



Written evaluation of States of Jersey draft regulations relating to the licensing of rented accommodation

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Contextual introduction

To understand the impacts of landlord and property licensing and best practices, it is advisable to learn from the licensing schemes that have been introduced and adopted, to varying degrees, by different Local Authorities (LAs) in the UK.

Following a summary of the benefits and challenges licensing has brought in the UK, this written submission will then identify what information and lessons are applicable to Jersey, specifically in the context of the Draft Public Health And Safety (Rented Dwellings) (Licensing) (Jersey) Regulations (P.40/2023). This may help to ensure effective and proportionate enforcement whilst minimising unintended consequences.

Benefits of licensing rented accommodation in the UK

Housing quality affects health¹. The direct cost to the NHS of poor-quality housing was £1.4bn in 2021, and the consequential costs such as the need for care and the loss of economic potential totalled £18.5bn per annum². Poor quality housing disproportionately affects socially disadvantaged groups. Improving housing standards can have a positive impact on physical and mental health, in particular when targeted at those in most need. Legislation aimed at improving housing also improves population health and reduces health inequality. For these reasons, among others, tackling substandard rented accommodation has been national priority in the UK in recent years.

Licensing all privately rented properties in an area is the only effective mechanism to determine whether properties are privately rented. Licensing enables the LA to learn the extent of the Private Rented Sector (PRS) in its area, relevant information regarding the landlords of the rental properties, and information about the occupancy of the properties.

¹ WHO, (2018). WHO housing and health guidelines. <https://www.who.int/publications-detail-redirect/9789241550376> [Accessed 21 Jul 2021].

² Garrett H, Mackay M and Nicol S. (2021). The cost of poor housing in England. BRE Group.



Landlords can be broadly split into different categories relating to their likelihood to comply with minimum legal requirements, with over 50% of landlords likely to fail to meet minimum legal standards³. Legislative compliance by landlords appears to be unrelated to years of experience as a landlord; however, higher compliance is correlated with renting out five or more properties.

Landlords who have no process for staying up-to-date with new legislative requirements or actively choose not to comply with new laws, are significantly more likely to have unsafe properties. Licensing allows for data-driven identification of these landlords and properties, as they are conspicuous by their absence from the licensing regime. This allows for more targeted use of LA resources against those who choose to operate under-the-radar. The minority of landlords who have no intention of willingly complying with minimum legal requirements may decide to leave the market if they cannot operate in the shadows. Removing rogue landlords who view minimum standards and legislative requirements as something to be avoided is a key benefit of licensing and effective PRS regulation.

Section 21 evictions, often referred to as “no-fault” evictions, face abolition in the upcoming Renter (Reform) Bill. The reason for their abolition is that tenants are deterred from reporting disrepair as they may face being evicted as retaliation⁴. Licensing entails a proportion of licensed properties being proactively inspected, enabling housing conditions to be improved without the tenant needing to report the disrepair and run the risk of being evicted.

Licensing schemes can be used to add specific conditions which improve the renting experience for tenants, which may be above and beyond legislative minimum standards. This can include requirements for landlords such as giving written tenancy agreements or carrying out inspections at six-monthly intervals.

There is clear evidence that licensing is an effective tool for improving health and conditions in rented properties, reducing anti-social behaviour, and ensuring that LA resources are more appropriately targeted.

Finally, multiple House of Commons reports on the PRS⁵ have made it clear that landlords were often operating their businesses in a financially sensible way by choosing to break the law. The risk of being caught was low. If caught, the risk of facing formal enforcement action that carried any financial consequence was low. If caught and subject to formal enforcement action, the penalties applied were often not significant enough to deter the criminal business model. Licensing facilitates better identification of criminal actors, and opens up more enforcement options that are faster and more

³ Department for Levelling Up, Housing & Communities, (2022). Segmenting private landlord compliance.

⁴ Secretary of State for Levelling Up, Housing & Communities and Minister for Intergovernmental Relations (2022). A Fairer Private Rented Sector [white paper].

⁵ For example: House of Commons. (2018). Housing, Communities and Local Government Committee Private rented sector Fourth Report of Session 2017–19 Report, together with formal minutes relating to the report



efficient for LAs to use. This means that proactive LAs can create an environment where landlords expect alignment between complying with minimum legislative requirements and operating their business in the most profitable manner.

Challenges of licensing rented accommodation in the UK

The challenges of licensing are multiple and vary depending on the specific LA and landlord population.

Cost to landlords

Landlords provide and deliver an essential service – housing. An increase in costs faced can affect a landlord's decision about whether to stay in the market or sell up and invest in other mechanisms of wealth-expansion.

Due to the lack of centralised funding for discretionary licensing schemes, the cost of processing licence applications and enforcing PRS standards is included within the cost of applying for a licence. The cost of licensing a property is usually £100-£200 per annum. There is no valid evidence that landlords “pass on” these costs to tenants; in fact, most landlords operate according to business principles and maximise their potential rental income at all times, whilst balancing the rewards with minimising the risks, such as keeping the rent below market for good tenants to avoid void periods or tenants who cease paying the rent.

Licence application fees tend to only impact landlord behaviour when the fee is high and the licensing scheme operates in an area of low housing demand. For example, the licence application fee of £750 for a 5-year licence in the Central London borough of Newham is unlikely to impact whether a landlord will continue to operate and/or grow their business in that area. However, in Blackpool, where there is low demand, low rental prices and a far higher-than-average proportion of tenants face addiction and mental health issues, an expensive licence fee may significantly impact the business assessment of whether it is worthwhile for a landlord to continue their business in that area.

The proposed licence application fee in Jersey is significantly lower than any LA in England, and therefore should not be a significant factor for landlords, as it is very low compared with the rental prices on the island.

The process of implementing a licensing scheme



It is an expensive and resource-intensive process for a LA to get permission from central government to bring in a licensing scheme⁶. Furthermore, as a result of a high ministerial churn in recent years, it is an uncertain process, leaving the distinct possibility that significant resources will be spent submitting an application, only for the minister in post at the time to reject the application when the previous minister would have agreed to it.

This is not an issue in Jersey.

Staffing levels

Following austerity cuts in 2008 and beyond, the size of PRS enforcement teams decreased significantly, while the size of the PRS increased and the cost of rent rose above inflation and wage growth, creating greater inducements for criminality. This has led to a shortage of qualified staff able to carry out effectively the necessary PRS regulatory functions required by licensing⁷.

As 6 full-time equivalent officers are expected to be able to meet the demands of the proposed licensing regime, this is not expected to be a significant issue in Jersey.

Inconsistent Local Authority enforcement

It is essential, once a licensing scheme is mature and well-known, that landlords and agents who continue to operate unlawfully face consequences for doing so. If a landlord knows that they will face no penalty if they are caught breaching licensing laws, but instead be given an opportunity to rectify the matter with no consequence, it removes the incentive to proactively comply with minimum legal standards. The correct business approach for that landlord is to operate unlawfully until caught, and then comply. This does not confer the necessary regulatory protection to tenants, and requires significant LA resource expenditure to bring properties up to the minimum legal standard.

Even though there are self-funding mechanisms to enforce against criminal landlords, such as Civil Financial Penalties, most LAs carry out very little formal enforcement due to lack of confidence,

⁶ Department for Levelling Up, Housing & Communities (2023). Selective licensing in the private rented sector: A guide for local authorities. <https://www.gov.uk/government/publications/selective-licensing-in-the-private-rented-sector-a-guide-for-local-authorities/selective-licensing-in-the-private-rented-sector-a-guide-for-local-authorities>

⁷ Department for Levelling Up, Housing & Communities (2023). Reforming the Private Rented Sector Fifth Report of Session 2022–23 Report, together with formal minutes relating to the report.



training and experience. Twenty of the three hundred and seventeen LAs in England are responsible for over 70% of the Civil Financial Penalties issued⁸.

Law-abiding landlords can feel justifiably aggrieved when they pay to comply with their obligations and see criminal landlords operating with impunity, extracting greater profit by overcrowding properties, failing to get a licence, and declining to spend the money needed to bring their rental properties up to the minimum legal standard.

Even within LAs, there can be a lack of clear processes and workflows. This can lead to inconsistent approaches to regulating the PRS between different staff members. A standardised and documented approach, where comparable offences are treated similarly, is vital to ensure landlords do not feel that they are being unfairly discriminated against, or that other landlords are receiving preferential treatment due to personal connections.

It is important that there are resource-appropriate mechanisms to enforce against criminal landlords and agents, and that the approach to enforcement is transparent, consistent and fair. If it correctly works as a deterrent, the threat of an inspection or visit can be enough to get the disrepair rectified, minimising the need for multiple property inspection and decreasing the cost of regulating the PRS to the taxpayer.

This is a pertinent issue in Jersey, and is explored later in this written submission.

Areas for clarification in Draft Public Health And Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 202-(P.40/2023) that could improve rental standards

Lodging Houses

Lodging houses do not need to have a licence. This is curious, as they constitute some of the cheapest rental accommodation and are likely to be at higher risk of substandard conditions than average rental properties. Indeed, the first set of PRS properties to require a mandatory licensing scheme in England were large Houses of Multiple Occupation, predominantly as a way to decrease the incidences of fire caused by poor maintenance and management, including unsafe gas and electrics. It is unclear whether lodging houses fall under the remit of the Public Health And Safety (Rented Dwellings) (Jersey) Law 2018, as §2(2) states:

*reference to a “rented dwelling” **may** include, but is not limited to –*

⁸ Watkin, S. (2021). The Enforcement Lottery: civil penalty usage by local authorities. NRLA. <https://www.nrla.org.uk/research/special-reports/enforcement-civil-penalty-usage>



(i) a lodging house within the meaning given to that expression by Article 1 of the Lodging Houses (Registration) (Jersey) Law 1962, and

The Public Health And Safety (Rented Dwellings) (Jersey) Law 2018 imposes minimum standards and conditions on rented properties. However, if something may include a lodging house, it may also **not include** a lodging house. Therefore, it would seem advisable to amend “may include” to “includes”. It is hard to see a reason why a high-risk property should be exempt from the licensing requirements. There is a separate, pre-existing registration regime that already covers lodging houses, but this current legislation is an opportunity to standardise the minimum conditions for properties. If different, extra standards and requirements are imposed for lodging houses with a large number of occupants, they can be included in legislative amendments.

In the UK, landlords have to be cognisant of a large patchwork quilt of Landlord and Tenant laws and regulations. This is an undesirable situation, turning some law-abiding, well-intentioned landlords into criminals due to unnecessary legal complexity. It may be that there is an opportunity to prevent a similar sprawl here. It would certainly be perplexing if lodging houses, which will be higher-risk, have lesser minimum standards than lower-risk rental properties.

What counts as ‘occupying’ a property?

Under the heading ‘Scope of the licensing scheme’, the draft regulation states:

Where a person who is both the owner and occupier of a dwelling permits that dwelling to be occupied , for reward, by up to two other persons, then that dwelling is not a rented dwelling for the purposes of this Law

There is case law regarding what counts as occupation; however, it may be appropriate to clarify a minimum amount of overnight stays in the property to meet the threshold to be considered an owner occupier. There may be situations where a landlord moves in with a partner or to a larger property but maintains a room at the property, without staying there regularly.

What counts as making an application?

Under §1 – Interpretation, it is stated that:

“application” means an application for a licence;

It is sensible to define what documents are required to be provided by the landlord, or state that it is for those processing the licence application to define what is needed.



As applying for a licence prevents an offence from occurring, it is worth considering when an application becomes duly made. It took a significant amount of legal wrangling, in which I had personal involvement, to define when a licence application is considered to be made to the extent that it prevents a landlord from committing a breach. This ambiguity could lead to a landlord filling out an online application form but not providing any of the information, required documentary evidence or application fee, and then stating they are not committing an offence as they have complied with the law and made an application.

A proposed clarifying amendment could be:

“application” means an application for a licence made in the manner and form specified by the scheme with the appropriate fee having been paid

Licence conditions for properties that do meet the minimum safety standards upon inspection

Under §3 – Licences it is stated that:

(4) If the dwelling is so inspected, the Minister must –

(a) issue or renew the licence;

(b) refuse to issue or renew the licence if the dwelling does not meet the minimum safety standards or there is a prescribed hazard present in the dwelling; or

(c) issue or renew the licence if the licence holder complies with any conditions set out in the licence designed to meet the minimum safety standards or address a prescribed hazard within a specified period

I infer that (c) relates to situations where a property does not meet the minimum standards upon inspection, but the licence that is granted will have a condition requiring action by a specific date to address the issues causing the property to fail to meet the minimum safety standards. The rectification works would reasonably be expected to lead to the property subsequently meeting the minimum safety standards.

It seems that 4(c) is either:

- Withholding the grant of a licence until the rectification works are complete; or
- Granting the licence, but adding specific conditions requiring certain works by a certain date



It is not clear which of the two above options the legislation is conveying. Considering it is an offence to operate without a licence, I wonder if it may be best for the licence to be considered to be granted with these added conditions that requires works done by a certain date, and failure to carry out the works to the required standard by the required date would be a breach of the licence conditions.

Who can be a licence holder and who can sign the application?

There can be benefits to a managing agency being the licence holder as they are more able to meet certain requirements. However, in the UK there are issues where the landlord puts an agent as the licence holder and the agency is substandard. The landlord then repeatedly tells the LA that they need to deal with the agency as the agency is the licence holder. This can create a frustrating situation where the property owner/landlord is receiving rent but refusing to take proactive steps to rectify issues in the property, and the LA has to expend effort getting a poorly run letting agent to comply or taking enforcement action against a managing agent that has no fixed assets to enforce against.

It may be advisable for the licence holder to be required to be the landlord of the property and for a managing agent to be able to fill out the form on behalf of their landlord client, but the landlord has to sign the document and be the licence holder. The managing agent could be the main point of contact, but the authority would always have a serving address for the landlord who is the licence holder.

As currently constructed, it seems that anyone could be the licence holder, leaving open the possibility of abuse whereby someone who has no real connection to the licensed property is the licence holder and becomes liable for something over which they have limited control.

The format of the written information for occupiers

The standard licence condition (7) could lead to a vast difference in the content and quality of information provided to occupiers. It may be helpful to:

- Provide an example of what 7(c) should look like
- Define exactly what information needs to be included to comply with 7(d)



P.40/2023 considerations to ensure effective and proportionate enforcement whilst minimising unintended consequences

There is a risk that a small proportion of landlords fail to license their properties. If there is insufficient enforcement against those who fail to license rental properties, the purpose of the licensing regime and minimum safety standards will be subverted. In this scenario, law-abiding landlords would have a genuine reason to feel aggrieved and may view the licence application fee as a tax on being a good landlord.

To ensure that offenders are treated consistently and transparently, it would be effective to have a published policy regarding:

- What informal efforts will be made to gain compliance from landlords of properties suspected of being rented who have not made an application
- The point at which formal enforcement will commence
- How formal action will continue for repeat offenders

As an example, it may be appropriate to say that letters will be written to properties suspected of lacking the required licence, detailing how to apply for a licence and the consequences of failing to apply for a licence for the first 6 months of 2024.

When a property is inspected on suspicion of lacking the required licence, given that requires expenditure of taxpayer resources, a formal fine will be issued at a specific level (such as £250).

If a landlord commits the same offence again, whether for the same or a different rental property, the second fine will be levied at £1000.

If a landlord commits the same offence a third time, that will be grounds to refuse to issue a licence and withdraw any licences already in force, and they will be unable to rent out any property for a period of time (such as five years).

Having a cut-off date after which informal action will no longer be the first step, is advisable. If, for example, this point is twelve months after the imposition of P.40/2023, it is likely that the only landlords who would remain unaware of this new legislation are those who make little or no effort to understand their legislative obligations when running a property rental business, or those who believe that they will face no financial detriment if they ignore the law. They would, in essence, be making a wise financial decision, saving the licence fee cost and the cost of any improvement works required at the expense of the protection of the tenants.



An effective way to increase compliance is to publish the details of those who have committed offences. This publication penalty furthers the aims of enforcement without adding any further penal sums to landlords who operate unlawfully. It is anecdotally understood that this approach is more effective in smaller geographical communities, where more residents know each other; therefore, this is an approach that would seem particularly impactful in Jersey.

Officers should have a clear process that is followed to ensure equal treatment of offenders, and would benefit from standardised templates with respect to warning letters and formal letters relating to legal proceedings.

If and when a housing tribunal is set up, it would be advisable to revisit the question of enforcement, as financial penalties operate in England as an effective and resource-efficient way to deter criminal behaviour from landlords. They also ensure relevant considerations are taken into account to reach a proportionate and appropriate financial penalty based on the severity of the housing offence, the culpability and track record of the offender, and the actual or potential harm experienced by the occupants.

One consideration will be whether that landlord who has been denied a licence can simply allow someone else to take over management of the property and carry out their landlord functions. To prevent an easy workaround which does little to protect the tenants from the actions of the repeat offender, it may be appropriate to refuse to allow the property to be rented. However, it does not feel appropriate on Jersey, which faces real housing shortages, to effectively leave a property empty. Therefore, it may be appropriate to state that only an estate agent registered with the Jersey Estate Agents Association can take over management and control of the property and be the licence holder. Such an agency would be unlikely to operate unlawfully; therefore, it is reasonable to expect that they will maintain minimum standards in the property, ensuring that tenants benefit from the regulatory protections that the States of Jersey intend to confer on all tenants.

There may be an overlap of regulations for lodging houses, as they are already regulated under Lodging Houses (Registration) (Jersey) Law 1962. Lodging houses are likely to hold a higher proportion of socioeconomically disadvantaged tenants seeking cheap room rental. It would be wise to bring lodging houses into the remit of the licensing and minimum safety standards scheme. Failing to do so would create a perverse situation where the tenants most likely to benefit from the regulatory protection of the licensing scheme and minimum safety standards would be left without appropriate protection. The question of whether lodging houses should be exempt from paying a further fee in addition to their registration fee is a question outside the remit of this written submission.

It is worth considering what documents are required to be submitted with the application. To understand risk profiles and learn about the PRS stock in Jersey, a floorplan, any necessary gas and electricity certifications and a copy of tenancy agreements for all tenants would be a sensible starting



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point, along with a signed declaration that the landlord will comply with all licence conditions and confirming an address to be used for service of official documents.

The nature of implementing a new licensing scheme, especially if most licences will have a start date of 1 January 2024, will create a natural cycle where there is a massive influx of licence applications at the same time every two years. This can be logistically challenging for the department processing the licence applications, as they will functionally have to put much of their day-to-day work on hold to deal with the time-limited flood of licence applications every two years.

It may be appropriate to allow licences for current rented properties that are submitted after 1 Jan 2024 and before 31 March 2024 to have their date of grant as the start date for their licence. This will allow for the more efficient functioning among those regulating the PRS.

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