the consultation closed on 20th January 2017 and no further consultation took place with the social housing providers prior to the presentation of R.132/2017. The Panel questioned the Minister for Housing regarding the discrepancies between the 2 documents at a meeting on 5th February 2018. However, we do not feel that the Minister provided a clear and sufficient explanation and, as a result, the Panel is still uncertain as to why the Minister is not proposing the adoption of a contract-based approach, as requested by the social housing providers during the consultation process.

³ Written Correspondence, Strategic Housing Unit, January 2018

⁴ Draft Consultation Paper, Strategic Housing Unit, 29th March 2017

14. The Panel identified further disparities between the 2 documents in respect of the structure of co-regulation and the introduction of an independent regulator. The consultation considered oversight of the performance standards and an appropriate body to act as the regulator of social housing. As such, the consultation identified 2 possible options – the Minister for Housing or an arm’s-length regulator.
15. When the Panel was first presented with [P.120/2017](#), it had immediate concerns regarding the cost of regulation and the potential impact on social housing providers and, subsequently, the supply of social housing. It has been estimated that the cost of appointing an arm’s-length regulator would cost in the region of £100,000 per annum; and it is assumed that the cost of the regulator will be met by a levy or registration fee on social housing providers. These costs, coupled with the licensing fees that will be charged to all rented dwelling landlords as a result of the adoption of the Rented Dwellings Law, could have a considerable impact on social housing providers.
16. Similar concerns were expressed during the consultation period, with a number of social housing providers questioning the justification for the costs of employing an independent regulator given the size of Jersey’s social housing sector. It also advised that a number of respondents stated that the Minister for Housing should have oversight of social housing performance through the Strategic Housing Unit (including the Social Security Department which supported the cost-effective solution of regulation carried out by the Minister for Housing). It was noted that the States already played a regulatory role in respect of social housing providers – letters of comfort; trustee appointments; rights over the disposal of property; and step-in rights in the event of insolvency – and that this role simply needed to be formalised through revised contractual agreements.
17. The draft consultation which was produced in March 2017 stated –

“The Minister for Housing acknowledges the concern expressed by respondents about the need to appoint an arm’s length regulator of social housing. The Minister shares concerns about the costs that appointing a regulator might create and whether the appointment of a regulator would be a proportionate measure in view of the small-scale of social housing provision in Jersey.

The Minister has therefore decided not to appoint an arm’s length regulator for social housing. In view of the proposed co-regulation model, the Minister is of the view that social housing providers should be able to manage their own performance against the standards and government providing ‘backstop’ oversight. It is therefore proposed that the Minister for Housing will assume the role, which will be set out in the agreements with social housing providers”⁵.

18. The Panel notes that, according to [P.120/2017](#), it is now recommended that a regulator should be established on an arm’s-length basis to provide assurance that it is independent in the performance of its functions. Again, it is not clear to the Panel why a change in direction has been made, and what new evidence is available to support the Minister’s decision. The report accompanying the Proposition also states that an independent regulator would provide the necessary separation of policy and regulatory framework that was envisaged by [P.33/2013](#). In its submission

⁵ Draft Consultation Paper, Strategic Housing Unit, 29th March 2017

to the Panel, Andium Homes argues that the current arrangements, whereby the Minister for Housing sets the housing policy for the Island, Andium Homes delivers the outcomes, and the regulation is carried out by the Treasury as Guarantor under the Terms of the Memorandum of Understanding (MoU), appears to more than adequately provide the degree of separation proposed in P.33/2013, which in turn generates the desired level of confidence.

19. Within P.120/2017, the States Assembly is being asked to agree, in principle, proposed components of a regulatory framework – one of these being the introduction of statutory oversight and governance arrangements for the assessment and prioritisation of housing need through the Affordable Housing Gateway. Again, it is not clear to the Panel how establishing access to the Gateway in law will enhance its function or help the Public understand to any greater extent how the system works.

Social Rental Sector vs. Private Rented Sector

20. When, or indeed if, statutory regulation of rented accommodation is introduced, the Panel is concerned that the current proposals only apply to social housing providers. During its meetings with the Minister for Housing and her Officers, we queried why the Proposition only proposed the regulation of social housing and did not include the regulation of private rented accommodation. The Panel was advised that the reason for this was that social housing providers carried out an important social role and received public funding; and therefore required appropriate public oversight to protect the rights and interests of tenants and to safeguard public and provide investment. For instance, social housing providers receive approximately £20 million of public funding per annum from Social Security under the Income Support provisions, and are entitled to receive part of the £250 million bond from the States of Jersey to help fund social housing projects. Furthermore, unlike private housing providers, social housing providers have access to rezoned land and are exempt from taxation on not-for-profit activities.
21. Although we recognise the various benefits awarded to social housing providers over landlords in the private rented sector, we also note that along with those benefits comes a commitment to comply with States' policy and provide a certain number of social rented dwellings. Furthermore, the private rented sector are also in receipt of public funding, albeit considerably less than the social housing rented sector. According to [R.92/2017](#) ('Social Security Department: Minister's Report 2016'), £9,520,000 of Income Support provisions were spent on housing individuals in the private rental sector in 2016.
22. During our meetings, the Minister for Housing explained that social housing providers house many vulnerable people, and thus it was felt that setting performance standards would ensure that adequate protections were in place for tenants. However, it could be argued that the private sector also house vulnerable people, and therefore should these tenants not be awarded the same protection? Unlike the private sector, social housing providers are expected to provide specialised buildings to accommodate vulnerable people and to ensure that the property is well-equipped for all circumstances. This point raises further concerns regarding the ability to peg social housing rents against market rents, as per the States' agreed 90% rental market policy. The private rental sector does not supply

such accommodation and therefore to compare the two in terms of costs does not seem possible or appropriate.

23. It was anticipated that the introduction of the new Rented Dwellings Law would put the social and private rented sector on a more equal footing. Each sector will be expected to provide properties that meet set standards, and both will be subject to licensing requirements. However, there is a concern that the current proposals will create a new division between the two. Interestingly, the draft consultation paper states that: *“the Minister agrees with the sentiments expressed by a number of respondents to the consultation that, as far as possible, there should be consistency between the social housing sector and the private rented sector.”*⁶
24. A former Health, Social Security and Housing Sub-Panel undertook a review of the Housing Transformation Programme in 2013 ([S.R.6/2013](#)). The Sub-Panel found a strong appetite for the regulation of the private rented sector to set and ensure delivery of consumer standards. Thus, one of the recommendations of its review was that *“any regulation should be flexible enough to include the private rented sector in the future without significant and costly institutional change.”*⁷ As far as the Panel is aware, the current proposals do not allow for such flexibility, and there is no intention to introduce regulation for the private sector in the future.
25. It is also worth noting the exclusion of Parishes from the proposals for regulation, and absence from the list of social housing providers provided on page 7 of P.120/2017. Similar to the former Health, Social Security and Housing Scrutiny Sub-Panel, Andium Homes recognises that the Proposition fails to take into account Parishes who operate small stocks of social housing along with organisations such as the Haigh Homes. The Panel would again question the Parishes’ exclusion from any regulation that was to be introduced by the Minister for Housing, as all tenants should have access to the same protection.

Conclusion

26. In light of the above, and in the absence of strong evidence to support the introduction of statutory regulation for social housing or the establishment of an arm’s-length regulator, the Panel questions the need for it at this time. Rather, we are of the opinion that it would be more appropriate for the Minister for Housing to introduce contractual agreements with social housing providers (and revisit the present Memorandum of Understanding with Andium Homes Limited), and to reassess the position in 3 years. Furthermore, this period would allow time for the new Rented Dwellings Law to embed, and for the Minister for Housing to undertake any necessary improvements to other legislation, namely the Residential (Tenancy) (Jersey) Law 2011, in order to strengthen the existing legal framework for rented accommodation.
27. The Panel notes that an amendment to the Proposition has been proposed by Deputy M. Tadier of St. Brelade in respect of the private rented sector. Whilst the decision to accept the amendment is ultimately a decision for States Members, we would urge Members to consider the matter and the reasoning behind the Minister’s

⁶ Draft Consultation Paper, Strategic Housing Unit, 29th March 2017

⁷ Former Health, Social Security and Housing Sub-Panel, [S.R.6/2013](#) – ‘Housing Transformation Programme Review’, page 47

decision to exclude the private sector from the proposals. Whilst the Panel does not see a need for statutory regulation at this time, we do believe that, similar to the former Scrutiny Sub-Panel, any regulation that is introduced should include flexibility to incorporate private rented accommodation. Following the approval of the new Rented Dwellings Law, which puts the 2 rented sectors on a more equal footing, it would now seem counterintuitive to impose an additional financial burden and further regulation onto one sector.

28. Since the Minister for Housing lodged P.120/2017, she has announced that the Strategic Housing Unit is undertaking 2 projects: preparation of an Objective Assessment of Housing Need Report (“OANHR”); and a review of access to social housing in Jersey. The Panel welcomes both projects, and notes that the relevant work can be undertaken irrespective of the outcome of the debate on 20th February. It is worth noting, however, that the current Proposition is confined to regulation for social housing, and we would argue that without regulation of the private sector and the ability to assess its performance, it would be difficult to determine the housing needs of the Island as a whole.

Minister for Housing Strategic Housing Unit



Residential rented accommodation – legislative framework

The following table sets out the legislation that regulates the letting and management of residential rented accommodation in Jersey:

Legislation	Description
Control of Housing and Work (Jersey) Law 2012	Establishes residential and employment statuses for people in Jersey, and the categories of accommodation (qualified or registered) that can be occupied by individuals depending on their status.
Dwelling-Houses (Rent Control) (Jersey) Law 1946	Provides a means for private sector tenants to appeal to the rent control tribunal to have their rent reviewed where they consider the amount payable to be excessive. The tribunal may reduce the rent if it determines the amount is unreasonable compared to the open market.
Dwelling-Houses (Rent Control) (Standard Tenancy Agreement) (Jersey) Regulations 1993	Provides a standard tenancy agreement to use when letting a property. Includes provision for rents to increase annually by no more than RPI.
Loi (1919) sur la Location de Biens-Fonds	Applies to leases that commenced before May 2013 prior to the introduction of the Residential Tenancy Law. The law establishes notice periods for leases based upon the rental value, size and type of property.
Loi (1946) concernant l'expulsion des locataires réfractaires	Applies to leases that commenced before May 2013 prior to the introduction of the Residential Tenancy Law. The law prescribes the jurisdiction of the Court in relation to the cancellation of a lease and eviction of tenants.
Lodging Houses (Registration) (Jersey) Law 1962	Establishes the registration criteria and application process for lodging houses. It is anticipated the Law will be repealed if the licensing requirements of the Public Health and Safety (Rented Dwellings) Law are introduced.
Public Health and Safety (Rented Dwellings) (Jersey) Law 201-	The Law will introduce minimum health and safety standards in respect of rented dwellings, and provide an enforcement mechanism where such dwellings fail to reach the required standards.

Legislation	Description
	<p>The Law will also enable through regulation the introduction of a licensing scheme for rented dwellings.</p> <p>Currently, the Statutory Nuisances (Jersey) Law 1999 allows officers to ensure rented accommodation is <i>wind and water tight</i> and the Loi (1934) sur la Santé Publique has provision for closing houses under certain very serious circumstances.</p>
Residential Tenancy (Jersey) Law 2011	<p>A framework of rights and responsibilities for landlords and tenants. Establishes a legal requirement for parties to enter into a tenancy agreement when letting residential premises, and provides for the contents of such agreements.</p> <p>Provides statutory notice periods for periodic tenancies, and the procedures that apply where a landlord wishes to seek the eviction of a tenant. Law also establishes the jurisdiction of the Court to rule in tenancy-related matters.</p>
Residential Tenancy (Condition Reports) (Jersey) Order 2014	Requires a landlord and tenant, at the beginning and end of a tenancy, to inspect and complete a report in respect of the repair and maintenance of a property.
(Residential Tenancy (Deposit Scheme) (Jersey) Regulations 2014	<p>Legislation to bring into effect a tenancy deposit scheme for the protection of tenants' deposit money.</p> <p>Establishes the requirement for a landlord to pay a tenant's deposit into the scheme when one is in force, as well as the processes and procedures for paying in, holding and paying out a deposit, including where a deposit is in dispute.</p>
Residential Tenancy (Supply of Services) (Jersey) Order 2013	Controls the re-sale of services supplied to rented premises (electricity, gas, water, etc.), and provides that tenant must not be charged more than the sale price for services where a landlord recharges a tenant for the supply.
Fire Precautions (Jersey) Law 1977	<p>Makes provision for the protection of persons from fire risks, including provision to designate the classes of premises that must hold a fire certificate. The Fire Precautions (Designated Premises) (Jersey) Regulations 2012 designate the classes of premises required to hold a fire certificate under the Law.</p>

It is important to draw a distinction between these pieces of legislation and the proposed statutory framework for social housing. Social housing providers are subject to the legal requirements governing the rented sector. They must, for example, comply with the Residential Tenancy (Jersey) Law 2011 and establish tenancies in accordance with the provisions of that Law. Moreover, they will be subject to the Public Health and Safety

(Rented Dwellings) (Jersey) Law 201- when it comes into force. However, it is not anticipated that there will be duplication between the above Laws and social housing regulation.

Foremost, social housing regulation is an overarching framework to oversee the performance of social housing providers. In this respect, regulation goes beyond housing standards – it also includes matters such as communication and engagement with tenants, support for vulnerable persons and making sure that social housing providers contribute towards enhancing the local community. Regulation also takes into account financial management and governance arrangements to ensure a sustainable and viable social housing sector.

Where social housing regulation does touch upon matters such as tenancy management and standards of social housing, it will not replace the existing legal requirements. Instead, these legal requirements are focused on how social housing providers conduct their everyday business activities, whereas social housing regulation focuses on the strategic and cross-sectorial aspects of social housing performance.

A performance standard set under social housing regulation may, for example, state that social housing providers must “*provide good standard homes*” or “*offer tenants appropriate security of tenure*”.

In order to achieve the standards, social housing providers will need to demonstrate they comply with their legal obligations under relevant Laws. In relation to the maintenance of homes, an indicator may be how many dwellings meet the Decent Homes Standard under the Public Health and Safety (Rented Dwellings) (Jersey) Law, along with other issues such as the time taken to respond to tenants’ requests for repairs. Likewise, in respect of security of tenure, a performance standard may relate to how many evictions were carried out each year in accordance with the Residential Tenancy (Jersey) Law 2011.

As such, the above legislation is intended to regulate the business activities of social housing providers in individual cases, whereas the proposals for social housing regulation will provide a broader system for monitoring, assessing and reporting on the performance of the sector as a whole.

**Policy Principal
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15 February 2018

Dear David,

P.120/2017 Social housing in Jersey: introduction of a regulatory framework

I am writing following our meeting on 4th January when we discussed the above proposition. In order to support the Scrutiny Panel's consideration of the draft social housing regulation proposals, I have set out below a response to several questions that I understand members had raised after our meeting.

The regulatory framework

At the outset, it is important to reiterate the objectives of social housing regulation. The proposals in P.120/2017 are intended to:

- Protect and promote the rights and interests of current and future social housing tenants.
- Safeguard public and private investment in social housing provision.

The principle of regulation received wide support from stakeholders during the consultation, though I recognise that the eventual regulatory framework must be proportionate to the local social housing sector. The consultation identified two options: a contractual approach or statutory regulation.

Contractual and statutory regulation can both establish various performance requirements for social housing providers, and the rights and obligations of the parties. Nevertheless, contractual regulation does not provide sufficient powers to direct or enforce the behaviour of social housing providers.

This is not to say there are currently significant issues with social housing providers, but the ability to maintain oversight and control over the performance of social housing providers is required in order to deal with the risk that, at some point, a social housing provider may not demonstrate satisfactory performance. In these situations, it is important to have a set of regulatory tools available in order to ensure that social housing providers continue to meet the aforementioned objectives.

Contractual regulation can include powers such as injunctions through the Court, but this solution lacks the transparency that is paramount in any regulatory system, and lacks the urgency with which a regulator might need to take action in order to protect the rights of a tenant. Accordingly, setting out the range of enforcement powers in legislation is much clearer and more robust, especially when the potential consequences are so far-reaching.

Regulation must be considered in the context of the approximately £20 million that is paid each year from the Income Support budget to social housing providers. This is the single largest expense in the Income Support budget, and there is an expectation that significant and regular flows of public funds will be subject to regulatory oversight in order to ensure that that investment is being used correctly and delivers value-for-money.

The Treasury is, of course, the principal stakeholder for Andium Homes and there is a Memorandum of Understanding between the Minister and the company. This is a shareholder relationship that is, out of necessity, influenced by the requirement for Andium Homes to repay its investment. It does not, however, deal with housing policy matters such as rent levels, communication and engagement, or support for vulnerable tenants among other matters, which fall outside the financial imperative.

I have therefore determined that statutory is the preferred option – this includes the appointment of an arm’s-length regulator, the position of which can only, of course, be created through statute. The establishment of a regulator will enable full separation of the policy and regulatory functions of the Minister for Housing, which was envisaged by P.33/2013. Separation of these functions will help the regulator take a long-term and holistic view of the social housing sector, acting as a conduit between tenants, social housing providers and government in the delivery of homes and housing services.

There is no need for regulation to be burdensome, and a straightforward legal framework provides clarity to all parties about the regulatory requirements and their respective rights and obligations.

In order to minimise the impact of statutory regulation, a ‘co-regulation’ model has been adopted in the proposed regulatory framework. Under this approach, government will establish the structure of regulation, including the appointment of a regulator, and social housing providers will be responsible for undertaking monitoring, assessment and reporting of their performance against the regulatory requirements. As such, the regulator will not take a proactive role in monitoring compliance with the regulatory requirements on condition that individual social housing providers present appropriate evidence of their performance.

The co-regulation approach recognises the primary responsibility that the governing bodies of social housing providers have for the performance of their organisation, and that they are accountable to stakeholders for the standard of services delivered, and for dealing with problems that might arise.

A regulatory framework also benefits social housing providers. It provides a tool that they can use to assess and monitor their performance, and ensure the provision of good quality services. In a similar way, it enables innovation and best practice to be shared across the entire social housing sector. This point was raised by the former Health, Social Security and Housing Scrutiny Sub-Panel, which stated that regulation must not

simply address the risk of service failure, but should encourage growth and consumer-oriented service delivery.

In this regard, one of the roles of a regulator will be to provide best practice guidance and to support the capacity of social housing providers to grow and access new funding. In addition, evidence from other countries has shown that regulation enables social housing providers to access private funding at competitive rates. For private lenders, the presence of statutory regulation is an important aspect of due diligence when deciding to lend and provides assurance that appropriate oversight exists to mitigate the potential risks to their investment.

Existing regulation

The existing legal framework for rented accommodation would not sufficiently meet the objectives of regulation. In essence, legislation is intended to regulate the business activities of social housing providers in individual cases, whereas the proposed social housing regulation will provide a broader system for monitoring, assessing and reporting on the performance of the sector as a whole.

For example, the Residential Tenancy (Jersey) Law 2011 establishes the legal route a social housing provider (and private landlords) must follow in order to evict a tenant. However, it does not address how many evictions a social housing provider has carried out over a given period. If, say, one social housing provider had evicted 10 tenants over a year, whereas another had evicted none, a regulator would wish to know why there was a difference between their performances in view of its objective to protect the rights of tenants.

Furthermore, if one social housing provider had failed to meet the Decent Homes Standard across its portfolio (as evidenced by interventions under the Public Health and Safety (Rented Dwellings) Law), but another had achieved the Decent Homes Standard on all its properties, a regulator would, again, wish to understand the reasons why there was such a difference and take action to ensure the social housing provider had a plan to meet the Decent Homes Standard.

This type of information is not only important for the regulator. Consistent, sector-wide information helps tenants to understand how their landlord is performing compared to another, and empowers them to hold their landlord to account for service delivery.

Moreover, existing laws focus on specific matters such as tenancy management and the standard of accommodation; they do not deal with other matters such as rents; communication, complaints and engagement with tenants; support for vulnerable people; and the contribution that social housing providers makes to broader community initiatives. These matters will be covered by the regulatory framework proposed in P.120.

Review of the Residential (Tenancy) Jersey Law 2011

There has not been a review of the Residential Tenancy Law since it came into effect, but I am aware that there are areas to the Law where changes could be made in order to strengthen the legislative framework for rented accommodation. For example, it may be possible to amend the Law to:

- establish the right of a landlord to enter a property with reasonable notice;
- establish minimum notice period requirements when a break clause is included in a tenancy;
- prevent “retaliatory evictions” where a tenant makes a complaint about property standards;
- introduce standard tenancy terms for repair and maintenance obligations; and
- introduce retrospective tenancy deposit protection.

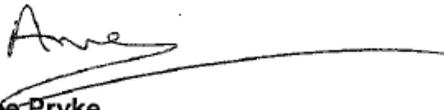
These potential amendments are separate to social housing regulation and would apply to the entire rented sector, including private tenancies. A full review of the Residential Tenancy Law has not been identified as a priority at this point, and would need to be considered by the next Minister. However, it is important that we keep the effectiveness of legislation under review, and it would be opportune to do so in the near future as we continue to strengthen regulation of the rented sector.

Rent increases (link to RPI)

The Retail Price Index (RPI) is a standard method by which landlords may choose to increase the rent they charge. It is considered best practice to link rent increases to RPI, reflecting the additional costs that a landlord may experience as a result of inflation in the costs of goods and services.

I am conscious that the debate on P.120 is fast-approaching. Should you or Panel Members have any further questions before the debate, my officers and I would be happy to respond and provide you with additional information.

Yours sincerely,



**Deputy Anne Pryke
Minister for Housing**

P.66/2017

**DRAFT PUBLIC HEALTH AND SAFETY (RENTED DWELLINGS) (JERSEY) LAW 201-
BRIEFING PAPER FOR ENVIRONMENT, HOUSING AND INFRASTRUCTURE SCRUTINY PANEL**

This paper has been produced at the request of the Environment, Housing and Infrastructure Scrutiny Panel to assist in their review of the proposals set out in P.66/2017 the "Draft Public Health and Safety (Rented Dwellings) (Jersey) Law 201-" (the Draft Law).

Clearly, the aim of the Law is laudable in terms of providing a means of ensuring that all occupants of private rented accommodation in Jersey benefit from defined minimum standards of accommodation. This paper tries to provide an informed view on how the draft Law will fit into existing arrangements for the regulation of residential accommodation and specifically social rented accommodation.

THE PRINCIPLES OF THE DRAFT LAW

All rented accommodation should meet minimum levels of safety and quality, and the "Decent Homes Standard"¹ is a measure which has precedent in Jersey having been used as the basis for the Social Housing Standard which underpinned the transfer of social housing to Andium Homes in 2014.

Until the introduction of the Residential Tenancy (Jersey) Law 2011 (RTL2011) (effective from May 2013) the private rented sector in Jersey was not sufficiently regulated.

Since the introduction of the RTL2011 there has clearly been a drive to improve regulation for the benefit of tenants, and a number of Regulations and Orders have been introduced under the RTL2011:-

- RESIDENTIAL TENANCY (SUPPLY OF SERVICES) (JERSEY) ORDER 2013
- RESIDENTIAL TENANCY (CONDITION REPORTS) (JERSEY) ORDER 2014
- RESIDENTIAL TENANCY (DEPOSIT SCHEME) (JERSEY) REGULATIONS 2014
- RESIDENTIAL TENANCY (DEPOSIT SCHEME – FEE) (JERSEY) ORDER 2015

All of these pieces of legislation offer protection for tenants across the whole of the rented sector.

Thus far, the Housing Minister has not brought forward any Regulations or Orders on Housing standards under the Residential Tenancy Law.

The new draft Law is a new piece of standalone legislation and it may be worth considering whether the intended outcomes in the draft Law could be achieved through an additional Regulation or Order under the RTL2011. There is an argument that this would limit the number of Statutes and bring all matters relating to residential accommodation together under one Law, increasing transparency for both landlords and tenants.

¹ Department of Communities and Local Government 2006
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7812/138355.pdf

That aside, if the draft Law is adopted as proposed, it will establish a statutory set of minimum standards for all rented dwellings in Jersey. That is a positive step and essentially will introduce the Decent Homes Standard, already adopted by Andium Homes, to all rented dwellings in Jersey.

Where there may be some concern for landlords, and in particular those who already operate in Regulated or pseudo regulated sub-sectors of the market (such as social housing), is the duplication that may arise from increases in the numbers of Laws which set standards of performance and behaviour for landlords; particularly when the various pieces of legislation are brought onto the statute books at different times and by different Ministers.

Of particular concern to Landlords will be any increase in costs associated with any new Laws. P.66/2017 for instance proposes that the States will be able to levy a charge on a landlord for issuing a license on any rented dwelling. That on its own may not be unreasonable, although consideration may need to be given to a maximum fee payable by landlords with larger portfolios so that those landlords who are likely to be professional landlords such as Social Housing Providers, are not shouldering the financial burden of regulation when in fact they are the group least likely to require regulating. However, where there will be concern is where subsequent regulation specific to certain sub-sectors or landlords also have a registration or licence fee payable. As an illustration of this the Panel will be aware that the Housing Minister has recently set out her intention to introduce a 'Regulatory Framework for Social Housing'. The full intent of that Regulatory Framework is examined in greater detail later in this paper but it is clear that should the Housing Minister be successful in asking the States to introduce the proposed framework, then an independent regulator will be appointed.

The cost of this appointment annually is estimated at a minimum of £100,000 per annum and in all likelihood it will be greater². It seems highly likely that the cost of the regulator will be met by a levy or registration fee on Social Housing Providers, or at least some of them, given that certain social housing providers, the Parishes in particular, are not to be subject to the Housing Minister's proposed Regulatory Framework.

It would therefore seem prudent, when considering the draft Law, for the Panel to consider what the unintended consequences of its introduction might be and the extent to which the intended outcomes of the Draft Law are already met in significant proportions of the rented sector.

We have already commented that there is little regulation of standards in the private rented sector in Jersey and so the introduction of the draft Law will provide a consistent and level playing field in terms of housing quality standards, which should be a very positive step for tenants generally.

In making that decision though, States Members should be appraised of what other legislation is proposed or already in place and how taken together they might impact on landlords and, where duplication of costs and charges are likely to occur, how these will impact on tenants who will ultimately be paying for these charges.

PROPOSED REGULATORY FRAMEWORK FOR SOCIAL HOUSING

The Housing Minister has carried out consultation on the introduction of a Regulatory Framework, which will apply to Social Housing providers.

² P.33/2013 estimated the cost of a Regulator at £160,000 p.a.

Her proposals are set out in a paper presented to the Council of Ministers recently.

The following commentary on that paper is intended to inform the Scrutiny process and identify possible areas of duplication between the Housing Minister's proposals and P.66/2017 or indeed other existing legislation or mechanisms already in place.

The Minister's paper is predicated on the need for "a robust system of oversight in accordance with the Government's priorities for housing" and "to provide a regulatory framework capable of protecting and strengthening the rights and interests of social housing tenants".

Section 6 of the paper sets out what is meant by Social Housing and identifies Jersey's Social Housing Providers. The list is, however, incomplete and fails to take account of a number of Parishes who operate small stocks of Social Housing along with organisations such as the Haigh Homes. Clearly the tenants of those bodies also warrant the protection proposed for tenants of the listed providers.

Section 8 of the Paper specifically deals with how the selected group of social housing providers will be regulated. Specific point is made that the view of Social Housing providers is that a form of contractual regulation would be appropriate for Jersey. There is of course a proven model of this already working in respect of how the States already regulates Andium Homes.

EXISTING REGULATORY FRAMEWORK APPLIED TO ANDIUM HOMES

As Jersey's largest landlord, Andium Homes' of course believes that tenants should have good levels of protection and have access to:-

- A fair and open selection process when being allocated a home;
- An affordable rent, in line with government policy;
- Safe, secure and well maintained housing;
- Safe and well maintained communities where they can also access support, if needed, to live independently;
- Timely communication about issues that affect them and the ability to provide feedback on the services they receive.

These beliefs manifest themselves in the Andium Homes Core Values and accord well with the priorities that the Minister sets out in her paper.

The same cannot be said about the private rented sector where performance is far more varied and generally unknown.

In our consultation dialogue with the Minister over the regulation framework proposals she has suggested that regulation of the private rented sector is not a priority because private sector tenants will be adequately protected through a combination of the RTL2011 and the draft Law. As these pieces of legalisation apply equally to the social housing sector, it follows that social housing tenants must equally benefit from that level of protection, given that the majority of the social housing providers have already adopted the Decent Homes Standard without the need for the draft Law.

Therefore, if it is accepted that tenants in both the private and social rented sector are protected by existing Laws, then the only other reason cited by the Minister for introducing specific social housing regulation is 'to maintain the necessary levels of confidence for government and private investors'.

This degree of confidence can easily be generated through non-statutory, contractual arrangements.

Such contractual arrangements are exemplified in the agreements between Andium Homes and the States of Jersey. Amongst other things, these agreements define the extent of the Company's activities, the significant annual return made by the Company each year, and the manner in which the company provides the States as sole shareholder or Guarantor, with confidence, e.g.

- Board composition and the mechanism for the appointment of Directors;
- Production of a Strategic Business Plan;
- Agreed KPI's;
- Production of an Annual Report, including consolidated, audited financial statements and an auditor's report, showing a comparison between Business Plan objectives and actual results;
- An annual submission of estimated capital expenditure and receipts;
- Any other information or reports required by the Guarantor;
- "No surprises" policy established in the spirit of open dialogue between the company and its Guarantor;
- A programme of quarterly meetings between the Company and Guarantor;
- Approval of remuneration policy;
- Use of the Affordable Housing Gateway for allocations;
- Providing homes which meet the Decent Homes Standard;
- Following the States Social Housing Rent Policy;
- Consultation with tenants.

Clearly, these matters correlate well with the desired financial and governance standards expressed by the Minister in her policy proposals. Were it the case that the Andium Homes contractual arrangements were mirrored across the entire social housing sector, then the States would have similar oversight of those organisations and additional legislation or regulation would be wholly duplicative and entirely unnecessary.

Andium Homes is a company limited by guarantee with the States as sole guarantor member; that in itself means that there are additional safeguards and oversight in respect of governance and operations, which are specific to limited companies.

The company has an openly recruited Board of Directors, which includes 6 non-executive directors (i.e. independent), including 2 tenant directors. The board members have specific legal obligations to fulfil under the Companies (Jersey) Law 1991.

As well as providing strategic direction for the company, the Board's role is to provide independent oversight of company governance. The Board follows best practice corporate governance as set out in the "UK Corporate Governance Code"³ published by the Financial Reporting Council.

In doing so:-

- The Board ensures that the needs of the stakeholder are met. In our case, key stakeholders include Treasury (as our owner), the SHU (because the SHU sets Housing policy which drives our Business Plan) and our tenants;
- The Board has adopted appropriate policies for good governance, including a robust internal complaints and appeals policy and a treasury policy that requires us to hold minimum cash levels.

³ <https://frc.org.uk/getattachment/ca7e94c4-b9a9-49e2-a824-ad76a322873c/UK-Corporate-Governance-Code-April-2016.pdf>

Notwithstanding these controls, Andium Homes further demonstrates its openness, transparency and attitude to exemplar governance through:-

- Being subject to the FOI Legislation;
- Being subject to review by the Public Accounts Committee and C&AG;
- Providing opportunities for the Housing Minister to influence the direction of business activities through the Housing Strategy;
- Regular communications with the Minister and SHU.

Through the adoption of P.33/2013 “The Reform of Social Housing”, the States achieved some important objectives in terms of separating the landlord, policy and regulation functions that had previously been carried out by the Minister for Housing; whilst creating a company with greater commercial agility and less political interference, without sacrificing governance, transparency and appropriate oversight.

The current arrangements whereby, the Housing Minister sets the housing policy for the Island; Andium Homes delivers the outcomes; and the regulation is carried out by the Treasury as Guarantor under the terms of the MoU, appears to more than adequately provide the degree of separation proposed in P33/2013, which in turn generates the desired level of confidence. All of this is achieved without the need for costly and burdensome new regulation and additional staff.

These existing mechanisms are contractual, and are wholly suitable for replication in one form or another with other social housing providers on a consensual basis.

Attached at Appendix A hereto is a table setting the Proposed Performance Measures, Service Delivery Standards and Key Performance Indicators (KPI's) as indicated in the Housing Ministers paper (Sections 9.8, 9.9 and 10.6) and how they are already regulated by existing legislation or other mechanisms already established by the States.

What is apparent from Appendix A is that:-

100% of the Proposed Performance Measures are already regulated through the Corporate Governance Code, which is adopted within the Memorandum of Understanding (MoU) between Andium Homes and the Minister for Treasury & Resources;

All of the Performance Measures are clearly set out annually in the Strategic Business Plan or Annual Report;

All of the Proposed KPI's with the exception of 1 ⁴are already reported on in the Annual Report and in some cases committed to in the MoU;

⁴ Andium Homes allocates its properties from the Affordable Housing Gateway using a mechanism called ‘Choice Based Lettings’ this empowers applicants to engage in the allocation process by bidding for properties which they want to live in. Allocation is made to the bidder in the greatest housing need.

Statistics on repairs are collected and used internally to drive continuous improvement. These will be available for publication as KPI's within the 2017 Annual Report.

All of the proposed service standards are already measured, reported on or regulated in existing legislation, the Strategic Business Plan, Annual Report or MoU.

Appendix A also details several matters which are not proposed in the Ministers Regulatory Framework paper but which would seem to be important in generating the confidence, cited as a key reason for regulation, for tenants, government and other stakeholders.

ANDIUM HOMES
November 2017