

FINAL VERSION: 8 April 2020

GUIDANCE RELATING TO RENT AND OTHER PAYMENTS

**FOR LANDLORDS AND TENANTS OF JERSEY RESIDENTIAL PROPERTY DURING THE COVID-19
CRISIS**

1. PURPOSE OF THIS GUIDANCE

Court applications for rent arrears, lease and tenancy agreement terminations and consequential orders for possession and eviction ("**Tenancy Disputes**") are currently unlikely to be heard as a result of the COVID-19 pandemic and the related Government of Jersey measures to manage the risk of contagion within the Island. In so far as such proceedings might be determined by the Petty Debts Court, the Magistrate as Judge of that Court has published a direction to the effect that any such cases have been adjourned. As to the Royal Court, it has issued guidance that it will only determine urgent civil (and certain children and criminal) cases, which would not include Tenancy Disputes.

While the Courts are not hearing Tenancy Disputes, the Government of Jersey wishes to issue guidelines by way of this Guidance to be read in conjunction with a related Practice Direction to be issued by the Royal Court and the Magistrates Court ("**the Court**"), as to how they will deal with Tenancy Disputes in due course. Pursuant to the Practice Direction the Court will, amongst other things, assess the conduct of both Landlords and Tenants (which for the purposes of this Guidance shall include any party including a guarantor of the obligations of a Tenant under any Residential Tenancy Agreement) and their reasonableness during the period specified by the Court from time to time (the "**COVID-19 Period**"). This Guidance is advisory, but compliance or non-compliance may be taken into account as stated herein.

The purpose of this Guidance is to ensure good conduct and reasonable behaviour from both Landlords and Tenants during the COVID-19 Period. The Guidance seeks to minimise interference in the normal contractual relationships between Landlord and Tenant ("**the Parties**" and each "**a Party**") but acknowledging that flexibility, pragmatism, reasonableness and common humanity need to be shown in exceptional times like these.

This Guidance applies to any lease, tenancy, licence or other agreement by any name called which provides for the occupation of any residential accommodation (which includes without limitation serviced accommodation and accommodation provided by an employer) and the words "Residential Tenancy Agreement", "Landlord" and "Tenant" are to be construed accordingly.

This Guidance shall commence on the date of issue and apply during the COVID-19 Period. It shall principally apply in respect of a Tenant's obligations to pay rent and other payments due under a Residential Tenancy Agreement, but also to the discharge by

both Landlord and Tenant of their respective general obligations under the terms of such Residential Tenancy Agreement. It applies only to residential accommodation. It is not intended to apply where there has been any unresolved rent arrears or other sums due or breach of the terms of a Residential Tenancy Agreement prior to the commencement of the COVID-19 Period of which a Tenant has been notified in accordance with the terms of a Residential Tenancy Agreement. Any Temporary Voluntary Arrangement reached between the Landlord and the Tenant may however include such matters.

This Guidance shall not operate to release either (i) any Tenant from its continuing obligation to pay rent and other payments ("**Sums Due**") and to discharge its obligations under the terms of a Residential Tenancy Agreement or (ii) any Landlord from its continuing obligation to discharge its obligations under the terms of a Residential Tenancy Agreement (in each case "**Obligations**" and "**Compliance with Tenancy Terms**" and each shall be construed accordingly).

The Government of Jersey hopes that litigation in relation to Residential Tenancy Agreements will only be required as a matter of last resort. In circumstances where proceedings are issued after the COVID-19 Period, it is anticipated that in accordance with the Practice Direction to be issued by the Court, the Court will take into the account the contents of this Guidance and the extent to which Parties are shown to have complied with or failed to follow this Guidance in dealing with the other Party under a Residential Tenancy Agreement during the COVID-19 Period.

2. OVERRIDING PRINCIPLES

The Government of Jersey requires each Party to act in an open, transparent, humane and reasonable manner in meeting its obligations under this Guidance ("**Overriding Principles**").

3. VOLUNTARY ARRANGEMENTS FOR RENT AND OTHER PAYMENTS UNDER A RESIDENTIAL TENANCY AGREEMENT

The following process should be followed during the COVID-19 Period by the Parties in respect of any Sums Due and any failure of Compliance with Tenancy Terms.

(i) Tenant's Obligations

- a. The Tenant shall give at least twenty-four (24) hours' written notice to the Landlord of any anticipated difficulty on the Tenant's part in paying Sums Due and/or anticipated inability of Compliance with Tenancy Terms of a material nature;

- b. The Tenant shall upon the request of the Landlord provide such evidence in support of its financial hardship as the Landlord may reasonably require, including amongst other information:
- i. Written confirmation from the relevant employer (or other reliable source) of any of the following as are relevant to the Tenant or any person forming part of the Tenant's household who contributes to the payment of the Sums Due and the Compliance with Tenancy Terms ("**Contributor**"):
 1. loss of job; or
 2. Covid-19 related ill-health causing a suspension or termination of employment; or
 3. significant reduction in working hours; or
 4. suspension of employment and/or payment of salary; or
 5. a reduction in salary; or
 6. the extent (if any) that the employer concerned is obliged to pay sickness benefit under the contract of employment;
 - ii. If the Tenant or Contributor is self-employed then the Tenant and/or Contributor must provide a written statement confirming his/her business activities have ceased trading or have been severely restricted or impacted by virtue of COVID-19 Government measures and setting out the nature of the business, how it has been impacted and providing latest summary cash flow statements;
 - iii. Confirmation the Tenant and/or Contributor have no other independent income sources other than those provided by the Government of Jersey;
 - iv. Confirmation of the Tenant's and/or /Contributor's monthly outgoings;
 - v. Confirmation that the Tenant and/or Contributor does not have personal savings or other investments or property (either in Jersey or elsewhere) with a value in excess of £5,000, providing such evidence as may reasonably be required to support such confirmation;
 - vi. Confirmation of the Tenant's and/or Contributor's family circumstances and dependents;
 - vii. Confirmation as to the Tenant's and/or Contributor's status as his/her entitlement to one of the following Social Security benefits:
 1. Statutory sickness benefit;
 2. Incapacity benefit;

3. Income support;
 4. COVID Emergency Social Security Scheme for Registered persons
 5. COVID Emergency Social Security Scheme for Unregistered persons
- c. Save to the extent that such evidence shall be required for the obtaining of legal advice or in any related Court proceedings, the Landlord shall keep confidential any such evidence provided by or on behalf of the Tenant or Contributor.
 - d. The Tenant shall continue to meet his/her other obligations under the Residential Tenancy Agreement to the extent permitted by law during the COVID-19 period and in doing so, shall provide evidence to the Landlord upon request in accordance with the terms of the Residential Tenancy Agreement;

(ii) Landlord's Obligations

- a. The Landlord shall give at least twenty-four (24) hours' written notice to the Tenant of any anticipated difficulty or inability on the Landlord's part of Compliance with Tenancy Terms of a material nature;
- b. The Landlord shall upon the request of the Tenant provide such evidence in support of its difficulty or inability of Compliance with Tenancy Terms as the Tenant may reasonably require.
- c. the Landlord shall at all times endeavour to continue to meet all its obligations under the Residential Tenancy Agreement to the extent permitted by law during the COVID-19 period and shall upon the request of the Tenant provide such evidence in support of its endeavours so to do.
- d. Save to the extent that such evidence shall be required for the obtaining of legal advice or in any related Court proceedings, the Tenant shall keep confidential any such evidence provided by or on behalf of the Landlord.

4. AGREED CONCESSIONS IN RESPECT OF SUMS DUE

- (i) The Landlord (subject to paragraph 7 of this Guidance) upon receipt of the Tenant's notice in respect of Sums Due and adequate evidence in support of its claim of financial hardship shall pursuant to the Overriding Principles and subject to all relevant legislation, seek to agree with the Tenant at least one of the following options:
 - a. A partial deferral of Sums Due;
 - b. A complete deferral of Sums Due;

- c. A partial waiver of Sums Due;
 - d. A complete waiver of Sums Due;
 - e. Early termination of the Residential Tenancy Agreement and surrender to the Landlord of the premises demised thereunder on terms agreed between the Parties;
- (ii) In the case of options 4.(i) (a) to (e) ("**Payment Concessions**"), deferral or waiver shall apply from the date of agreement until the expiry of the COVID 19 Period or such longer period as may be agreed by the Parties.
- (iii) In the case of options of 4.(i) (a) and (b) repayment of the Sums Due shall be paid by the Tenant over a period not less than 12 months from the expiry of the COVID 19 Period unless the Tenant volunteers a shorter period.

5. AGREED CONCESSIONS IN RESPECT OF INABILITY OF COMPLIANCE WITH TENANCY TERMS

- a. The Landlord and Tenant in the event of the giving of notice by either one to the other and providing adequate evidence in support of its claim of inability of Compliance with Tenancy Terms shall under the requirements of the Overriding Principles seek to agree at least one of the following options:
- i. A partial deferral of Obligations;
 - ii. A complete deferral of Obligations;
 - iii. A partial waiver of Obligations;
 - iv. A complete waiver of Obligations;
- b. Early termination of the Residential Tenancy Agreement and surrender to the Landlord of the premises demised thereunder on terms agreed between the parties.

In the case of options 5. a (i) to (iv) ("**Obligation Concessions**"), deferral or waiver shall apply from the date of agreement until the expiry of the COVID-19 Period or such longer period as may be agreed by the Parties.

6. FORMALISING TEMPORARY VOLUNTARY ARRANGEMENTS

- a. Upon an agreement being reached pursuant to the provisions of paragraphs 4 or 5 of this Guidance, a written agreement shall be prepared and signed by the Parties ("**Temporary Voluntary Arrangement**"). Such Temporary Voluntary Arrangement may be used as the proof required under Article 53 of the Income Tax (Jersey) Law 1961 for tax relief for rent not paid.

- b. Where a Temporary Voluntary Arrangement has been entered into, the Landlord shall not issue any Tenancy Dispute for recovery of Sums Due or the discharge of Obligations or for termination of the Residential Tenancy Agreement and an order for possession of the Property and eviction by virtue of such Sums Due or such breach of Obligations provided the Tenant continues to comply with all its other obligations under the Residential Tenancy Agreement which are not subject to the Temporary Voluntary Arrangement.
- c. Where a Temporary Voluntary Arrangement has been entered into the Tenant shall not issue any Tenancy Dispute for the discharge of Obligations or give notice to terminate the Residential Tenancy Agreement by virtue of such breach of Obligations provided that the Landlord continues to comply with all its other obligations under the Residential Tenancy Agreement which are not subject to the Temporary Voluntary Arrangement.
- d. Where a Temporary Voluntary Arrangement has been entered into, each Party must advise the other when their circumstances change (or those of any Contributor) and when he/she is no longer suffering from financial hardship or is no longer suffering an inability to adhere to Compliance with Tenancy Terms to the extent that they are once again able to discharge in whole or in part obligations due by them under the Residential Tenancy Agreement. In such circumstances the Parties shall re-assess the terms of the Temporary Voluntary Arrangement using the same principles as set out in this Guidance.
- e. Where a Temporary Voluntary Arrangement has been entered into, each Party may advise the other if their circumstances (or those of a Contributor) have materially changed such that he/she is suffering greater or additional financial hardship which shall necessitate a reassessment of such Temporary Voluntary Arrangement, such reassessment to be made on the same principles as set out in this Guidance.

7. INABILITY OF LANDLORD OR TENANT BY WAY OF FINANCIAL HARDSHIP TO ENTER INTO A TEMPORARY VOLUNTARY ARRANGEMENT

- a. Where a Landlord is also suffering from financial hardship to the extent that it would not be reasonable for it to agree a Payment Concession or an Obligation Concession (as defined) it shall write to the Tenant and provide evidence of its Financial Hardship to the Tenant, and in such circumstances only the Landlord shall not be required to agree a Payment Concession or an Obligation Concession.
- b. Where a Tenant is also suffering from financial hardship to the extent that it would not be reasonable for it to agree an Obligation Concession it shall write to the Landlord and provide evidence of its financial hardship to the Landlord and in such circumstances only shall not be required to agree an Obligation Concession.

- c. In the event the Landlord does not consider the Tenant has adequately evidenced financial hardship the Landlord shall be required to set out its reasons in writing to the Tenant.
- d. In the event the Tenant does not consider the Landlord has adequately evidenced financial hardship the Tenant shall be required to set out its reasons in writing to the Landlord.
- e. In the event the Tenant's reasons are later not deemed adequate by a Court in any Tenancy Dispute, the Court shall be entitled (but not obliged) to make such adverse inferences or orders against the Tenant as it considers fit
- f. In the event the Landlord's reasons are later not deemed adequate by a Court in any Tenancy Dispute, the Court shall be entitled (but not obliged) to make such adverse inferences or orders against the Landlord as it considers fit.

8. COMPLIANCE WITH THIS GUIDANCE

Actions taken or not taken by the Landlord and/or the Tenant under this Guidance may be used (i) as evidence in any Tenancy Dispute or (ii) in respect of any application of the Landlord or the Tenant for any financial support packages as the Government of Jersey may make available during the COVID-19 Period and thereafter.