

STATES OF JERSEY



RENT SAFE SCHEME (P.121/2021): COMMENTS

Presented to the States on 13th January 2022
by the Minister for the Environment

STATES GREFFE

COMMENTS

The Minister for the Environment recommends that the States Assembly *reject* [P.121/2021](#) as proposed by Senator Moore.

P.121/2021 (the Proposition) asks the States Assembly to decide whether they are of the opinion that the Minister for the Environment (the Minister) should bring legislation forward for consideration that would amend Government of Jersey's [Rent Safe](#) scheme from a voluntary scheme into a compulsory scheme with a complete legislative foundation¹.

By amending the Rent Safe scheme and existing legislation to meet the intentions of the Proposition, this could result in a suite of legislative changes that are, arguably, unnecessary, and highly complex when considering existing powers already available to the States Assembly. Such fundamental changes would require a reassessment of each property on the existing register against the new legal criteria, effectively losing any gains from the existing register.

In summary, the Minister is of the mind that the proposal will introduce a regulatory regime that would be overly burdensome, especially in comparison to proposals that they have previously brought to the Assembly and which were rejected.

Further Detail

Legislative Basis

Currently, the Rent Safe scheme has no singular legislative basis and rather proposes adherence to existing legislative requirements, where applicable, and voluntary adherence to the legislative principles and best practice in areas that are unregulated or where the type of property or tenancy brings it out of legal scope. The scheme was built upon a legislative portfolio spanning the responsibilities of various ministers, not just the Minister for the Environment. It is therefore assumed that the adoption of the Proposition would require a variety of legislative changes and/or new legislation to avoid conflicts and duplication.

A simpler solution is available to the Minister and the Assembly by utilising the powers afforded to them to introduce a licensing scheme under Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 ([Article 5: Licencing Regulations](#)).

Previous endeavours to regulate rented dwellings

In the interest of public safety, the Minister agrees with the need for further regulation of rented dwellings and has brought several proposals to the States Assembly. These

¹ Note: The Report accompanying the Proposition states that the Rent Safe scheme “asks for Landlords to ensure a property is dry, electrically safe and not overcrowded.” It must be noted that this is a legal requirement under the [Public Health and Safety \(Rented Dwellings – Minimum Standards and Prescribed Hazards\) \(Jersey\) Order 2018](#). Adherence to this aspect of the Rent Safe scheme is not voluntary and must be adhered to as of [1 December 2018](#).

endeavours have sought to do so through existing legislation², however, they have not been adopted by the States Assembly.³⁴⁵

Expanding on the above, the adoption of Deputy Ward's proposition requesting that regulations be brought forward to the States Assembly for approval (P.20/2021⁶) did not result in the States adoption of the regulations (P.33/2021) which were presented and consistent with P.20/2021.

Although this Proposition aims to tackle regulation of the sector via the existing Rent Safe scheme, the proposition is, in essence, resurrecting the previous debates on licencing the sector, albeit in a more complicated manner.

Binding the Minister's successor and the next Assembly

To avoid binding the Minister's successor to a proposition that has proven to be controversial – a position similar to that which the incumbent Minister inherited in 2018⁷⁸ – the Minister would suggest that any decision to bring such legislation forward should be for the consideration of the successive Minister for the Environment.

Furthermore, rather than commence policy development at such a late stage in this term of the Assembly with a view to presenting legislation, it is deemed more appropriate that this matter be left firmly open for the new Assembly to consider and determine appropriate resourcing etc. with the support of the new Minister for the Environment.

Impact on resources, if adopted

The priorities for officers in the Regulation directorate of IHE for the remainder of this term of government have been established and financed through the recent debates on the Government Plan. If this proposition were adopted, this would require a revision of priorities and a likely diversion of resources from other policy work. For example, a new Food Law and its subordinate legislation.

Further analysis is required to fully understand any manpower or financial arising from the adoption of the Proposition. For example, the Report accompanying the proposition states that no record of landlords is maintained and so the impact of this legislation is difficult to ascertain. Previous proposals by the Minister stated that the number of landlords could be in excess of 10,000 which was an informed estimate based on the most recent census at the time of the proposal(s). Considering this, although circa 2000 units of rental accommodations are already registered, the Proposition could lead to an increase of circa 400% units being added to the Rent Safe scheme's existing dataset. (Other possible financial/manpower implications are discussed under 'Risk based renewal')

² [Public Health and Safety \(Rented Dwellings\) \(Jersey\) Law 2018](#)

³ [P.33/2021](#): Draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 202-

⁴ [P.106/2019](#): Draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 201-

⁵ [P.20/2021](#): Public Health and Safety (Rented Dwellings): Request for new Licensing Regulations

⁶ [Vote for Public Health and Safety \(Rented Dwellings\): Request for new Licensing Regulations](#)

⁷ [P.66/2017](#): Draft Public Health and Safety (Rented Dwellings) (Jersey) Law 201- (continuation of debate following approval of principles and referral to Scrutiny)

⁸ [P.95/2018](#): Draft Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 (Appointed Day) Act 201-

The new proposition would require a complete review and possible revision(s) of the relevant law(s), as well as the widening of legal powers to make compulsory a presently voluntary and successful scheme, all of which would require consultation with Scrutiny and key stakeholders.

The purpose and scope of Rent Safe currently

The purpose of [Rent Safe](#) is to provide:

“...potential tenants with a list of landlords that have reached accredited status under the Rent Safe Scheme, together with an overview of the number of properties that have reached the accredited minimum standards required for 3, 4 or 5 stars.”

Rent Safe is a voluntary scheme and whilst all landlords are able to register their properties, only those that meet an accredited rating are listed on the Rent Safe register.

Rent Safe covers a number of key areas including minimum standards, residential tenancy matters and energy efficiency measures – all attributes which give a tenant assurance about safe accommodation run by a responsible landlord.

The above areas, among others, are not enshrined in a sole piece of legislation but rather various pieces of legislation and/or best practice under various ministries, and with purposes that would not necessarily meet the intention of this proposition.⁹¹⁰

Risk based renewal

The Proposition proposes that a process for renewal be developed based on the star rating of a rented dwelling.

Whilst this may seem a simple approach, this does present a variety of complexities. These include landlords, or agents acting on their behalf, who manage a portfolio of properties with different ratings, each with their own renewal dates, which would create a significant administrative burden. This would be further compounded by any subsequent changes in ratings and other renewal dates stock is acquired or sold.

Additionally, this aspect of the Proposition could be overly time and resource intensive and likely difficult to maintain within existing FTE in IHE and so may require additional resources. For example, one renewal of multiple properties by one landlord becomes multiple renewal applications at varying times.

Prima facie this aspect of the proposition is overly complex and, when compared to a similar proposal relating to charging fees for licenses linked to Rent Safe’s star ratings, is an approach that was deemed complex and lacking clarity by the Environment, Housing and Infrastructure Scrutiny Panel¹¹¹² and key stakeholders, and so risks being subject to the same interpretation.

⁹ [Public Health and Safety \(Rented Dwellings\) \(Jersey\) Law 2018](#): “A LAW to promote the health and safety of persons in rented dwellings, and for connected purposes.”

¹⁰ [Residential Tenancy \(Jersey\) Law 2011](#): “A LAW to make more detailed provision about residential tenancies of 9 years or less; and for other purposes.”

¹¹ [S.R.1/2020: Minimum standards for rented dwellings: licensing regulations](#)

¹² [P.33/2021: Comments \(Presented by the Environment, Housing and Infrastructure Scrutiny Panel\)](#)

Other considerations not addressed by the Proposition

Transitional arrangements would be required if this Proposition were adopted, however, no guidance is provided so as to inform the Minister and their officers of the States Assembly's preferred direction of travel. Previously under the Minister's own proposals, transitional arrangements have been proposed (formerly referred to as "grandfather periods") and as these were not accepted previously, it is assumed these were deemed to be unacceptable. Further consultation would be required.

Legislating for operational best practice (part b of the proposition)

"(b) to develop a process for the regular renewal of Rent Safe registration based on a risk rating approach to determine the frequency and order of inspections of rental dwellings."

This aspect of the Proposition is unnecessary as this would be addressed as part as standard operating procedures.

By legislating for operational practice, the department would be unable to amend working practice, regardless of if they were found to be unworkable or otherwise, without seeking prior approval of the States Assembly. This would limit to ability of the department to proactively respond to best practice guidance, such as those proposed by the Comptroller and Auditor General or professional bodies in the United Kingdom, in a timely manner and, furthermore, risks politicising professional practice.