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# STATES OF JERSEY



## RENTAL SECTOR IN JERSEY: PROPOSED POLICY DIRECTION

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Presented to the States on 29th July 2015  
by the Minister for Housing

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STATES GREFFE

## REPORT

### 1. Executive summary

- 1.1 Housing is a key component in people's lives. A home provides security, stability and comfort. It affects health and well-being; encourages people to participate in social and economic life; and helps to support strong communities.
- 1.2 The Strategic Plan 2015 – 2018 recognises the role that housing has in supporting broader social and economic policy objectives, and includes a goal to –
- “Champion a proper supply of housing of all types, promote affordability, improve housing standards and build strong communities.”*
- 1.3 The Housing Strategy will build on this goal by placing affordable, good standard and secure homes at the heart of the Council of Ministers' vision for housing, and setting out the role that housing has in addressing some of the challenges facing the Island.
- 1.4 This report supports the Housing Strategy. It is one of several detailed policy papers that will assist with the delivery of the Strategy, and establishes specific policy areas that the Minister for Housing will take forward in respect of the rental sector.
- 1.5 The Minister for Housing and the Minister for Health and Social Services recognise the large contribution that rental accommodation makes towards meeting housing needs in the Island. The private and social rental sectors provide homes to a range of different people, many of whom would be unable to access other categories of tenure or who are attracted to the choice and flexibility that renting offers them.
- 1.6 The importance of the rental sector is reflected in figures which show that under half of Island households live in rental accommodation: the private rental sector accounts for around 33% of households across more than 13,000 units of accommodation<sup>1</sup>, and social housing provides homes to 14% of households, with over 5,600 units of accommodation.
- 1.7 Accordingly, private and social rental accommodation has a significant part to play in the Island's social and economic future, particularly in relation to health and well-being, the regeneration of St. Helier, and tackling inequality. This makes it essential to have a debate about the role of the sector and the ways which it can support, and be more responsive to, people's housing needs.
- 1.8 The measures set out in this report are intended to help direct this debate. Focusing on 3 core features of the rental sector – standards, affordability and security of tenure – the report sets out a package of measures that could be used to create a professional and well-functioning rental sector which provides an attractive, stable and long-term housing option for the people it serves.

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<sup>1</sup> States of Jersey Statistics Unit (2013) *Jersey in Figures 2013*, p. 45

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## 2. Overview

2.1 There has been a considerable amount of work carried out in the last 5 years on the framework of laws governing the Island's rental sector. These include –

- The Residential Tenancy (Jersey) Law 2011 came into force in **May 2013**. This established statutory rights and responsibilities for landlords and tenants.
- The Control of Housing and Work (Jersey) Law 2012 was introduced in **July 2013**. This Law enabled 'registered' (often called 'unqualified') people to obtain security of tenure for the first time.
- An Order to prevent landlords from supplying utilities to tenants above the retail price was introduced in **October 2013**.
- Compulsory Condition Reports were introduced in **October 2014** to record the condition, repair and maintenance of properties at the beginning and end of tenancies.

2.2 Whilst the rental sector has been an active area for new regulation, there is further work remaining to bring the different elements of regulation together into a coherent framework, and to strengthen areas where there is limited statutory protection, or where existing Laws are outdated and do not reflect present-day requirements.

2.3 Therefore, this report sets out the proposed policy direction for the rental sector and the co-ordination of work taking place across the States to deliver these proposals.

2.4 This Report has been prepared, in part, as a response to the Proposition of Deputy M. Tadier of St. Brelade, P.42/2014<sup>2</sup>, as amended, which the States Assembly adopted on 22nd May 2014. The Proposition requested –

- The Minister for Health and Social Services, in consultation with the Minister for Housing, to introduce minimum condition standards for all rental properties;
- The Minister for Housing to investigate the setting-up of a registration scheme for landlords; and
- The Minister for Housing to investigate the introduction of rent control to set maximum levels of rents and fees that may be charged to tenants.

2.5 The Strategic Housing Unit (SHU) and the Environmental Health Department have reviewed these issues jointly on behalf of the Ministers for Housing and Health and Social Services and, in so doing, have accounted for the direction of P.42/2014. This report sets out their findings, and includes other policy measures that could be used to create a more effective approach to regulating the rental sector.

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<sup>2</sup> "Residential rental property: minimum standards and a register of landlords"

### 3. Summary of proposals

3.1. This Report has been prepared for the Minister for Housing, having consulted with the Minister for Health and Social Services. The report brings together the Ministers' immediate priorities for the rental sector, and the policy measures they suggest should be advanced over this ministerial term, including –

**3.1.1 Introduction of minimum standards:** All categories of rental accommodation will be subject to the same minimum condition standards and system of inspection under a new Public Health and Safety (Rented Dwellings) Law. In this way, it would not make a difference whether a unit of accommodation was 'qualified' or 'registered', self-contained or a lodging house, socially or privately rented – all tenants would receive the same level of protection.

**3.1.2** A range of monitoring and enforcement powers will be specified, including –

- 'Portfolio action' where all rental accommodation let by an individual landlord can be inspected if there is reasonable grounds to believe, on inspecting one property, the problems at that property may be present at other properties as well; and
- 'Selective licensing' for poor-performing landlords that would effectively place those landlords under a closer inspection regime, with this being published so that prospective tenants are aware.

**The plan is to introduce a draft Law in 2015 – see conclusion 1.**

**3.1.3 Houses in multiple occupancy:** The regulatory regime introduced by the new Draft Public Health and Safety (Rented Dwellings) (Jersey) Law 201- provides an opportunity to develop a new category of housing for 'Houses in Multiple Occupation' (3 or more households who live in the same property), and to create an enhanced system of mandatory inspection. This is to recognise that the occupation of a single property by separate but sharing households presents higher challenges in relation to the maintenance of standards.

**3.1.4** Following this, the intention would be to repeal the Lodging Houses (Registration) (Jersey) Law 1962 ("the 1962 Law") – which addresses standards of accommodation for a specific type of property occupied by registered persons (both self-contained and HMO) – subject to further consultation with interested stakeholders. If taken forward, all the accommodation covered by the 1962 Law would be covered instead by the Draft Public Health and Safety (Rented Dwellings) (Jersey) Law 201-.

**The intention is to undertake this task in 2016 – 2017 – see conclusion 2.**

**3.1.5 Social Housing Law:** A regulatory framework for social housing will be introduced to provide comfort above that available to private sector tenants in terms of standards and good governance of social housing providers, including Andium Homes and the social housing trusts, and to provide them with policy direction.

**The plan is to introduce a draft Law in 2015 – see conclusion 3.**

**3.1.6 Tenancy deposit scheme:** a service to protect tenants' deposits – where money paid to landlords by tenants should be handed to a scheme administrator, and repaid on completion of a tenancy, after a dispute resolution process if necessary – is currently being established.

**The plan is to introduce a scheme in 2015 – see conclusion 4.**

**3.1.7 Tenant redress:** The ease of the process whereby tenants and landlords obtain redress for a breach of tenancy will be examined, with a view to exploring whether an intermediary and easier way to access dispute resolution process should, and can be, introduced prior to action in the Petty Debts Court.

**3.1.8** This is to recognise that presently the parties to any dispute must either settle the dispute themselves, or undertake court action. It is felt that all tenants should have similar rights whoever owns their property, and this principle will be explored.

**The intention is to undertake the above task in 2016 – 2017 – see conclusion 5.**

**3.1.9 Voluntary accreditation:** Professional management standards will be promoted through the introduction of a voluntary landlord accreditation scheme for the private rental sector. The scheme will promote best practice and ensure that accredited landlords comply with a set of rental management standards. A good practice guide for rental accommodation will also be developed to educate landlords and tenants about their legal rights and responsibilities.

**The intention is to undertake the above task in 2015 – 2016 – see conclusions 6 and 7 below.**

**3.1.10 Security of tenure:** Options to afford legal protection for people who live in non-self-contained premises, which are not covered by the Residential Tenancy Law, will be examined, including measures to provide a reasonable level of security of tenure.

**The intention is to undertake the above task in 2016 – 2017 – see conclusion 8.**

**3.1.11 Rent control:** Advice has also been sought from the Economics Unit on rent controls – the advice is provided as an **Appendix** to this Report. Following review, the Minister for Housing is not minded to proceed with rent controls at this juncture, given that the primary focus of the Minister is to support affordability through increased supply and increases in the quality of the housing stock.

- 3.1.12** However, this does not mean that options for rent stabilisation cannot be looked into to make the costs of renting more predictable and prevent instability by encouraging longer tenancies with more predictable rent increases.

**The intention is to ensure that there is greater rent stability by introducing index-linked rent increases as part of a voluntary accreditation scheme, and to give further consideration to reforming the Rent Control Tribunal under the Dwelling Houses (Rent Control) (Jersey) Law 1946, including the composition of the Tribunal, its role and remit, and the tenancy matters for which it should be responsible – see conclusion 9.**

#### **4. Minimum condition standards for rental accommodation**

- 4.1 Good standard, secure and well-maintained accommodation has a significant effect on people’s lives in terms of their health and well-being. Poor standards of housing can cause or exacerbate health problems as much as good standards of housing can help to promote good health and limit the incidence of medical conditions.
- 4.2 In view of the need to promote good standards of accommodation in the rental sector, the States Assembly agreed in May 2014 that the Minister for Health and Social Services should bring forward draft legislation covering minimum condition standards for all categories of rental accommodation. As a result, the Minister will bring the Draft Public Health and Safety (Rented Dwellings) (Jersey) Law 201- to the Assembly for debate in 2015.
- 4.3 The Law will cover all categories of rental accommodation, including properties in the private sector, social housing, lodging houses, and staff accommodation. The Law will not cover owner-occupied property, since it is a matter for home-owners to live as they see fit, providing they have the capacity to make that choice. The draft Law will not cover lodgers in owner-occupied properties either.
- 4.4 To determine whether a rental accommodation unit meets minimum standards, the Environmental Health Department will use the Housing Health and Safety Rating System (HHSRS), a risk-based tool which assesses potential hazards to health and safety arising from deficiencies in housing.
- 4.5 The HHSRS addresses 29 of the most common types of physical hazards relating to housing, including –
- Disrepair;
  - Dampness, excess cold/heat;
  - Accidents (falls, fires, electrical faults);
  - Hygiene, sanitation and water supply;
  - Amenity standards; and
  - Lack of space, overcrowding and lighting.

- 4.6 Tenants who have a concern about the condition of their rental accommodation will be able to report problems to the Environmental Health Department and request an inspection of their property. An Environmental Health Officer will then carry out an assessment, using the HHSRS, of the risk of an incident arising from the hazard and harm occurring to its occupants as a result.
- 4.7 If a hazard is discovered that is determined to be serious, known as a 'Category 1 Hazard', the Environmental Health Department will have the power to take action to rectify the problem. The most likely action will be the issuance of an enforcement notice that requires a landlord to improve the condition of his/her property, although stricter penalties would be open to the Department depending on the seriousness of the hazard.
- 4.8 The Environmental Health Department may, for example, issue a prohibition notice banning a property, or part of one, from being let, until the problem is rectified. The Department would also be able to complete the work itself and claim expenses from the landlord. In most cases, a landlord would only be at risk of prosecution if he/she were to repeatedly ignore an improvement notice or other order.
- 4.9 Moreover, the Ministers believe it is vital to have a series of tools available to improve the standard of rental accommodation, and have agreed to include provision in the draft Law for officers to undertake 'portfolio action'. This provision would permit the Environmental Health Department to undertake more proactive monitoring of rental accommodation where it was determined that problems affecting one of a landlord's properties may also be present at another.
- 4.10 In this way, inspection would not rely solely on a compliant being made in respect of a property before it could be inspected. If a compliant was received about one property, then an inspection could be initiated in respect of any other properties let by that same landlord if there were reasonable grounds to do so.
- 4.11 Additionally, the Ministers wish to include provision in the Draft Public Health and Safety (Rented Dwellings) (Jersey) Law 201- to introduce a selective licensing regime targeted at poorly-performing landlords. This would work on the presumption that all landlords were operating in accordance with the Law, unless it could be demonstrated otherwise, in which case they would be put under a closer regulatory regime with conditions around the improvement of their accommodation. A register of these landlords would be held publicly to help inform the decisions of prospective tenants<sup>3</sup>.
- 4.12 Any landlords who did not improve their behaviour and continued to let poor-standard accommodation would run the risk of having their licence revoked; and whilst options for sanctions are being reviewed as part of the finalisation of the draft Law, this could include being excluded from the private rental sector altogether.

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<sup>3</sup> Law Commission (August 2008) *Housing: encouraging responsible letting*

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**Conclusion 1: The Draft Public Health and Safety (Rented Dwellings) (Jersey) Law 201- will be brought forward by the Minister for Health and Social Services during 2015. If approved, the new Law will introduce minimum standards for all categories of rental accommodation and a system to monitor and enforce standards. As some of the tools available to improve standards, ‘portfolio action’ and a ‘selective licensing’ scheme will be developed to capture landlords who fail to meet the legal requirements for renting property.**

## **5. Lodging house accommodation**

- 5.1 The development of the Draft Public Health and Safety (Rented Dwellings) (Jersey) Law 201- has given the Ministers an opportunity to consider the regulation of properties presently covered by the Lodging Houses (Registration) (Jersey) Law 1962.
- 5.2 The new Law, if adopted when brought to the States Assembly, will provide a set of health and safety standards with which all properties currently registered as lodging houses will also need to comply.
- 5.3 The 1962 Law originally functioned to ensure minimum standard accommodation for groups of people such as migrant workers. A person who was not qualified under the Housing (Jersey) Law 1949 was unable to lease a property and would therefore be classified as a lodger. *This meant they were only able to reside in registered lodging house accommodation; or in housing outside of the Housing Law; or as a private lodger in another person’s home; and received no tenancy rights or legal security of tenure.*
- 5.4 To compensate, the Law provided a registration and active inspection regime that does not depend on a complaint being made. All properties are registered, and a number of those properties are inspected each year, usually two-thirds of lodging houses. This is a more rigorous inspection regime than applies to other residential properties in Jersey.
- 5.5 When the Control of Housing and Work (Jersey) Law 2012 was introduced, the barrier that had prevented unqualified people (called ‘registered’ people in the Law) from leasing property was removed, the effect of which was that they were able to lease the property in which they lived rather than simply ‘lodge’. Ultimately, this provided people with security of tenure where they leased. This does not mean that they can live in qualified property, but they are able to lease that property under the Residential Tenancy (Jersey) Law 2011. This significantly increased the tenancy rights of many people living in lodging houses, the majority of which now comprises of self-contained units afforded the protection of the Residential Tenancy (Jersey) Law 2011.
- 5.6 In order to remove duplication and harmonise the regulation of lodging houses, the Minister for Housing proposes to repeal the Lodging Houses (Registration) (Jersey) Law 1962 when new minimum condition standards legislation has been introduced.

- 5.7 At the same time, the Ministers propose that any unit of accommodation that forms the principle residence of 3 or more unrelated households, and hence where they share amenities such as a kitchen, toilet and washroom, will be classified as ‘Houses in Multiple Occupation’ (HMOs) and subject to a compulsory licensing scheme under the Draft Public Health and Safety (Rented Dwellings) (Jersey) Law 201-. A compulsory licensing scheme will apply irrespective of whether the property is in the ‘qualified’ or ‘non-qualified’ housing sectors. Put simply, any property which meets the definition will be regulated.
- 5.8 This category of rental accommodation has a useful purpose in providing homes for certain groups of people; but it arguably poses a greater risk to residents on account of the often more intensive use of shared facilities by unrelated households, and the more transient working arrangements among the people who live there<sup>4</sup>. In addition, a high concentration of multi-occupancy accommodation can have an impact on the wider neighbourhood, especially in urban areas, in terms of anti-social behaviour and quality of life, etc.
- 5.9 Therefore, compulsory licensing for Houses in Multiple Occupation is a targeted approach that would focus resources where they are needed most, and ensure that an active inspection regime continues for properties where health and safety risks are of most concern, i.e. HMOs.
- 5.10 The rights and responsibilities of a House in Multiple Occupation owner would be similar to those any of other landlord in the private rental sector. However, since the risks associated with large rental properties are found to be greater in terms of poor conditions, overcrowding and fire hazards, a compulsory requirement to register such properties would help to prevent and manage problems around maintenance and repair.
- 5.11 The introduction of a licensing scheme would ensure a registration and inspection regime remained for properties where more than several unrelated households lived together, through which enforcement action could be taken if the owner of a House in Multiple Occupation did not fulfil their responsibilities.
- 5.12 The proposed repeal of the Lodging Houses (Registration) (Jersey) Law 1962 and the introduction of provisions around Houses in Multiple Occupation will be subject to consultation with interested stakeholders, including relevant States Departments and lodging house owners, to ensure they are well-balanced, practical and meet the modern requirements of this sub-sector of the rental market.

**Conclusion 2: The Lodging Houses Law should be repealed, with standards being dealt with instead through the Public Health and Safety (Rented Dwellings) (Jersey) Law-. In its place, the Law will create a licensing scheme for rental properties designated as ‘Houses in Multiple Occupancy’, which will be subject to an enhanced inspection regime that does not rely on a complaint being received.**

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<sup>4</sup> Scottish Executive (July 2004) *Houses in Multiple Occupation: a guide for landlords*

## 6. The Draft Social Housing Law

- 6.1 The revised structure for social housing provision in Jersey, as set out in P.33/2013, brings with it the need to ensure a robust regulatory framework around the Island's social housing providers – Andium Homes and the social housing trusts. Following the transfer of the States' social landlord functions to Andium Homes in July 2014, it is important to implement a consistent regulatory framework across the whole social housing sector in view of the public interest and investment in the provision of social housing.
- 6.2 At this time, the Minister for Housing is working with key stakeholders to formulate a potential model for the regulation of social housing, as well as the principles that will underpin a regulatory framework. Ultimately, it is not the intention of the Minister to stand in the way of social housing providers and the way they operate. Boards and Trustees are foremost responsible for providing social housing to tenants and first-time buyers, and regulation must not impede on their ability to deliver core services.
- 6.3 However, a consistent, fair and transparent regulatory framework is required in order to support the demands for social housing and protect the rights, interests and well-being of tenants and other stakeholders. Therefore, the Minister's aims in proposing a system of regulation is to ensure that social housing providers –
- Meet the needs and priorities of tenants and service users;
  - Deliver consistent standards across core service;
  - Continually improve performance and value for money;
  - Ensure the confidence of public and private investors in social housing; and
  - Protect the reputation of the affordable housing sector as a whole.
- 6.4 The aim is to identify a model of regulation that is both proportionate to the size and structure of the Island's social housing sector and minimises regulatory interference; but which also ensures minimum standards of performance, financial management and governance. In this respect, the key elements of the regulatory framework are likely to include –
- Defining the performance standards which social housing providers should achieve for existing and new tenants;
  - Setting out the standards of governance and financial management for social housing providers; and
  - Introducing a social housing regulator and establishing its powers.
- 6.5 It is anticipated that the Minister will bring forward the Draft Social Housing (Jersey) Law 201- to implement a regulatory framework for social housing in the autumn of 2015.

**Conclusion 3: The Draft Social Housing (Jersey) Law 201- will be introduced to provide a regulatory framework for social housing in respect of the standards of service for tenants, good governance and financial management of social housing providers, including Andium Homes and the Social Housing Trusts.**

## 7. Tenancy deposit scheme

7.1 The Minister for Housing is currently undertaking a procurement exercise to appoint a company to set up and manage a tenancy deposit scheme on behalf of the States of Jersey. This follows the approval by the States Assembly in July 2014 of the Residential Tenancy (Deposit Scheme) (Jersey) Regulations.

7.2 The Regulations adopted by the States Assembly establish the regulatory framework for a tenancy deposit scheme. The regulations include provisions to protect deposits paid by a tenant in connection with a residential tenancy, and a means of alternative dispute resolution if a landlord or tenant who is party to such an agreement disagrees with the amount of money to be repaid at the end of a tenancy. The key deliverables include –

- Appointing a company to set up and administer a tenancy deposit scheme;
- Establishing the processes through which deposit money will be protected;
- Creating and manage an alternative dispute resolution process;
- Generating awareness of the scheme among landlords and tenants; and
- Preparing an annual report to the States on the operation of the scheme.

7.3 The Scheme will be compulsory and based on the custodial model in effect already in the United Kingdom and Northern Ireland. Overall, it is intended that a tenancy deposit scheme will –

- Reduce the number of unfairly withheld tenancy deposits;
- Ensure the safekeeping of deposits throughout the period of a tenancy;
- Ensure deposits are returned quickly and fairly, particularly where a dispute arises; and
- Encourage continued improvements in rental management standards.

7.4 The Regulations came into force on 28th February 2015, which provides the Minister with the power to appoint a scheme provider to set up and operate a scheme as soon as reasonably practicable after the Regulations are in force.

7.5 The procurement process is nearing completion and it is anticipated that a scheme provider will be appointed by the Minister in the coming weeks, with the actual scheme following in late 2015, once the Minister is satisfied that the appointed provider has established a robust scheme which meets the requirements of the regulations.

**Conclusion 4: A tenancy deposit scheme where all tenants' deposits should be paid to a scheme administrator, and repaid on completion of the tenancy, after a dispute resolution process if necessary, is currently being established and will come into operation during 2015.**

## **8. Ability of tenants and landlords to obtain redress**

- 8.1 Tenants and Landlords letting property under the Residential Tenancy (Jersey) Law 2011 have access to the Petty Debts Court to resolve disputes.
- 8.2 Until July 2014, tenants of the Housing Department, before it became Andium Homes, also had access to the administrative appeals process administered by the States Greffe under which tenants could bring forward complaints in respect of departmental decisions. As Andium Homes is no longer a States Department, their tenants do not have access to this mechanism anymore. Notably, tenants of housing trusts have never had access to administrative appeals. This places them in the same position as any other tenant in the Island.
- 8.3 Andium Homes operates a robust internal complaints procedure, and the housing trusts have arrangements in place to address concerns and complaints. Moreover, the regulatory framework for social housing will include a standard around social housing providers' communication with tenants, which will cover having available an accessible complaints procedure internally to deal with complaints or feedback on services.
- 8.4 This then raises the question as to why tenants of social housing providers should be different from the tenants of private landlords. Shouldn't tenants have the same rights to have their complaint dealt with reasonably whoever is their landlord?
- 8.5 For this reason, the Minister is minded to accept that all tenants in Jersey have access to the Petty Debts Court procedure, and to explore whether this procedure could be enhanced and made more accessible for the benefit of all tenants. For example, would an intermediate dispute resolution service have benefit? This could take the form of a rented housing board, which would be able to hear and determine complaints on rental issues such as a where a landlord had failed to manage a tenancy reasonably or comply with a legal duty incumbent on them.

**Conclusion 5: The Minister will explore whether additional dispute resolution processes are needed in respect of the ability of tenants to complain and seek redress from their landlord.**

## **9. Information and awareness about the private rental sector**

- 9.1 The framework of Laws covering the private rental sector is robust, but its complexity can make it difficult for people to understand how these Laws affect them. Unfamiliarity is not an excuse for poor practice, but some landlords and tenants may not be aware about or fully understand their legal rights and responsibilities<sup>5</sup>.

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<sup>5</sup> J. Rugg & D. Rhodes (2008) *The private rented sector: its contribution and potential*, University of York Centre for Housing Policy

- 9.2 There are several different Laws covering private rental accommodation, including –
- Planning and Building (Jersey) Law 2002
  - Building Bye-Laws and supplementary planning guidance
  - Residential Tenancy (Jersey) Law 2011
  - Lodging Houses (Registration) (Jersey) Law 1962
  - Dwelling-Houses (Rent Control) (Jersey) Law 1946
  - Statutory Nuisances (Jersey) Law 1999
  - Loi (1934) sur la Santé Publique.
- 9.3 The growing number of legal requirements for private rental accommodation, and the likelihood some might be repealed in future, makes it a priority to ensure that Laws are accessible for landlords and tenants, and to find new ways of communicating with them about their rights and responsibilities.
- 9.4 Therefore, the Strategic Housing Unit will publish new information about the statutory framework affecting the private rental sector. A good practice guide for landlords and tenants will be produced to promote good rental management practices. The guide will cover the different issues which shape tenancies and explain the principles of the laws around private rental accommodation, including information on:
- Rental accommodation condition, repair and maintenance;
  - Forms of agreement;
  - Termination, eviction and dispute resolution;
  - Rent setting and review;
  - Deposit collection and condition reports; and
  - Provisions for non-self-contained accommodation.
- 9.5 The publication of a good practice guide will help to strengthen security of occupancy for households in the private rental sector, and improve awareness amongst landlords about their legal obligations.
- 9.6 It is also expected that the new tenancy deposit scheme will be used to communicate information to landlords and tenants. The tender process is nearing completion, and when a scheme administrator is appointed, the Strategic Housing Unit will work with the provider to consider how guidance about deposits, property conditions and rental management standards can be publicised and promoted.

**Conclusion 6: Guidance and information will be made available about the legal requirements for private rental accommodation. A good practice guide will be published to provide practical advice to landlords and tenants about their rights and responsibilities.**

## 10. Landlord registration schemes

- 10.1 The professional management of rental accommodation provides a strong basis for ensuring positive outcomes for tenants in terms of good standard homes and secure tenancies. The emergence of schemes in the United Kingdom such as registration and accreditation for private sector landlords thus reflect efforts by policy-makers to encourage professional management standards and strengthen secure occupancy for tenants.
- 10.2 The Ministers for Housing and Health and Social Services have given consideration to whether a form of registration or accreditation scheme could be introduced locally as a way of improving rental management standards. Deputy Tadier's Proposition, P.42/2014, focused on a compulsory registration for landlords; however, options for voluntary accreditation may be just as effective when developed as part of a wider package of measures aimed at encouraging responsible management practices.
- 10.3 In the first instance, compulsory registration refers to a universal process where a requirement exists for all landlords in the private rental sector to be registered in order to be able to legally rent out accommodation. There are 2 different types of registration scheme. A compulsory registration scheme would enable any person to register themselves as a landlord and let accommodation. This type of scheme is used mainly to generate data for authorities on landlords and the properties that they let.
- 10.4 An alternative approach would be to introduce a licensing system for private sector landlords, which would subject applicants to a more comprehensive registration process. There is a difference between simply requiring a person to register as a landlord, and being granted a licence. 'Registration' might be considered as a 'light touch' approach with minimal barriers to becoming a landlord. However, 'licensing' is a more stringent threshold for a person to become a landlord and implies some form of assessment following which a licence could be granted or refused.
- 10.5 In Scotland, for example, where a landlord registration scheme has operated since 2004, the registration process requires an assessment of whether an applicant is a 'fit and proper' person before being given permission to be a landlord<sup>6</sup>.
- 10.6 Having reviewed the merits of a compulsory registration scheme, the Ministers are sympathetic to the rationale of such an approach and why it has been introduced in Scotland and Northern Ireland. However, they not convinced that a compulsory registration scheme would add value to the purpose of raising rental management standards in Jersey, at least whilst new statutory arrangements covering the private rental sector are still bedding in and evolving.

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<sup>6</sup> Department for Social Development, Northern Ireland (2010) *Building Sound Foundations: a strategy for the private rented sector*

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- 10.7 The Ministers believe that registration is a ‘one size fits all approach’ that does not target regulation where risks are greatest. Over 80% of people who rent in Jersey are satisfied with their accommodation<sup>7</sup>, with people who are unsatisfied being concerned about issues such as parking and storage, which a registration scheme would not cover. Therefore, great care must be taken before imposing a requirement on all landlords when the concerns that exist relate to a small number.
- 10.8 In this context, compulsory registration does not offer sufficient distinction between the needs of different landlords, placing a disproportionate burden on responsible landlords, but not focusing adequate resources on tackling a small minority of bad landlords who would be better dealt with through the Draft Public Health and Safety (Rented Dwellings) (Jersey) Law 201-.
- 10.9 Instead, the Ministers wish to adopt a more innovative approach which shifts focus away from the enforcement of standards by government to working with landlords to encourage good practice. The Ministers favour the development of a voluntary accreditation scheme, which is a process of formal recognition for good practice.
- 10.10 Landlords who wished to join an accreditation scheme would be required to comply with a set of standards before receiving accredited status. These standards would relate to matters such as –
- Communication with tenants;
  - Management of the tenancy;
  - Rental accommodation condition, repair and maintenance;
  - Rent setting and review; and
  - Deposit collection and condition reports.
- 10.11 The benefit of accreditation is the element of recognition that it gives to landlords who manage their rental accommodation appropriately and comply with their legal responsibilities. Landlords can then use their accredited status as a marketing tool to distinguish themselves from non-accredited ones. Accreditation also benefits tenants, because it allows them to make better-informed decisions about who they rent from, and provides assurance the accommodation they rent will meet certain minimum standards.
- 10.12 There is no compulsion to join an accreditation scheme: the nature of accreditation implies a voluntary form of regulation. Accreditation on its own will not capture bad landlords who will simply choose to avoid such a scheme<sup>8</sup>, but as a wider package of targeted measures, a properly incentivised and promoted accreditation scheme could be used to support responsible landlords. If voluntary accreditation becomes seen as an indicator of good practice in the private rental sector, more landlords will want to achieve the status and accreditation will become the norm.

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<sup>7</sup> States of Jersey Statistics Unit (2012) *Jersey Annual Social Survey*, pp. 19-20

<sup>8</sup> Department for Communities and Local Government (June 2009) *Impact Assessment of a national register for landlords*

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- 10.13 The Strategic Housing Unit and the Environmental Health Department intend to work with landlords and other stakeholders to develop an accreditation scheme. There are a number of important issues to consider around –
- The model of accreditation scheme;
  - The standards for an accreditation scheme;
  - Incentives for landlords to join an accreditation scheme; and
  - Information and promotion requirement for an accreditation scheme.
- 10.14 The Ministers will report to the States Assembly with proposals for an accreditation scheme, including administrative arrangements, and the standards and procedures by which it will operate. One approach being looked at is a graded accreditation scheme for landlords, or a ‘star’ rating system similar to the ‘Eat Safe’ initiative developed by the Environmental Health Department.
- 10.15 In addition, there may be a role for voluntary sector organisations in Jersey to work with private rental sector landlords, to encourage them to learn about and improve their rental management standards as part of an accreditation process.
- 10.16 Overall, regulation of the private rental sector is an ongoing and evolving process. With this in mind, the option of moving to compulsory registration will be reviewed following an assessment of the effectiveness of voluntary accreditation after a year of a scheme coming into force.

**Conclusion 7: A voluntary accreditation scheme will be created for landlords in the private rental sector. A voluntary accreditation scheme will help to embed good management practice and secure compliance with the legal requirements for renting property. A scheme will also give tenants greater confidence in their landlord’s ability to manage a tenancy effectively.**

**A compulsory landlord registration scheme is not proposed at this stage, though it may have a role to play in the future if measures additional to those outlined in this paper are required based on firm evidence.**

## **11. Security of tenure**

- 11.1 The term ‘security of tenure’ refers to the legal rights a household has, to occupy a property without interference or threat of being evicted, provided they meet their obligations or the tenancy has terminated. This legal right is afforded to tenants in Jersey by the Residential Tenancy (Jersey) Law 2011 (“the Residential Tenancy Law”). Article 10 of the Residential Tenancy Law states –

*“A landlord shall not, without lawful reason, prevent a tenant from occupying the whole or any part of a residential unit that is the subject of a residential tenancy agreement to which they are both parties, or otherwise interfere with the tenant’s enjoyment of the residential unit, being enjoyment that is not inconsistent with the agreement.”*

- 11.2 Security of tenure is provided to occupants who live in accommodation defined as ‘self-contained’ – i.e. contains facilities for the exclusive use of a single household without sharing with others – which is covered by the Residential Tenancy Law. The Law gives practical efficacy to the principle of security of tenure by setting out –
- Legal requirements around tenancy agreements;
  - Essential provision that tenancy agreements must contain;
  - Notice periods for periodic tenancies;
  - The jurisdiction of the Court to rule on tenancy matters; and
  - The power of the Court to make an order for eviction.
- 11.3 Most properties fall within the provisions of the Residential Tenancy Law, including self-contained accommodation provided by lodging houses. It is estimated that 80% of occupants in lodging house accommodation are covered by the Law, but there remains around 20% of people whose lodging accommodation is not self-contained (i.e. they share amenities with other households). Households living in these types of arrangements are not presently covered by any legislative provisions and hence are not afforded security of tenure.
- 11.4 Some lodgers may enter into a licence agreement that includes provisions around notice periods, but the legal status of such arrangements are not fully known, and there are still cases where lodgers are given little or no notice when asked to leave their accommodation. The consequence is that many households living in lodging premises will be more vulnerable and marginalised given their lack of security and stability, which can have implications for their health, welfare and participation in society generally.
- 11.5 The Minister for Housing believes that it is wrong in an inclusive society for people not to have basic rights of occupancy when they might have lived in lodging premises for long periods of time. Therefore, the Minister wishes to investigate the formalisation of legal arrangements around lodging accommodation, to ensure an appropriate level of protection for people who are not presently afforded protection by the Residential Tenancy Law.
- 11.6 This might include the following provisions –
- A basic lodgers’ agreement establishing legal rights and responsibilities;
  - A right to a reasonable levels of privacy and enjoyment of accommodation;
  - Provisions covering notice periods and eviction periods; and
  - The treatment of deposit or rental monies.
- 11.7 The Minister recognises that there is a question about the extent to which security of tenure is required in all housing circumstances. For example, lodging premises can be used as a temporary housing option for people who have transient working arrangements. Groups such as migrant workers may require a flexible tenure and will not wish to be bound into an agreement with notice periods if they are moving on within the space of only a few weeks or months.

- 11.8 However, the main concern relates to situations where lodging accommodation is used as a permanent form of accommodation. It appears unreasonable for people to have no security of tenure simply as a result of them not living in self-contained premises, even where that has been their home for several years. In contrast, a person living in self-contained premises, but only for a few months, will be afforded full statutory protection by the Residential Tenancy Law.
- 11.9 For this reason, the Minister for Housing wishes to look at whether it is necessary to expand provisions around security of tenure, either through an extension of the Residential Tenancy Law, or a new Law, to strengthen governance arrangements around lodging accommodation. A possible option under consideration is a sliding scale of notice periods where the legal rights a person has to occupy and remain in a premises would depend on the length of time which he/she had occupied the accommodation.
- 11.10 As an example, provision could be made for lodgers to receive at least one month's notice to leave if they had occupied a property for no more than 6 months, after which they would be eligible to receive a 3 months' notice period. This might also apply to tenants under the Residential Tenancy Law who require more short-term accommodation arrangements.
- 11.11 The Minister also wants to ensure that tenants who live in accommodation which is in disrepair feel confident to make a complaint without the threat of eviction or their tenancy being terminated. This problem, known as a 'retaliatory eviction,' has been highlighted recently in the United Kingdom where a Private Members' Bill was debated by Parliament on the issue<sup>9</sup>.
- 11.12 A retaliatory eviction arises when a tenant requests his/her landlord to make repairs to a property, or has requested assistance from the authority to investigate a concern about conditions. In response, rather than carry out the works, the landlord will begin or threaten eviction proceedings against the tenant, or opt to terminate a tenancy early. This has the effect of preventing a tenant from raising a genuine concern or complaint about a defect for fear of reprisal action from the landlord.
- 11.13 The frequency of retaliatory evictions in the UK is deemed to be a by-product of the fact that its tenancy laws allow landlords to evict tenants without having to establish any 'fault' on the tenants' part. However, in Jersey the issue may be covered already by the Residential Tenancy Law by the fact that the Court must be satisfied that the tenant or landlord has broken the terms of the tenancy, and has not taken reasonable steps to rectify the issue, before deciding whether a tenancy should be terminated.

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<sup>9</sup> Department for Communities and Local Government (June 2009) *Impact Assessment of a national register for landlords*

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- 11.14 Nevertheless, it is possible to see a situation arising where tenants may not make a complaint, fearing the termination of a lease if they do. With minimum standards legislation expected to be introduced locally, it would be sensible to look at whether similar retaliatory actions are a problem locally and, if so, consider what options are available to prevent landlords from serving notice on a tenant to terminate the tenancy or begin the process to evict a tenant following a reasonable complaint being made.
- 11.15 Overall, the principle of security of tenure and to whom and in which situations it should apply, as well as a broader range of issues around notice periods, eviction processes, and lodging agreements, means that the Minister needs to give further consideration as to how concerns can be addressed and made to work in practice. For example, what treatment should be afforded to lodgers renting a room in another person's private home? Should it apply only where premises are lived in by more than 3 lodgers? What would happen in circumstances where a lodger causes disruption or made threats against other lodgers?
- 11.16 Clearly, security of tenure is a complex subject that has the potential to imbalance the landlord-tenant relationship if not approached in a proportionate manner. The Minister therefore intends to engage with interested parties and examine the legal implications of these ideas in detail before developing more definite proposals.

**Conclusion 8: Policy options for providing greater security of tenure to people living in accommodation who are not presently covered by the Residential Tenancy Law will be considered by the Minister for Housing. One possible option the Minister wishes to examine is whether it may be feasible to develop a sliding scale of notice periods based on the length of time a person has occupied his/her accommodation.**

## **12. Rent control**

- 12.1 P.42/2014, as amended, requested the Minister for Housing to investigate whether it would be appropriate to introduce a system of rent controls. Advice has therefore been sought from the Economics Unit in respect of the rationale for a system of rent controls and the potential impact this could have on the rental sector. This advice is included as an **Appendix** to this Report.
- 12.2 Following review, the Minister for Housing is not minded to proceed with imposing rent controls in the context of the maximum rent that can be charged when a person enters into a tenancy. There are few comparable instances in other countries where rents are controlled on lettings<sup>10</sup> and initial rents are determined by the market. The evidence suggests that such intensive controls generate undesirable side-effects, including –
- Landlords may choose to discriminate on tenants' characteristics rather than price, adversely affecting households on low incomes who could be viewed as less reliable tenants;

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<sup>10</sup> Lloyd T. (February 2014) *Are rent caps the answer?* Shelter Housing Blog

- Landlords may attempt to maintain their margins by reducing investment in the maintenance of their properties; and
  - Landlords may be forced to end tenancies and leave the market if mortgage payments are not covered by rent.
- 12.3 The Minister’s priority is to support housing affordability and increase the standard of housing stock, and so the Minister is concerned that rent controls could be counterproductive to this objective. The most sustainable way to reduce the cost of rents is to increase supply, so that more households have access to social housing or the ability to enter into home ownership if they are able, reducing demand for private rental accommodation. Without a supply of affordable housing, the cost of renting a home will not become less prohibitive.
- 12.4 However, the Minister recognises that the Island does face significant challenges in improving the affordability of rental accommodation, especially for households on low incomes. Although medium to long-term supply of housing is the best option for reducing the cost of renting, building affordable homes takes time, and households will remain concerned about the affordability of renting their homes in the meantime.
- 12.5 The 2013 Jersey Housing Affordability Report identified 56% of low-income households in the private rental sector spent more than 30% of their gross income on rents<sup>11</sup>, which gives cause for concern, given the potential that it has to create instability and insecurity for households in the rental sector.
- 12.6 Therefore the Minister wishes to look further at options that would enable long-term tenancies and promote index-linked rent increases agreed between landlords and tenants. This system of “third generation rent controls” operates in countries such as Germany, France and Spain, where rent increases within tenancies are regulated. This implies that the market will determine rent levels at the commencement of a tenancy, but there are controls in place over the amount by which rents can increase during the tenancy (e.g. linked to a measure of inflation such as RPI).
- 12.7 Rent stabilisation mechanisms exist already in Jersey through the Dwelling-Houses (Rent Control) (Jersey) Law 1946. The Law makes available a standard residential tenancy agreement which includes provision that rents should not be raised above the RPI on an annual basis. If a tenancy agreement does not include the RPI-linked rent increase provision, the tenant may be able to take action through the Rent Control Tribunal to prevent unreasonable rent increases that are above market rent levels.
- 12.8 The standard tenancy agreement also functions as an “off-the-shelf” contract, and so in many cases tenants will be protected against excessive rent increases already. In respect of the standard tenancy agreement with annual RPI-linked rent increases, the Minister believes this arrangement could be one of the conditions with which a landlord would need to comply before receiving accredited status under a voluntary accreditation scheme.

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<sup>11</sup> States of Jersey Statistics Unit (2013) *Jersey Housing Affordability Report*, p. 14

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- 12.9 The benefit of such a condition would be that rent increases could be more transparent, stable and predictable for tenants. A controlled system of rent increase could reduce tenant turnover and thus reduce transactions costs for landlords.
- 12.10 Moreover, the Minister accepts that a Rent Control Tribunal has not been appointed in several years and that a decision needs to be taken soon about the future of the Law, given the desire to rationalise and strengthen the legal framework that governs the rental sector.
- 12.11 The Minister believes there is benefit in having a statutory facility available to enable tenants to challenge rents increases which are deemed to be excessive, with a Tribunal having ultimate power to maintain or reduce the rent as it considers reasonable.
- 12.12 The limited activity of the Rent Control Tribunal in recent years may be seen as a reasonably positive point, with landlords and tenants reaching agreement without third party intervention. However, in view of the considerable focus that this Report has given to educating landlords and tenants about their rights and responsibilities, it is deemed a useful opportunity to explore whether a new Tribunal could be created to rule in cases where rent increases are seen by a tenant as being unreasonable, having factored in circumstances such as any improvements made by a landlord to his/her property in the course of a tenancy that might impact on market rental value.
- 12.13 A reformed Rent Control Tribunal could also be utilised to cover the points raised in section 8 of this report in respect of creating a new complaints procedure to allow tenants to obtain redress for any other tenancy related matters.

**Conclusion 9: The Minister is not minded to introduce rent controls at the initial stage of a tenancy, but considers it appropriate to ensure there is greater control over rent increases within a tenancy.**

**The Minister is minded to consider reforming the Rent Control Tribunal under the Dwelling-Houses (Rent Control) (Jersey) Law 1946 to ensure that a mechanism exists for tenants to challenge excessive rent increases during a tenancy, and whether its remit could be amended to consider other tenancy-related issues. As part of a voluntary scheme, a provision will be included to link rent increases to no more than the Jersey Retail Price Index.**

### **13. Conclusion**

- 13.1 Whilst in historic terms, home ownership has been seen as the most attractive form of tenure – with renting seen as a life stage as opposed to a lifetime tenure option – this does not mean the rental sector cannot be made to function more effectively to support people’s housing needs, whether through implicit voluntary measures or explicit legislative coverage.

- 13.2 Put simply, for people who cannot afford to purchase their own home or who prefer to rent, the rental sector must be a desirable form of tenure and provide an affordable, professional and secure accommodation option. Therefore, the Ministers for Housing and Health and Social Services have identified in this Report some of the components of the rental sector that require attention to strengthen this position.
- 13.3 Overall, the Ministers are of the view that the legal framework covering the sector is robust, but its complexity can make it difficult for people to understand how the Laws apply to and affect them. Moreover, there needs to be a greater focus on the standard of accommodation, and more tools at the disposal of authorities to tackle poor landlords who simply ignore their legal responsibilities.
- 13.4 These do not point to a need to make extensive reforms to the legal framework, but rather to provide landlords and tenants with support to ensure its effectiveness in practice. The Ministers have therefore outlined a number of proposals they believe could be used to improve property conditions and rental management standards. These include –
- The introduction of the Draft Public Health and Safety (Rented Dwellings) (Jersey) Law 201- to monitor and enforce minimum standards for rental accommodation;
  - The implementation of a tenancy deposit scheme in 2015;
  - The introduction of a Draft Social Housing (Jersey) Law 201- to establish the standards and the good governance practices with which social housing providers should comply;
  - A good practice guide on rental management standards;
  - A voluntary accreditation scheme for landlords in the rental sector;
  - A compulsory licensing scheme for owners of Houses in Multiple Occupation;
  - A selective licensing scheme for poor-performing landlords;
  - Greater security of tenure for people in non-self-contained rental premises; and
  - Measures to prevent excessive rent increases within tenancies.
- 13.5 Whilst the statutory context of the rental sector is undoubtedly important, the sector's complexity has to be appreciated in policy development. Therefore, the Ministers' preferred policy direction adopts a package of legislative as well as voluntary measures to improve rental management standards. Such an approach recognises that landlords cannot be subsumed into one group, but that a package of measures aimed towards different types of landlords is the only way to embed cultural change and secure better outcomes for tenants.
- 13.6 Clearly, with a number of different policy issues being considered at one time, all of which impact on one another, there is a need to carry out more work to develop and consult on proposals in more detail. In this respect, the Ministers for Housing and Health and Social Services intend to work together with stakeholders to develop policy options before advancing proposals further.



## Economics Unit

November 2014

### Rent Control: An Economic Assessment

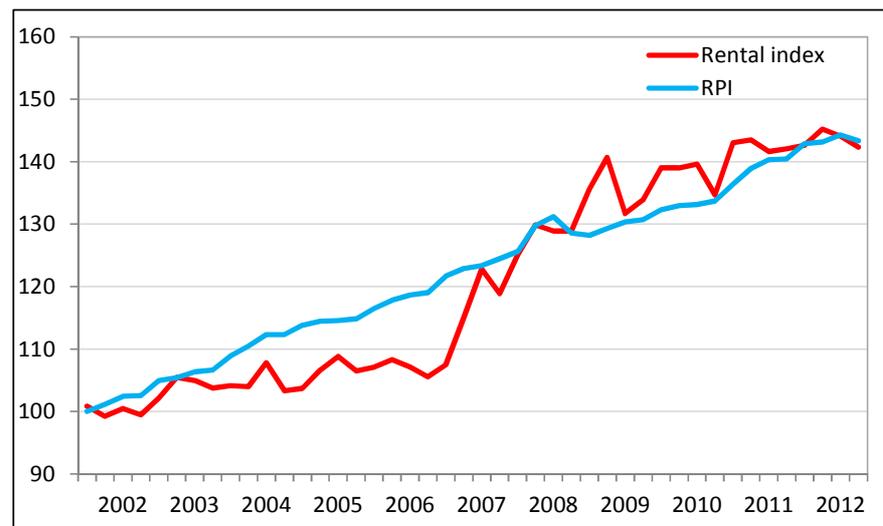
This note assesses the high level economic consequences of general private sector rent control and the different forms it can take. It originally formed part of the Housing Minister's comments to P.139/2010 "Rent control: removal of exemptions" which sought to apply a form of rent control to all written leases.

It has been updated by reviewing the economic evidence on rent control in the light of any new information to see if there are any implications for the conclusions.

#### 1. Background

The Private Sector Rental Index (PSRI) in Jersey measures the annual increase in rents on newly rented properties in Jersey. Figure 1 illustrates how the PSRI has changed between 2002 and 2012 (the first and last years that PSRI data is available) relative to the retail prices index (RPI). While RPI has increased by 43% (blue line), the PSRI has increased by 42% (red line), so rents have increased slightly less than overall inflation over this period.

*Figure 1: Private sector rental index and Retail Price Index changes 2002-2012*



Source: Jersey Statistics Unit

Private sector rental prices are driven by the interaction between supply and demand for rental housing. If rental prices are increasing, it suggests that the demand for rental housing outstrips supply so potential tenants are willing to pay more to secure themselves housing, and landlords are able to ask for higher rents. Putting it another way, an increase in supply relative to demand will lead to slower rental price increases than would otherwise have been the case.

Average earnings increased by 39% over this period. This demand-side factor is likely to have contributed to the increase in rental prices seen between 2002 and 2012.

## 2. Rent Control

### Summary

Rent control appears an attractive policy on the surface because it seems like it will reduce the price of rental housing, in turn making housing more affordable for those on lower incomes.

However, once one recognises that changes in prices affect the incentives facing landlords and potential tenants and have knock-on effects on supply and demand, rent control can look less attractive. In particular, economic theory, supported by evidence from actual experience, suggests that rent controls:

- Reduces the availability of rental housing
- Reduces the quality of rental housing
- Causes misallocations of housing
- Are difficult to administer
- Do not achieve the distributional goals they are advocated as the solution for.

Some types of rent control may also not reduce the rental price, but just alter the timing of rental price increases – for example ‘second’ and ‘third generation’ price controls described below.

Some types of rent control might help improve tenancy security, if the market will not provide a suitable level of security. However, there could be other ways to increase security without the disadvantages of rent controls, like rules controlling contracts between landlords and tenants, for example.

The OECD’s economists (based on Andrews, 2011) summarise the evidence well:

*“Strict rental regulations are associated with lower quantity and quality of housing and their benefits for tenants are not certain. Indeed there is no clear evidence that average rents in countries with stricter controls are lower. Moreover, especially if they are poorly targeted, rental market regulations may have undesirable redistributive effects among different categories of tenants.”*

There are three different types of rent control:

- ‘First-generation’ rent controls place restrictions on the level of rents across the whole rental sector.
- ‘Second-generation’ price controls allow for some restricted increase in rents to allow for factors such as investment and inflation.
- ‘Third generation’ price controls (or ‘tenancy rent controls’) place restrictions on the change in rents *within* tenancy agreements, but not between them.

First and second generation rent controls are largely discredited as the evidence suggests that they have the negative effects listed above.

First-generation rent controls are hardly found today. Those countries that combine strong rent regulation with sizable private rented sectors usually have systems that permit rents to adjust to near-market levels even though they are formally ‘controlled’ (Whitehead, 2012).

The evidence on the effect of third-generation rent controls is more ambiguous, and as a consequence they have more support and are in use in a number of jurisdictions, including Jersey. However, even in this weaker form, most economists believe that rent controls do more harm than good (Jenkins 2009).

The economic consequences of rent controls that lead to rents that are lower than would have been determined by the interaction of demand and supply, are considered in more detail below.

#### **Reduces the availability of rental housing**

Rent controls set a limit on the absolute level of rental prices or the rate at which they are allowed to increase. In turn, this raises demand for housing relative to the market equilibrium (since the rental price is artificially low), and reduces the supply of housing (since landlords would be less willing to rent), creating an excess demand for rental housing. In addition, third-generation rent control creates an incentive for tenants to stay in the same property, which reduces the turnover in the rental market.

#### **Reduces the quality of rental housing**

Rent control destroys landlords’ incentives to maintain the housing stock. There is little incentive for landlords to invest in their properties to maintain and improve them if it will make no difference to the level of rent they will receive.

Further, since price can no longer be used to allocate housing to those who are most willing to pay for it, another system of rationing is required. At best, the mechanism will be some form of waiting list or queuing system.

However, it is quite plausible that the allocation mechanism becomes the willingness to tolerate bad housing conditions. In other words, since landlords will no longer get a higher rental price in return for maintaining their properties, they will neglect to do so, and the allocation of housing will then be made based on those who are willing to tolerate a poor standard of housing.

#### **Causes misallocations of housing**

Restrictions on rental price reduce its ability to bring supply and demand into balance; therefore other mechanisms must be used.

When there is excess demand for rental properties and rental prices cannot adjust upwards, landlords might choose tenants based on other characteristics. The chosen tenants will not necessarily be those who would have valued renting the property the most – this is the misallocation of housing. The consequence is that some tenants will be less happy with their rental property than they would otherwise have been without the rental controls.

There is also evidence that rent controls, particularly second and third generation controls, create an incentive for tenants to remain in a property for longer than they would otherwise, and an incentive for landlords to select short-term tenants so that they are able to adjust rental prices between tenancies.

The flip side of this is that it might help improve tenancy security, if there is a reason to believe that the market will not provide a suitable level of security. However, it would be necessary to demonstrate this market failure exists and that a form of rent control is the best way to address it. There could be other ways to increase security without the disadvantages of rent controls, like rules controlling contracts between landlords and tenants, for example.

Another case where rent control causes a misallocation of housing is where rent controls are stricter in social rental housing compared to private rental housing, leading to lower rents in social rental housing compared to the equivalent in the private market.

This unintentionally leads to a misallocation of housing because it makes social tenants less likely to move when they would otherwise want to, because they would have to forego the rent advantage relative to the private market (Flatau 2003). This also slows down or prevents other would-be tenants from moving to more suitable housing in the social and private rental sectors.

#### **Rent control is difficult to administer**

As mentioned above, restrictions on price reduce the ability of the price mechanism to bring supply and demand into balance; therefore other mechanisms must be used. This may be queues or quality deterioration, but it also creates a significant incentive for a ‘black market’ in rental housing. This could manifest in a number of ways, including side-payments, bribes, over the odds payments for non-regulated items – for example items of furniture. If a rent control system is to work and be considered fair, these transactions would need to be policed, which is difficult and potentially costly.

#### **Rent control does not achieve the distributional goals that it is often advocated as the solution for**

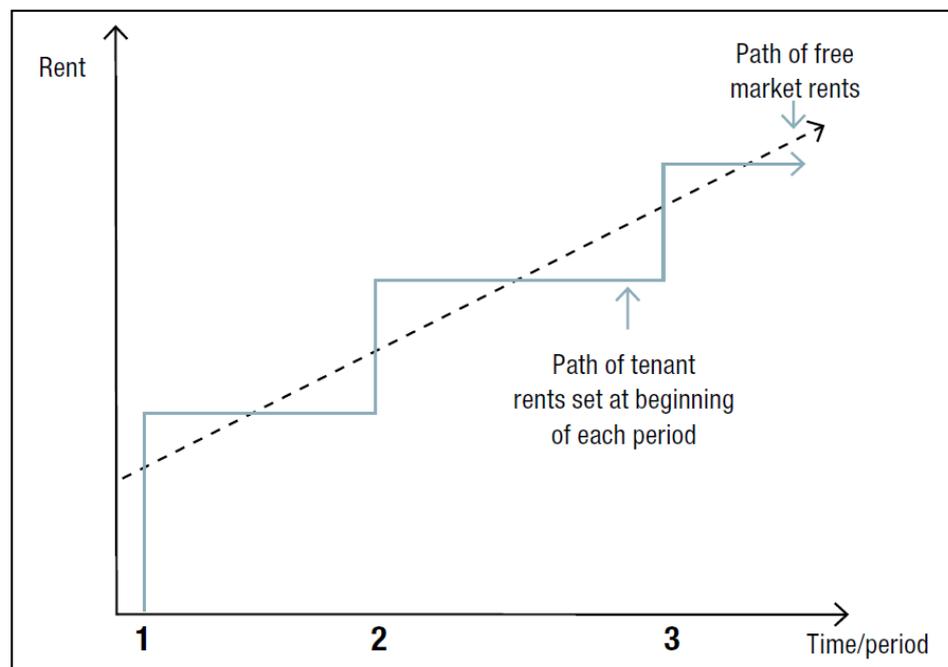
Where rent control is effective at reducing rental prices, the evidence suggests that any benefits to tenants from rent controls are poorly targeted. Tenants as a whole do not benefit – some tenants lose out, while others gain – and there is little evidence that those that gain are the poorest or most vulnerable.

#### **Some types of rent control may not reduce the rental price**

There is some evidence that the effectiveness of second and third generation rent controls is reduced by the ability of landlords to set the initial rental price. To the extent that tenants are willing to pay a higher initial rental price in return for controlled increases, rent control simply alters the timing of payments rather than reducing them (Figure 2).

**Figure 2: The growth of rents under third-generation rent controls**

Tenancy starts in period 1 and rents are reset each 'period' of, say, 3 years' duration, at a time when markets rents are rising strongly.



Source: Ball (2010)

The consequence of this is that households who move often (more than average) pay too much rent (above the market rent that would have existed without the controls) whilst those who move less often pay too little rent.

### 3. Conclusion

The economic literature on rent controls is fairly conclusive. Rent controls create substantial inefficiencies in housing markets without any redeeming contributions in terms of redistribution or fairness objectives.

If the objective is to support those on low incomes in obtaining affordable housing, then this objective would be better achieved using other policy levers such as the tax and benefit system. If the objective is to reduce the price of rental housing then there are only two options; (1) increase the stock of rental housing (or the supply of housing more generally), or (2) reduce the demand for rental housing.

More generally, rental regulations should strike a balance between landlords' and tenants' interests, create security of tenure (if the market fails to deliver the right level of security) and avoid affecting sitting and new tenants differently.

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