

RESPONSE TO IMPROVING RESIDENTIAL TENANCIES IN JERSEY
DRAFT RESIDENTIAL TENANCY (JERSEY) AMENDMENT LAW 202- (P24/2025)
RESPONSE FROM LES VAUX HOUSING TRUST (“LVHT”)
PRIVATE & CONFIDENTIAL (SEE ACCOMPANYING EMAIL FOR CONDITIONS)

	Part / Article	Wording	Comment
1.	Article 3 (6)	In Article 1(1), after the definition “residential unit” there is inserted – “social rented housing” means a residential unit – (a) that may be occupied under a residential tenancy only by people who are eligible under the policy on renting social housing that is published by the Minister; and (b) for which the amount of rent must comply with a policy on social housing rents that is published by the Minister;	Our understanding is that this wording will mean that any change by the Minister of the wording of the policy will have immediate effect under Law. Without any recourse to the States Assembly. As per our original response to the draft proposals (made in 2023) we stress that none of our comments are about whether the present Minister is reasonable or not. It is about once the power has been created, <u>who</u> in (say) 10 years time, will be the one who desires to wield it, and what are the controls over such a decision ? Therefore in terms of the impact of this wording, our interpretation is that if the Minister was suddenly to tighten up policy in terms of who we were able to rent to, or who qualified for social rented housing (for example by tightening the age ranges, or by reducing the amount of rent that can be charged, such a policy can notionally be changed within a few days (in extremis) , and tenants might (for example) no longer be eligible, and would we have to evict them ? There does not appear to be any check or balance on this. The consequence is therefore that whilst ordinarily a definition in law is something that remains stable, until the Law is changed, the definition here could well change much more frequently, because any new Minister wishes to change it. The question then arises as to what happens to tenants who no longer fit the definition ?

			Conversely – there does not appear to be any ability to enable a social housing provider to give notice to a tenant because the Minister has decided that they no longer ‘fit’ the definition of social housing should they wish to. Overall, we revert straight back to the very reason that we were originally established. Whereby our remit is to house people in need of accommodation who, whilst originally residentially qualified did not meet the tighter criteria of the then Housing Committee and therefore were not able to be helped by the States of the day. We would note that the present policy does not engender such concerns, the concern is the process over how such a policy might be changed in the future. Separately – and referenced below also, there also does not seem to be any ability for a landlord (in particular a landlord providing social rented housing) to give notice (even if it is a longer period) to someone whose circumstances have changed. Thus – we are aware of tenants who likely have more than 1 property – for example have inherited something overseas. The question will depend on circumstance, timing etc, but given that social rented landlords do cap their rents at 80% of market, should someone with inherited wealth ; or wealth that they have created continue to receive a cheaper rent ? In our view this should remain a matter for the landlord, however, should the landlord wish to give notice, the present circumstances under which notice can be given do not allow this.
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			A minor point to be made in relation to the reference to 2 policies issued by the Minister is how are such policies to be specifically identified (and in particular to ensure that someone can easily identify the most up to date version of the said policies) ? For example should they be given a specific reference in the Law, and provision made for that unique identifier and (say) any updates thereto ?
2.		Further expansion on the above in relation to the Gateway : To quote housing policy : “An applicant to the Gateway is eligible to be placed on the waiting list to rent social housing if they: ▪ Are over 18 years old. ▪ Have ‘Entitled’ residential status. ▪ Have been resident in Jersey for more than 6 months prior to the date of application². ▪ Do not own a property in Jersey or elsewhere in the world. ▪ Do not exceed the household income limits set out in this policy (see Appendix I below); ▪ Do not have savings or capital assets of more than £70,000.”	We are not aware of any formal monitoring by the Gateway team of tenants who have been previously been allocated through the Gateway. Therefore should someone’s circumstances change once they have been allocated a tenancy using the Gateway – for example they inherit a house overseas, or their assets increase, again there does not seem to be an easy mechanism by which any Landlord (be it Andium, the Housing Trusts or other) can (at their discretion) take measures to move the said tenant out of social housing should that be considered an appropriate thing to do. One additional query – if a tenant has a pension scheme (ie something separate to the main social security scheme), would that represent part of the calculation of the value of their assets ? (At which point it would be quite feasible for a tenant’s circumstances to change such that assets were actually greater than £70,000.

3.		For completeness we reproduce an observation we made (in 2023) as part of our original commentary to the draft proposals :	“...We also make an important observation at this point. We are becoming aware that certain tenants may be owners of property in other jurisdictions, and are presently deliberating upon this as to how we should treat such tenants, and their ability to access social rented accommodation in Jersey. However we are unclear as to the initial checks performed within the Gateway as regards second properties elsewhere. We understand that cooperation agreements may exist which can assist with such information. Importantly we are unclear as to whether such information is monitored and updated going forward. For example should a tenant be required to inform the social housing provider / the Gateway should they (say) inherit a property? What should be the position as regards the ability to continue to rent their present accommodation ? Should tenants be required to make a periodic declaration (say) every couple of years to the effect that they have no other undeclared assets whether in Jersey or elsewhere, with penalties for false disclosure ? etc etc ?...”
4.	Article 6(F) /6(G) – Page 49 – Page 52	6F (f) – tenant’s residential status (f) “tenant’s residential status”, meaning that the tenant is prohibited by Article 17 of the Control of Housing and Work (Jersey) Law 2012 from occupying the residential unit because of – (i) their residential and employment status under that Law; or (ii) the residential unit’s housing category under that Law;	This is just to note that this does not represent a change in the tenants eligibility for social rented accommodation – it is just the usual Island wide residential status and whether this has changed.

5.		6f(h) Uninhabitable residence (h) uninhabitable residence”, meaning that an authorised person decides that something has caused a residential unit to become uninhabitable under Article 9(1);	The definition seems to be a reasonable and objective test.
6.		6f(n) tenant’s illegality or nuisance (n) “tenant’s illegality or nuisance”, meaning that the tenant – (i) has used, or caused or permitted the use of, the residential unit for illegal purposes; or	As identified in the guide lines the first part of this is about the illegal use of the property. It is important to note that It is NOT about the tenant’s illegality as a whole. This is a matter of concern to the Trust. In the context of a ‘forever’ lease it is important to understand the circumstances whereby a tenant can be given notice. The fundamental point here is that what happens if a tenant has done something illegal but not involving the property. Using an extreme (but not unrealistic) example, a tenant is find guilty of being a paedophile, but the activity did not take place in the residential unit. In particular the estate / other homes in the vicinity have children staying or visiting.

		(ii) has caused or permitted the following, to which a police officer or a States' employee with a relevant enforcement or regulatory function has attended – (A) a repeated or serious nuisance in the residential unit; or (B) interference with the reasonable peace, comfort or privacy of a neighbour of the residential unit; and	It would surely be entirely reasonable for any landlord to want to give notice to the tenant. Particularly when taking account of a wider responsibility whether from safeguarding (or other) towards other residents (possibly other tenants). There is no provision (that we can see) under the Law that would allow the Landlord to give notice under these circumstances. Separately – we have not had sufficient time to assess whether there are any conflicts between this law and other relevant laws. For example should the Trust have evidence that a tenant is a drug dealer (for example court transcripts) the Landlord will have responsibilities under Proceeds of Crime etc. As noted above, it is not evident that the Tenancy Law would permit a Landlord to give notice to such an individual for non payment of rent (say) as the tenant would undoubtedly argue that they were paying rent, but the Landlord would be concerned as to the source of the funds (i.e. were they being paid out of drug profits). If the crime was not directly connected to the property, it would seem that the Landlord would be prevented from giving notice to the tenant, yet might be liable under Proceeds of Crime etc. The second part of this article is about nuisance. The guidelines state the following : “There may, however, be other reasons for notice that could apply under the circumstances, such as a tenant’s illegality or nuisance, or a serious breach of the tenancy agreement.”
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			However, . It is only on looking at the Law that it becomes clear that a repeated nuisance requires a police officer (or equivalent) to physically attend. For a serious nuisance that may make sense. But, it is unclear whether just calling for a police officer to attend would satisfy the criteria, and it may well be that the police regard this as (say) a civil matter and do not attend. [Particularly if their resources are required elsewhere]. In addition, this would seem to be quite a high bar for a repeated nuisance. Eg Something might repeatedly annoy the neighbours, and in the event the tenant does not stop doing it, that would usually be a repeated nuisance. However each individual occurrence might not be enough to warrant calling out the police. Therefore we would recommend this is split. That a serious nuisance SHOULD continue to require the police (or equivalent) to have been asked to attend, [This is subtly different to the police actually having attended]. However a repeated nuisance should NOT require attendance by the police (or equivalent). It should have a lower threshold (ie including, specifically, that the police (etc) should not be required to attend), but there should be a documented trail (in writing) of a nuisance having taken place (defined as something which diminishes the enjoyment of a neighbour), which has occurred on a number of occasions, and about which the tenant has been written to on the said occasions. Perhaps after the 4 occurrence, and documenting that the tenant has not addressed their behaviours / has not modified their activity, the landlord should be capable of giving notice to the tenant.
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7.		6f(o) – tenant’s residential status from incorrect information (o) tenant’s residential status from incorrect information”, meaning that the tenant is prohibited by Article 17 of the Control of Housing and Work (Jersey) Law 2012 from occupying the residential unit because of a change in their residential and employment status that resulted from their provision of incorrect information under that Law.	Similarly to 6F (f) this is not about eligibility. This is just to note that this does not represent a change in the tenant’s eligibility for social rented accommodation – it is just the usual Island wide residential status and whether this should be revised due to incorrect information having been received has changed. This therefore also raises the question that if an application has misrepresented information to the landlord during the application process, does the landlord have the ability to rescind the tenancy ? [If the answer is in the affirmative we would welcome being referred to the relevant part of the draft law].
8.		This is probably also an appropriate place to raise an issue over what is NOT included as a reason for a Landlord having discretion towards giving a tenant notice.	This comment is made in the context of what we have called a ‘forever lease’ – ie a periodic lease. The point being that such leases have the potential to continue for a very long time, during which time a tenant’s circumstances could well change. As far as we can see, wearing our ‘social landlord’ hat, there is no provision for a landlord to give any form of notice in the event that a tenant’s financial circumstances change (by which we mean significantly improve). [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

			[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Whilst this is not yet a significant issue for the Trust, given that it would appear that someone who has the trappings of quite significant wealth is living in a social rented flat which is 'subsidised' / restricted in its rental level, there might come a time when the Trustees might wish to give notice to the tenant. None of the present conditions in the proposed law would allow us to do so, yet it would seem unlikely that this is the type of person in the longer term that we should be helping, at a significantly reduced rent, given their apparent financial circumstances. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] However again, there might come a point in different circumstances when Trustees might wish to encourage said tenants to leave, and have no formal mechanism to do so.
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			A final example, less specific, is that our managing agent has suggested that they are aware of circumstances where tenants have properties overseas. For example inherited in [REDACTED]. Some might well ask the question as to why someone with their own property (albeit not in Jersey) should benefit from reduced rents in Jersey accommodation. Again, should Trustees become aware of such information with evidence, we do not have a mechanism to give notice to a tenant. We believe that a landlord should have discretion in these circumstances (perhaps with a longer notice period), because whilst we are in the business of providing security of tenure to tenants, we are not necessarily in the business of enabling a tenant to become significantly wealthier off the basis of our cheaper accommodation. We would suggest that there should be an extra option for Landlords to be able to terminate a periodic tenancy should such circumstances arise.
9.			Taking the above into account, we reiterate the point made in 2023. Namely that given the difficulties of trying to legislate for all particular circumstances under which a landlord may reasonably give notice, whereby the risk is that other circumstances are inadvertently overlooked, we do believe there should be some form of 'no blame' notice – perhaps with 6 months – to cover times when there are legitimate reasons for a landlord to wish to end the relationship with the tenant, but which are not presently defined under the Law.

			Above, we have identified at least 2 such circumstances – serious illegality but just not carried out within the rental unit ; or a significant change (improvement) in the financial circumstances of a tenant. There will be others that we have not yet identified.
10.		11 Order for eviction of tenant (2) The Court may order the eviction if it is satisfied that – (a) the residential tenancy has ended; and (b) the tenant has not given vacant possession of the residential unit. The Court must order the eviction if it is satisfied – (a) of the matters under paragraph (2); and (b) that the landlord ended the residential tenancy under Article 6F for any of the following reasons –	To note : 11(2) IS separate to 11(3). (2) is MAY, (3) is MUST. The Court retains discretion for the remainder of the table under 6F, but (3) details specific reasons where the Court MUST evict. However this does give rise to a query, and we would welcome clarification : Under 11(2) it would seem that the Court can be satisfied that the tenancy has finished, but MAY choose not to evict the tenant, in which case where would that leave the landlord ? We are unclear as to whether this is true, and, if so, what would be the practical implications / outcomes ?

For completeness we include 2 remarks from our 2023 comments in relation to the draft proposals. The first one is probably covered by the matter now being a policy rather than being defined in the proposed amendment to the Law. The second is a procedural matter which we believe should be resolved at some point.

1.		Pathway : New social housing providers may be required to sign up to additional commitments, for example, demonstrating a long-term commitment to social housing; financial viability; good governance etc	In our general experience, there should be a mechanism by which a social housing provider can withdraw from being defined as such. A Law is for the long term. We are aware of one previous provider that no longer exists. Therefore it seems likely that at some point this may again occur, and that the Law should make provision for this and similar such occurrences.
2.		2.7 Rental deposit scheme As work to update the Residential Tenancy Law progresses, the Minister will take the opportunity to review the performance of the deposit scheme and regulations, making recommendations accordingly	We make one observation on this area as follows : If an existing tenant moves into another Trust property, the present rules imposed under the scheme are as follows : - the deposit for the current tenancy has to be refunded - and a deposit taken for the new tenancy - MyDeposits will then charge an administration fee of £21 - (which will be deducted from the Tenant's deposit) In our opinion this does not seem fair to the tenant.