

STATES OF JERSEY



DRAFT RESIDENTIAL TENANCY (DEPOSIT SCHEME) (AMENDMENT) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 28th July 2015
by the Minister for Housing**

STATES GREFFE



Jersey

DRAFT RESIDENTIAL TENANCY (DEPOSIT SCHEME) (AMENDMENT) (JERSEY) REGULATIONS 201-

REPORT

1. Background

- 1.2. The Residential Tenancy (Deposit Scheme) (Jersey) Regulations 2014 were made by the States Assembly on 9th July 2014. The Regulations provide for the establishment of a scheme to hold deposit money paid by tenants who let accommodation under a residential tenancy agreement, and remove the risk of a tenant's deposit being withheld unfairly by his or her landlord.
- 1.3. The Regulations came into force on 28th February 2015. Having done so, the Minister for Housing is able now to appoint a scheme administrator to set up and manage a tenancy deposit scheme.
- 1.4. A procurement exercise has been carried out over several months to appoint an organisation to carry out the role of scheme administrator, and the Minister for Housing has appointed a preferred provider who will be appointed as the scheme administrator shortly, following completion of contract arrangements.
- 1.5. An announcement will be made in September about the appointment of the scheme administrator, and more information will be made available publicly about how a scheme will work. The Minister anticipates that a scheme will launch by the end of 2015.

2. Operation of a tenancy deposit scheme

- 2.1. The Regulations provide the scheme administrator with a legal framework to set up and administer a custodial tenancy deposit scheme as operates in England and Wales, Northern Ireland and Scotland already.
- 2.2. In a custodial scheme, when a landlord receives deposit money from a tenant, he or she must hand over the deposit to the scheme administrator who holds the deposit money in a dedicated account for the duration of the residential tenancy.
- 2.3. When the tenancy agreement ends, if a landlord and tenant agree with the amount of the deposit money to be repaid in whole to one party or in part between them, the scheme administrator will be notified and must release the amount within 5 days.
- 2.4. If either party disagrees with how much of the deposit money should be returned and to whom, the scheme administrator will hold onto the deposit until the dispute has been resolved. The deposit will only be released by the scheme administrator once the parties have reached agreement between themselves;

upon the decision of the adjudicator to a dispute resolution process; or by order of the Petty Debts Court.

3. The amendments

- 3.1. The Minister for Housing proposes to make 2 minor amendments to the procedures governing the operation of a tenancy deposit scheme. The amendments will, if enacted, make the administrative process for paying in deposit money more efficient.
- 3.2. The amendments to Regulations 28 and 29 affect the requirement for a landlord to pay in a tenant's deposit money to the scheme administrator either at the beginning of a tenancy (Regulation 28) or when an existing tenancy is renewed or varied (Regulation 29).
- 3.3. The 2014 Regulations require a landlord to pay in his or her tenant's deposit within 14 days of receiving the money. However, experience from the operation of schemes in the United Kingdom indicates that this length of time is too short, and could lead to a landlord escaping punishment for not paying in a deposit to the scheme on the grounds of an administrative oversight.
- 3.4. The amendments to Regulations 28 and 29 are therefore considered to provide a more reasonable length of time for a landlord to hand over deposit money to the scheme administrator. Landlords will have up to 30 days to protect the deposit as opposed to the current 14 days, which removes the likelihood of 'administrative delay' being used as a defence in any Court proceedings.
- 3.5. It will be an offence liable to punishment of a fine up to level 3 on the standard scale (£2,000) for a landlord not to hand over deposit money to the scheme administrator.
- 3.6. The second amendment to Regulation 30 will create a speedier and more administratively efficient service for the payment in of deposit money.
- 3.7. When a landlord hands over a deposit to the scheme administrator, the deposit must be accompanied by a notice setting out key details of the tenancy (the deposit amount; address of the property to which the deposit relates; landlord and tenant information, etc.). Regulation 30 currently specifies that the notice must include the signatures of the landlord and each tenant.
- 3.8. However, a requirement of a scheme is that it should operate an Internet-based service for landlords to pay in and manage deposit money, so getting the signature of each tenant would be more difficult and result in a paper-based system. The requirement for a landlord to get the signature of each tenant could therefore cause delays to the protection of deposit money and be used as a reason not to protect the money in a scheme.
- 3.9. Accordingly, the amendment to Regulation 30 creates a more efficient process. Rather than relying on the signature of each tenant, when the scheme administrator sends a copy of the notice prepared by the landlord to each tenant confirming their deposit has been protected, it will provide tenants with details of how to contact the scheme administrator to notify any inaccuracies in the information provided by the landlord (such as the amount of deposit money protected; the length of the tenancy; the property address; and contact information of the landlord).
- 3.10. If a landlord knowingly or wilfully provides false or inaccurate information to the scheme administrator, the landlord would be committing an offence punishable by a fine of up to level 3 on the standard scale.

4. Financial and manpower implications

- 4.1. There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

Re-issue Note

This Project is re-issued because the original version incorrectly showed the lodging Minister on the front cover as the Chief Minister, instead of the Minister for Housing.

Explanatory Note

These Regulations amend the Residential Tenancy (Deposit Scheme) (Jersey) Regulations 2014 (the “2014 Regulations”).

Regulation 1 is the interpretation provision.

Regulation 2 amends Regulations 28 and 29 of the 2014 Regulations.

Regulation 28 provides that, if a deposit is paid to a landlord whilst a tenancy deposit scheme is in force, the landlord must pay an equivalent amount to the scheme administrator within 14 days of receiving the deposit.

Regulation 29 applies to a landlord who has received a deposit before a tenancy deposit scheme is in force. Once a scheme is in force, the landlord must pay an equivalent amount to the scheme administrator within 14 days of the tenancy first being varied or renewed after the scheme comes into force.

The amendments increase the time allowed to the landlord to pay the scheme administrator from 14 days to 30 days.

Regulation 3 amends Regulation 30 of the 2014 Regulations. Regulation 30 applies in any case where a landlord pays an amount equivalent to a deposit to a scheme administrator. The payment has to be accompanied by a notice containing information and the signature of the landlord or his or her managing agent, and the signature of the tenant, although it does not matter if the latter is missing, provided that the landlord has taken reasonable steps to attempt to obtain the tenant’s signature. The scheme manager is required to send a copy of the notice to the tenant.

The amendments remove the requirement for the notice to be signed by the landlord or his or her managing agent and the tenant. The amendment adds a requirement for scheme manager, when sending a copy of the notice to the tenant, to inform the tenant about how to notify the scheme manager of any inaccuracies in the notice.

Regulation 4 provides for the citation and commencement of these Regulations.



Jersey

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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Article 24 of the Residential Tenancy (Jersey) Law 2011¹, have made the following Regulations –

1 Interpretation

In these Regulations “2014 Regulations” means the Residential Tenancy (Deposit Scheme) (Jersey) Regulations 2014².

2 Regulations 28 and 29 amended

In Regulations 28(1) and 29(1) of the 2014 Regulations, for the words “14 days” there shall be substituted the words “30 days”.

3 Regulation 30 amended

In Regulation 30 of the 2014 Regulations –

- (a) paragraph (1)(j) shall be deleted;
- (b) paragraph (2) shall be deleted;
- (c) for paragraph (3) there shall be substituted the following paragraph –

“(3) The scheme administrator must send to the tenant –

- (a) a copy of the notice; and
- (b) information about how to notify the scheme administrator in the event that the tenant believes that any information included in the notice is inaccurate.”.

4 Citation and commencement

These Regulations may be cited as the Residential Tenancy (Deposit Scheme) (Amendment) (Jersey) Regulations 201- and shall come into force 7 days after they are made.

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- ¹ *chapter 18.720*
² *R&O.103/2014*