

STATES OF JERSEY



Jersey

DRAFT COVID-19 (RESIDENTIAL TENANCY) (TEMPORARY AMENDMENT OF LAW) (JERSEY) REGULATIONS 202-

**Lodged au Greffe on 8th April 2020
by the Minister for Children and Housing**

STATES GREFFE

REPORT

At a time when Islanders may be facing hardship due to the Covid-19 coronavirus outbreak, it is important they are not put at risk of being made homeless. The measures proposed in the Draft Covid-19 (Residential Tenancy) (Temporary Amendment of Law) (Jersey) Regulations 202- (“the draft Regulations”) are designed to sustain residential tenancies and protect tenants by –

- preventing tenants from being evicted due to financial hardship caused by coronavirus;
- introducing a suspension on rent increases to protect tenants from additional financial hardship; and
- enabling tenants to extend their tenancies during the coronavirus outbreak should they so wish.

The measures will enable tenants to stay at home, protect their health and reduce the spread of coronavirus.

The measures will apply until 30th September 2020 to all tenancy agreements covered by the [Residential Tenancy \(Jersey\) Law 2011](#), (“the 2011 Law”) including tenancies for ‘Qualified’ and ‘non-Qualified’ accommodation.

Tenants will still have a duty to make every effort to pay rent and fulfil the obligations of their tenancy agreement. Landlords, in turn, must continue to provide security of tenure to tenants.

The Minister for Children and Housing will publish guidance alongside the draft Regulations to inform landlords and tenants about the changes to the 2011 Law and the effect on tenancies. The guidance will deal with matters such as how the repayment of rent arrears should be managed, and information that a tenant should provide to demonstrate they are experiencing financial hardship.

This will be supported by a Practice Direction from the Court in respect of how it will deal with matters relating to rent arrears, should the landlord and tenant pursue legal proceedings as a last resort.

The draft Regulations

The draft Regulations, if approved by the Assembly, will make temporary amendments to the 2011 Law for the period of the Covid-19 coronavirus pandemic.

New Articles to be inserted in the 2011 Law:

Article 7A provides for the extension of residential tenancies. Where a fixed-term tenancy is due to end before 30th September 2020, it may continue as a periodic tenancy unless the landlord and tenant enter into a new fixed-term agreement, or both parties agree that the tenancy may expire.

Any existing periodic tenancy may only be ended by the tenant or where the parties agree in writing that it should end.

Article 7B provides for cases where the continuing of an existing tenancy will prevent any prospective tenancy from proceeding. The landlord must inform the prospective tenant as soon as practicable and reimburse any sum paid in connection with securing the tenancy. The landlord and prospective tenant are released from any legal obligation to each other.

Article 7C suspends any rent increases due under a tenancy agreement until 30th September 2020. A landlord must not increase the rent and, where a tenant has already been notified of a rent increase, the increase will not take effect until after 30th September 2020. The draft Regulations make it an offence for a landlord to increase rent during the period, which is liable to a fine of level 3 on the standard scale.

Article 7D prevents a landlord from seeking to terminate a tenancy and evict a tenant through the Court for breach of tenancy due to financial hardship caused by the Covid-19 coronavirus outbreak.

The provision applies to breaches of tenancy for rent arrears and failure to pay any other sums of money due directly to the landlord, such as utilities and service charges. It does not apply to other breaches of tenancy, such as failure to keep a property in proper repair and anti-social behaviour.

The landlord must not seek to impose any financial penalty or other fee on a tenant as a result of their inability to make the payments.

The tenant will remain liable to pay the rent and any other payments to the landlord. Under **Article 7E**, the Minister for Children and Housing may issue guidance in relation to the end of tenancies, rental payments and eviction for rent arrears caused by the Covid-19 coronavirus outbreak.

Article 7F enables the Minister, by Order, to make further provision in relation to the termination of residential tenancy agreements, increases in rent and failure to pay rent or other sums due to the landlord.

Financial and manpower implications

The draft Regulations are designed to sustain tenancies and protect tenants from additional financial hardship at a time when they may already be under significant financial pressure.

A tenant will still be fully liable for paying their rent and other sums paid directly to their landlord such as utilities and service charges.

The draft Regulations provide a framework to manage issues such as rent arrears during the Covid-19 coronavirus outbreak. However, the Regulations will give landlords and tenants the flexibility to determine arrangements for the repayments of rent arrears and other amounts accrued, so that the financial impact is managed in a way that is appropriate for both parties. The Minister will publish guidance to support landlords and tenants with this process.

EXPLANATORY NOTE

These Regulations, if passed, will make temporary amendments to the Residential Tenancy (Jersey) Law 2011. The amendments will expire on 30th September 2020.

Regulation 1 inserts a new Part 3A which has temporary provisions relating to the Covid-19 outbreak.

Article 7A applies to tenancies that are due to terminate before 1st October 2020. Any tenancy for which there is a specified term continues as a periodic tenancy unless the landlord and tenant enter into a new agreement with a specified term or both agree that the tenancy expires. A periodic tenancy may only be ended by the tenant or where the tenant and the landlord both agree in writing that it should end. Where a tenant has given notice that he or she wishes to end a periodic tenancy, he or she may inform the landlord that he or she intends to remain in the accommodation. A tenant who is unable to leave after notice has been given by the tenant or landlord because of the Covid-19 outbreak may remain in the accommodation. In both cases the tenancy will continue as a periodic tenancy.

Article 7B makes provision for cases where the continuing of an existing tenancy will prevent any prospective tenancy from proceeding. The landlord must inform the prospective tenant as soon as practicable and reimburse any sum paid in connection with securing the tenancy. The landlord and prospective tenant are released from any obligation to each other.

Article 7C prevents rent increases taking effect until after 30th September 2020. A landlord must not increase the rent and, where a rent increase has been notified, that increase will not increase until after 30th September 2020. Where a tenancy is renewed with a rent increase clause, the rent must not increase until after 30th September 2020. A landlord who contravenes Article 7C commits an offence and is liable to a fine of up to level 3 on the standard scale, which is currently £10,000.

Article 7D prevents a landlord from seeking eviction under Article 12 of the Law where, as a result of financial hardship due to the Covid-19 outbreak, a tenant has failed to pay rent or any other sum due to the landlord and has provided the landlord with written notice and appropriate evidence. The landlord must not seek to impose any financial penalty or charge interest or any other fee in relation to that sum but the tenant remains liable to pay the rent to the landlord. Where a court determines that the failure to pay rent was not as a result of financial hardship caused by the Covid-19 outbreak, it may order interest is paid if it determines that the failure to pay rent was not as a result of financial hardship caused by the Covid-19 outbreak.

Article 7E requires the Minister to issue guidance in relation to the termination of tenancies, increases in rent and eviction for arrears or rent or other sums due to the landlord caused by the Covid-19 outbreak.

Article 7F provides the Minister with the power to amend, by Order, the inserted Articles 7A to 7E and to make further provision in relation to the termination of tenancies, increases in rent and failure to pay rent or other sums due to the landlord.

Article 7G provides that Part 3A expires on 30th September 2020.

Regulation 2 is a citation and commencement provision. The Regulations come into force on the day after they are made.



DRAFT COVID-19 (RESIDENTIAL TENANCY) (TEMPORARY AMENDMENT OF LAW) (JERSEY) REGULATIONS 202-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES make these Regulations under Article 2 of the Covid-19 (Enabling Provisions) (Jersey) Law 2020¹ –

1 Temporary amendment of the Residential Tenancy (Jersey) Law 2011

After Article 7 of the Residential Tenancy (Jersey) Law 2011² there is inserted –

“PART 3A

PROVISIONS RELATING TO THE COVID-19 OUTBREAK

7A Termination of a residential tenancy

- (1) Despite Articles 6 and 7, this Article applies to the termination of residential tenancy agreements.
- (2) Where any specified term of a tenancy expires, the tenancy continues from the date of the expiration of the term as a periodic tenancy unless the landlord and tenant –
 - (a) enter into a new agreement with a specified term; or
 - (b) agree that the tenancy expires.
- (3) Article 6 applies to existing periodic tenancies and to periodic tenancies entered into on or after the coming into force of the Covid-19 (Residential Tenancy) (Temporary Amendment of Law) (Jersey) Regulations 202³ as if –
 - (a) the conditions in paragraph (3) are that –
 - (i) the notice is in writing, and
 - (ii) the notice has been agreed between the landlord and the tenant;
 - (b) paragraph (5) does not apply.

- (4) Where a landlord served a requirement in accordance with Article 6 or a tenant gave notice in accordance with Article 7 before the coming into force of the Covid-19 (Residential Tenancy) (Temporary Amendment of Law) (Jersey) Regulations 202- and the date specified in the requirement or notice has not passed, the tenant may give notice in writing to the landlord that he or she intends to remain in occupation and the tenancy continues as a periodic tenancy.
- (5) Where a tenant has received notice and the date specified has passed, if he or she is unable to vacate the premises as a result of the Covid-19 outbreak, he or she may remain in occupation and the tenancy continues as a periodic tenancy.
- (6) In this Article, “periodic tenancy” means a tenancy to which Article 6, as modified by paragraph (3), and Article 7 apply.

7B Effect of Articles 6 to 7A on prospective residential tenancies

- (1) This Article applies where –
 - (a) a landlord and prospective tenant have reached agreement about a residential tenancy, whether a residential tenancy agreement has been signed or not;
 - (b) the tenant has not yet taken occupation; and
 - (c) any of the provisions of Articles 6 to 7A result in the accommodation no longer being available with vacant possession.
- (2) Where this Article applies –
 - (a) the landlord must inform the prospective tenant as soon as practicable that the accommodation is no longer available;
 - (b) the landlord and prospective tenant are released from any obligation to each other; and
 - (c) the landlord must reimburse the prospective tenant any sum paid in connection with securing the tenancy.

7C Suspension of rent increases

- (1) A landlord must not increase the rent due under any residential tenancy agreement, or make a variation of a residential tenancy agreement subject to an increase in the rent, for a period before 1st October 2020.
- (2) Where a landlord notified an increase before the coming into force of the Covid-19 (Residential Tenancy) (Temporary Amendment of Law) (Jersey) Regulations 202- and that increase has not taken effect, the rent must not increase for any period before 1st October 2020.
- (3) Where a residential tenancy agreement is renewed and the tenancy includes a clause allowing for an increase in the rent, that rent must not increase for any period before 1st October 2020.

- (4) A landlord who increases a rent in contravention of paragraph (1), (2) or (3) commits an offence and is liable to a fine of level 3 on the standard scale.

7D Failure to pay rent because of financial hardship

- (1) Despite Article 12, where the tenant has breached a term of the residential tenancy agreement requiring the payment of rent or any other sum to the landlord and has notified the landlord in writing that the breach is a result of financial hardship caused by the Covid-19 outbreak and provided appropriate supporting evidence in line with guidance provided by the Minister, that breach does not constitute a breach for which the landlord may apply to the Court for an order under Article 12.
- (2) The landlord must not impose any financial penalty or charge interest or any other fee in relation to the rent or other sum referred to in paragraph (1).
- (3) Nothing in paragraph (1) removes –
- (a) the liability of the tenant to pay the rent or other sum to the landlord;
 - (b) or the ability of the court to require that interest is paid on the rent or other sum if it determines that the breach of the term was not a result of financial hardship caused by the Covid-19 outbreak.

7E Guidance

The Minister must issue guidance in relation to the termination of tenancies, rental payments and eviction for arrears of rent or other sums due to the landlord caused by the Covid-19 outbreak.

7F Power to make further provision by Order

The Minister may, by Order, amend Articles 7A to 7E and may make further provision in relation to the termination of residential tenancy agreements, increases in rent and failure to pay rent or other sums due to the landlord.

7G Expiration of Part 3A

Part 3A expires on 30th September 2020.”.

2 Citation and commencement

These Regulations may be cited as the Covid-19 (Residential Tenancy) (Temporary Amendment of Law) (Jersey) Regulations 202- and come into force on the day after they are made.

ENDNOTES

Table of Endnote References

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- ¹ *L.2/2020*
² *chapter 18.720*
³ *P.42/2020*