

# Improving residential tenancies in Jersey

## Comments by Mark Boleat on Government of Jersey consultation document

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### Introduction

1. On 14 April 2023 the Government of Jersey published a consultation document [Improving Residential Tenancies in Jersey, Residential Tenancy Law Reform proposals](#). Comments are requested by 26 June 2023.
2. This response is a personal response by someone with substantial experience of public policy in the UK and Jersey as chair of two government owned businesses and one regulator in Jersey, chief executive of major UK trade associations and author of a number of papers on consultation and policy development. I also have experience in housing as the former Chair of Andium Homes, the Jersey Development Company, a large UK housing association and the Housing and Finance Institute. The response is primarily concerned with the policy-making process, in particular the lack of any analysis of the impact of the proposals.

### Summary

3. The consultation document is proposing far-reaching changes to the residential tenancy law, in particular a significant restriction on the use of fixed term tenancies and limiting rent increases.
4. Policy measures can easily have unintended consequences with policy makers assuming that their proposals would have only the direct impact anticipated. The way to avoid unintended consequences is to conduct a proper analysis of the impact of the proposals using readily available tools.
5. The consultation document has no analysis of any form of the impact of the proposals either in terms of cost to landlords, tenants and the taxpayer or the impact on the housing market. This is an unacceptable way to make policy and is guaranteed to have unintended consequences as well as being ineffective in achieving the stated objectives.

### The proposals

6. The proposals are usefully summarised in the Minister's foreword –

**Changing the standard forms of tenancy**, focusing on the use of open-ended tenancies that can only be ended for specific reasons,

meaning that landlords will no longer be able to end a tenancy without good reason and tenants will have greater protection from 'revenge evictions'.

**Introducing and enhancing minimum notice periods** for ending a tenancy or increasing rents, leading to greater clarity and certainty for both tenants and landlords.

**Limiting the amount and frequency of rent increases**, so that rents should not be increased more than once per year, and the amount should be capped during tenancies. I will be looking to ensure that such legislative measures do not lead to negative, unintended consequences in the rental market. We must ensure that these changes also protect tenants' security of tenure and do not compromise a landlord's ability to realise a stable and fair rental return.

**Establishing a new Housing Tribunal** that will consider and resolve a wide range of residential tenancy matters, creating a more accessible route for tenants and landlords to resolve tenancy disputes.

**Formalising requirements for social housing provision**, including introducing a definition of a 'social housing provider' which will be attached to minimum requirements, whilst creating a route for new organisations to become recognised social housing providers.

**Increasing the scope of Regulation and Order-making powers**, to make sure the Law can be extended further and remains fit-for-purpose over the years ahead.

## The implication of regulation for markets

7. It is widely accepted that policy measures can have unintended consequences – a point recognised in the Minister's foreword. The way to avoid unintended consequences is to conduct a proper analysis of the impact of proposed measures using well-established tools and drawing on evidence from the specific market and wider afield. There is no shortage of evidence on the impact of regulatory measures on the housing market. The analysis should be included in the consultation document and itself subject to consultation.

8. There is a tendency on the part of policy-makers everywhere to assume that a policy measure has only the direct effect intended with no side effects – so price controls may be thought merely to have the effect of reducing prices rather than the likely additional effect of reducing supply. Similarly, policies designed to keep prices high (as in taxi regulation in Jersey) have the effect of people not using the service but using alternatives (Jersey Lifts in Jersey in response to taxi regulation).

## The absence of analysis of impacts

9. The consultation document has 45 pages with detailed proposals under a number of different headings such as tenancy agreements and rents and charges. The proposals include –

- Significantly greater requirements on landlords in respect of documentation to be given to tenants and to be maintained.
- The ending of fixed term tenancies except in limited specific cases.
- Power for government officers or a tribunal to determine whether a property is deemed to be uninhabitable and to reduce rents.
- Rent increase cannot exceed RPI subject to exceptions such as refurbishment.
- Only one rent increase a year and eight weeks' notice of a rent increase.
- Restrictions on what landlords can charge for.
- A requirement to provide documentation to government officers.
- Maximum occupancy limits.
- Emergency powers that will allow for rent freezes.
- Power for a housing tribunal to assess whether rent charges are reasonable.

10. The consultation document also allows the minister to produce a code of practice although what it would cover and what status it would have are not clear.

11. There are also detailed provisions on offences and penalties.

12. Nowhere in the consultation is there any analysis of the likely impact of the proposals, such as –

- Costs to landlords and tenants.
- Cost of the tribunal and the officers who will be needed as a result of the law and who will meet these costs – landlords, tenants or the taxpayer.
- Impact on the supply of rented accommodation, in particular through the ending of fixed term policies.
- Impact of the ratcheting effect through the RPI link. For example: RPI increases by 10% in one year but market conditions do not allow any rent increase. In the following year RPI increases by 3% but market rents increase by 10%. Result: over a two-year period market rents have increase by 10%, RPI by 13% but existing landlords have only been able to increase rents by 3%.

Either such an impact analysis has been done, in which case it should be published in the consultation document – or it does not exist in which case this is an unacceptable way to make policy.

14. Similarly, there is no attempt to put the proposals in a market context – to explain how supply and demand determine prices. A graph shows rents rising faster than RPI. It also shows that house prices have risen even faster – a point that is not mentioned. Rents and house prices are closely linked. Rents reflect the capital cost of housing, interest rates and maintenance costs, none of which are closely related to RPI.

### **Need for joined-up policy-making**

15. The consultation document notes that “The Minister for the Environment is due to bring forward proposals to introduce a rented dwellings licensing scheme through Regulations created under the primary law”. At first sight it is strange that what is clearly a measure closely linked to regulation of residential tenancies is not the responsibility of the Minister for Housing and is not adequately cross-referred to in the consultation, the only reference being this quote. As an aside in respect of public policy there is no trace of the Minister’s proposals on the government website; rather they can only be found by those people who know that they exists and are able to navigate the States Assembly website, again a poor piece of policy making. It is also understood that in answering a question in the States Assembly yet another minister announced a proposal to mandate minimum energy requirements for new rental agreements. Again this is no way to announce a policy proposal and all of these issues need to be fully joined-up with a careful analysis of the overall effects.

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