
STATES OF JERSEY



RENTAL DEPOSIT SCHEME TO PROTECT TENANTS' DEPOSITS: RESPONSE OF THE MINISTER FOR HOUSING TO THE APPROVAL BY THE STATES OF P.130/2009

**Presented to the States on 17th November 2009
by the Minister for Housing**

STATES GREFFE

**RENTAL DEPOSIT SCHEME TO PROTECT TENANTS' DEPOSITS:
RESPONSE OF THE MINISTER FOR HOUSING TO THE APPROVAL
BY THE STATES OF P.130/2009**

(A) Nature of future Tenant Deposit Scheme

This report aims to facilitate some wider understanding of what will now take place following the States approval of P.130/2009, "Rental Deposit Scheme to Protect Tenants' Deposits".

P.130/2009 called for Regulations to be brought forward by March 2010 under the Residential Tenancy Law to establish a scheme to protect tenant deposits and to resolve disputes arising from the operation of a scheme. P.130/2009 did not elaborate on the form this protection should take and proper consultation on this matter has not taken place.

Type of scheme

Tenants' deposit schemes are essentially based on either a custodial or insurance-based model. In the debate on P.130/2009, little mention was made of the nature of any scheme, but such that there was referred to a custodial model. In addition, comments made in the Appendix to P.130/2009 indicate that a custodial-type scheme is preferred.

In a custodial scheme, the landlord hands over deposits received to a third party who holds them until such time as their return is required following the end of the tenancy. In the event of a dispute as to how much should be returned to whom, a paper-based mediation/arbitration process occurs and awards are made. The scheme is funded by the interest arising from the deposits held.

The Minister for Housing himself has previously expressed a preference for the custodial model because it is compulsory, and offers a potentially swift dispute resolution process with monies already held by the scheme provider. However, the issue of who will be responsible for the administration of the scheme and how it will be administered will need careful thought.

In an insurance scheme, a premium is paid to a scheme administrator but the landlord holds onto the deposit. Only in the event of a dispute is the landlord required to hand the deposit over to the scheme administrator. It is then held pending resolution of the dispute. The scheme is funded by the insurance premiums.

In the UK, the choice of either a custodial or insurance-based scheme is available, however, it is unlikely that sufficient funds would be generated for a scheme to be self-funding if landlords were to have the choice of entering into either an insurance or custodial-based scheme, so Jersey will likely have a single scheme and it is expected that will be a custodial one.

Funding

The challenge will be to consider options that will allow all aspects of the scheme to be self-funding, especially in the present and forecast low interest rate environment, and at the same time attractive as a viable business proposition to a suitable scheme provider.

One possibility the Minister will consider is to make the Regulation apply to deposits already held by landlords, such that they will need to be paid into the scheme when it is established. This is in order to generate sufficient funds in the short term for the scheme to be self-financing. Other options are also being considered, appreciating that this could be onerous administratively and on existing, perhaps very long-standing tenancies. Another alternative to support the self-funding principle might be to consider offering a long contract term when negotiating the initial contract with a scheme provider, so as to allow the provider to recoup adequately any monies it has invested in setting the scheme up, in particular in light of the present low interest rate climate.

Dispute resolution

The Minister for Housing wishes to draw attention to the support that was given to the current Petty Debts Court mediation process for resolving tenants' disputes during the States debate on P.130/2009.

The potential for providing alternative dispute resolution services as an integral part of any deposit protection scheme and the form that any such services should take together with any likely resulting costs are further matters which will need to be determined.

(B) Law Drafting issues

To meet the States' wish to consider Regulations by March 2010 it is important to identify near immediate Law Drafting time for a deposit scheme. Bids have been submitted, with an expectation that time will be found to support the decision of the States. It is unclear what length of drafting time may be required, but perhaps of up to 25 days.

In addition, to assist with the resolution of deposit disputes, the Minister gave an undertaking to create an Order under the Residential Tenancy Law requiring Statement of Condition Reports whenever a new residential tenancy agreement is entered into. Bids are also being submitted for this item.

(C) Timetable

The Minister for Housing feels it is important to point out that the States' decision to bring forward a set of Regulations by March 2010 poses a challenge if necessary processes are to be complied with before the deadline, alongside other work, in particular, the Migration policy. Notwithstanding this, the Minister will work to achieve the States' timetable.

In addition, the timetable agreed by the States did not appear to give time for public consultation on the issues outlined above. The Minister for Housing continues to

believe that it is important that the general public, especially landlords and tenants, are made aware of the proposals and their consequences before a States debate on the structure of a Tenant Deposit Scheme.

The Minister hopes that publication of this Report will assist in raising an early awareness of some of the issues, and will continue to keep the public informed. Furthermore, the agreed timetable appears to allow little opportunity for Scrutiny review and, in due course, the Minister may ask the Panel to comment upon this.

Following any States approval, time will also elapse before its introduction as a scheme provider will need to be identified, and business permissions, systems, processes and guidelines all obtained or developed. It may also be necessary to collect deposits already held by landlords for existing tenancies to establish a fund to manage a scheme, as referred to above, so both time and resource may need to be invested in chasing and collecting deposits from around 11,000 qualified units.

(D) Future proposals for Unqualified persons and Other Landlord/Tenant objectives

The Comment of the Minister for Housing referred to in the States debate outlined his wish to provide legal protections for unqualified people, including security of tenure, provision of written agreements and deposit protection. The Minister also outlined proposals for wider benefits that could arise from the introduction of a Landlord Registration Scheme, such as the improvement of accommodation standards and fire safety strategies by providing landlord and tenant information to the Health Protection and Fire Services and improved notification of address changes that will be required under the Migration Law.

As advised in the debate on P.130/2009, when the Migration policy is introduced it is expected that Registered (or unqualified) individuals will be able to enter into tenancy agreements for Registered (unqualified) residential units under the Residential Tenancy Law.

In discussions held so far, it would appear that it will not be possible to extend the protections of the Residential Tenancy Law to those individuals living in lodgings in private homes or in units of accommodation which do not meet the definition of a residential unit under the Residential Tenancy Law, for example, in a lodging house with shared facilities. Nor will it be possible to incorporate the wider objectives of the proposed Landlord Registration Scheme into the Residential Tenancy Law. However, it is likely that both objectives could be achieved in a Law establishing a Landlord Registration Scheme such as originally proposed by the Minister.

(E) Conclusion

The Minister for Housing will bring forward Regulations for a Tenants' Deposit Scheme, accounting for the issues raised above.

In addition, the Minister deems issues relating to the provision of protection for unqualified individuals and the benefits to be derived from the creation of a Landlord Registration Scheme, as referred to above, to be of sufficient importance that he will continue to give further consideration to them and in due course expects to bring forward proposals for consultation in this connection.

APPENDIX**Comparison of custodial scheme and insurance-based schemes**

The United Kingdom made provision for both the protection of tenancy deposits and also the resolution of deposit disputes in the Housing Act 2004. Schedule 10 of the Law states that a tenancy deposit scheme must be either a custodial or an insurance scheme. Landlords offering short-hold tenancies in the United Kingdom must sign up to one or other type of scheme.

(A) United Kingdom Custodial scheme

A custodial scheme is one where the landlord hands over the full amount of the deposit taken from the tenant to the scheme administrator within 14 days of the tenancy starting. Failure to do this results in a fine of 3 times the amount of the deposit.

There is no registration fee and the scheme provider holds the money in a designated account. The scheme is funded by interest earned on monies deposited with the provider. Tenants, landlords and agents are entitled to some interest on any proportion of the deposit that they are entitled to at the end of the tenancy.

At the end of the tenancy, if the parties agree as to how the deposit monies are to be returned, they need to complete a Joint Repayment Form detailing the sum that is agreed to be returned and also any sum in dispute. Any sum agreed is paid out within 10 days (in practice less). The parties can then enter into the Alternative Dispute Resolution process to resolve any dispute over any remaining sum.

In brief, the dispute resolution process is paper based with a Landlord's Evidence Form being submitted by the landlord and a Tenant's Response form being returned by the tenant. The landlord can then comment on the Response Form, after which the adjudicator will decide the matter and the appropriate sums will be returned to the parties.

There is one provider of custodial services in the United Kingdom.

(B) United Kingdom insurance-based scheme

There are 2 insurance-based schemes in the United Kingdom, both of which are linked to an insurance company.

In an insurance-based scheme, a landlord or letting agent is required to pay a fee to register with the scheme provider. The fee is based on the number of properties owned by the landlord or offices managed by the agent. It is a matter for members to decide if and how they should recover the subscription from tenants or landlords.

A landlord retains any deposit he receives from a tenant. When the tenancy ends, the landlord and tenant either deal with the return of the deposit between themselves or, in the case of a dispute, enter into the dispute resolution process offered by the scheme provider. This requires the landlord to pay the disputed amount to the scheme provider who then holds it until the matter is resolved. At that point the sums decided upon by the arbitrator are returned to the parties.

If the deposit sum in dispute is not paid into the scheme, the scheme provider will seek to claim the sum from its own insurers and take subsequent action against the landlord to get reimbursement. In this way the tenant is still protected.

The insurance scheme is financed by the premiums paid in by members and interest thereon.

More information on these deposit schemes can be found at:

<http://www.direct.gov.uk/en/TenancyDeposit>
www.direct.gov.uk/en/TenancyDeposit

Other countries which have deposit protection tend to adopt custodial models, with some variations in terms of who collects monies, with some examples of the State or private banks administering the schemes. These are demonstrated below.

Northern Ireland and Scotland are also proposing or considering adopting deposit protection schemes.

(C) Differences between the United Kingdom schemes

Custodial scheme:

- (i) No joining fee.
- (ii) Deposit money collected from outset and held by provider.
- (iii) Undisputed amounts paid out upon receipt of application from both parties within a matter of days. (We propose to legislate for a 5 day payment out period.)
- (iv) Disputed amounts dealt with by an arbitrator who, if agreement cannot be reached, makes a binding decision and returns the monies accordingly. Monies are available as held by the scheme provider throughout.
- (v) Scheme funded by interest from deposits held.

Insurance-based scheme:

- (i) Annual premium which can potentially be reclaimed from tenant.
- (ii) Annual fee covers all property that is let.
- (iii) Relies on parties to the agreement to resolve deposit issues swiftly and amicably. Only monies in dispute are handed over to the scheme provider but this system relies on landlords or agents handing disputed monies in.
- (iv) In case of dispute the matter is resolved by an arbitrator and monies returned accordingly, but scheme will pay out to a tenant and rely on its insurance company to reimburse it in case of default by the landlord or agent.
- (v) Scheme funded by premiums paid in and interest earned on them.

(D) Examples of other schemes worldwide

Other jurisdictions worldwide offer differing forms of tenant deposit protection. The following are 4 differing examples:

(a) Queensland, Australia

Those who rent in Queensland are covered by the Residential Tenancies Act. The law is administered by the Residential Tenancies Authority (“RTA”) which is an independent and impartial government authority. When a new tenancy is agreed, it is common for the lessee to pay a “bond” by way of deposit to the lessor. The lessor must pay the bond to the RTA and it is held in the Residential Tenancies Fund. At the end of the tenancy the money is released to the parties upon proof of their agreement or else the matter is dealt with by the dispute resolution service offered by the RTA or by the Small Claims Tribunal. Income from the monies held in the Fund is applied towards the cost of enforcing the Residential Tenancies Act and, amongst other things, educating landlords and tenants about their statutory rights and obligations.

(b) New Zealand

A similar system exists whereby a landlord must send any deposit monies received to the Chief Executive of the Ministry of Housing. He is responsible for the Residential Tenancies Trust Account. At the expiry of the tenancy the monies are repaid or, if the matter is contested, the Chief Executive refers the parties to a Tribunal for hearing. Tenancy mediators are available to assist the parties.

(c) Alberta, Canada

Landlords are required to pay deposit monies into an interest bearing trust account at a bank or similar within 2 days of receiving the money. Any interest received belongs to the tenant. If there is a dispute over the return of the deposit monies then a tenant can make an application to the court for resolution.

(d) Belgium

A system exists whereby the tenant places the deposit in an interest bearing bank account in his own name which is blocked. The money can only be released by the bank at the end of the tenancy if both parties agree that the money can be released.

Alternatively, the tenant can enter into a guarantee arrangement with the bank whereby a monthly amount is paid in which, at the end of the fixed-term tenancy agreement, will equate to the deposit amount due. The money is released upon written agreement received from both parties.