

STATES OF JERSEY



Jersey

DRAFT PUBLIC HEALTH AND SAFETY (RENTED DWELLINGS) (LICENSING) (JERSEY) REGULATIONS 202-

**Lodged au Greffe on 16th April 2021
by the Minister for the Environment
Earliest date for debate: 8th June 2021**

STATES GREFFE

REPORT

The Assembly adopted the [Public Health and Safety \(Rented Dwellings\) \(Jersey\) Law 2018](#) ('the Law') in 2018, and the Minister subsequently made ([MD-PE-2018-0083](#)) the [Public Health and Safety \(Rented Dwellings – Minimum Standards and Prescribed Hazards\) \(Jersey\) Order 2018](#). The purpose of the Law is to: '*promote the health and safety of persons in rented dwellings, and for connected purposes, which requires that rented dwellings meet minimum standards.*'

These Regulations were presented in a different form previously under [P.106/2019](#) and were not adopted by the Assembly. This version of the Regulations, incorporating the various changes suggested by members during past debates and discussions, has been lodged ahead of the debate of [P.20/2021](#) which would '*request the Minister for Environment to lodge ... (the Regulations)*' and which required other amendments – which have not been included – to the Regulations before their presentation to the Assembly.

These Regulations, if approved, would implement a suitable licensing scheme:

- i. with nil charge;
- ii. requiring landlords to licence their properties as dwellings for the purpose of renting; and
- iii. assist with achieving the purpose of the Law to improve the quality of rented dwellings, ensuring they meet the minimum standards for accommodation as required by Law.

Detail

The Draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 202- ('the Regulations'), if adopted, would make it a requirement for landlords to licence a dwelling for the purpose of rental accommodation.

Unlike registration schemes which inform Government that you are carrying out an activity, it is an important distinction that under these proposed Regulations a landlord would not be allowed to use a property as a rented dwelling *unless* that dwelling is licensed.

The Infrastructure, Housing and Environment Department ('the Department') is responsible for enforcement and, despite minimum standards being a legal requirement, continue to identify rented dwellings in a state of noncompliance.

The Regulations would provide Environmental Health Officers ('Officers') with a complete data set of licenced dwellings. Using this, Officers would be able to carry out proactive targeted inspections over an extended period based on various details of the property – which will be received as part of the application license – and any other information gathering.

Currently, investigations begin following information received by the Department or a formal complaint. It should be noted that although tenants are able to contact the Department directly, in the majority of cases where dwellings were found in noncompliance, tenants had not complained directly to the Department for fear of eviction.

The licensing scheme proposed has been designed to:

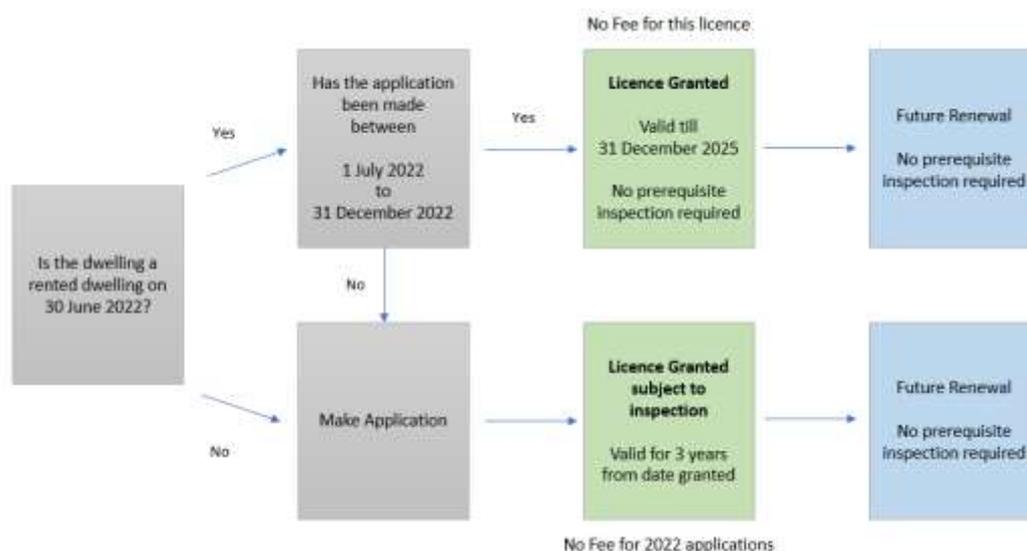
- i. be as simple as possible;
- ii. be independent from any other scheme;

- iii. not impose any licensing or application fee; and
- iv. not introduce a mass regime of inspections.

In summary the Regulations would introduce a licensing scheme:

- i. that applies to all rented dwellings as defined in the Law;
- ii. that applies equally, thus achieving a level playing field;
- iii. that will come into force on 30 June 2022 which gives time for a managed transition
- iv. that allows for the granting of a licence without inspection for ‘existing’ rented dwellings if the application is made within a 6-month ‘grandfather rights’ period - outside of this period or properties coming on to the rental market for the first time will need an inspection; and
- v. with a licence that will be valid for 3 years to maintain a good degree of continuity whilst allowing environmental health officers to be effective in inspection and compliance work.

The diagram below is a representation of the proposed licensing scheme.



Fees

The Law allows the Minister to impose a charge in respect of issuing licences. The Minister has decided that there will be no application or licence fees charge proposed on introduction of the regulations. This will remain the case unless a future Minister considers imposing a fee. Therefore, ‘existing’ landlords who are granted ‘grandfather rights’ should not expect to be charged any fees until they renew their licence, which expires on 31 December 2025, and unless the Minister decided to introduce a fee.

If in future the Minister decided to introduce a fee, this would require formal publication via a ministerial decision and accompanying report. If the Regulations are adopted, the data gathered after the initial period could be reviewed to allow for a reliable determination of a fee which is proportionate to the cost of licensing and equitable in regulating the activity.

Financial and manpower implications

There are existing financial implications due to previous medium-term financial plan decisions of the Assembly. These decisions assumed that income would be generated as a result of these Regulations (in a previous form) as part of cost recovery.

Inspections will be carried out by the existing team.

APPENDIX TO REPORT**Proposed Licence Conditions****Notification of changes**

The Licence Holder, or nominated other, must inform Environmental Health directly, using the online portal or in writing, of any changes listed below within 28 days of the change occurring –

- (a) Licence Holder change of address, contact telephone number or email address;
- (b) Manager change of address, contact telephone number or email address;
- (c) Change of emergency contact number provided to the tenant;
- (d) Cancellation of Licence due to change in ownership, change of use as a rented dwelling or other change in circumstances.

Information to occupiers

The Licence Holder must within 28 days of a request, supply the occupiers of the property with a copy of the licence for the property they occupy.

A copy of the licence should be sent to the address the licence is in respect of or electronically to the tenant's last known email address.

This condition is fulfilled if a copy of the licence is provided to the tenant a maximum of two times per licenced year.

Within 28 days of the commencement of any new tenancy, or within 28 days of the first licence coming into force for tenants already in occupation on that date, the Licence Holder must provide the occupier(s) with written information explaining how they can raise an issue or make a complaint to the landlord or nominated other in relation to matters concerning their occupation, such as disrepair, pests and emergency issues relating to the security of the property.

This must include –

- a contact address;
- daytime telephone number;
- emergency out-of-hours telephone number;
- how the Licence Holder or nominated other will deal with such issues; and
- a statement on occupiers right to complain to Environmental Health together with contact details.

It is recommended that this information is included as a supplement to the Tenancy Agreement. This information can be provided in hard copy or electronic format (including notices displayed in communal areas, handbooks, emails, SMS, apps, websites and other bespoke systems) being fully accessible to the occupier. Consideration should also be given to occupiers who may have difficulty in accessing some forms of electronic communication.

Occupiers should be advised in advance of any changes to the above information and must be advised within 28 days of changes taking place. This can be communicated electronically or in writing and a record should be kept.

Due diligence checks

It's recommended the Licence Holder or nominated other carries out due diligence checks on prospective tenants before entering into tenancy agreements. This can take many forms and can include but is not limited to declarations on previous rent arrears, anti-social behaviour, damage, abandonment, refused housing, referees. As the Licence Holder, prospective tenants should also be given the opportunity to make any representations. For example, this may be their first tenancy so are unable to provide a previous landlord reference.

Property Inspections

There is a legal requirement on Licence Holders or nominated others to inspect the property at the start and end of a tenancy agreement in order to inform the Conditions Report.

It is recommended that the Licence Holder or nominated other carries out inspections at appropriate intervals. Any records made should be kept for the duration of the tenancy.

It is suggested that a record contains details of –

- who carried out the inspection and other persons present;
- date and time of the inspection;
- a breakdown of each room, including the common parts and external curtilage of the property, with any issues identified;
- changes in any equipment, furniture and furnishings supplied as part of the tenancy
- the number and location of each smoke and carbon monoxide (if applicable) detectors in the property;
- confirmation that each detector in the property has been tested and whether it is in working order and not expired; and
- action(s) taken or to be taken as a result of any issues identified during the inspection.

Occupiers right to quiet enjoyment

The Licence Holder or nominated other must ensure that the occupier's right to quiet enjoyment of the property is respected. Where entry is required to the property, the Licence Holder or nominated other must ensure that any notice requirements contained in a lawful tenancy agreement are complied with. In any case, the Licence Holder or nominated other must ensure that the tenant receives at least 24 hours written notice of intention to enter the property during reasonable hours. They must specify the reason entry is required, save where it would not be reasonable to give such notice, such as a genuine emergency.

Minimum property standards

The Licence Holder will ensure the rental property for which the licence relates meets those standards maintained within the Public Health and Safety (Rented Dwellings – Minimum Standards and Prescribed Hazards) (Jersey) Order 2018.

Equipment, furniture and furnishings

The Licence Holder or nominated other must ensure that any goods they make available to the occupier(s) as part of their residential tenancy are safe and in full working order. They should check these goods during inspections.

EXPLANATORY NOTE

These Regulations would establish a scheme in connection with the health and safety of rented dwellings and provide for the issuing of licences in respect of dwellings to be used as rented dwellings.

Regulation 1 defines the terms used in the Regulations.

Regulation 2 establishes the scheme and prohibits a dwelling being used as a rented dwelling unless licensed by the Minister for the Environment in accordance with the scheme and the Regulations. It also lists the matters that the scheme may provide for.

Regulation 3 empowers the Minister to licence rented dwellings for 3 years, commencing on the date the licence is issued (unless the Minister directs otherwise) and to inspect and be satisfied that a dwelling meets the health and safety standards required under the Law. It creates a power for the Minister to impose charges for the issue of a licence and if so imposes a requirement to publish those charges. There is also power for the Minister to withdraw a licence if the Minister considers that a dwelling does not meet those standards.

Regulation 4 provides an appeal to the Royal Court against a decision of the Minister not to grant a licence or to withdraw a licence.

Regulation 5 makes it an offence to contravene the prohibition on using an unlicensed dwelling as a rented dwelling or any requirement of a licence, punishable by a fine of up to £10,000.

Regulation 6 requires the Minister to issue a licence where a dwelling is a rented dwelling on commencement of the Regulations and a licence application is received by 31st December 2022. The licence is treated as having commenced on 1st July 2022 and expiring on 31st December 2025. In this case the Minister does not need to inspect the dwelling under *Regulation 3(3)*.

Regulation 7 gives the title by which the Regulations are to be cited and provides for them to come into force on 30th June 2022.



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DRAFT PUBLIC HEALTH AND SAFETY (RENTED DWELLINGS) (LICENSING) (JERSEY) REGULATIONS 202-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES make these Regulations under Article 5 of the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018¹ –

1 Interpretation

In these Regulations –

“applicant” means an applicant for a licence;

“licence” means a licence granted under Regulation 3;

“Law” means the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018²;

“new licence” means the first licence granted in respect of the dwelling to which it relates.

2 Establishment of Scheme

- (1) A scheme is established for the purpose of further ensuring the safety of rented dwellings and the health and safety of persons occupying such dwellings.
- (2) A person must not allow a dwelling to be used as a rented dwelling unless the dwelling is licensed for such use by the Minister in accordance with the scheme and these Regulations.
- (3) Without limiting paragraph (1) the scheme may provide for the following matters –
 - (a) the manner and form of an application for a licence;
 - (b) the information to be contained in such an application;
 - (c) for the Minister to require further information in relation to the application.

3 Licences

- (1) The Minister may license dwellings to be used as rented dwellings.
- (2) A licence –
 - (a) commences on –
 - (i) the date specified by the Minister in the licence, or
 - (ii) if no date is specified, the day it is issued; and
 - (b) expires 3 years after it commences.
- (3) Before issuing a new licence the Minister must –
 - (a) inspect the dwelling; and
 - (b) be satisfied that the dwelling meets the standards in respect of health and safety required under the Law.
- (4) A licence may contain such requirements as the Minister thinks fit.
- (5) The Minister may impose charges for the issue of a licence and if such charges are imposed they must be published.
- (6) The Minister may withdraw a licence if the Minister considers that the dwelling does not meet the standards set out in paragraph (3).

4 Appeals

- (1) A person aggrieved by a decision of the Minister not to grant a licence or to withdraw a licence may appeal to the Royal Court within 28 days of that decision.
- (2) On hearing the appeal, the Court may –
 - (a) confirm, reverse or vary the decision against which the appeal is brought; and
 - (b) make such other order as it thinks fit, including any order with respect to the payment of the costs of the appeal.

5 Offences

- (1) A person who contravenes Regulation 2(2) or any requirement of a licence commits an offence and is liable to a fine of level 3 on the standard scale.
- (2) Articles 15(2), 16(1) and (2) and 17 of the Law apply to an offence under paragraph (1) as they apply to offences under Article 15(1) of the Law.

6 Transitional provisions

- (1) The Minister must issue a new licence in respect of any dwelling that, on the day that these Regulations come into force, is a rented dwelling, if the application for the licence in respect of that dwelling is received by 31st December 2022.
- (2) Despite Regulation 3(2), a new licence issued under paragraph (1) is treated as commencing on 1st July 2022 (even if issued after that date) and expiring on 31st December 2025.

- (3) Regulation 3(3) does not apply in respect of a licence issued under paragraph (1).
- (4) Nothing in this Regulation limits the Minister's powers under Regulation 3(6).

7 Citation and commencement

These Regulations may be cited as the Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 202- and come into force on 30th June 2022.

ENDNOTES

Table of Endnote References

1	<i>chapter 22.700</i>
2	<i>chapter 22.700</i>