

# **STATES OF JERSEY**



## **DRAFT RESIDENTIAL TENANCY (JERSEY) LAW 200-: SUMMARY OF FINDINGS OF THE CONSULTATION**

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**Presented to the States on 10th October 2008  
by the Minister for Housing**

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**STATES GREFFE**

## WHITE PAPER ON RESIDENTIAL TENANCY (JERSEY) LAW 200-

### SUMMARY OF CONSULTATION DETAILS

The Minister for Housing published for consultation a White Paper on the Draft Residential Tenancy (Jersey) Law 200- between 29th April – 24th June 2008.

The consultation was designed to inform the public about the proposed Law and to gauge public opinion on new provisions to formalise the obligations between landlord and tenant. Current legislation in this area dates back to 1919 and 1946, and the proposed draft Law would create an updated regulatory framework, detailing security of tenure provisions and providing clarity to the roles and responsibilities of those entering into the relationship of landlord and tenant. The paper also put forward for consideration proposals relating to the possible establishing of a Tenants' Deposit Scheme to protect tenants' deposits.

Specific questions were asked in relation to some provisions of the draft Law and also the issue of a Tenants' Deposit Scheme. The responses to these questions are referred to at the end of this Report.

### OVERVIEW OF CONSULTATION RESPONSES

The Consultation paper was placed on the States of Jersey website and circulated to all those on the Public Consultation Register. The paper was also publicised through the local media, and copies and requests for comment were sent to some individuals or organisations who are or have been directly involved in this area of law for their comment, namely Age Concern; the Housing Department; the Law Society; the Petty Debts Court Magistrate; the Citizens Advice Bureau; the Lodging Houses Association; the Housing Trusts; the Jersey Estate Agents Association; and the Jersey Consumer Council. In addition, States Members were asked to comment.

In total 24 responses were received. Of these, 14 were from landlords, landlords' organisations and social housing providers; 3 from tenants; and 7 from other individuals or organisations, including the Citizens Advice Bureau, the Jersey Consumer Council, the Scrutiny Housing Sub-Panel, and the Jersey Rights Association, among others.

Only 5 questionnaires were completed. The majority of respondents chose to send in written responses in which they focussed on specific areas of the consultation, with 15 respondents commenting on the issue of the Tenants' Deposit scheme and 10 on the notice period proposals. General comments were also made on the impact the proposals might have on the way in which the letting market operates, and some queries were raised on how the Law will operate.

While the Minister for Housing welcomed the level of interest in these proposals, he continues to seek further comment, and in particular, is keen to hear some comment from States Members.

### MINISTER'S RESPONSE TO CONSULTATION

Any proposals for legislating for relationships between private parties have the potential to provide emotive, and perhaps divided, responses. The Residential Tenancy Law is an example where there are potentially 2 opposing views, namely those of tenants and those of landlords.

However, I am pleased to advise that the overall mood of this consultation is not that of opposing camps, but rather one of a wish to see fairness and practicality prevail. A detailed summary of the issues raised in the responses received is given below, but some key points did arise:

There was recognition of the importance to Jersey of the rental and letting market, in particular given levels of owner-occupation and property prices, but it was also accepted that both good and bad landlords and tenants exist. As such, both need protection in the form of a modern regulatory framework. It was pleasing to see this consensus.

Certainly, it was acknowledged that current legislation is outdated.

The concept of an updated Law dealing with landlord and tenant obligations raised no objection, although there was a wish that bureaucracy be kept to a minimum, for example the proposal that landlords be required to provide 6 monthly statements of monies received was one suggestion that was challenged, and it was suggested that too much new bureaucracy might lead to some landlords withdrawing their properties from the rental market, which could cause problems to Jersey's economy.

Several comments were also received on the length of notice period proposals and alternative options offered, mainly around shorter notice periods for landlords than the 3 months proposed, or alternatively, larger deposits which accounted for a 3 month notice period where receipt of rent may become more problematic.

Also cited as important was the need to appreciate that many of those letting or lodging will not have English as a first language, and that such individuals need support and help to fully understand any agreements they are entering into. Such initial understanding will ultimately be to the advantage of both parties (e.g. the point in time when notice needs to be given; date when rent is due).

It was generally felt that the Petty Debts Court offers a good service to those in dispute; although it was felt that many would be reluctant to use its services, either because of language difficulties, fear of legal process, or even of being "blacklisted" as a troublemaker. Some concern was also raised over the swiftness of dispute resolution, and in particular, the swiftness of the settlement of deposit monies – which was vital for landlords, and in particular, a tenant perhaps needing the money for alternative accommodation. This is notwithstanding the fact that the mediation service under the Petty Debts Court appears to work successfully within the context of small claims, and has a likely role to play in any deposit protection solution.

Indeed, the topic that generated the most discussion in the consultation was that dealing with the need, or otherwise, for a tenants' deposit scheme. The Citizens Advice Bureau's response in particular was comprehensive and informative in recounting the unfortunate experiences of a number of tenants in recovering deposit monies and the difficulties they faced. However, the consultation has granted landlords and other associations the opportunity to put their case and, whilst I am concerned by and alert to the circumstances demonstrated by CAB's report, I wish to say how reasonable I think the landlords' responses have also been.

**As a result of the balanced responses received to this consultation, it is evident that some form of process needs to be put in place to provide peace of mind to both tenants and landlords with regard to the return of deposit monies. Asking for a deposit, as one landlord stated, is the only way a landlord has of safeguarding their property. Equally, for a tenant, the prompt return of a deposit may be the only way that a tenant has of funding a deposit for a new home.**

A choice of deposit protection schemes now operate in the UK, and the type of custodial deposit scheme favoured by the Citizens Advice Bureau is one of the options that the Population Office is researching, and indeed, a **compulsory, agency-led custodial deposit scheme is my preferred model for deposit protection – because of its potential swiftness as a scheme for mediating, arbitrating, and returning monies and resolving disputes, and its dedicated, specialised nature.** This is only on the basis of any proposal being self-funding, requiring

minimal administration for all, not being undertaken by the States, and being wholly unbiased.

However, other options have been put forward by respondents which warrant further consideration before any final decision is taken. Key requirements will be that the process for deposit protection –

- clarifies what deposits are taken for;
- ensures that clear evidence is available of the condition of the premises when occupancy was entered into;
- states the grounds upon which a deposit will be returned;
- provides a mechanism whereby deposit monies are readily accessible;
- provides a mechanism that will ensure their swift return;
- provides details of an accessible process that will help decide issues between the parties if necessary. (Although mediation is recognised as a valuable means of settling a dispute, there is evidence that the more decisive option of arbitration should also be available.)
- be user-friendly and operated at no cost to the taxpayer.

In addition, key information is still awaited from the Jersey Annual Social Survey which will report in January 2009. Important questions have been asked about tenants' experiences with the return of their deposits, which will supplement and update the information provided by the Citizens Advice Bureau. **This wide-ranging survey of 3,500 households should be awaited before any final decision is taken.** This is important because it will provide a balanced and extensive view of the issues at a single point in time.

Another matter felt to be of key importance is the need to give lodgers, as well as tenants, the protection of any rental deposit scheme. I fully concur with this view and, even if not fully achievable, as I have stated previously it is the intention of the forthcoming Migration Policy to review the definition of "lodger". If this is achieved then many more individuals will be able to get protection from any scheme.

The Population Office is in the process of undertaking this work and officers are working to a schedule which involves –

- working with agencies who might be in a position to operate a custodial deposit protection scheme;
- liaising with the Law Draftsman on possible amendments to the Law arising from the consultation, and provisions to establish a rental deposit scheme.

**If re-appointed as Minister for Housing, I intend to lodge a proposition to bring the Draft Residential Tenancy (Jersey) Law 200- for debate early in 2009, and Draft Regulations under that Law for the establishment of a scheme to protect deposits and resolve disputes will likely be lodged later in the year.**

## SUMMARY OF RESPONSES

### Q1:

*Are there issues arising in landlord/tenant residential tenancy agreements that are not specifically mentioned in the draft RTL [Article 4 and Schedules 1 and 2 of the RTL] that you feel should be regulated?*

#### **A number of issues were raised for further consideration. These included:**

- A requirement for policing of landlords to continue with licences being revoked from unscrupulous landlords;
- Written agreements are imperative;
- Landlords should check properties; photograph them and make an inventory before tenants move in, and both parties sign copy documents;
- Landlords could, for example, make it clear when the agreement is taken out that cleaning is charged at £X per hour at the end of a tenancy to come out of the deposit – “it can take 2 hours to clean just a cooker”;
- Concerns were expressed about renewal at the end of long fixed leases;
- Payment of deposits should relate to length of period of notice;
- Law needs to be monitored once introduced for compliance purposes;
- A damage deposit should be levied as well as a rental deposit as, if rent is overdue when a tenant leaves and damage has been caused, the rental deposit may not be sufficient for both; **or**
- RTL should state how damage monies to be returned;
- Rates should be paid pro rata when taking up a tenancy;
- Split services – may not be practical to have separate meters for services – could be costly – better to send a copy of the statement upon request itemising tenant’s liability;
- Regular statements of monies paid not necessary – most rent is paid by standing order so is clear on bank statements, and if a landlord has a joint account for all rents [s]he receives it would be difficult to single out individual amounts. Statement could be given on request;
- Not right that a landlord could commit a criminal offence if [s]he forgets to provide a statement of monies received;
- Specific provision should be included in the Law dealing with liability for rent /notice when tenants die/are hospitalised long-term;
- States policies offering tenants States housing property at “short notice” and resulting in tenants seeking to leave private accommodation at short notice, and income support covering only part of rental due resulting in the balance often falling into arrears should be reviewed;
- Law should provide for landlords to be entitled to interest payments and administrative costs if rent not paid on time;
- When a tenant moves out, a landlord needs a reasonable time to receive final cleaning/repair bills so that the balance due to the tenant from the deposit can be calculated;
- Threshold up to which the RTL will apply should be raised from 9 to 21 years.

#### **Notice periods:**

### Q2:

*Do you agree with the proposals for fixed periods of notice to be given by both landlord and tenant?*

**YES: 5      NO: 3**

**Q3:**

*Do you agree with the proposed periods of one month from tenant to landlord and 3 months from landlord to tenant?*

**YES: 4 NO: 2**

**Q4:**

*Please include a figure in the boxes to show the number of months notice you think.*

- Minimum 3 month either way– landlords need time to arrange for repair of properties before they can re-let – one month not enough;
- One month either way;
- By mutual agreement; no fixed periods in law
- Should be the same for both landlord and tenant and size of deposit should be linked to rental payments due during notice period;
- 3 months for a landlord should be the minimum– 4-6 months preferable.

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**Deposit Scheme:**

**Q5A:**

*Do you agree with the recommendation that the mediation process offered in the Petty Debts Court provides an appropriate forum for resolving issues concerning the return of deposits?*

**YES: 8** (although 3 of these felt it was adequate only as a last resort) **NO: 3**

**Q5B:**

*Do you believe there is a need to establish a formal Deposit Scheme?*

**YES: 7** (but a number of options were put forward)

**NO: 4** (reasons given include bureaucracy and probable use of taxpayers' money; most landlords do return deposits; need a 3rd party arbitrator)

**Q6:**

**Did you pay a deposit when you began living in your *current* accommodation?**

**YES: 3 NO:**

**If "Yes", how much was the deposit?**

Two of up to £1,000 and one of up to £1,500.

**Q7/8:**

**Disputes in the last 5 years and method of resolution**

All 3 respondents had had disputes over the return of the deposits. One was not resolved; one was resolved with the help of the CAB; and one with the help of the Petty Debts Court.

Views expressed, and options proposed for a scheme:

- The Consumer Council would like to see a system whereby deposits were held by an agency who supervised them.
- The Citizens Advice Bureau recommends a custodial model scheme whereby a deposit is held by a third party and any issues are resolved by a dispute resolution scheme. In particular, it was suggested that problems include disputes over cleaning costs, disputes over whether deterioration in fixtures and fittings has occurred, issues of where the

landlord does not have the money to repay the deposit, disputes over the facts, including receipt and size of deposits, deposits not being passed over to the new owners when a rented property is sold, and deductions in deposit following dispute in notice. Indeed, a whole raft of actual issues were raised, and statistics provided showing around 245 rental deposit disputes each year were referred to CAB.

- The Jersey Rights Association suggest a scheme whereby a written agreement would be used by all landlords, tenants and lodgers setting out rights and obligations including the deposit to be lodged. A receipt would be given and a schedule of contents and their conditions prepared. Photographs could be taken and signed by the parties at the time of entry into the agreement. The landlord would need to prove his entitlement to retain any part of the deposit. If a dispute arose, a form could be used and filed with the Petty Debts Court, although any dispute should first be dealt with by an administrator. The claim form will be available in different languages. Both parties need to sign the form. If one party refuses, the court would be advised of the fact when a claim is lodged. In any disputed claim a landlord should be required to lodge the deposit within 7 days with an independent person appointed by the Minister for Housing.
- Scrutiny Housing Sub-Panel recommends that an independent deposit-taking agency be established, with qualified property staff who could visit and assess properties at the end of tenancies. It is hoped that such a system would reduce the number of disputes.
- Australian-style systems were referred to by 2 respondents where deposits are sent to and registered with local councils. When a tenant moves out, the landlord is contacted and the deposit returned if there are no objections. If there are issues, the landlord has a time limit to provide evidence and the matter is dealt with by mediation or ultimately by the courts.
- Landlords expressed some sizeable concern that deposits were landlords' means of protecting themselves and their property, and were keen that the size of deposit equated to notice periods. At the same time, landlords as a whole did not express opposition to a deposit scheme *per se*, and were far more concerned that the legislation was balanced and reflected the fact that issues related to problem tenants just as much as any problems related to landlords.
- Indeed, concerns over a possible custodial deposit scheme were largely focused on the perception that the problem did not justify more bureaucracy and legislation.

