



Jersey

PUBLIC HEALTH AND SAFETY (DWELLINGS) (JERSEY) LAW 201-

Report

Explanatory Note

This draft Law, if passed, will introduce minimum health and safety standards with respect to dwellings and provide an enforcement mechanism through the use of inspectors and the issuing of notices.

Part 1 - Introductory

Article 1 contains the interpretation provisions.

Part 2 – Standards of health and safety in dwellings

Article 2 makes the Minister of Health and Social Services responsible for promoting the health and safety of persons in and about dwellings along with the conservation of energy and water supplied to dwellings, and for authorizing inspectors to take action on the Minister's behalf. *Article 3* empowers the Minister to make Orders to promote such matters. In relation to health and safety, Orders may prescribe hazards to be found in dwellings, the method of assessing risks posed by these hazards and the level of risk that is acceptable for any hazard.

Article 4 provides for the Minister to prepare, issue and revise codes of practice to provide practical guidance in respect of any provision of the Law or its Orders and to arrange printing and distribution of such codes. Failure of a person to follow guidance contained in a code does not of itself render the person liable to proceedings but the code is admissible in all criminal proceedings and may be taken into account where relevant.

Part 3 - Enforcement

Article 5 sets out the powers of inspectors in relation to the inspection of dwellings, including the power for the Bailiff or a Jurat to issue a warrant in appropriate cases.

Article 6 requires the inspector to identify prescribed hazards, assess the level of risk posed by each hazard and take appropriate action. This may consist of the issuing of hazard awareness advice or a notice. Orders may prescribe circumstances in which the issue of a notice may be compulsory. The inspector is also empowered to give advice about energy and water conservation.

Article 7 is about hazard awareness advice. This consists of information or advice given by the inspector as to a course of action that the inspector considers will remove the hazard or reduce the risk posed by it to an acceptable level.

Article 8 covers notices. The inspector may issue an improvement notice, requiring the taking of action to remove the hazard or reduce the risk posed by it to an acceptable level, a prohibition notice, banning occupation of the dwelling until such action is taken or a demolition notice requiring the dwelling to be demolished. There are provisions specific to individual types of notices and matters to be specified in the notice are set out.

Article 9 sets out the additional provisions that must or may be included in notices, including directions as to the remedial action that might be taken and enabling a notice to be varied or withdrawn if there is a change of circumstances. There is provision for the interface between this Law and the powers of the Minister for Planning and Environment under the Planning and Building (Jersey) Law 2002.

Article 10 is concerned with the power to appeal to the Royal Court where a notice has been served.

Article 11 empowers the Minister to undertake remedial action where a person has failed to undertake it and to recover the cost from that person.

Part 4 – Criminal liability

Article 12 sets out offences of contravening a requirement or prohibition imposed by a notice, obstructing an inspector and pretending to be an inspector. There is further provision to charge continuing offences and for secondary parties to be liable.

Article 13 provides a defence if the person charged proves that the offence was due to an act or default of another person and makes that other person liable instead. It is also a defence to the charge of contravening a notice for the person to show that he or she was unaware of the notice or took all reasonable steps to comply with it.

Article 14 makes it an offence to attempt to commit an offence under this Law.

Article 15 is a standard provision concerning partnership and corporate liability.

Part 5 – Miscellaneous

Article 16 provides that (without prejudice to any other right of action) nothing in the Law is to be construed as giving a civil right of action in respect of a contravention of a provision of an Order. However, unless the Order otherwise provides a breach of a duty imposed by the Order is actionable in respect of any damage it causes and this is without prejudice to any available defence.

Article 17 is a standard provision concerned with the service of notices.

Article 18 is a general provision concerning the Minister's powers to make Orders.

Article 19 provides that the Law is in addition to other public health provisions.

Article 20 sets out the title of the Law and provides for it to come into force by means of an Appointed Day Act.





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Arrangement

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PUBLIC HEALTH AND SAFETY (DWELLINGS) (JERSEY) LAW 201-

A LAW to promote the health and safety of persons in, and the conservation of energy and water supplied to, dwellings and for connected purposes.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

INTRODUCTORY

1 Interpretation

(1) In this Law, unless the context otherwise requires –

“dwelling” means a building or other structure, whether temporary or permanent, or any part thereof, used or capable of being used as a residence by one or more persons, together with any yard, garden, outhouses and appurtenances belonging to or usually enjoyed with the dwelling;

“hazard” means any risk of harm to the health or safety of an actual or potential occupier of a dwelling that arises from a deficiency in the dwelling or in any land or building in the vicinity of the dwelling;

“inspector” means a person authorized by the Minister for the purposes of this Law;

“Minister” means the Minister for Health and Social Services;

“notice” means a notice issued under Article 8;

“person having control” in relation to a dwelling means any of the following –

- (a) the owner;
- (b) a person entitled to receive rent or who would be entitled to receive rent if the dwelling were let;
- (c) a person responsible for repairs to the property;
- (d) a person responsible for allowing one or more other persons to occupy the building for any period of time, whether or not such person acts under an agreement or arrangement with any of the persons described in paragraph (a) to (c);

“prescribed hazard” means a type of hazard prescribed by Order made under Article 3(2)(a).

- (2) The States may by Regulations amend the definition of “person having control”.

PART 2

HEALTH AND SAFETY IN DWELLINGS

2 Duty of Minister to promote health and safety and conservation in dwellings

The Minister shall be responsible for promoting –

- (a) the health and safety of persons in and about dwellings; and
- (b) the conservation of energy and water supplied to dwellings,

and shall authorize inspectors to take action on the Minister’s behalf in accordance with this Law and any Order made under this Law.

3 Orders with respect to health and safety and conservation

- (1) The Minister may make Orders for the purposes of –
 - (a) securing the health and safety of persons in or about dwellings;
 - (b) furthering the conservation of fuel and power; and
 - (c) furthering the conservation of water by, for example, preventing waste, undue consumption and misuse of water.
- (2) Orders under paragraph (1)(a) may prescribe –
 - (a) the types of hazards that may be present in dwellings for the purposes of this Law;
 - (b) the method of assessing the risks posed by prescribed hazards;
 - (c) the level of risk that that is acceptable for any prescribed hazard.

4 Codes of practice

- (1) The Minister may, after consultation with such persons or bodies as appear to the Minister to be representative of the interests concerned –



- (a) prepare and issue codes of practice for the purpose of providing practical guidance in respect of any provision of this Law or any Order made under this Law; and
 - (b) revise any such code by revoking, varying, amending or adding to the provisions of the code.
- (2) The Minister shall cause any code prepared under this Article to be printed and distributed, and may make such arrangements as the Minister thinks fit for its distribution, including causing copies to be put on sale to the public at such price as the Minister considers to be reasonable.
- (3) A failure on the part of any person to follow any guidance contained in a code issued under this Article shall not of itself render that person liable to proceedings of any kind.
- (4) In all criminal proceedings any such code shall be admissible in evidence, and if any provision of such a code appears to the court conducting the proceedings to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question.

PART 3

ENFORCEMENT

5 Powers of inspectors

- (1) An inspector may –
 - (a) for the purpose of ensuring the health or safety of persons in or about a dwelling; or
 - (b) for the purpose of ensuring that the dwelling complies with any standards relating to the conservation of energy or water supplied to a dwelling,

carry out an assessment in that dwelling, including any assessment of any prescribed hazards in the dwelling.
- (2) Subject to the production by the inspector, if so required, of evidence of the inspector's authority, the inspector may –
 - (a) at any reasonable time enter the dwelling;
 - (b) on entering the dwelling be accompanied by –
 - (i) any other person, and
 - (ii) any equipment or materials,

that the inspector considers necessary for any purpose for which the power of entry is being exercised;
 - (c) make such examination and investigation as may in any circumstances be necessary, including obtaining information about the identity of the person having control of the dwelling;
 - (d) direct that the dwelling, or any part of it, or anything in it, shall be left undisturbed (whether generally or in particular respects) for so

- long as is reasonably necessary for the purpose of any examination or investigation under sub-paragraph (c);
- (e) take such measurements and photographs and make such recordings, including records of sound or picture, as the inspector considers necessary for the purpose of any examination or investigation under sub-paragraph (c);
 - (f) take samples of any articles or substances found in the dwelling and of the atmosphere in or in the vicinity of the dwelling; and
 - (g) require any person whom the inspector has reasonable cause to believe to be able to give any information relevant to any examination or investigation under sub-paragraph (c) to answer such questions as the inspector thinks fit to ask.
- (3) An inspector shall not seek access to any dwelling unless the inspector has given 24 hours' notice to the occupier or, if the inspector thinks fit, the person having control of the dwelling, if different, except –
- (a) in an emergency;
 - (b) where the occupier or person having control of the dwelling consents to the inspector having access without giving prior notice; or
 - (c) where the occupier or person having control of the dwelling to whom notice has been given consents to the inspector having access at the end of period of less than 24 hours commencing with the time notice was given.
- (4) If it is shown to the satisfaction of the Bailiff or a Jurat by information on oath that –
- (a) admission to any dwelling has been refused, or that refusal is anticipated, or that the dwelling is unoccupied or that the occupier, whether or not the person having control, is temporarily absent, or that the case is one of emergency, or that giving notice under paragraph (3) would defeat the object of the entry; and
 - (b) the inspector has reasonable grounds for seeking entry into the dwelling,
- the Bailiff or Jurat, as the case may be, may issue a warrant authorizing a police officer, an inspector and such other persons as the warrant may specify to enter the dwelling, if need be by force.
- (5) On leaving any unoccupied dwelling entered by virtue of this Article the inspector shall leave it as effectively secured against unauthorized entry as it was prior to entry.
- (6) A warrant issued in pursuance of paragraph (4) shall continue in force until the purpose for which the entry is required has been satisfied or for a period not exceeding 28 days, whichever is the later.
- (7) The period described in paragraph (6) for which a warrant shall continue in force may involve access to the dwelling on more than one occasion during that period and the inspector may, on each occasion, be accompanied by –
- (a) any other person; and



(b) any equipment or materials,
that the inspector considers necessary for the purpose for which the entry is required.

- (8) A reference in this Article to an emergency is a reference to a situation where the inspector has reasonable cause to believe that circumstances exist that are likely to represent an imminent risk of serious harm to the health or safety of persons in or about the dwelling and that immediate entry is necessary to verify the existence of those circumstances or to ascertain their cause and effect a remedy.

6 Risk assessment and action by Inspector

- (1) The inspector shall –
- (a) identify any prescribed hazards in a dwelling;
 - (b) assess the level of risk posed by any prescribed hazard; and
 - (c) take such action (if any) in accordance with paragraph (2) as the inspector considers appropriate, having regard to all the relevant circumstances including the cost of taking action to remove the hazard or reduce the risk posed by it to an acceptable level.
- (2) The inspector may issue –
- (a) to the person having control of the dwelling or to an occupier, or both, hazard awareness advice in accordance with Article 7; or
 - (b) to the person having control of the dwelling, a notice of a type described in Article 8.
- (3) However, the Minister may by Order prescribe circumstances in which the issue of a particular notice is compulsory.
- (4) The inspector may also give advice to the person having control of the dwelling about improving any standards relating to the conservation of energy and water supplied to the dwelling.

7 Hazard awareness advice

Hazard awareness advice shall consist of such information or advice as to a course of action that the inspector considers will remove the hazard or reduce the risk posed by it to an acceptable level.

8 Notices

- (1) The types of notices that may be issued under Article 6(2)(b) are –
- (a) an improvement notice requiring the person to take action within such period (ending not earlier than the period within which an appeal against the notice can be brought under Article 10) to remove the hazard or reduce the risk posed by it to an acceptable level;

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- (b) a prohibition notice stating that the occupation of the dwelling, or such part of it as may be specified in the notice, is prohibited unless and until action is taken to remove the hazard or reduce the risk posed by it to an acceptable level;
 - (c) a demolition notice stating that the dwelling is required to be demolished within 6 weeks of the ending of the period within which an appeal may be brought.
- (2) An improvement notice may be expressed to take effect only on the happening of a specified event.
 - (3) A prohibition notice shall take effect –
 - (a) at the end of the period specified in the notice; or
 - (b) if the notice so declares, immediately.
 - (4) A demolition notice may only be issued if the inspector considers that it is the only appropriate action and the dwelling is not a site of special interest within the meaning of Chapter 1 of Part 6 of the Planning and Building (Jersey) Law 2002.
 - (5) A notice shall specify in relation to the hazard (or each of the hazards to which it relates) –
 - (a) whether the inspector considers he or she was obliged to issue it by virtue of an Order under Article 6(3) or did so as a matter of discretion;
 - (b) the nature of the prescribed hazard;
 - (c) the deficiency giving rise to the hazard;
 - (d) the dwelling at which the hazard is present;
 - (e) the date by which the action (if any) to remove the hazard or reduce the risk posed by it to an acceptable level must be started or completed; and
 - (f) the person's right of appeal under Article 10 and the period within which an appeal may be made.

9 Supplementary provisions relating to notices

- (1) A notice may include directions as to the action (if any) that might be taken to remove the hazard or reduce the risk posed by it to an acceptable level.
- (2) If directions are included in a notice they may be framed –
 - (a) to any extent by reference to an approved code of practice or any other published guidelines approved by the Minister; and
 - (b) so as to afford the recipient a choice between different types of remedial action.
- (3) If there has been a change in the circumstances that gave rise to a notice, an inspector may vary or withdraw a notice as the inspector thinks fit and the inspector shall give reasons for any such variation.
- (4) If a notice that is not to take immediate effect, has been issued –



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- (a) it may be withdrawn by an inspector at any time before the end of the period specified in the notice in pursuance of Article 8(1)(a) or (3)(a) as the case may be; and
 - (b) the period so specified may be extended or further extended by an inspector at any time when an appeal against the notice is not pending.
- (5) The withdrawal of a notice shall not affect the power of an inspector to issue another one in respect of the hazard that was the subject of the withdrawn notice.
 - (6) The inspector shall send a copy of every notice issued to the Minister for Planning and Environment.
 - (7) Despite the foregoing provisions of this Law, a notice shall not be issued if the inspector thinks it more appropriate for the Minister for Planning and Environment to serve a dangerous building notice under Article 66 of the Planning and Building (Jersey) Law 2002 or a land condition notice under Chapter 6 of Part 6 of that Law.
 - (8) In so far as it is required, planning and building permission in accordance with the Planning and Building (Jersey) Law 2002 shall be taken to have been granted to undertake work in compliance with a notice.

10 Appeals against notices

- (1) A person on whom a notice is issued under Article 6(2)(b) may, within 21 days from the date of its issue, or the issue of any variation of the notice, appeal to the Royal Court.
- (2) On an appeal under this Article the Court may either cancel or affirm the notice or substitute a different type of notice.
- (3) If the Court affirms the notice, it may do so either in its original form or with such modification as the Court may in the circumstances think fit.
- (4) The Court may direct that the notice shall be suspended until the determination of the appeal.

11 Power of Minister to undertake work

- (1) If a person fails to undertake the action necessary to remove the hazard or reduce the risk posed by it to an acceptable level before the end of the period of compliance specified in an improvement notice whether or not the person is convicted of an offence under Article 12, the Minister may –
 - (a) take the necessary action; and
 - (b) recover from that person, as a debt due to the Minister, the expenses reasonably incurred by the Minister in doing so.
- (2) Any person authorized in writing by the Minister may enter any part of the dwelling specified in the notice for the purposes of taking any action which the Minister is authorized to take under this Article.

- (3) The right of entry under paragraph (2) may be exercised at any reasonable time.
- (4) The Minister must issue a notice under this paragraph before exercising the right of entry under paragraph (2).
- (5) The notice must identify the improvement notice to which it relates and state –
 - (a) the dwelling and hazard concerned;
 - (b) that the Minister intends to enter the dwelling;
 - (c) the action which the Minister intends to take in the dwelling; and
 - (d) the power under which the Minister intends to enter the dwelling and take the action.
- (6) The notice must be served on the person on whom the improvement notice was served and a copy of the notice must be served on any other person who is an occupier of the premises.
- (7) The notice and such copy must be served sufficiently in advance of the time when the Minister intends to enter the dwelling as to give the recipients reasonable notice of the intended entry.
- (8) A copy of the notice may also be served on any owner of the dwelling.

PART 4

CRIMINAL LIABILITY

12 Offences

- (1) A person who –
 - (a) contravenes any requirement or prohibition imposed on the person by a notice (including any such notice as varied by an inspector or modified on appeal);
 - (b) intentionally obstructs the exercise or performance of any person's powers or duties under this Law; or
 - (c) pretends to be an inspector,is guilty of an offence and liable to [a fine of level 4 on the standard scale].
- (2) An offence under paragraph (1) may be charged by reference to a day or any longer period of time and a person may be convicted of a second offence or subsequent offences under paragraph (1) by reference to any period of time following the preceding conviction for such an offence.

13 Defences

- (1) A person charged with an offence under this Law who proves to the satisfaction of the court that that the offence was due to an act or default of some other person who committed it without his or her consent, connivance or wilful default, shall be acquitted of the offence.



- (2) Where paragraph (1) applies, the person to whose act or default the offence was attributable shall be guilty of the offence and that person may be charged with and convicted of the offence by virtue of this paragraph.
- (3) In proceedings against a person for an offence under Article 12(1)(a) it shall be a defence to show –
 - (a) that the person was not aware of the existence of the notice; or
 - (b) that the person took all reasonable measures to secure compliance with the notice.

14 Attempts to commit offences

Any person who attempts to commit an offence under this Law shall be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.

15 Offences by bodies corporate etc

- (1) If an offence under this Law committed by a limited liability partnership, a separate limited partnership or a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
 - (a) a person who is partner of the partnership, or a director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (2) If the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.

PART 5

MISCELLANEOUS

16 Civil liability

Without prejudice to any right of action that exists apart from this Law, nothing in this Law shall be construed as conferring a right of action in any civil proceedings.

17 Service of notices

- (1) Any notice required by this Law to be given to any person may be given to or served on the person in question –
 - (a) by delivering it to the person;
 - (b) by leaving it at the person's proper address;
 - (c) by sending it by post to the person at that address; or
 - (d) by sending it to the person at that address by facsimile, electronic transmission or other similar means that produces a document containing the text of the communication in legible form or is capable of doing so.
- (2) Any such notice may –
 - (a) in the case of a company incorporated in Jersey, be served by being delivered to its registered office;
 - (b) in the case of a partnership, company incorporated outside Jersey or unincorporated association, be given to or served on the secretary or other similar officer of the partnership, company or association or any person who purports to act in any such capacity, by whatever name called, or on the person having the control or management of the business, as the case may be.
- (3) For the purposes of this Article and of Article 7 of the Interpretation (Jersey) Law 1954 in its application to this Article, the proper address of any person to or on whom a notice is to be given or served by post shall be the person's last known address or, where a notice is served as described in paragraph (2), the last known address of the registered office (if there is one) or main business address of the company, partnership, or unincorporated association.
- (4) If the person to or on whom any notice is to be given or served has notified the Minister of an address within Jersey, other than the person's proper address within the meaning of paragraph (3), as the one at which the person or someone on the person's behalf will accept documents, that address shall also be treated for the purposes of this Article and Article 7 of the Interpretation (Jersey) Law 1954 as the person's proper address.

18 Orders

- (1) The Minister may by Order make provision for the purpose of carrying this Law into effect and in particular, but without prejudice to the generality of the foregoing, for prescribing any matter which may be prescribed under this Law.
- (2) An Order made under this Law may contain such transitional, consequential, incidental or supplementary provisions as the Minister considers are necessary or expedient.



19 Saving provisions

This Law shall be in addition to and not in derogation of –

- (a) the Loi (1934) sur la Santé Publique;
- (b) the Fire Precautions (Jersey) Law 1977 ;
- (c) the Statutory Nuisances (Jersey) Law 1999;
- (d) the Planning and Building (Jersey) Law 2002; and
- (e) any other law relating to public health and safety.

20 Citation and commencement

This Law may be cited as the Public Health and Safety (Dwellings) (Jersey) Law 201- and shall come into force on such day as the States may by Act appoint.

