

# Minimum standards for rented dwellings: licensing regulations

Environment, Housing and  
Infrastructure Scrutiny Panel

21st February 2020

S.R.1/2020



States of Jersey  
States Assembly



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## Chair's Foreword

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It is clear that there is a need for some easily accessible legislation to manage standards in rented accommodation in Jersey. The Panel has established that there are 'tools' in the Minister's box such as the 1934 law, the 1999 law and the rent safe scheme but he has chosen to by-pass these in favour of the proposed new legislation which would enable the department to evaluate the rented dwelling market in more detail.

This may have been stimulated by a strong public desire for immigration controls in the island and a need therefore for statistics on the numbers of rented dwellings in the island. The panel questions whether this is the correct 'tool' to achieve this.

The Panel has received little in the way of representation from tenants apart from the Citizens' Advice Bureau and evidence from the department itself but a significant response to its invitation for evidence from landlords. This has stimulated the Panel to look into the business case proposed by the Minister and it is as yet far from clear what the costs of administration will be, what the anticipated income stream will be and whether or not there will be a surplus on the process.

There is a suggestion that charges will be related to the Rent Safe scheme star ratings but presently there is no certainty as to which properties might achieve this and it is therefore impossible to gauge the return. The Panel concluded that the Rent Safe scheme was good for both tenants and provided encouragement to landlords to keep their properties in good order. Introducing a parallel registration scheme was in reality a duplication.

The Panel was concerned at the potential inflationary effect that not only the registration charge, but also consequential fees may have on rents. It was noted that expected returns on property investment vary between 2% and 6% without capital appreciation so it can be appreciated that some of the older, high maintenance properties could be driven out of the market if costs were to rise. It is open to conjecture whether or not the numbers of rentable properties would be reduced as a result. The fact that interest taken out on mortgages by landlords is a business expense and allowable as a deduction against profits for tax purposes will always act as a catalyst for new entrants to enter into the market.

'Revenge evictions' stimulated by a tenant's complaint are not unknown and despite any proposed 'whistleblowing' process are unlikely to be eliminated. The Panel considered that better documentation at the outset of a rental agreement in appropriate languages would obviate many of the landlord/tenant issues which currently arise and cause rancour. The Minister may wish to consider incorporating such a document into legislation as is the case in other jurisdictions.

The time scale of implementation of the regulations was thought to be unrealistic given the lead times involved in the building trade should a landlord be required to make property improvements.

The Panel believes that on balance there are as many bad tenants as there are landlords and that the proposals as lodged are somewhat heavy handed and bureaucratic in an age when most areas of government are trying to reduce 'red tape'.

A handwritten signature in blue ink that reads "Jackson".

**Connétable Mike Jackson**  
**Chair**  
**Environment, Housing and Infrastructure Scrutiny Panel**

## Executive Summary

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In 2018 the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 (“the Law”) was introduced, setting out the requirements for landlords to meet minimum standards for their rental properties. The Law made provision, under Article 5, for the States, by Regulations, to establish a licensing scheme. Under such Regulations, the Minister for the Environment would have the ability to licence rented dwellings, impose charges in respect of those licences, create offenses of breach of licence, and make supplementary provisions that may be considered necessary.

On 1st October 2019, the Minister for the Environment lodged the Draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 201- (P.106.2019) (“the draft Regulations”). With the draft Regulations, the Minister for the Environment seeks to develop a database that would provide details about properties that are being rented out, their suitability, their location, and their occupancy. It is intended that the data be used to ensure that rental properties meet, or are brought up to, modest minimum standards. Appendix 2 to the Proposition and Report set out the proposed charging regime for licensing of rented dwellings.

The Panel undertook a review to determine whether the draft Regulations are fit for purpose, fair and proportionate; whether appropriate consultation has been undertaken; and to ascertain the impact of the draft Regulations on both landlords and tenants.

If the Draft Regulations are passed by the Assembly, it is the Minister’s intention to run the proposed licensing scheme alongside the existing Rent Safe scheme. Rent Safe is outlined in Chapter 2 of our report. The rationale behind the decision to operate the Rent Safe scheme and the proposed licensing scheme alongside each other was not clear to the Panel and we have therefore recommended that the two schemes are combined.

The Panel received a number of submissions from private landlords suggesting that further regulation was unnecessary because data was already available to Government to create the desired database. However, we were assured by the Minister that, at present, there is no way of gathering data on the number of rental properties that exist, where they are located, and the number of people that reside in the property.

The detail of the new licensing scheme and the fees to be applied are set out in Chapter 3.

Whilst we were assured by the Minister that no extra costs would be incurred and no surpluses in revenue would be made from the licensing scheme, the level of fees and the income to be generated was questioned by the Landlords’ Association. The Government has estimated that the proposed scheme will raise £690,013 of revenue in 2020, increasing to £954,250 by 2023, and will cost £640,960 per annum to operate.

We found that the estimated revenue, to be generated under the proposed scheme, is based on a number of uncertain variables. Thus, until the charging regime and fee structure for licensing under the draft regulations are finalised and the number of rental properties that fall within the scheme realised, it will be impossible to ascertain how much income the scheme will generate. We also remain dissatisfied that the estimated cost of the licensing scheme has been adequately justified and, on the information provided, we believe that the income will exceed the operating costs over the next three years. As a result, we recommend that the Minister for the Environment should publish an annual report to the States Assembly, detailing

the amount of income generated by the proposed scheme, and, **before the debate of the draft Regulations**, must provide the States Assembly with further clarity as to the costs of operating the scheme.

During our review, the Minister for the Environment advised the Panel that the income generated from the scheme would not be used to cross-subsidise other regulatory work. However, the Panel was also advised during a public hearing that regulatory income would be budgeted against the Department's regulatory budget as a whole. Due to the conflicting evidence, we recommend that the Minister for the Environment must consult with the Panel prior to setting and publishing the final fee structure. We further recommend that the Minister must publish a report to the States Assembly per annum, detailing how the income, generated from the scheme, has been spent.

We found that there was a risk that the introduction of fees under the proposed licensing scheme, coupled with existing costs under the Law, could result in increased rental prices. We also found that increased regulation, along with the additional costs of an annual licence fee, may lead to properties being sold if they were no longer considered by landlords to be viable investments. The department had not undertaken work to quantify these potential effects.

We received a number of submissions that raised concerns about the cost of licensing multiple units of staff accommodation. We found that 'Staff Accommodation', 'Lodging Houses' and 'Tourist Accommodation', which are registered under the Lodging Houses (Registration) (Jersey) Law 1962 and Tourism (Jersey) Law 1948, will not be subject to any additional fee on top of what is already paid under the proposed licensing scheme. Staff accommodation not registered under the current Laws, but which meets the definition of 'Staff Accommodation', will be subject to a fee, although the proposed fee will be set on a maximum occupancy person count and not per dwelling.

The Panel is concerned that the current fee structure, proposed under Appendix 2 to the Proposition and Report, does not appear to consider or address industries within the Island that provide self-contained units on a seasonal basis and the high costs that may be imposed on them as a result of the licensing scheme. We therefore recommend that the Minister for the Environment undertakes further work to ascertain the impact of the proposed licence fee on seasonal businesses and how the fee structure could be amended to ensure fairness and proportionately. The Minister must report back to the States Assembly with the outcome of the work prior to the implementation of the scheme.

Under the draft Regulations, 'Social Housing Providers' (which includes housing associations, housing trusts, registered charities, and the parishes) are given a 100% discount if their properties are registered in the Rent Safe scheme. There is a concern that this will act as a disincentive to improve the standard of social housing accommodation. To ensure a level playing field across all housing providers, the Minister for the Environment should ensure that rented dwellings defined as 'Social Housing Providers' under the proposed scheme are not exempt from being charged an annual licence fee if they are Rent Safe accredited. Similar to private landlords, social housing providers should be awarded discounted licence fees depending on their star rating under the Rent Safe accreditation scheme.

The Panel found that older properties may find it harder to achieve a 5-star rating under the Rent Safe Scheme as a result of current planning regulations and may, therefore, be incapable of being awarded a higher percentage discount under the proposed licensing scheme. The Minister for the Environment should amend the current fee structure to ensure a graduation of fee charges according to the size of the property and the number of occupants the property is capable of housing.

Chapter 5 of our report considers the draft Regulations and proposed licensing scheme in comparison to similar schemes operating in the United Kingdom. We found that selective licensing schemes in the UK generally operate for a maximum of 5 years. Licences granted to landlords in the UK typically last for the duration of the scheme. In Wales, a licence expires at the end of a period of 5 years, beginning with the date it was granted unless the licence holder makes an application to renew the licence. In order to reduce the level of bureaucracy and costs for landlords, the Minister for the Environment should amend the proposed licensing scheme and extend the validity of a licence from one year to five years in line with the current practice in the United Kingdom.

## Key Findings

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**F1**

The Rent Safe Scheme will operate alongside the licensing scheme that would be introduced under the draft Regulations.

**F2**

Licence fee discounts for landlords who are part of a recognised accreditation scheme is considered 'common place' in the UK.

**F3**

The rationale behind the decision to operate the Rent Safe Scheme and the proposed licencing scheme alongside each other is not clear to the Panel.

**F4**

At present there is no way of gathering data on the number of rental properties that exist, where they are located and the number of people that reside in the property. The Panel has been advised that the draft licencing scheme will provide such data.

**F5**

It is currently unknown how many rented dwellings in Jersey fall below minimum standards.

**F6**

The Citizens Advice Bureau recorded 1,887 cases in 2018 where housing advice was requested, of which only 128 (6.8%) of cases raised issues regarding housing conditions. The severity of the 128 cases, however, is unknown.

**F7**

It has been estimated that the proposed scheme will raise £690,013 of revenue in 2020, increasing to £954,250 by 2023.

**F8**

The estimated revenue to be generated under the proposed scheme is based on a number of uncertain variables. Until the charging regime and fee structure for licencing under the draft regulations are finalised and the number of rental properties that fall within the scheme realised, it will be impossible to ascertain how much income the scheme will generate.

**F9**

The Panel is not satisfied that the Minister for the Environment has provided adequate justification as to why the proposed Licencing Scheme will cost a significant amount of £640,960 per annum to operate.

**F10**

The proposed scheme will generate an estimated annual income of £954,250 by 2023 but will only cost £640,960 per annum to operate.

**F11**

The Minister for the Environment has given an assurance that the income from the scheme will not be used to cross-subsidise other regulatory work. However, the Panel was also advised during a public hearing that regulatory income would be budgeted against the Department's regulatory budget as a whole.

**F12**

Unlike the Control of Housing and Work (Jersey) Law where 'any person' is required to complete a change of address form, the Public Health and Safety (Rented Dwellings) law 2018 puts the onus on the 'person having control' of the dwelling to provide the information and to keep it updated.

**F13**

The draft Regulations, and the Report that accompanies the Regulations, provides limited detail as to the proposed inspection regime and fee structure under the licencing scheme. However, in accordance with draft Regulation 3(5), the Minister for the Environment will have to publish the charges imposed for the issue of a licence.

**F14**

The introduction of fees under the licencing scheme, coupled with the costs associated with electrical inspections required under the Minimum Standards legislation, may result in an increase in rent.

**F15**

The Minister for Children and Housing has a lack of insight regarding the current housing market.

**F16**

The Minister for Children and Housing intends to intervene directly with the housing market if the licencing scheme impacts current rental prices.

**F17**

'Staff Accommodation', 'Lodging Houses' and 'Tourist Accommodation', which are registered under the Lodging Houses (Registration) (Jersey) Law 1962 and Tourism (Jersey) Law 1948, will not be subject to any additional fee on top of what is already paid. Staff accommodation not registered under the current Laws, but which meet the definition of 'Staff Accommodation', will be subject to a fee, but the proposed fee will be set on a maximum occupancy person count and not per dwelling.

**F18**

The current fee structure does not appear to consider or address industries within the Island that provide self-contained units on a seasonal basis and the high costs that may be imposed on them as a result of the licencing scheme.

**F19**

Increased regulation and the additional costs of an annual licence fee may lead to rental properties being sold if they are no longer considered by the landlord to be a viable investment.

**F20**

Social Housing Providers, which include housing associations, housing trusts, registered charities, and the parishes, are given 100% discount on their properties if they are in 'Rent Safe'. There is a concern that this removes the incentive for social housing providers to improve their standard of accommodation.

**F21**

Older properties may find it harder to achieve a 5-star rating under the Rent Safe Scheme as a result of current planning regulations and therefore incapable of being awarded a higher percentage discount under the proposed licencing scheme.

**F22**

Under the current fee structure proposed within the draft Regulations, the annual licence fee will be equally applied to all sized properties.

**F23**

The Draft Regulations and proposed licencing scheme do not capture private properties that rent out rooms.

**F24**

Selective licencing schemes in the UK generally operate for a maximum of 5 years. Licences granted to landlords in the UK typically last for the duration of the scheme. In Wales, a licence expires at the end of a period of 5 years, beginning with the date it was granted unless the licence holder makes an application to renew the licence.

## Recommendations

**R1**

The Minister for the Environment should explore the possibility of combining the Rent Safe Scheme and the proposed licensing scheme, following a bedding in period of the draft Regulations.

**R2**

The Minister for the Environment must publish an annual report to the States Assembly, detailing the amount of income generated by the proposed scheme.

**R3**

Before the debate of the draft Regulations, the Minister for the Environment must provide the States Assembly with further clarity as to the costs of operating the scheme.

**R4**

The Minister for the Environment must publish a report to the States Assembly per annum, detailing how the income generated from the scheme has been spent.

**R5**

The Minister for the Environment must consult with the Panel prior to setting and publishing the finalised fee structure for the licensing scheme. This will enable the Panel to ensure that the licensing scheme will not be generating more income than the amount it costs to operate.

**R6**

The Minister for the Environment should undertake further work to ascertain the impact of the proposed licence fee on seasonal businesses and how the fee structure could be amended to ensure fairness and proportionately. The Minister must report back to the States Assembly with the outcome of the work prior to the implementation of the scheme.

**R7**

To ensure a level playing field across all housing providers, the Minister for the Environment should ensure that rented dwellings defined as 'Social Housing Providers' under the proposed scheme are not exempt from being charged an annual licence fee if they are Rent Safe accredited. Similar to private landlords, social housing providers should be awarded discounted license fees depending on their star rating under the Rent Safe accreditation scheme.

**R8**

The Minister for the Environment should amend the current fee structure to ensure a graduation of fee charges according to the size of the property and the number of occupants the property is capable of housing.

**R9**

The Minister for the Environment should amend the type of properties captured under the licencing scheme to include private house lodgings.

**R10**

In order to reduce the level of bureaucracy and costs for landlords, the Minister for the Environment should amend the proposed licencing scheme and extend the validity of a license from one year to five years in line with the current practice in the United Kingdom.

# 1 Introduction

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The Draft Public Health and Safety (Rented Dwellings) (Licensing) (Jersey) Regulations 201- (P.106/2019) were lodged on 1st October 2019 by the Minister for the Environment for debate by the States Assembly on 12th November 2019. However, following a request from the Panel, the debate of the Regulations was deferred until 25th February 2020 to allow the Panel to undertake further evidence gathering. The Regulations, if adopted, will bring into force the requirement for landlords to register their rental properties for a fee, which is intended to cover the cost of a new licensing and inspection regime. The Regulations will also require landlords to pay an annual fee to renew their licence.

The draft Regulations fall under the [Public Health and Safety \(Rented Dwellings\) \(Jersey\) Law 2018](#), which sets out requirements for landlords to meet minimum standards for their rental properties. The Law includes a provision for the Minister to introduce (by Regulations) a Licensing scheme for rented dwellings.

In the absence of the Law prior to 2018 there were few powers available to officers to elicit improvements to substandard rented accommodation in Jersey. For instance, the Statutory Nuisances (Jersey) Law 1999 allows officers to ensure rented dwellings accommodation is “wind and water tight” and the Loi (1934) sur la Santé Publique has provision for closing houses under certain, very serious circumstances<sup>1</sup>.

The main aim of the Panel’s review has been to ascertain whether the introduction of regulation through a licensing scheme is necessary and a proportionate measure for Jersey. The Panel’s Terms of Reference for the review can be found in Appendix 2 to this report.

The Panel received evidence from written submissions, a joint public hearing with the Minister for the Environment and the Minister for Children and Housing, and a further public hearing with the Jersey Landlords’ Association. We also invited comments from members of the public and other interested stakeholders via a call for evidence.

In addition to this, the Panel wrote to 24 targeted stakeholders to request written submissions. Overall, the Panel received 34 submissions to the review. It is important to note that the majority of submissions received were from landlords and the Panel received very few submissions from tenants. As part of the evidence gathering process the Panel also examined feedback and responses from the Government’s own consultation, which was carried out in Summer 2019.

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<sup>1</sup> As set out in [Comments to the draft Public Health and Safety \(Rented Dwellings\) \(Jersey\) Law 201-](#), presented by this Panel (as then constituted) in December 2017

**Chapter 2** of this report provides an overview of the current legislation in force and the Rent Safe scheme, and considers questions raised in submissions as to the rationale for introducing licensing instead of continuing the current regime of enforcement on a “complaints only” basis.

**Chapter 3** considers the proposals for a new licensing scheme and explores what impact such a scheme may have for tenants and landlords. In addition, we assess whether the scheme is workable, proportionate, and has adequate provision in place to resource it.

**Chapter 4** assesses to what extent the Government of Jersey consulted with stakeholders and how any concerns or feedback have been addressed within the new licensing proposals.

**Chapter 5** provides an overview of how selective licensing works in the UK, including any evidence for its effectiveness.

## 2 Current legislation and Rent Safe scheme

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### Public Health and Safety (Rented Dwellings) (Jersey) Law 2018

The purpose and function of the [Public Health and Safety \(Rented Dwellings\) \(Jersey\) Law 2018](#) ("the Law") is to enable minimum standards to be set across the rented dwelling sector to match the 'Decent Homes Standard' adopted by the Social Housing sector<sup>2</sup>.

The legislation provides for the introduction of subordinate legislation based on best practice to protect the health and safety of occupants of and visitors to rented dwellings.

The Law identifies 2 broad categories in relation to Health and Safety in rented dwellings:

1. Ministerial Powers to introduce minimum health and safety standards with respect to rented dwellings.
2. Provision that the States may make Regulations to establish a scheme for licensing rented dwellings, and in particular to enable the Minister for the Environment to issue and charge for licences.

The [Public Health and Safety \(Rented Dwellings – Minimum Standards and Prescribed Hazards\) \(Jersey\) Order 2018](#) sets out the minimum standards and requirements that are expected in a 'decent home'<sup>3</sup>, as well as the method of assessing risks posed by these hazards and the level of risk that is acceptable for any hazard.

The draft Regulations now being proposed will address the second of the above categories, by providing for a licensing scheme for rented dwellings.

The Law also provides for the Minister for the Environment to prepare, issue and revise codes of practice to offer practical guidance in respect of any provision of the Law or its Orders and to arrange printing and distribution of such codes. We were advised that information is available online and in leaflets distributed to tenants and landlords, which includes information in Portuguese and Polish. Face-to-face training is also provided to a number of organisations.<sup>4</sup>

Enforcement in support of the above control measures is provided by power in the Law to apply penalties or sanctions, either criminal or administrative.

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<sup>2</sup> See original proposition, [P.66/2017](#) for further rationale on the need for the law

<sup>3</sup> [Department for Communities and Local Government- A Decent Home: Definition and guidance for implementation](#)

<sup>4</sup> [Letter from the Minister for the Environment dated 23rd January 2020](#)

## Residential Tenancy (Jersey) Law 2011

[The Residential Tenancy \(Jersey\) Law](#) was brought into force in 2011 to provide clearer legal obligations for both landlords and tenants. The main features of this Law include:

- Clear notice periods; a landlord being required to give 3 months' notice and a tenant required to give 1-month notice.
- Basic requirements for all tenancy agreements i.e. who the rent is paid to, payment frequency, deposit amount, rent reviews and contact details.
- Clearer court processes in cases of breach of tenancy or eviction.
- Under this Law, the [Residential Tenancy \(Condition Reports\) \(Jersey\) Order 2014](#) requires that property condition reports, noting the physical condition and state of repair of residential accommodation, must accompany the tenancy agreement. The order also details the content which must feature in the condition report and that the report must be completed at the start of the tenancy and when the tenancy is varied, such as at renewal.

## Rent Safe scheme

[Rent Safe](#) is a voluntary scheme which compiles a list of landlords that have reached accredited status under the Rent Safe Scheme standards, together with an overview of the number of properties that have reached the accredited minimum standards required for 3, 4 or 5 stars. The scheme is free for property owners to register with.

The principle of the scheme is that it enables tenants renting a property to be informed that by using an accredited landlord they are aware that the landlord –

- takes their tenant's welfare seriously
- takes action to resolve issues quickly
- works to make sure their properties continue to meet recognised housing standards.

Only landlords/properties that meet an accredited rating of 3 to 5 stars are listed on the Rent Safe register. The below table provides a description of each of the star ratings and the defined standards.<sup>5</sup>

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<sup>5</sup> Appendix 3, [P.106/2019](#)

Number of stars	Standards
5	The property exceeds the minimum Rent Safe standard and has achieved accreditation through compliance with legal standards. Energy efficiency measures are also in place.
4	The property exceeds the minimum Rent Safe standard and has achieved accreditation through compliance with legal standards.
3	The property meets the minimum Rent Safe standard and has achieved accreditation through compliance with the minimum legal standards.
2	The property does not quite meet the minimum Rent Safe standard, and some improvement is required.
1	The property does not meet the minimum Rent Safe standard, and improvement is required in several areas.
0	The property does not meet the minimum Rent Safe standard and much work is required to ensure that the health, safety and welfare of tenants is protected.

In a Public Hearing with the Minister for the Environment and the Minister for Children and Housing, the Minister for the Environment outlined the Rent Safe scheme statistics as follows:

- 2,703 dwellings are registered under the voluntary scheme
- The scheme has been in place for 2 years
- 66% of dwellings registered with the scheme are reaching the 4-star standard
- 32% of dwellings registered with the scheme are reaching the 5-star standard

The Minister for the Environment also explained that there are many dwellings which are not registered and that the number of dwellings registered with Rent Safe *“is quite a small number compared with 9,000 [dwellings]”*<sup>6</sup>

The Rent Safe scheme operates with a star system and the draft Regulations provide for discounts to be applied to the registration fee as detailed in the next chapter. The intention, therefore, is that the Rent Safe scheme will work alongside the draft Regulations.

The Panel has queried the necessity for both the Rent Safe Scheme and the Regulations and considered whether it would be less bureaucratic to have just one scheme in place. In written correspondence from the Minister for the Environment, he referred the Panel to research that had been undertaken by the Chartered Institute of Environmental Health in partnership with the Chartered Institute of Housing – [‘A licence to Rent’](#) – which was published in January 2019. The research examined existing licensing schemes in the UK to assess the benefits achieved and suggest ways in which the schemes could be improved. Of the 27 schemes in operation across the UK, reference to discounts for landlords who are part of a recognised accreditation scheme was considered ‘common place’.<sup>7</sup>

<sup>6</sup> [Transcript of Public Hearing with the Minister for the Environment and the Minister for Children and Housing of 3rd December 2019](#) Page 3

<sup>7</sup> Consultation Response, August 2019

In response to the Government’s consultation on the draft Regulations, the Chartered Institute of Environmental Health expressed their support for the Government’s proposal to introduce the licencing scheme alongside an accreditation scheme:

*“Combining the proposed scheme with an accreditation scheme for landlords and making this information easily available to existing and prospective tenants, could help drive up standards in the private rented sector further”.<sup>8</sup>*

	<b>FINDING 1</b> The Rent Safe Scheme will operate alongside the licensing scheme that would be introduced under the draft Regulations.
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	<b>FINDING 2</b> Licence fee discounts for landlords who are part of a recognised accreditation scheme is considered ‘common place’ in the UK.
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	<b>FINDING 3</b> The rationale behind the decision to operate the Rent Safe Scheme and the proposed licencing scheme alongside each other is not clear to the Panel.
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	<b>RECOMMENDATION 1</b> The Minister for the Environment should explore the possibility of combining the Rent Safe Scheme and the proposed licensing scheme, following a bedding in period of the draft Regulations.
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## The rationale for licensing

The rationale for introducing licensing for rented dwellings is explained in the report which accompanies the draft Regulations:

*...the Department... continues to uncover rented dwellings in really poor condition, some in the control of allegedly ‘good’ landlords. Whilst these properties are known about, it is certain that there are many more that the regulators simply have no knowledge of. The sector had been largely unregulated, and now requires licensing to ensure that all rented dwellings are safe and will not contribute to poor mental and physical health.<sup>9</sup>*

The report goes on to explain that minimum standards are designed to set a minimum accepted level to avoid harm to the tenant and to reduce the risk of illness or injury within a rental property.

The report also explains the benefits of requiring all landlords to be licensed:

*The draft Regulations, if passed by the Assembly, will ensure that the Government of Jersey, for the first time ever, develops data about what property is being rented out,*

<sup>8</sup> [Letter from the Minister for the Environment dated 12th December 2019](#)

<sup>9</sup> [P.106/2019](#) Page 3

*and its suitability, occupancy and location, for the purposes of ensuring that it meets, or is being brought up to, modest minimum standards.<sup>10</sup>*

In several of the written submissions received by the Panel it was suggested that existing legislation already provided the Government with the powers to inspect dwellings and prosecute property owners' where property did not meet the minimum standards or for other non-compliance with the current Law and therefore further licensing was not required for this purpose.<sup>11</sup> Further reference to this is made in the next chapter.

In a public hearing with the Minister for the Environment and the Minister for Children, the Panel queried why the Law could not simply be enforced on a 'complaints only' basis. The response from the Minister for Children and Housing was as follows:

***The Minister for Children and Housing:***

*I think that if our starting point was that people were more aware of the procedures that already exist and what rights tenants have, it would certainly be a much better starting point, but I do think it is the case that tenants are not aware of what rights they currently have under the law and what procedures, what complaints there are. Again, lots of people approach me directly, who I send straight to Environmental Health, who obviously do a great job of that. I would say though that there are undoubtedly people out there for whom the knowledge would probably not help them so much or maybe they already have that knowledge but still cannot complain because they find themselves in a vulnerable position and are worried about how they would be treated afterwards and having a reactive system will not necessarily reach those people. Environmental Health have got powers to deal with that substantially better than was the case a few years ago. That is certainly a good thing and is improving things for people otherwise may not have had a course of action that should have been taken. So we are better than where we were a few years ago, but I am still of the view that there is more we can do and a proactive system is better than a reactive one.*

***Deputy I. Gardiner:***

*Just to make it clear that according to the law of 2018, the department does not need to wait to complain, that you can initiate a visit and you can visit and inspect the property. Is this correct?*

***Environmental Health Consultant:***

*We could, but we would not know why we needed to visit, unless it was blindingly obvious there was something wrong. We have seen an increasing number of complaints since the law was passed, but we do get ... I would guess maybe a fifth of the complaints we get, people say: "Can you not tell the landlord or can you find a way of visiting so the landlord does not know it was me that asked you?" because they are worried what would in the U.K. (United Kingdom) be called revenge evictions. Obviously we have no way of knowing what happens and the last thing we want to become is an eviction service.<sup>12</sup>*

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<sup>10</sup> [P.106/2019](#) Page 4

<sup>11</sup> [Submissions of Guy Morris, Mr and Mrs Le Brun, Roger Trower and the Jersey Landlords Association](#)

<sup>12</sup> [Transcript of Public Hearing with the Minister for the Environment and the Minister for Children and Housing of 3rd December 2019 Page 3-4](#)

Details from the Magistrate’s Court Greffe show that there were 29 cases for eviction brought to Court, resulting in 16 evictions being ordered in 2018. In 2019, 51 cases for eviction were brought to Court, resulting in 29 evictions being ordered. However, it is not known what the circumstances surrounding those evictions were.<sup>13</sup> The Landlords Association told us that they were only aware of 4 court cases in 2018 and 2 evictions.<sup>14</sup>

At the Public Hearing on 3rd December 2019 the Minister for the Environment told the Panel that a further advantage of having a licensing scheme, - over simply enforcing the current legislation by complaint - is that such a scheme would require landlords to register their properties and therefore would provide data on how many rental properties exist, where they are located and what the occupancy is. The Panel was further advised during the hearing that that there was currently no way of gathering that information:

**Environmental Health Consultant**

*The main thing that will be different is we will know where the properties are. We do not know where the rented properties are; we do not know who owns them; we do not know what the occupancy is; we do not know if they are overcrowded or not. There is no way of gathering that information. It is suggested that that exists within the States, but it does not.*<sup>15</sup>

	<p><b>FINDING 4</b></p> <p>At present there is no way of gathering data on the number of rental properties that exist, where they are located and the number of people that reside in the property. The Panel has been advised that the draft licencing scheme will provide such data.</p>
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	<p><b>FINDING 5</b></p> <p>It is currently unknown how many rented dwellings in Jersey fall below minimum standards.</p>
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## The Tenants’ position

No submissions were received directly from tenants on the Draft Regulations. However, the Panel did receive correspondence from the Citizens Advice Bureau who advised:

*“Housing was our biggest single advice area in 2018 with 1,867 cases being recorded. So many societal problems can be attributed to insecure family surroundings and we believe that many of these problems can equally be rectified at the ‘front end’.*

*We wholeheartedly support this new legislation, looking at the last full calendar year, we have had 128 clients with issues that directly relate to Housing Conditions, the common issues are;*

- 1) Damp / Mould
- 2) Leaks
- 3) Inadequate or non-existent heating systems

<sup>13</sup> [Email from the Magistrate’s Court Greffe dated 9th January 2020](#)

<sup>14</sup> [Transcript from Public Hearing with the Jersey Landlords’ Association 7th January 2020](#) Page15

<sup>15</sup> [Transcript of Public Hearing with the Minister for the Environment and the Minister for Children and Housing of 3rd December 2019](#) Page 6

4) Dangerous electrical systems

5) Not wind or watertight conditions ...

*As is evident from the above chart, the problems with housing conditions are multi-faceted and we are at least now in a position to be able to advise tenants of proper recourse to protection with an independent assessment from Environmental Health who can, if necessary, enforce action to rectify a breach of the legislation.”<sup>16</sup>*



**FINDING 6**

The Citizens Advice Bureau recorded 1,887 cases in 2018 where housing advice was requested, of which only 128 (6.8%) of cases raised issues regarding housing conditions. The severity of the 128 cases, however, is unknown.

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<sup>16</sup> [Submission of the Citizens Advice Bureau](#)

### 3 The proposed new licensing scheme

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The Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 makes provision under Article 5 for the States to agree by Regulations to establish a scheme that would further ensure the safety of rented dwellings, as well as the health and safety of those occupying such dwellings.

If adopted, the draft Regulations would enable the Minister for the Environment to licence dwellings that are to be rented, and to impose charges for issuing licences and in relation to enforcement action arising out of the breach of the regulations or a requirement of any licence.

The report attached to P.106/2019 states that the draft Regulations, if passed by the Assembly, will ensure that the Government of Jersey collects data about what property is being rented out, as well as its suitability, occupancy and location, for the purposes of ensuring that it meets, or is being brought up to, modest minimum standards as required by law. Use of this data will enable more accurate risk assessments to be carried out and the ability to prioritise and target inspections.

The minimum standards as detailed in the Public Health and Safety (Rented Dwellings – Minimum Standards and Prescribed Hazards) (Jersey) Order 2018 are already in force, and the proposed regulations would provide the scheme by which these minimum standards can be more proactively inspected and enforced.

The proposed licensing conditions are included in Appendix 1 to P.106/2019. The draft Regulations also propose the introduction of licensing charges, which are detailed below.

Property type	Application Fee	Annual Licence Fee (before discount)	Discount applied	Amount per unit – first year	Amount per unit – subsequent years
Social Housing Provider (Rent Safe accredited)	£0	£200	100%	£0	£0

5 Star Rent Safe accredited dwellings	£0	£200	75%	£50	£50
4 Star Rent Safe accredited dwellings	£0	£200	50%	£100	£100
3 Star Rent Safe accredited dwellings	£0	£200	25%	£150	£150
Unaccredited dwelling	£50 (paid first year only)	£200	0%	£250	£200

The above table details the proposed fees for traditional type residential accommodation, the fees proposed for hostel type accommodation can be found on pages 9-10 of [P.106/2019](#).

It is stated in P.106/2019 that the fees have been set at a level enabling Environmental Health to recover the full cost that will be incurred by regulation. This would include the running of the scheme, and the provision of advice, inspections and enforcement of the law.

P.106/2019 proposes that landlords already renting will be granted a licence without pre-inspection and will be given until the end of March 2020 to apply. Following the deferral of the debate to allow us to conduct our review, the Minister for the Environment has lodged [an amendment](#) to extend the deadline to June 2020.

The fee structure as shown above provides for discounted fee levels for properties registered with Rent Safe according to the star rating of the property following inspection. The proposition states that this is to reward best practice. Landlords are given a star rating if they meet all legal requirements. Additional stars are awarded for properties where the landlord goes beyond the bare minimum, and where the property has energy efficiency measures in place.

As shown in the table above, Social Housing Providers (which includes Parishes) are given a 100% discount on their properties if they are in 'Rent Safe'. Further reference to this is made below under the sub-heading "Different treatment of private landlords and social housing providers".

## Resource and financing of the scheme

The Minister for the Environment confirmed that the scheme will be funded by the licence fees received, and that no further resources would be provided.

### ***Minister for the Environment***

*"I was not prepared to go into a system in which we had to recruit extra staff or incur extra costs. The challenge I set to the team is to do this within existing. It is accepted*

*that they are doing other work. I think what we will do is monitor this as we go. We cannot make surpluses, absolutely not.*<sup>17</sup>

The Panel was provided with details of the number of properties expected to register under the scheme and the expected revenue to be generated from the licencing requirement. This detail is set out in the table at Appendix 1 to this report. It forecasts that a total of 9,089 dwellings will be registered in 2020 producing revenue of £690,013, in 2020 rising to £954,250 by 2023.

In their written submission, the Jersey Landlords' Association estimated that the revenue to be generated under the scheme would be of the order of £1.670,000 per year<sup>18</sup>. However, in oral evidence, they suggested that the amount could be as high as £2,500,000. This is based on 10,000 properties, each paying a fee of £150-£250 per year<sup>19</sup>.

The Panel asked the Minister for the Environment to explain the disparity between his department's forecasts and the figures provided by the Landlords' Association. The Minister for the Environment explained that his forecasts are based on a lower number of properties that will fall within the scheme (9,089) and the expectation that a proportion of landlords will, over time, join the Rent Safe scheme and therefore qualify for discounted fees.

The Panel queried the number of dwellings that the Department had estimated would be registered through this scheme in 2020, due to other evidence that had received throughout its review. For instance, at the Public Hearing on 7th January 2020, the Jersey Landlords Association advised the Panel that, as of the end of 2019, there were 13,293 properties registered with MyDeposits Scheme<sup>20</sup>. The Panel notes that this figure is significantly higher than the 9,089 rental properties estimated to be registered by 2020. After further investigation, however, we found that there are currently 7,461 deposits being held by the MyDeposits Scheme.<sup>21</sup>

	<b>FINDING 7</b>
	It has been estimated that the proposed scheme will raise £690,013 of revenue in 2020, increasing to £954,250 by 2023.
	<b>FINDING 8</b>
	The estimated revenue to be generated under the proposed scheme is based on a number of uncertain variables. Until the charging regime and fee structure for licencing under the draft regulations are finalised and the number of rental properties that fall within the scheme realised, it will be impossible to ascertain how much income the scheme will generate.

	<b>RECOMMENDATION 2</b>
	The Minister for the Environment must publish an annual report to the States Assembly, detailing the amount of income generated by the proposed scheme.

<sup>17</sup> [Transcript of Public Hearing with the Minister for the Environment and the Minister for Children and Housing of 3rd December 2019 p.20](#)

<sup>18</sup> [Submission of the Jersey Landlords' Association](#), Page 8

<sup>19</sup> [Transcript from Public Hearing with the Jersey Landlords' Association 7th January 2020](#), Page 13 and Page 24

<sup>20</sup> [Transcript from Public Hearing with the Jersey Landlords' Association 7th January 2020](#)

<sup>21</sup> MyDeposits, February 2020.

The cost of operating the scheme is forecast to be £640,960 per annum, as detailed in the table below. Of this total, £385,000 will fund 6 full-time inspectors, £95,000 will be spent on managerial oversight, £42,000 on administrative support and £57,500 on IT development and maintenance. We were previously advised by the Minister for the Environment, however, that the 6 full-time inspectors, to be funded under this scheme, were existing staff and would not be solely dedicated to undertaking work in respect of these regulations but also other areas within Environmental Health.

#### Costs of Licensing Scheme

<b>Staff Costs</b>	
6 FTE	£385,000
GHE Regulation managerial oversight (not including wider GHE and Corporate overheads)	£95,000
Central business and administrative support	£42,000
<b>Supplies and Services</b>	
IT development and maintenance	£57,500
Equipment purchase	£1,500
Training incl travel	£13,000
3 Lease vehicles	£4,800
Fuel	£2,160
Office Rent and associated costs	£35,000
Other office consumables	£5,000
<b>Total Expenditure</b>	<b>£640,960</b>

By way of comparison the Minister for the Environment has advised the Panel that the current cost of maintaining the Lodging House Register is £62,000,<sup>22</sup> Although this does not include a system of regular mandatory inspections as is proposed by the draft Regulations.

	<p><b>FINDING 9</b></p> <p>The Panel is not satisfied that the Minister for the Environment has provided adequate justification as to why the proposed Licencing Scheme will cost a significant amount of £640,960 per annum to operate.</p>
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	<p><b>FINDING 10</b></p> <p>The proposed scheme will generate an estimated annual income of £954,250 by 2023 but will only cost £640,960 per annum to operate.</p>
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<sup>22</sup> [Letter from the Minister for the Environment dated 8th January 2020](#)



### RECOMMENDATION 3

Before the debate of the draft Regulations, the Minister for the Environment must provide the States Assembly with further clarity as to the costs of operating the scheme.

## Potential impact of a licensing scheme

The majority of submissions to the Panel's review were from Landlords raising concerns about the proposed licensing scheme. These concerns included:

- **The scheme amounts to a “stealth tax”**
- **Legislation in this area and data on private rentals already exists**
- **Data on rental dwellings is already available to the Government under the Control of Housing and Work Law 2012**
- **Cost of licensing being passed onto the Tenant**
- **Impact on Agriculture and Hospitality**
- **Powers available to the Minister**
- **Landlords will sell their properties**
- **Different treatment of private landlords and social housing providers**
- **Relevance of types of dwellings to fees**

We will address each of these concerns in turn.

### **Stealth Tax and Cross-Subsidising**

Several submissions contended that the licence fee is an extra tax in addition to the tax private landlords already pay on their rental income. One such submission made this point and argued that it is unjust for social housing providers not to be treated equally:

*“Licence fees may well be necessary if the Legislation is to be self-funded, but a lack of trust makes me fear that they could easily become a Tax by another name. We already have 'Long Term Care Charges' that are allegedly not taxes. I can see Licence fees being a stealth tax on private landlords and can see no safeguards to prevent this happening. In fact the exclusion of Social Housing providers from paying Licence fees signals an attempt to penalise private sector providers at some point.”<sup>23</sup>*

At the Public Hearing on 3rd December 2019 the Panel asked whether the cost of the scheme is a form of tax and was advised:

#### **Group Director for Regulation, Growth, Housing and Environment:**

*No, I would say that the wider debate we have across all regulatory areas is who should pay for the regulatory cost. Most of our regulatory areas are effectively cost-neutral now to the general taxpayer. They are the person who benefits from the regulation. The private interests who benefit from that regulation pay for the service. So that is the same*

<sup>23</sup> [Submission of Peter and Julie Bisson](#)

*in our building industry, our planning permissions, whether it be waste licences, water licences and the like.*<sup>24</sup>

The Panel was concerned that income generated from the scheme could be used to cross-subsidise other regulatory work within the Growth Housing and Environment Department. In answer to this, the Panel was advised by the Group Director for Regulation, Growth, Housing and Environment:

*As you have got regulatory income coming in, it is effectively costed against our regulatory budgets as a whole, so...effectively housing a very big area of our work within Environmental Health. The other big area of work is food safety, and the other big area of work is related to housing and it is community nuisance, so we have a number of areas.*<sup>25</sup>

The discussion continued:

***The Connétable of Grouville***

*With this particular scheme, you are taking in £600,000, but you are not expecting to spend that on this scheme.*

***The Minister for the Environment***

*We do not know yet.*

***The Connétable of Grouville:***

*So it is cross-subsidising...*

***The Minister for the Environment***

*The point I am trying to make, that is a good debate, but I do not think it is resolvable here. I will...*

***Deputy K.F. Morel:***

*It is a Reform debate, because the lack of evidence is what is coming through here.*

***The Minister for the Environment***

*I accept that. I accept that what you want to see is a high degree of evidence, but at the moment the policies that I have inherited, and certainly they are longstanding, is that all of the regulatory services that are operated under our umbrella are effectively self-financing and cost recover. Now, you could do an examination of every one of those and try and work out all the minutiae of which bits of it are for what service and how the cross-fertilisation or cross-subsidies occur. But that has been the parameters with which we had to work...*<sup>26</sup>

The Panel understands that it is a general principle of law that an administrative charge must relate to the cost of administering the scheme. If the charge was such as to raise an obvious surplus this could be struck down as effectively imposing a tax for which specific authority

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<sup>24</sup> [Transcript of Public Hearing with the Minister for the Environment and the Minister for Children and Housing of 3rd December 2019](#), Page 17

<sup>25</sup> [Transcript of Public Hearing with the Minister for the Environment and the Minister for Children and Housing of 3rd December 2019](#), Page 16

<sup>26</sup> [Transcript of Public Hearing with the Minister for the Environment and the Minister for Children and Housing of 3rd December 2019](#), page 20.

would need to be given in the Law. The Panel queried the point in a letter to the Minister for the Environment. In his response, the Minister advised:

*“The projected expenditure for work carried out to enforce the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 and the associated Order relating to Minimum Standards is £640,960. The projected income is £690,013 and it should be noted that these figures do not involve any cross subsidy and are costs attributed solely to Environmental Health. In addition, in my response to question 2 I gave the caveat that ‘should further housing work move into the GHE Regulation portfolio from other areas of Government then resources will have to be addressed’. Furthermore, if I can refer you to my response to your email dated 10 January 2020, in particular:*

*‘I would like to stress that as we don’t have a full picture of the rental sector, we can only apply what we do know and include best estimates where we don’t.’ It is also worth noting that as time goes on and standards improve, whether it be through new builds coming onto the market, landlords wanting to improve their dwellings to attract larger discounts, improve their investment or the demands from tenants for a better offering – the projected income will decrease.’*

*Therefore, I believe the proposed charging regime upholds the principle that the licence fee and associated discounts made available will pay for the direct cost of administering this scheme. This is reinforced in the resource implications statement in the Ministerial Decision MD-PE-2019-0085 and associated report, in the approval to lodge P.106/2019.*

<sup>27</sup>

	<p><b>FINDING 11</b></p> <p>The Minister for the Environment has given an assurance that the income from the scheme will not be used to cross-subsidise other regulatory work. However, the Panel was also advised during a public hearing that regulatory income would be budgeted against the Department’s regulatory budget as a whole.</p> <p><b>RECOMMENDATION 4</b></p> <p>The Minister for the Environment must publish a report to the States Assembly per annum, detailing how the income generated from the scheme has been spent.</p>
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### **Existing legislation and data held by the Government**

Submissions received from landlords argued that Government already had legislation in place to enable data to be gathered to identify all private rental properties under the Control of Housing and Work (Jersey) Law 2012. Submissions also pointed out that Environmental Health already had the ability to inspect to ensure compliance with minimum standards under the Public Health and Safety (Rented Dwellings) (Jersey) Law.<sup>1</sup>

One landlord told us:

*Perfectly adequate and modern legislation exists to combat sub-standard rented properties, including:*

<sup>27</sup> [Letter from the Minister for the Environment dated 23rd January 2020](#)

- a) *the Public Health and Safety (Rented Dwellings) Law 2018 (and related secondary legislation) (the "Law"), which covers areas include disrepair; overcrowding; amenity standards; fire precautions; and filthy and verminous premises) - Article 6 of the Law already provides wide ranging powers to environmental health officers giving them a right to enter and inspect properties and to provide rectification notices and ultimately fines, at their own instance or following a tenant complaint; and*
- b) *the Residential Tenancy (Jersey) Law 2011 (and related secondary legislation) which gives tenants the right to take landlords to the civil courts for breaches of a lease.*

*Information on rented properties is already held and collected by various government departments (e.g. the Change of Address Notification Forms sent to the Population Office on the change of tenants, rates returns made to the Parishes, the Public Register of Contracts and information submitted through the Rent Safe scheme (for those who have signed up to this)*

*Given that mechanisms already exist to find out the location of rented properties and to deal with sub-standard properties, the establishment of the Scheme would be disproportionate to the needs of the Island. It is a waste of Government time and taxpayers' and landlords' money to set up an entirely new system to obtain information that the Government already holds and enforce a Law that it can already enforce.<sup>28</sup>*

Another landlord said:

*It is quite clear that there are already in place plenty of legislation, rules and regulations with which landlords are compelled to comply, and along with current Public Health and Residential Tenancy laws, compulsory condition reports, Mydeposit schemes, building regulations, compulsory electrical and fire certificates and inspections it is a mystery why yet further regulation and cost should be placed on any law abiding residential landlords.<sup>29</sup>*

The Panel discussed this with the Minister for the Environment at the Public Hearing on 3rd December 2019 and was advised:

***The Minister for the Environment:***

*If I may come in here, I think that there is an overwhelming case here for a proper robust system, a centralised system, where we for the first time know what residential properties we have. We do not currently know. I think if you look at the Island trends, we are in a housing crisis, we have got desperate housing needs to meet. There is no question that the provision of private rental accommodation is a major component of that. I think all those indications are is that we now need to move to ensure and have an arrangement in place where we can feel much more confident in the minimum standards that we have already passed in the law that the States Assembly approved back in 2017, in December. Now, that was the former Assembly voted I think pretty well unanimously, followed up by putting it into place in September 2018. I said I had wanted more time to look very, very carefully at why we needed registration and a licensing system. I committed to the States, having done so, that we needed to do it and we have spent the time trying to make sure that the arrangements that we put in place are fit for purpose and as suitable for the current needs as possible and strike the right balance between achieving those standards and putting something in place which is overly*

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<sup>28</sup> [Submission from Guy Morris](#)

<sup>29</sup> [Submission from Mr and Mrs Le Brun](#)

*bureaucratic. I am satisfied now we have come to the point where the arrangements are about right.*<sup>30</sup>

It is already a requirement of the Control of Housing and Work (Jersey) Law 2012<sup>31</sup> that any person who moves address in Jersey must complete a Change of Address form and return this to the Customer and Local Services Department. Furthermore, the form requires the names of all the occupants of that property to be listed. In light of this, the Panel queried with the Minister for the Environment whether the change of address form that a landlord or tenant is currently required to complete, under The Control of Housing and Work (Jersey) Law<sup>32</sup>, could simply be adapted to also include the type of property and type of occupancy (i.e. two bedroom house – private rental / three bedroom flat – social rental etc.). This information could then be shared with his Department in order to collect data on the number of rental properties on the Island and identify properties that have not been inspected under Rent Safe. The Minister for the Environment provided the following response:

*“The Control of Housing and Work (Jersey) Law requires ‘any person’ to complete a change of address form. The responsibility to ensure compliance in relation to the Public Health and Safety (Rented Dwellings) (Jersey) Law 2018 and the Public Health and Safety (Rented Dwellings – Minimum Standards and Prescribed Hazards) (Jersey) Order 2018 sits very clearly with the ‘person having control’ of the dwelling, as defined in the Regulations. Therefore, the responsibility to provide the information, keep it up to date and sanctions for being unlicensed sit with those persons having control. This should not be deflected to tenants, in the same way that inspections should not only take place on receipt of complaint.”*<sup>33</sup>

	<b>FINDING 12</b>
Unlike the Control of Housing and Work (Jersey) Law where ‘any person’ is required to complete a change of address form, the Public Health and Safety (Rented Dwellings) law 2018 puts the onus on the ‘person having control’ of the dwelling to provide the information and to keep it updated.	

## **Powers available to the Minister**

Regulation 2 establishes the licensing scheme and states that the scheme may provide for the manner and form of an application for a licence, the information to be contained in such an application and for the Minister for the Environment to require further information in relation to the application.<sup>34</sup> A number of stakeholders raised concerns that Regulation 2 provides the Minister with too much power and that the details of the scheme are not within the Law itself. For example one of the responses stated:

*“Article 2(1) of the Regulations establishes the Scheme but the details of the Scheme are not included in the Regulations themselves and have not, as far as I am aware, been provided to the public or to States Members.*

<sup>30</sup> [Transcript of Public Hearing with the Minister for the Environment and the Minister for Children and Housing of 3rd December 2019](#), Page 6

<sup>31</sup> Articles 9(3) to 9(5) of the [Control of Housing and Work \(Jersey\) Law 2012](#) place requirements on both the tenant and landlord to notify the population office of a change of address.

<sup>32</sup> Articles 9(3) to 9(5) of the [Control of Housing and Work \(Jersey\) Law 2012](#) place requirements on both the tenant and landlord to notify the population office of a change of address.

<sup>33</sup> [Letter from the Minister for the Environment dated 12th December 2019](#)

<sup>34</sup> [P.106/2019](#)

*The details that are missing are presumably details of the inspection regime (when, how and if inspections will take place) and the details of the fees payable on the grant of a licence (and the discounts available thereunder), although we do not know what else the Scheme may involve, as we have not seen the documentation establishing it.*

*Although some of these details appear in the Report, they do not appear in the Regulations and will presumably be established in a separate policy document. This is problematic as:*

- (a) there is a lack of certainty for the public and States Members at the outset of the Scheme as to its details; and*
- (b) such provisions may be subject to change at a later date without States members' scrutiny, since the scheme documentation will not form part of the Regulations and will instead form part of the policy of the Environment Department, changeable by Ministerial decision...*

*This is an extremely poor way to legislate and gives too much power to Government to change important parts of the Scheme going forward, without the scrutiny of the States Assembly.*<sup>35</sup>

The Panel understands these concerns; however, it notes that in accordance with draft regulation 3(5)<sup>36</sup> the Minister for the Environment will have to publish the charges therefore allowing transparency and the ability for Scrutiny, and the States Assembly in general, to hold the Minister for the Environment to account.

	<p><b>FINDING 13</b></p> <p>The draft Regulations, and the Report that accompanies the Regulations, provides limited detail as to the proposed inspection regime and fee structure under the licensing scheme. However, in accordance with draft Regulation 3(5), the Minister for the Environment will have to publish the charges imposed for the issue of a licence.</p> <p><b>RECOMMENDATION 5</b></p> <p>The Minister for the Environment must consult with the Panel prior to setting and publishing the finalised fee structure for the licensing scheme. This will enable the Panel to ensure that the licensing scheme will not be generating more income than the amount it costs to operate.</p>
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### **Cost of Licensing being passed onto tenants**

A recurring theme from both landlords and tenants was the view that additional costs suffered by landlords under the regulations would be passed onto the tenants driving up rents.<sup>37</sup> It was argued that this in turn will inflate the market rental value of properties yet further. For instance, one submission from a landlord gave the following example:

<sup>35</sup> [Submission from Guy Morris](#)

<sup>36</sup> [P.106/2019 Page 18](#)

<sup>37</sup> [Submissions from Guy Morris, Peter and Julie Bisson, Roger Trower, the Jersey Landlords Association and Anonymous submission](#)

*"We provide nice flats for people to live in, and we shouldn't be taxed further for doing so. We are providing a service for people and should be rewarded not punished! We think that any further Taxes on property will be passed on to the Tenant, and many people will sell their properties and Invest in something different. That is what we are thinking of."*<sup>38</sup>

Furthermore, The Jersey Landlords' Association told the Panel:

*The new Regulations will financially affect (and thus "punish") EVERY landlord of privately rented, self-contained accommodation. Whilst the proposed Licence Fees and other additional costs would, in the first instance, be payable by landlords, that extra annual expenditure will simply be passed on to tenants by way of increased rents and will thus "punish" them too. Surely, this net financial effect would be wholly counter-productive to the best interests of tenants generally.*<sup>39</sup>

At the Public Hearing on 3rd December 2020 the Panel raised the point of possible rent increases and was advised:

***The Minister for Children and Housing:***

*I do not think that that will be the case. If it has a disruptive effect on the market in one way or another, it will be down to myself and the rest of the Housing Policy Development Board to fix the parts of the market that allow that to happen. We know that compared to lots of other jurisdictions we do not have safeguards in our residential tenancy law on what rent increases can be applied and how they can be applied. So there are other things we have got to do outside of this law, but all of that is on our agenda....*<sup>40</sup>

*...I do not think it is possible to find evidence that goes one way or the other. We will not know until it happens. If rents go up in that time anyway, you will not necessarily be able to attribute it to this, it may be attributed to something totally different that is happening in the market, so it is not a clear science like that. I am just saying that I do not think it will happen. I am simply not convinced that what is, in the grand scheme of things, a very small cost certainly for the licensing will have that effect.*

The Panel also heard about the overall costs incurred by landlords through the whole of the legislation introduced around minimum standards and the potential impact on rents. At the Public Hearing with the Jersey Landlords' Association on 7th January 2020 the Panel were advised:

***Ms. E. Paul:***

*...It is not the £200, £4 a week. Yes, I might swallow it, I might pass it on. It is not that. It is a change of behaviour of what happens from this whole legislation. I can give you an example. In the Minimum Standards Order 2018 that came in, as we all know it says electrical checks every 5 years. It does not. It is wrong. I know we have had this conversation. That is what is being said by Environment. It is electrical checks every 5 years or every change of tenant. So if you have a tenant moving every 6 months that would be 10 electrical checks. The fact is that it is drafted wrong. It was not intended like that and the Environment Department says: "Oh no, it does not mean that." I have got a very different story if somebody gets a shock because the courts would do that.*

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<sup>38</sup> [Anonymous submission](#)

<sup>39</sup> [Submission of the Jersey Landlords' Association](#)

<sup>40</sup> [Transcript of Public Hearing with the Minister for the Environment and the Minister for Children and Housing of 3rd December 2019 Page 7](#)

*That is as may be, that is one side, but why does this relate to money and the £200? So I get my flats electrically checked. I had one done I think it was early December.*

*Deliberately I used a different electrical checker from the person who historically has done all of mine. Historically it is £200 a flat. This guy walked in, he looked at one switchboard, that is fair straightaway. Before I knew it it was £1,200. So what was the £1,200? It is £400 for checking. This is the electrical check. I changed to R.C.B.O.s (residual-current circuit breaker with overcurrent protection), I do not know whether you know; it is a modern-day standard, it is fine. But I do it anyway. I do not think I have to but I do it. £40 each, there is at least 10 on each circuit; 12. He said £40 each. They are not, they are £20 each from the last check, you know, then they will always find something because they want to bring it up to modern day standards. So in the bathrooms, not ventilation, to put the lights - they have to be up to an IP65 standard, I think - before I knew it, it was £1,200, now some of that I did not need to do.*

...

**Ms. E. Paul:**

*...The other example I have is fire certificates. All my buildings hold fire certificates, they have to hold fire certificates. At one time the fire officer used to come around every 3 years and check everything and it was okay if you had your fire certificates. There is no capacity for him to do that now so what you do is you put in your application every 3 years and you have to prove that you had, by a competent person, everything checked every 6 months. Every 6 months they check and if an emergency light goes out they will put that on the worksheet and then I say: "Go and fix the emergency light" and I have to prove to the fireman that the emergency light has been fixed in time. All jolly good but it changes the behaviour of the guy I am using, the commercial guy I am using. Suddenly he says my drain down lights are not bright enough after 3 hours or whatever, you know, I then get a second guy in to check the first guy's work and he says: "No, it is fine." But at the end of that ... I mean on one I had recently within 6 months they said 10 emergency lights went: "Oh, we will fix them, £1,000." He will never get that work. I got them done for £400. But do you see what I mean? It is a change of behaviour, not so much on the landlord but also on the people the landlords are using to fix the properties because they know they have the force of the law ... we are not even talking the tenants or the Environment Department or the Fire Department or whatever other department you want behind them, and that is where the cost comes in and that cost will be passed on to tenants. We are on the tip of the iceberg, you have not seen anything about rents going up compared to how they are going to go up if this relentless kind of governmental intervention continues.<sup>41</sup>*



**FINDING 14**

The introduction of fees under the licencing scheme, coupled with the costs associated with electrical inspections required under the Minimum Standards legislation, may result in an increase in rent.



**FINDING 15**

The Minister for Children and Housing has a lack of insight regarding the current housing market.

<sup>41</sup> [Transcript of Public Hearing with the Jersey Landlords' Association of 7th January 2020 Page18-19](#)



## FINDING 16

The Minister for Children and Housing intends to intervene directly with the housing market if the licencing scheme impacts current rental prices.

### Impact on Agriculture and Hospitality

Submissions received from the Jersey Royal Company and Jersey Oyster questioned the extent of the licensing fees and the effect upon low cost accommodation provided for their staff:

#### Jersey Oyster

*As members of the Jersey farmers Union (JFU) we have recently received notification from them that under the 'Licensing Regulations' we will be required to pay a compulsory licence fee of up to £200.00 per year, per unit to let out a property plus an application fee of £50.00 per unit. I am therefore writing to enquire if these figures are correct and if they are to ask why such a high tariff has been proposed.*

*Jersey Oyster has no problem with Government wishing to ensure that property owners meet minimum standards for their rental properties. That said we see no reason why such a heavy cost burden should be proposed and wonder why the current 'rent-safe' system needs to be duplicated or imposed. We also consider the proposed cost to be inflationary and potentially another 'stealth tax' on an already under pressure industry-Agriculture/Aquaculture.*

#### Jersey Royal

*In terms of the impact of the proposed regulations; the proposed Annual Licence Fee of £200 per unit and £400 for hostel style accommodation is of significant concern. At peak times of the year JRC employ circa 400 people, many migrant seasonal workers from a range of countries. The majority of those are housed in on-farm accommodation provided by the company, some owned but the majority rented from a third party. The accommodation ranges from farm cottages to purpose-built units, portacabin style units and a former hotel unit where we provide en-suite rooms, food and laundry services. Most units are made available for 2 persons per unit.*

*JRC provides a total of 120 units of accommodation plus the provision of 60 rooms in the hotel style unit. I would suggest that this accommodation would currently meet a good general standard as we are already audited by several third part organisations on behalf of our retail customers or under Ethical Trading Initiative rules. The cost of these third-party audits is already borne by JRC and amount to several thousands of pounds each year.*

*In addition, the cost to our company of this new legislation is likely to be between £25,000 and £30,000 per annum.*

*It is important to note that the provision of accommodation to farm workers is a crucial part of attracting a robust workforce for the industry. We are not providing accommodation on a for-profit basis. Indeed, the amount we can charge for accommodation is determined as part of the minimum wage agreement set by Government. To encourage workers to come to the Island we also discount these*

*charges and the chargeable rates are far lower than what landlords would achieve on the 'open market'. Furthermore, we are not in a position where we are able to [pass] any additional costs related to the accommodation portfolio on.<sup>42</sup>*

The Chamber of Commerce also expressed concerns that have been raised by members within the Agriculture and Hospitality sectors:

### **Jersey Chamber of Commerce**

*...one must question the fee charging aspect, yet again increasing the costs to businesses and without explaining how the level of these charges have been arrived at. Whilst understanding the thinking about standards and tenant protection, Chamber are concerned about the charges or the increased bureaucracy for businesses that will be created by them.*

*The application charge at £50.00 is a further burden of increased cost on industry. One business has expressed their concern with their own situation. They currently have 10 units of purpose-built accommodation and very modern accommodation with 5 more underway. That would be £750 for the application and even if they were to achieve four-star status, they would then pay 50% of the £200 per unit per year fee, effectively a tax at £1500 per year.*

*At a time when attracting staff into the agriculture and hospitality industry is increasingly difficult and attracting EU workers to return to service industries already under immense pressure, we have a Government proposing to raise the cost of operating in these sectors.<sup>43</sup>*

In email correspondence, and following receipt of their submission, the Chamber of Commerce further advised the Panel:

*The Jersey Chamber of Commerce has discussed this Proposition with the employers who supply staff accommodation and employers relying on their staff to find rented accommodation and all have expressed concern at: The additional costs and likely inflation to a rental market already in short supply; the effects of these costs on tenants and businesses; the vagueness of the Minister in explaining the level expected income from these fees, in subsidising other work in his department; and the exclusion of Social Housing providers from this scheme.<sup>44</sup>*

The Panel queried the fee proposals in respect of agricultural accommodation and was advised the following by the Minister for the Environment:

*"I am proposing a fee structure on a cost recovery basis. Mindful of duplication, 'Staff Accommodation', 'Lodging Houses' and 'Tourist Accommodation' which are registered under the Lodging Houses (Registration)(Jersey) Law 1962 and Tourism (Jersey) Law 1948, whilst not exempt from licensing, will not be subject to any addition fee on top of what is already paid, provided the dwelling remains registered for the duration of the licence. Staff Accommodation not registered under these two Laws will be subject to a fee. However, this fee is discounted if the dwelling is Rent Safe accredited. In order to recognise the challenges within the industry, the proposed fee will be set on maximum*

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<sup>42</sup> [Submission of The Jersey Royal Company](#)

<sup>43</sup> [Submission from the Jersey Chamber of Commerce](#)

<sup>44</sup> Email Correspondence, 31st January 2020

occupancy person count similar to 'Hostels', and not per dwelling. The Staff Accommodation count should be derived from a collective single addressee (save for a unique room, apartment or block number), is owned by the same individual, company or group and is occupied solely by workers (and their families) within the owner's business or occupied by other workers within the same industry (for example Agriculture / Hospitality). By way of example, a building containing 10 x 2-person maximum occupancy dwellings (20 persons):

1. Not Rent Safe accredited and not falling within the definition of 'Staff accommodation' - treated as individual dwellings - 10 x (£50 application fee + £200 annual fee) - £2,500
2. Registered as 'Staff Accommodation' under the Lodging Houses (Registration)(Jersey) Law 1962 – No fee
3. Not registered as in (2) above but meets the definition of 'Staff Accommodation' in the proposed fee structure – 20-person maximum occupancy = (£50 application fee + [11-20-person rate] £350) - £400 This fee can then be further discounted by joining the free and voluntary Rent Safe scheme. 5\*Accreditation would therefore reduce the licence fee to just £100 per annum for the entire building, accommodating a maximum of 20 persons.<sup>45</sup>

	<p><b>FINDING 17</b></p> <p>'Staff Accommodation', 'Lodging Houses' and 'Tourist Accommodation', which are registered under the Lodging Houses (Registration) (Jersey) Law 1962 and Tourism (Jersey) Law 1948, will not be subject to any additional fee on top of what is already paid. Staff accommodation not registered under the current Laws, but which meet the definition of 'Staff Accommodation', will be subject to a fee, but the proposed fee will be set on a maximum occupancy person count and not per dwelling.</p>
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	<p><b>FINDING 18</b></p> <p>The current fee structure does not appear to consider or address industries within the Island that provide self-contained units on a seasonal basis and the high costs that may be imposed on them as a result of the licencing scheme.</p> <p><b>RECOMMENDATION 6</b></p> <p>The Minister for the Environment should undertake further work to ascertain the impact of the proposed licence fee on seasonal businesses and how the free structure could be amended to ensure fairness and proportionately. The Minister must report back to the States Assembly with the outcome of the work prior to the implementation of the scheme.</p>
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### Landlords will sell their properties

Some landlords argued that they are already having to expend monies to have electrics and

<sup>45</sup> [Letter from the Minister for the Environment of 13th January 2020](#)

plumbing certified and to ensure compliance with fire regulations and that the additional cost of an annual licence fee will result in some rental properties not being viable as an investment and so will be sold. It has been suggested that this in turn would exacerbate Jersey's housing problem:

*"Landlords have already had to spend out for having electrics checked, plumbing checked and certified, and fire regulations updated. To have all these things done each tradesman charged a minimum of £100 plus per flat. Now the States want to hit landlords with another tax. This is totally unrealistic and will cause dramatic increases in rents, and the possible risk of a much smaller pool of rental properties available as landlords are more likely to sell their rental properties as they will not be viable to rent out any more, hence there will be a far greater demand on the States social housing pool."<sup>46</sup>*

*"... this proposed new law is akin to a "sledgehammer to crack a nut", in that whilst it might help tenants of these unscrupulous landlords, the fact that it will apply to all landlords will have serious consequences for the numbers of rental properties available on the market.*

*Jersey is facing a dire shortage of available housing at present and, particularly for those persons at the lower end of the scale and those unable to purchase property for whatever reason, their only housing opportunities at present are in the rental market. For a number of people, purchasing property and making it available for rental represents a very good investment.*

*Were it not for these types of rental accommodation being available, a large number of the younger population here in Jersey would be forced to move away from Jersey. However, the imposition of this new law is likely to make landlords reconsider whether or not letting property will be such a good investment in the future, and the withdrawal of such properties from the rental market would then make the housing problem here in Jersey even more dire than it currently is."<sup>47</sup>*

At the Public Hearing on 3rd December 2019, the Minister for the Environment told the Panel:

***The Minister for the Environment:***

*I have certainly had conversations with people that I have known for a very long time in Jersey, I have been here 40 years, longstanding landlords who have spoken to me. In fact, one in particular - I do not want to over-exaggerate - who I deeply respect, who told me they thought this would act as a disincentive. But I do know there is a considerable number of new properties are hitting the market, because we have got an enormous amount of buy-to-let properties coming through the system. These are new landlords and I think it is important that we have systems in place, that we first of all register those and make sure they all come up to standard. People are now - in the current situation of poor interest rates - definitely looking to property to meet housing ...<sup>48</sup>*

At the Public Hearing on 7th January 2020, the Jersey Landlords' Association made the point that recent legislation changes, the behaviour of contractors, and the costs to the landlords, are already causing rental properties to be sold, noting that 67 lodging houses have been lost over the past year.

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<sup>46</sup> [Submission of George Murphy](#)

<sup>47</sup> [Submission of William Sutton](#)

<sup>48</sup> [Transcript of Public Hearing with the Minister for the Environment and the Minister for Children and Housing of 3rd December 2019](#) Page20

**Ms. E. Paul:**

*...Have we seen anything about people leaving in the industry? Yes, definitely. There are lots of different reasons. This law is one, the planning laws being a complete nightmare is another. I do not know whether you are aware that in the registered market you are registered and here is a list of all the lodging houses in Jersey, it is published, it is very hard to find but you can find it on the net. So when you register ... the forms have just come out and we fill them in and we pay a fee per bed space. It has been like that for evermore. It says that every lodging house in Jersey will be on a public register, this is it. Okay, every lodging house is assigned a number so at the moment we are up to 311, there are not 311 because one drops out the numbers do not match back up.*



**FINDING 19**

Increased regulation and the additional costs of an annual licence fee may lead to rental properties being sold if they are no longer considered by the landlord to be a viable investment.

**Different treatment of private landlords and social housing providers**

A number of submissions received by the Panel highlighted an inequity in imposing the licence fee on all private landlords in order to deal with only a small number of landlords that are not compliant<sup>49</sup> and, furthermore, excluding social housing providers that are accredited with the Rent Safe scheme. For instance, one submission stated:

*The fairness of exempting social housing providers and parishes from the licence fee whilst private landlords pay fees is also highly questionable. Surely, if fees are to be paid, then these should be apportioned fairly across the private and social housing sectors, so that there is a level playing field. This is especially important given that one hears so much anecdotal evidence of poor housing stock in the social housing sector too.<sup>50</sup>*

The Panel queried this with the Minister for the Environment and the Minister for Children and Housing in the Public Hearing.

**Deputy K.F. Morel:**

*Minister, when we go back to social housing not paying for this, obviously social housing providers I imagine are going to provide a range of accommodation. Some of it may be 2-star on the Rent Safe scheme, some of it may be 5-star on the Rent Safe scheme. Why are you not applying a similar kind of scale discount scheme to social housing, because you are basically providing them with ...*

**The Minister for the Environment:**

*To social housing. I am going to put my hands up here, I thought we were. I thought ...*

**Deputy K.F. Morel:**

*Sorry, Minister. You are basically providing them with no incentive to improve their standard of accommodation.*

**Environmental Health Consultant:**

*No, they have to meet the minimum standards.*

<sup>49</sup> [Submissions from Peter and Julie Bisson and the Jersey Landlords Association refer](#)

<sup>50</sup> [Submission from Guy Morris](#)

**Deputy K.F. Morel:**

*I accept they have to meet minimum standards, but given that for private landlords you say this 4, 3, 2, 1-star situation and you get discounts accordingly, by exempting social housing providers from any costs, you are not providing any incentives to improve ...*

**Group Director for Regulation, Growth, Housing and Environment:**

*I see what you mean.*

**Deputy K.F. Morel:**

*... the standard of their housing, whereas you are providing that to private landlords through the discounting scheme, so why are you not providing it to social housing landlords?*

**The Minister for the Environment:**

*I think the underlying question is can we be satisfied that the housing trusts are driving to improve standards. I do not think I can ...*

**Deputy K.F. Morel:**

*They are not going to be looking to improve those standards if they meet the minimum.*

**The Minister for the Environment:**

*I do not think I am the right Minister to answer that. The Minister for Housing would be able to answer that.*

**Deputy K.F. Morel:**

*We are not going to be using that as an excuse. I am sorry we let him go early, precisely because we need to carry on with it.*

**The Minister for the Environment:**

*I will be honest, my starting point is if when you have got groups of people who set up to become registered social landlords that they are committed to decent standards. Now, the one thing I know in my short term in the States is that Andium Homes is one that has improved very significantly. I mean, that understates it, I think, in the standards of housing. When I first got elected in 2011, I remember visiting a housing estate and being very disappointed, to put it lightly, and the people complaining to me, people who would not come forward and complain, people living on pensions and so on who had been living in these neglected dwellings for years who really were very upset to tell me about this. I am delighted to see ... and one of the first things I did was asked Andium: "Have you improved those dwellings now?" and they said: "Yes".<sup>51</sup>*

At the Public Hearing on 3rd December 2019 the Panel asked the Minister for the Environment and his Officers about the exemption for social housing providers:

**Group Director for Regulation, Growth, Housing and Environment:**

*We have chosen that route because we did not feel that it was fair to place that burden on social providers who are providing public benefit for persons in housing need...*

**Deputy K.F. Morel:**

*We noticed the Minister for Housing told us earlier he believes there is about £10 million spent by the States of Jersey to private landlords in order to house essentially social*

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<sup>51</sup> [Transcript of Public Hearing with the Minister for the Environment and the Minister for Children and Housing of 3rd December 2019](#) Page 33

*housing people, so why is it that those private landlords ... again, what I am saying is where a landlord has a tenant who is being paid for by income support, basically the States will be paying that cost because it will be passed straight on to the States as the ultimate payer. The other side is why should private landlords subsidise the public side of it? Because you are just not removing the cost of Environmental Health and regulation, you are getting landlords to pay for the public side of it.*

**Group Director for Regulation, Growth, Housing and Environment:**

*I would argue that there is ... again, it follows the principle that private interests should pay for this, otherwise if we do not run that model, I think we need to segregate how it is paid for versus what the outcomes of the regulations are. The outcomes of the regulations I think are very clear in terms of people’s outcomes in life and their health. How that is funded, we have come up with a funding model which does not spread the cost of that across the taxpayer as a whole.<sup>52</sup>*

	<p><b>FINDING 20</b></p> <p>Social Housing Providers, which include housing associations, housing trusts, registered charities, and the parishes, are given 100% discount on their properties if they are in ‘Rent Safe’. There is a concern that this removes the incentive for social housing providers to improve their standard of accommodation.</p> <p><b>RECOMMENDATION 7</b></p> <p>To ensure a level playing field across all housing providers, the Minister for the Environment should ensure that rented dwellings defined as ‘Social Housing Providers’ under the proposed scheme are not exempt from being charged an annual licence fee if they are Rent Safe accredited. Similar to private landlords, social housing providers should be awarded discounted license fees depending on their star rating under the Rent Safe accreditation scheme.</p>
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**Relevance of types of dwellings to fees**

The Panel noted that some rental properties, through no fault of the landlord, would not be capable of achieving a 5\* standard under the Rent Safe Scheme and therefore unable to receive the maximum discount of 75 percent under the licencing scheme. For instance, older properties may be subject to planning restrictions that would make it impossible or cost prohibitive to install double glazing or achieve the same level of energy efficiencies as a modern building. Furthermore, a landlord that owns a flat within a block would be unable to undertake such works without the consent of the other owners within the same block. With regard to this matter, the Panel received a number of submissions which questioned the fairness of the current star rating system used under the Rent Safe Scheme. These included:

*“Although we do not own any three star accommodation, it does not seem proportionate or fair to unjustly charge those with more basic, but perfectly habitable properties a much*

<sup>52</sup> [Transcript of Public Hearing with the Minister for the Environment and the Minister for Children and Housing of 3rd December 2019](#) Page 17-18

larger sum than those who can more easily reach higher standards due to a more modern build or more expensive fittings. We believe if any charge is levied should be the same for all.”<sup>53</sup>

“Indeed some improvements of the type that may be demanded will be impossible to attain on single units. For example energy conservation measures are easy when you own the whole block. Its a different proposition when your flat is one in a block of 6 owner occupier properties all perhaps reluctant to join in with an external cladding project.”<sup>54</sup>

“I am pleased to say that in recent years the standard of agricultural accommodation has improved greatly but obviously when much of it is for seasonal staff, used only for part of the year, it can be difficult to justify reaching the five star rating, so getting the discount.”<sup>55</sup>

“The requirements for energy saving whilst appreciated are often impossible in older properties or should only done about when heating etc require replacement. Again, forcing rents to rise.”<sup>56</sup>

“In a block of flats built in the 60’s or 70’s may now not conform to the requirements of minimum standards; this becomes difficult if each unit of accommodation is owned by a different person.”<sup>57</sup>

“I have achieved 4 stars and cannot achieve 5 stars as to do so the entire block of 6 flats would need further insulation works. The flat is not cold being built only 20 years ago but I am penalised for being unable to move you? Am I expected to insulate all 6 flats to get mine up to 5 stars bearing in mind that 80% of the block is owner occupied and outside of the Licence Scheme?”<sup>58</sup>

Whilst the Panel recognise these concerns, as stated in Chapter 2 above, the Minister for the Environment has referred the Panel to the submission of the Chartered Institute of Environmental Health and is satisfied that a 5-star rating can be achieved in such properties:

“The difference between a 4 and 5 star Rent Safe accredited property is that energy efficient measures are in place.

Each property is assessed on an individual basis. There are many measures, even with a notable number of constraints that can be put in place to improve energy efficiency. The landlord will undoubtedly have to consider what cost-effective measures they can put in place. By way of an example, it is a misconception that a single glazed dwelling could never achieve a 5-star rating if a number of other measures were also put in place. Reference should also be drawn to a research project by Purcell titled ‘Historical Buildings Energy Study Jersey’ published in July 2013 which makes the same point. There are a number of 5-star properties in Rent Safe who have achieved this standard despite of constraints related to the age of the properties.”<sup>59</sup>

<sup>53</sup> [Submission of Mr and Mrs Le Brun](#)

<sup>54</sup> [Submission of Peter and Julie Bisson](#)

<sup>55</sup> [Submission of the Jersey Farmers’ Union](#)

<sup>56</sup> [Summary of Consultation Responses](#) Page 43

<sup>57</sup> [Summary of Consultation Responses](#) Page 118

<sup>58</sup> [Summary of Consultation Responses](#) Page 132

<sup>59</sup> [Letter from the Minister for the Environment dated 12th December 2019](#)

The Panel also noted that the licensing fee would be equally applied to all sized properties. For instance, the fee charged for a one-bedroom flat that may achieve a rental of £1200 would be the same as the rental applied to a four-bedroom house that may achieve a rental of £2,500. The Panel queried this matter with the Minister for the Environment in a public hearing and he advised that the aim was to make the scheme “*simple and fair*”. The Group Director for Regulation, Growth, Housing and Environment went on to say:

**Group Director, Regulation, Growth, Housing and Environment:**

*I think we could look at how we charge our fees. For instance, in planning we used to charge for a new dwelling, it used to be the same price, whether it be a 5,000 square foot dwelling or a 150 square foot dwelling, if you can get them that small. But now it is done per square metre so effectively the bigger properties, the bigger the scheme, the more you pay. We could look at a graduation of fees.*

**The Connétable of Grouville:**

*Yes, we can adjust that.*

**Group Director, Regulation, Growth, Housing and Environment:**

*The regulations allow fees to be brought in, so what those fees look like and how they are charged, that there will be still flexibility around it.<sup>60</sup>*

	<p><b>FINDING 21</b></p> <p>Older properties may find it harder to achieve a 5-star rating under the Rent Safe Scheme as a result of current planning regulations and therefore incapable of being awarded a higher percentage discount under the proposed licencing scheme.</p>
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	<p><b>FINDING 22</b></p> <p>Under the current fee structure proposed within the draft Regulations, the annual licence fee will be equally applied to all sized properties.</p> <p><b>RECOMMENDATION 8</b></p> <p>The Minister for the Environment should amend the current fee structure to ensure a graduation of fee charges according to the size of the property and the number of occupants the property is capable of housing.</p>
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The Panel also has concerns that the Regulations do not cover rooms rented in private houses. This was commented upon at the Public Hearing with the Jersey Landlords’ Association on 7th January 2020:

<sup>60</sup> [Transcript of Public Hearing with the Minister for the Environment and the Minister for Children and Housing of 3rd December 2019](#) Page 48-49

**Mrs E Paul:**

*The best one that came up is this, and this is really scary so I will leave you with this: "Got 2 rooms available in a recently renovated unusual Victorian building [I really hope the landlord is not here] friendly, co-operative, reliable people wanted who like historic houses and dogs. Each room is for single occupancy and has simple cooking facilities, including a new microwave and kettle. A new fridge and toaster are shared with one other lodger on the landing directly outside the rooms. The owner will clean your rooms and do bed linen. The lodgers will share the bathroom with the owner and there will be 3 lodgers in total and the owner." So that is 4 to one bathroom. "Lodgers can access the kitchen at fixed times in the morning and evening to cook. £700 a month, £500 deposit." That is what you are going to force people into.<sup>61</sup>*



**FINDING 23**

The Draft Regulations and proposed licensing scheme do not capture private properties that rent out rooms.



**RECOMMENDATION 9**

The Minister for the Environment should amend the type of properties captured under the licencing scheme to include private house lodgings.

<sup>61</sup> [Transcript of Public Hearing with the Jersey Landlords' Association of 7th January 2020](#) Page 30

## 4 Government consultation

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Prior to the licensing proposals being lodged, the Government of Jersey ran a public consultation for four weeks from 28th May 2019. The licensing proposals, draft regulations, draft licence conditions and frequently asked questions were published on [www.gov.je](http://www.gov.je).

Respondents were invited to submit comments through an online survey and / or send a written response to Environmental Health via email or post. In addition, two public briefing sessions were held at the Town Hall on Tuesday 11th June 2019. Precise numbers on attendance were not available, however, the Department mentions in its summary document of the consultation responses that “both events were very well attended.”<sup>62</sup>

The Jersey Consumer Council also advertised the public consultation in their quarterly newsletter, which is distributed to every residential address in the Island.<sup>63</sup>

### Consultation feedback

#### Government bodies

The Consultation received responses from a number of Ministers, Government officials and Government Bodies. For example, the summary document states:

*Support was very strong from the Medical Officer of Health, The Children’s’ Commissioner, Jersey Fire and Rescue and Jersey Police. They cite the broader determinants of ill health, “Putting Children First”, Modern Slavery and protection of life among their reasons to support the proposals.*

The Medical Officer of Health highlighted that monitoring and improving housing standards would align with three of the Government’s common strategic priorities:

- We will Put children first;
- We will improve islanders’ wellbeing and mental and physical health; and
- We will reduce income inequality and improve the standard of living.

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<sup>62</sup> [Summary of consultation responses](#) Page 4

<sup>63</sup> [Summary of consultation responses](#) Page 4

The Medical Officer also made reference to the strong links between standards of housing and mental and physical health, particularly that of children and older people.<sup>64</sup>

The Minister for Children and Housing stated the scheme would raise standards, enable greater enforcement capability, and improve data collection and knowledge about the rental sector.<sup>65</sup>

The States of Jersey Police viewed the regulations as a positive step to support the vulnerable and affirmed that the extra data collected, as a result of the regulations, and would enable further intelligence gathering, with particular regard to modern day slavery and people trafficking. For these reasons, the States of Jersey Police supported the scheme.<sup>66</sup>

### **Social housing providers**

Within its submission to the consultation, Andium Homes advised that it supported initiatives that improved housing standards, but did highlight *“a significant difference in the level of protection required for tenants of large-scale landlords who can demonstrate that they already have robust maintenance regimes in place, and smaller or non-professional landlords where those levels of service and planned maintenance may not be in place or so evident.”*<sup>67</sup>

The Jersey Homes Trust, while supportive of measures to improve the lot of residential tenants, felt that the inclusion of social landlords in the scheme was unnecessary bureaucracy and the proposed furnishing of tenant’s references to be intrusive and unworkable. Further, it commented that *“private landlords who are not exempt will still face very high and insupportable fees”*.<sup>68</sup>

### **Other**

The Jersey Consumer Council members supported the scheme, but some did have concerns that the star system was *“a waste of time in this particular instance and would possibly lead to unnecessary administration work. It was felt that accommodation either meets the minimum standard or not, although it was accepted that there needs to be incentives to raise the levels from merely acceptable”*. It also suggested a *“whistle blower line”* to enable anyone, not just tenants, to report a landlord without fear of retribution.<sup>69</sup>

The Chartered Institute of Environmental Health welcomed the proposals and cited the publication of a joint research project between it and the Chartered Institute of Housing, which detailed qualitative analysis of selective licensing schemes and found them to be effective at improving housing conditions. They noted that whilst these schemes differ from the scheme being proposed in Jersey, there are some similarities which are relevant to Jersey.<sup>70</sup> Further reference to this report is made in Chapter 5.

### **Tenants**

The Government’ consultation included an on-line survey, which received 111 responses. 22.5% of respondents were tenants. In answer to the question *“have you lived in what you*

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<sup>64</sup> [Summary of Consultation Responses](#) Page 95

<sup>65</sup> [Summary of Consultation Responses](#) Page 93

<sup>66</sup> [Summary of Consultation Responses](#) Page 96

<sup>67</sup> [Summary of Consultation Responses](#) Page 98

<sup>68</sup> [Summary of Consultation Responses](#) Page 100

<sup>69</sup> [Summary of Consultation Responses](#) Page 97

<sup>70</sup> [Summary of Consultation Responses](#) Page 102

consider to be poor housing 40% of tenants answered “yes.” Comments made to support this referred to:

- Poor water quality
- Electrical hazards
- Heating problems and lack of insulation
- Poor ventilation, dampness and mould<sup>71</sup>

Comments made in support of the regulations included:

*There is not a lot of detail about the mechanics of how the scheme would run. However, I believe it is important that the issuing of a licence is for individual properties and not for a landlord. As some landlords have a large portfolios of dwellings, they shouldn't be allowed to 'hide' poorer quality dwellings in amongst those of a better standard.*

*Tenants are in a very powerless position in Jersey - properties are very expensive to rent and can be difficult to find. I believe therefore that in any scheme the responsibility needs to be on the government to declare a property 'habitable' rather than on a tenant to complain that the property is 'uninhabitable'*

*I hope that this is a starting step, to improve the quality of rental stock within the island; there's much more to do beyond such basics.*

*This licensing scheme would also seem useful by which to gather statistical data on the island's private rental dwellings. This being something that was mentioned several times, by States members, during their debate on soaring rental prices and the general housing crisis of late*

*I believe in the long term this is the right thing to do, to ensure that all rented accommodation is of basic standards as the welfare of all islanders is important and this should all ensure that all buildings are maintained.*

Others raised concerns over rental increases:

*This will cause rents to rise as naturally landlords will pass on the cost. The rent safe scheme will also cause costs to tenants through the checks that are required. I do not know anybody that owns their own property that has an electrical or had check up each year.*

*The requirements for energy saving whilst appreciated are often impossible in older properties or should only done about when heating etc require replacement. Again forcing rents to rise.*

*In most properties I have rented the services have been fine or in the case of a water leak remedied quickly. Charging a fee and requiring regular checks makes rental more expensive as these costs will be passed on to the tenant. However I have rented two properties where it was my responsibility to arrange and pay for a boiler service with any additional cost paid for by the landlord.*

*I am not convinced this is going to do anything to the lower end of the market, including those which operate on a cash only basis. Sometimes these suit the tenant as they are not encumbered with a contract, others are from unscrupulous landlords but who may not be worried about housing qualifications, etc.<sup>72</sup>*

<sup>71</sup> [Summary of Consultation Responses](#) Page 86-88

<sup>72</sup> [Summary of Consultation Responses](#) Page 89-91

## Landlords

The Jersey Landlords Association submitted a number of objections to the regulations, including the following statements: “a huge and costly exercise in red tape”, “there has been no cost/benefit analysis for the Regulations” and “the cost would be passed onto tenants”.<sup>73</sup>

The survey carried out as part of the Government consultation process highlighted a number of concerns raised by individual landlords:

- The regulation is unnecessary and is already covered by existing legislation
- The impact upon tenants
- The scheme being an indirect tax
- That inspections should be upon tenant complaint only
- That annual inspection is unnecessary and costly
- The resourcing and cost of administration of the scheme<sup>74</sup>

As part of this review, the Panel wished to gain an understanding of how and to what extent Government had listened to the feedback gathered in the consultation and whether any feedback had been adequately addressed when the final licensing proposals were lodged for debate.

### ***The Connétable of St. Brelade:***

*In your summary of the consultation responses the department received earlier this year, you stated that some of the social landlords made helpful comments about the over-prescriptive nature of the proposed licensing conditions... Can you advise how you have taken this on board and whether or not you revised the proposals?*

### ***Environmental Health Consultant:***

*We have revised the proposals. The main things were really about it being over-prescriptive, about saying “that shall” rather than “it is recommended” so we recommended that landlords should ... well, we said that they should visit their properties annually. We now say we recommend, because there are different business plans. I mean, I think it is crazy if landlords do not visit annually, but that is not my role, I am not a landlord. So we took that out. The necessity to provide a paper copy of the licence is onerous if you have got 6,000 properties, so we said “on request” so if somebody wants to request their licence, they have to do it. We also built into that protection for the landlord, because you could have a vexatious tenant ...*

### ***The Connétable of St. Brelade:***

*What about any other changes to the draft regulations following feedback? Has there been anything else?*

### ***Environmental Health Consultant:***

*There have not been any changes to the draft regulations, which are very short. It is about a page and half...Most of them were in that area of licence conditions.*

Comments made by the Jersey Landlord’s Association in their submission to the Panel state that there was no face to face consultation on the proposals:

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<sup>73</sup> [Summary of Consultation Responses](#) Page 107

<sup>74</sup> [Summary of Consultation Responses](#) Page 109-145

*...Despite the promises made and undertakings given, no such consultations have ever taken place with our Association on these presently proposed Regulations. Nor, so far as we know, have there been any “true” public consultations on these proposed Regulations, either with private landlords or with tenants or with taxpayers and nothing has been published to demonstrate otherwise. Last Summer, there was merely a lecture (with PowerPoint presentation) given on 11 June 2019, by the outgoing director of the Environmental Health Department... The JLA’s written views... received no subsequent acknowledgment or response. They were effectively ignored and were certainly not published or circulated publicly after the lecture event day...<sup>75</sup>*

A further submission made to the Panel stated:

*We agree 100% with the submissions already made by the JLA and the views reflected in their press release. We attended one of the so-called “consultation” meetings at the Town Hall back in June and were left fuming. [The Government’s] presentation was patronising to say the least, and completely non-consultative. We are fed up with the way in which the States of Jersey so readily import ideas from the UK with scant regard for their impact on the economy and culture of the Island. The proposed licensing scheme would be a sledgehammer to crack a nut, and would effectively “punish” the majority of landlords who keep their properties in good order.<sup>76</sup>*

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<sup>75</sup> [Submission of the Jersey Landlords' Association](#)

<sup>76</sup> [Submission of Mr and Mrs Costard](#)

## 5 Licensing of rented properties in the UK

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Under [Section 80, Part 3 of the Housing Act 2004](#), a local housing authority can designate the whole or any part or parts of its area as subject to ‘selective licensing’; i.e. a landlord has to apply for a licence for each property that they rent out. This is to reduce or eliminate specific problems arising in particular areas.<sup>77</sup>

This applies to privately rented property in designated areas. Subject to exemptions in the [Selective licensing of Houses \(Specified Exemptions\) \(England\) Order 2006](#), all properties in the private rented sector that are let or occupied in an area designated for selective licensing are required to be licensed by the local housing authority, unless the property is a House in Multiple Occupation (see below). Selective licensing schemes can operate for a maximum of 5 years and renewal needs to be approved by the Secretary of States for Communities and Local Government. Licences granted to landlords typically last for the duration of the scheme (i.e. a maximum of 5 years).<sup>78</sup>

Selective licensing designations may be made if an area in the UK meets one or more of the following conditions:

- Low housing demand;
- a significant and persistent problem caused by anti-social behaviour;
- poor property conditions;
- high levels of migration;
- high levels of deprivation;
- high levels of crime.

Before making a decision to introduce selective licensing, the local authority must consult those likely to be affected, including landlords, and consider the other effective methods of achieving the intended objective. The decision to designate an area for a selective licensing scheme must be approved by the Secretary of State for Communities and Local Government, unless they fall under the general approval of the area.<sup>79</sup>

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<sup>77</sup> [Selective licensing in the private rented sector, A Guide for local authorities. Department for Communities and Local Government](#)

<sup>78</sup> <https://www.theguardian.com/money/2018/jul/14/rented-property-licensing-landlords>

<sup>79</sup> [Selective licensing in the private rented sector, A Guide for local authorities. Department for Communities and Local Government](#)

## UK - House in Multiple Occupation

A [house in multiple occupation](#) is a property rented out by at least 3 people who are not from one “household” (e.g. a family) but share facilities like the bathroom and kitchen (effectively a house share). To rent out a property as a house in multiple occupation in England or Wales the landlord must contact the local council to check if they need a licence. A property is defined as a large HMO if the following apply:

- it is rented to 5 or more people who form more than 1 household;
- some or all tenants share toilet, bathroom or kitchen facilities;
- at least 1 tenant pays rent (or their employer pays for them).

A licence is valid for five years. There is no fixed cost, with the local council deciding the price of how much each licence should carry. For example, a mandatory HMO licence for one property in [Barking & Dagenham costs £956](#), whilst a licence in [Islington costs £280](#) per letting (a three-person occupancy would therefore cost £840). A further licence is required for each separate property.

Each property must be found to be suitable for the number of occupants (varying on size and facilities), with the manager of the house considered to be ‘fit and proper’ – for example, they have no criminal record or breach of landlord laws or code of practice. The council must also be provided with an updated gas safety certificate each year, install and maintain smoke alarms, and provide safety certificates for all electrical appliances when requested.

## Liverpool

[Liverpool City Council](#) operate a compulsory licence scheme for landlords. Each licence costs £412, with an additional £360 required for each subsequent let...

Landlords are each investigated for backgrounds of “convictions for dishonesty, violence or drugs or contraventions of housing laws”, and have to meet health and safety guidelines and ensure that a state of repair is maintained. The ability of the landlord to prohibit anti-social behaviour is also considered.

However, “Good landlords” who are already members of an accredited or co-regulation scheme approved by the council would only pay £200 for each property.

Properties with an HMO licence are exempt.

In January 2020, the [Secretary of State rejected Liverpool City Council’s application to extend its scheme for a further five years](#).

## Wales

[Rent Smart Wales](#) is a service hosted by Cardiff Council, which is the designated Licensing Authority for the whole of Wales, and ensures compliance with the legislation under the [Housing \(Wales\) Act 2014](#) in partnership with 22 local Welsh authorities.

Cardiff Council was selected as the sole licensor in order to centralise this process and make accessing the service easier for landlords, agents and tenants to access. However, the local authority may undertake lead enforcement action against landlords and agents not complying with their legal obligations on behalf of the Licensing Authority.

The Scheme, the first of its kind to be introduced in the UK, ensures that Landlords and agents of private residential property in Wales are required by law to be registered or licenced, along with their portfolio of property.

Section 26 of the Housing (Wales) Act, upon which we understand the Jersey scheme is based, provides:

“A licence expires at the end of a period of 5 years beginning with the date it was granted, unless the licence holder makes an application to renew the licence in accordance with subsection (2).”

	<p><b>FINDING 24</b></p> <p>Selective licensing schemes in the UK generally operate for a maximum of 5 years. Licences granted to landlords in the UK typically last for the duration of the scheme. In Wales, a license expires at the end of a period of 5 years, beginning with the date it was granted unless the license holder makes an application to renew the licence.</p> <p><b>RECOMMENDATION 10</b></p> <p>In order to reduce the level of bureaucracy and costs for landlords, the Minister for the Environment should amend the proposed licencing scheme and extend the validity of a license from one year to five years in line with the current practice in the United Kingdom.</p>
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## Effectiveness of licensing

### Independent review of the Use and Effectiveness of Selective Licensing

In 2019, the Ministry of Housing, Communities and Local Government commissioned an [independent review of the Use and Effectiveness of Selective Licensing](#). The review was commissioned to tackle concerns of anti-social behavior and low-cost demand and was subsequently broadened to look at poor property conditions, high crime, high levels of deprivation, and high migration. Survey results indicated that poor housing conditions and pervasive anti-social behavior were the most common reasons for the introduction of selective licensing, followed by deprivation and low demand.

The characteristics of effective schemes were identified as follows:

- Careful planning, in particular with respect to anticipated costs and also to mitigate the potential impact of underestimating the number of licensable properties;
- Well thought through and diligent approach to evidence gathering and consultation;
- Licensing forming part of a wider suite of community-based measures aimed at effecting change consistent with the aims and objectives of selective licensing, with a clear political will to support the scheme;
- Effective engagement with both landlords and tenants, but especially raising, through dialogue and training, landlord awareness of their responsibilities;
- An inspection regime that is robust, consistent and targeted – dealing with contraventions firmly but fairly, where possible dealing with the worst first; and
- Regular and open publication of progress against targets and outcomes - this encourages trust and support from stakeholders.

The Review noted factors that can impede the effectiveness of licensing included:

- Identifying the true extent of the private rented sector. Virtually all local authorities reported finding more privately rented properties than anticipated, with consequent pressure on resources causing delays and other difficulties
- To be effective, any scheme must maintain a focus on identifying unlicensed properties; the research highlighted a high correlation between failure to licence and unsatisfactory management and property conditions. An effective policy for identifying such properties (with intelligence gathering a key factor) should be developed at the planning stage.
- Genuinely self-supporting (no subsidy) schemes are in the minority and typically have higher licence fees. The largest single cost of operating a scheme is staffing; setting a fee too low can have significant consequences – usually a reduction in the percentage of properties inspected, delays in issuing licences etc.
- Several respondents reported that completion of the application form was often undesirably onerous, with a typical application form comprising 15-25 pages. The length is dependent on the extent of information required by local authorities in addition to extensive mandatory questions required by legislation. Many considered several of these mandatory questions to be of limited relevance or utility.

The review noted difficulties around fee setting in the UK identifying that:

*“a lack of knowledge as to what costs actually are associated with the setup and running of a scheme. Authorities that are setting up a scheme for the first time do not have experience of the costs of such an undertaking and may underestimate as a result. Costs associated with IT systems, transportation of inspection officers around the area, recovering monies etc, are often underestimated. Budget should be made to not only inspect licensed properties but also to locate unlicensed properties, and this can be hard to estimate in the first instance.”<sup>80</sup>*

The review concluded that, whilst selective licensing can be an effective policy tool with many schemes, achieving demonstrable positive outcomes when implemented in isolation, can lead to limited effectiveness. Schemes are more successful as part of a wider, well-planned and coherent initiative with an associated commitment of resources.

### **Report of The Chartered Institute of Environmental Health and the Chartered Institute of Housing**

A joint research project between The Chartered Institute of Environmental Health and the Chartered Institute of Housing produced a [report](#) in January 2019. It found that selective licensing is not a “quick win” and it may take several years before tangible outcomes are achieved.

The Report’s findings were that selective licensing schemes lead to a more proactive approach to housing inspections. *“This is because there is usually an explicit objective to inspect all properties covered by the scheme, rather than only relying on tenants to make complaints to the council. This proactive approach is essential if schemes are to deliver positive outcomes, however it is also resource intensive and most councils are managing this by adopting a risk rating approach to determine frequency and order of inspections”*

It identified some common features of successful schemes. These include:

- *A high level of political support from local councillors, including a willingness to commit resources to make the scheme a success;*

<sup>80</sup> [An Independent Review of the Use and Effectiveness of Selective Licensing](#) Page 51

- *A clear understanding of the outcomes the scheme is intended to achieve, defined at the outset and with clear plans in place to measure progress; and*
- *A strong focus on proactively seeking out noncompliance, both in terms of landlords failing to obtain licences and in terms of them failing to adhere to licence conditions. This is often resource intensive. Borough-wide schemes, by definition, tend to be much bigger and therefore a different approach to inspections is used. Whilst most borough-wide schemes have not sought to inspect every property, they have often found evidence of non-compliance on a large scale and have taken a tough enforcement approach as a deterrent. Similar to smaller schemes, significant improvements to housing standards have been achieved in these areas.<sup>81</sup>*

Whilst not formally a part of the research project, the report found that issues associated with setting up of a new selective licensing scheme included high upfront costs, a high level of bureaucracy and prescriptive advertising standards.

Recommendations made in the report for local authorities, which may be relevant to Jersey, are as follows:

1. *Local authorities establishing selective licensing schemes need to be clear from the outset about the outcomes that their scheme is intended to achieve and how these will be measured and monitored. A simple count of the number of prosecutions, although useful, is not on its own sufficient to demonstrate the effectiveness of the scheme and councils should always consider how progress against wider objectives will be monitored. Using non-licensed areas as a baseline measure, is one way of doing this.*
2. *Many schemes are accompanied by good engagement with landlords. Review and publication of the outcomes of the selective licensing scheme at appropriate intervals, may help to engage with local stakeholders, such as landlords, about the achievements of the scheme.*
3. *Local authorities should consider using civil penalties to rebalance their resources for enforcement, where introducing them presents an opportunity to review their overall approach. While there will always be some role for informal approaches, some councils may want to consider escalating more quickly to issuing financial penalties.*

## Summary

Selective licensing schemes may be effective policy tools to achieve improvement in standards, however, they can take several years to achieve tangible outcomes.

The Independent Review commissioned by the Ministry of Housing, Communities and Local Government concluded that certain financial challenges arose with almost every authority having reported discovering more privately rented properties than they believed to be the case and consequential unanticipated pressure on IT systems and staff that can lead to delays in the issue of licences. There may also be insufficient staff to engage in enforcement action.<sup>82</sup>

The joint research project of Scott Lawrence and Peter Wilson concluded that there needed to be clear identification of outcomes and how they would be measured and monitored against wider objectives. Good engagement with landlords was a feature and publication of outcomes may help to engage with stakeholders about the achievements of the scheme.<sup>83</sup>

<sup>81</sup> [Report of Chartered Institute of Environmental Health and Chartered Institute of Housing, page 8](#)

<sup>82</sup> [Independent review of the Use and Effectiveness of Selective Licensing, Page 98](#)

<sup>83</sup> [Report of Chartered Institute of Environmental Health and Chartered Institute of Housing, Page 8](#)

The Panel noted that UK schemes grant licences for a period of five years and an important difference between the UK legislation with Jersey legislation is that the expenses imposed can only be used to support the administration and enforcement of the scheme. The figures provided in Appendix 1 relate in some part to cross Government spending not directly related to the scheme.

**Group Director for Regulation, Growth, Housing and Environment:**

*It does not quite work like that with our regulatory income. As you have got regulatory income coming in, it is effectively costed against our regulatory budgets as a whole, so the ...*

**The Connétable of Grouville:**

*So this scheme is subsidising other schemes?*

**Group Director for Regulation, Growth, Housing and Environment:**

Effectively housing a very big area of our work within Environmental Health. The other big area of work is food safety, and the other big area of work is related to housing and it is community nuisance, so we have a number of areas.

**The Connétable of St. Brelade:**

In terms of food safety, do restaurants pay anything towards the scheme?

**Group Director for Regulation, Growth, Housing and Environment:**

Not currently, but that is something that is in train.<sup>84</sup>

**The Minister for the Environment:**

*I accept that (on the cost). I accept that what you want to see is a high degree of evidence, but at the moment the policies that I have inherited, and certainly they are longstanding, is that all of the regulatory services that are operated under our umbrella are effectively self-financing and cost recover. Now, you could do an examination of every one of those and try and work out all the minutiae of which bits of it are for what service and how the cross-fertilisation or cross-subsidies occur. But that has been the parameters with which we had to work. It would be entirely open to Government of course to change to a different direction, but that certainly would have affected the bottom line on the Government Plan that we have just passed. In fact, it would probably more than double the Environment team's spend if we were to do that, but nonetheless ... so I think what we will do is I am assured - and this was the starting principle - I was not prepared to go into a system in which we had to recruit extra staff or incur extra costs. The challenge I set to the team is to do this within existing. It is accepted that they are doing other work. I think what we will do is monitor this as we go. We cannot make surpluses, absolutely not. We are certainly looking at the issue of the other services one by one as we come to them to see what fees we generate, but one thing is for sure: you cannot generate the fee structure until you have got proper, robust, sensible systems in process to do this. Now, in this case, the bigger picture for me is*

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<sup>84</sup> [Transcript of Public Hearing with the Minister for the Environment and the Minister for Children and Housing of 3rd December 2019](#) Page16-17

*that at the moment we do not know the number of residential dwellings that we are relying on to meet our housing standards, our private rented. We do not.*<sup>85</sup>

In considering whether the proposed regulations are fair, proportionate and fit for purpose, the Panel observed that, whilst there may be some poor property conditions remaining in Jersey, many of the criteria required to adopt selective licensing regulations in the UK do not apply to Jersey, namely: low housing demand, a significant and persistent problem caused by anti-social behaviour, high levels of deprivation, and high levels of crime.

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<sup>85</sup> [Transcript of Public Hearing with the Minister for the Environment and the Minister for Children and Housing of 3rd December 2019](#) Page 20



## Appendix 2

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### Panel Membership



Constable Mike Jackson (Chair)



Constable John Le Maistre (Vice-Chair)



Constable Sadie Le Sueur-Rennard



Deputy Kirsten Morel



Deputy Inna Gardiner

### Terms of Reference

- 1.** To determine whether the draft regulations are fit for purpose, as well as fair and proportionate.
- 2.** To assess how and to what extent the Department has considered feedback gathered in the consultation and whether any legitimate concerns from stakeholders have been adequately addressed.
- 3.** To consider the impact the proposed regulations will have on tenants, landlords and letting agents.
- 4.** To consider how the draft regulations will work in conjunction with the draft legislation, in addition to the current non-compulsory 'rent-safe' scheme.
- 5.** To determine how and to what extent licensing fees will affect the cost of renting.
- 6.** To further understand how the inspection regime will work in practice and to assess whether it is workable, proportionate and that there is adequate provision in place to resource it.

## Evidence Considered

### Public hearings

- Minister for the Environment – 3rd December 2019
- Minister for Children and Housing – 3rd December 2019
- Jersey Landlords' Association – 7th January 2020

The Public Hearing transcripts can be viewed on the States Assembly website here: <https://statesassembly.gov.je/Scrutiny/Pages/scrutinyreviewtranscripts.aspx>

The webcast of the hearing can also be viewed here up until 6 months after the hearing was held: <https://statesassembly.public-i.tv/core/portal/webcasts>

### Written Submissions

A total of 34 written submissions were received by the Panel and can be viewed here <https://statesassembly.gov.je/scrutiny/Pages/Review.aspx?reviewid=335>

## What is Scrutiny?

Scrutiny Panels and the Public Accounts Committee (PAC) work on behalf of the States Assembly (Jersey's parliament). Parliamentary Scrutiny examines and investigates the work of the Government, holding ministers to account for their decisions and actions. They do this by reviewing and publishing reports on a number of areas:

- Government policy;
- new laws and changes to existing laws;
- work and expenditure of the Government;
- issues of public importance.

This helps improve government policies, legislation and public services. If changes are suggested, Scrutiny helps to make sure that the changes are fit for purpose and justified.

The Environment, Housing and Infrastructure Scrutiny Panel, scrutinise Government on matters within these three remits. To learn more about the Panel's work – [CLICK HERE](#)

