

The General Housing Law

Summary of Consultation Findings



Committee for the
Environment & Infrastructure

Executive Summary

On 19 July 2018, the States directed the Committee *for the Environment & Infrastructure* to undertake a Programme of Works to investigate the efficacy of the existing legislative framework and processes governing housing quality standards, and to determine how legislation could support the provision of good quality housing, following concerns that the current provisions within legislation to regulate standards across the Island's housing stock were inadequate.

A number of useful points for consideration were raised in the consultation, such as suggestions regarding how measures aimed at enforcing the law and incentivising good practice could be improved by collaborative working amongst key stakeholders and support from Government.

It was recognised that a consolidation of the current legislation would be beneficial as it would help to unify language and create a better shared understanding of processes and specifications amongst service providers and users. It was anticipated that streamlining the existing structure and giving greater powers to the Office of Environmental Health and Pollution Regulation (OEHPR) to assess all standards and enforce improvements would remove duplication of services.

A number of respondents felt that introducing minimum standards would have a positive impact by improving the quality of the Island's housing stock and would reduce the health and safety risks associated with dwellings left in poor condition.

The Committee intends to address some of these points whilst considering the unintended consequences that might occur if the proposals

were introduced, such as the effect on the affordability and availability of private renting housing.

It was noted that more technical detail, including a detail of the proposed fees, would need to be developed.

The Committee will consider the consultation responses as part of the development of a set of draft proposals for the General Housing Law, which it aims to bring to the States of Deliberation in spring 2020.

The Consultation

The Committee *for the Environment & Infrastructure* is developing proposals for housing legislation that will provide a singular legislative framework to strengthen existing legal powers by providing proportionate provisions to regulate conditions across all housing on-Island and provide greater protection to tenants, landlords and property owners.

A targeted consultation was issued in March 2019 to ascertain views on the existing legislation and an early draft of the Committee's proposals.

The consultation was aimed at key stakeholders, such as housing providers, landlords, and estate agents, representatives of the construction industry, charities, relevant States Committees and services who might have new rights, obligations and / or duties under the new general housing law. A total of 37 responses were received.

Summary of the Key Findings

The key findings are summarised into six themes which were identified during the review of the consultation responses: introducing a singular legislative framework; minimum housing standards; registration of the private rented sector; licensing of houses in Multi-Occupation (HMOs); deposit protection scheme; and other comments received.

1 Introducing a singular legislative framework

It was questioned whether the proposals would have the effect of supplementing or consolidating the existing legislation. Most respondents were broadly in favour of standardising practices and creating a shared understanding in order to streamline the current system, but were opposed to the idea of supplementing existing legislation as they were concerned that this would over-complicate the law and add unnecessary bureaucracy.

“Ensuring that a Law exists that clearly sets out definitive roles, responsibilities and expectations, with no contradictions, is essential to address issues raised in [the] report”.

“Regulatory burden will be increased, not reduced”.

People’s level of satisfaction with the current law was high. A large percentage of people felt that the legislation did not require amendment as there was a perceived lack of evidence to suggest that a change in legislation would improve housing standards and eradicate bad practice, but that a better application of the current law via policy changes could create a positive impact. This application should be clear and consistent.

2 Minimum housing standards

More detail regarding the standards criteria and information on how the system (assessments and enforcement of improvements) would operate in practice was requested.

A number of respondents supported the idea of introducing minimum housing standards as a measure to ensure the Island’s housing stock was of good quality. However, it was noted that the Housing Health and Safety Rating System (HHSRS) is now outdated and a more contemporary model bespoke to Guernsey should be adopted that is both clear and transparent.

Agencies concerned primarily with the health and safety of inhabitants, such as the Police and the Fire and Rescue Service in particular, were firmly supportive of introducing minimum standards to ensure people are protected against potential hazards caused by dangerous structural elements of the dwellings as well as installations inside the dwellings.

“Agree that the current controls are outdated, unsuitable, fractured and at times conflicted.”

However, others were of the view that powers to enforce an acceptable standard compliant with health and safety requirements already existed and that no further measures were needed.

Some comments mentioned concerns regarding the unintended consequences that might emerge if minimum standards were introduced. For example, if landlords were obliged to make costly upgrades to their properties, it might be expected that the costs of rent would increase to off-set the additional expense. Landlords and property owners suggested that the States of

Guernsey should offer some kind of financial relief to incentivise landlords to make the necessary improvements.

“There is a dilemma in wanting to put up living standard to a minimum acceptable level but not increase the rents for low income people”.

3 Registration of the private rented sector

Views on the mandatory registration of the private rented sector were divided.

Some respondents were of the opinion that the registration of the private rented sector would be advantageous to landlords because certification would show prospective tenants that the property was well maintained and in good condition, which would encourage good practice.

“...a kite mark type certification so that landlords can show prospective tenants as a positive endorsement of their accommodation.”

Others did not see any benefits associated with the registration of the private rented sector. They were concerned that the enforcement of registration would not prevent miscreant landlords from providing poor quality housing, as they would simply avoid the system and remain undetected.

“Bad landlords will remain below the radar and can only be identified by complaints about the state of their property as would be the case now if current laws were enforced.”

Some comments expressed a concern that if a registration fee was charged, landlords would be inclined to raise the costs of their rent in order to compensate for the additional expense and that this would have an undesirable effect on the market and would have an especially negative

impact on tenants that are on a low income. It was noted that the registration would need to be compliant with GDPR.

Some respondents suggested that, if the proposal to introduce registration were approved, the renewal of registration fees and licence fees should be aligned so that they fall on the same date to help ease the process and avoid duplication for landlords.

4 Licensing of houses in multi-occupation (HMOs)

Further detail regarding the timeline of implementation was requested.

Landlords thought that HMOs should be subject to the same level of regulation as standard rental properties, which does not include licensing. Respondents requested a workable definition of an HMO and the use of a single framework. It was suggested that Guernsey import the UK definition of an HMO – “a property rented out by at least three people who are not from one “household” (for example a family) but share facilities like the bathroom and kitchen”.

The Fire and Rescue Service were strongly in favour of the licensing of HMOs, but thought that further consideration would need to be given to implementation procedures in order to manage the allocation of time and resources required to respond to a surge in HMO inspection requests when initially introduced.

5 Deposit protection scheme

Views on the deposit protection scheme were mixed. A diverse group of respondents, including some landlords, fully endorsed the scheme for the reassurance it would give them that their assets were secure.

If a deposit protection scheme were to be introduced, a custodial system, similar to the model used in Jersey, was preferred by the majority.

“A custodial scheme has the greatest chance of succeeding, avoiding disputes and offering protection to the tenant and landlord. It is also up and running in Jersey.”

However, a significant number of landlords were opposed to the deposit protection scheme because it was felt that the proposals were unbalanced and did not afford landlords and property owners as much protection as tenants. Furthermore, the point was made that the proposals were unfairly discriminatory against landlords, as mandatory deposit protection schemes do not exist in other market places. They were of the opinion that if a mandatory deposit protection scheme were introduced, it should be extended to include all forms of deposits.

“We suggest that to provide balance, landlords should be given more protection in various ways such as strengthening the debt recovery process, rather than being charged fees to register their rental property and licence fees if it’s a HMO.”

“If a scheme is to be set up, any deposit of any nature should be covered by the scheme and, by law, businesses should be forced to use it. It should not form part of a housing standards law”.

Some respondents considered there to be enough protection available through non-judicial or judicial redress mechanisms in the existing system. It was noted that the Guernsey Private Residential Landlords Association (GPRLA) already offer a free and open mediation service to both landlords and tenants, or arbitration could be used to settle disputes. Petty Debt claims could also be made in the Magistrate’s Court.

More technical detail concerning the deposit scheme, in particular, the policy regarding the investigation of disputes and oversight of the appeals system, was requested.

Some members of the Royal Institute of Chartered Surveyors (RICS) commented that they already have to demonstrate a separation of funds and accounts and that, where this was already being done, a deposit scheme would be unnecessary. It was suggested that a legal requirement for self-managing landlords to open a separate tenant bank account in escrow could be introduced, but that this did not need to be through a new government scheme.

6 Other comments

More detail regarding the cost/ resource implications was requested.

Landlords and property owners were concerned that the proposals were antithetical to the free market.

“Landlords and owners will be restricted in how they operate their businesses to maximise their profit margins.”

Some people took issue with the title of the proposed new legislation, ‘Regulation of Housing (Enabling Provisions) (Guernsey) Law’, and suggested it should be changed to ‘Regulation of Housing Standards (Enabling Provisions) (Guernsey) Law’ to better reflect what the law is about.

Landlords felt that it was unfair that the proposals implied they were responsible for the poor health of the tenant, as whilst poor quality accommodation can be a contributor, it is not usually the main reason.