

STATES OF JERSEY



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

Lodged au Greffe on 3rd June 2014
by the Minister for Housing

STATES GREFFE



Jersey

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

REPORT

1. Introduction

The Draft Residential Tenancy (Deposit Scheme) (Jersey) Regulations 201- introduce rental deposit protection for all residential tenancies in Jersey. Their provisions will remove the risk of tenants' rental deposits being withheld unfairly by landlords and managing agents when tenancy agreements come to an end, and will provide a simple framework to assist landlords and tenants in the management of deposits.

The Minister for Housing has brought forward the draft Regulations in response to the States Assembly's approval of [P.130/2009](#) "*Rental Deposit Scheme to protect tenants' deposits*" in October 2009. The Proposition, lodged by Deputy G.P. Southern of St. Helier, requested the Minister to establish, by Regulations, a scheme for the protection of tenants' rental deposits and resolving any disputes arising under it.

The Regulations give effect to the Assembly's decision and establish, for the purposes of the Residential Tenancy (Jersey) Law 2011, the regulatory framework for a tenancy deposit scheme. They include provisions to protect money paid in relation to residential tenancy agreements, and a means of dispute resolution if parties to such agreements disagree with the amount of money to be repaid.

In bringing forward Regulations to establish a tenancy deposit scheme, the Minister's objectives are to –

- reduce the number of unfairly withheld tenancy deposits
- ensure the safekeeping of deposits throughout the period of a tenancy
- ensure deposits are returned swiftly and fairly, particularly if a dispute arises
- encourage continued improvements in property management standards.

If adopted, the Regulations will affect all new, varied or renewed residential tenancy agreements made on or after the date on which the deposit scheme comes into force. However, landlords may choose to join the scheme voluntarily before then if they wish.

Overview

The Regulations give effect to a scheme for the safekeeping of deposit money paid in connection with a residential tenancy agreement. Where a landlord requires a tenant to pay a deposit, the landlord will have an obligation to pay the amount into the scheme within 14 days of its receipt.

Deposits will be held in a dedicated account by a scheme administrator until they are repaid at the end of a tenancy. If there is a disagreement over the amount of money to

be returned, the Regulations provide for the scheme administrator to establish a dispute resolution service, which will adjudicate on the apportionment of money to be repaid to the tenant and/or landlord or managing agent.

Under the Regulations, the Minister will appoint the scheme administrator to establish and maintain the tenancy deposit scheme. The scheme administrator will be responsible for making arrangements for the scheme to take effect, and determine the rules by which it will operate. At the same time, the administrator must ensure that the scheme meets the provisions specified in the Regulations and follows the directions of the Minister.

The scheme administrator will also have a duty to provide landlords and tenants with information about the scheme their deposits are being held under, and guidance on the protection afforded to them.

If the States Assembly approves the Regulations, it is anticipated that the Minister will undertake a tender process, with the support of the States Procurement Unit, and appoint a scheme administrator soon afterwards. In doing this, the Minister will outline in the tender document the requirements of the scheme.

A tenancy deposit scheme is then likely to come into operation during 2015, subject to the Minister being satisfied that the scheme administrator has set up an appropriate scheme with robust administrative and accounting practises.

Under the Regulations, the scheme administrator will be accountable to the Minister for Housing. Both parties will enter into a Service Level Agreement (S.L.A.), which will provide the means through which the Minister maintains oversight over the deposit scheme and its performance. The Minister may also give directions concerning those matters specified as the responsibility of the Minister in the Regulations; for example, as to the investment of deposits, the use of interest accrued, and publishing of scheme rules. These are summarised in more detail in section 5.

2. Background

It is common practise in the private residential rental sector for a landlord to require a tenant to pay a deposit at the beginning of a tenancy, which is then used as security to ensure the tenant's performance of his obligations under a tenancy agreement. For example, a landlord may decide to retain a deposit, in whole or in part, to repair damage caused during the tenancy, cleaning bills, unpaid bills or rent arrears.

The majority of landlords behave professionally and hold deposits responsibly. When deposits are returned, this is done without any problem. However, a minority of landlords withhold rental deposits unfairly and cause their tenants difficulties. These landlords, whilst localised in nature, have an adverse impact on tenants' welfare and financial circumstances, and also harm the image of the wider private rental sector.

Concerns about poor rental deposit management practise have existed for more than a decade. In 2002, Senator C. Stein brought a proposal to the Assembly to establish a deposit scheme ([P.2/2002 Amd.](#)) and, more recently, the desirability of a deposit scheme was looked at as part of the consultation on the Residential Tenancy Law in 2008 ([R.107/2008](#)).

The findings of the consultation led the then Minister for Housing, Senator T.J. Le Main, to state: *'it is evident that some form of process needs to be put in place to provide peace of mind to both tenants and landlords with regard to the return of deposit monies.'* Whilst the Minister went on to explain that further options needed to be researched, the Minister was minded to bring forward draft Regulations to establish a deposit scheme as part of the incoming Residential Tenancy Law.

Following the States Assembly adopting the Draft Residential Tenancy (Jersey) Law 200- ([P.74/2009](#)) in July 2009, Deputy G.P. Southern of St. Helier lodged his own Proposition, “Rental Deposit Scheme to protect tenants’ deposits” ([P.130/2009](#)), which asked the Minister to bring forward Regulations to establish a rental deposit scheme to protect tenancy deposits, including a process to resolve disputes arising from the operation of the scheme. The Deputy’s Proposition was adopted by the States in October 2009.

The Residential Tenancy (Jersey) Law 2011 came into force on 1st May 2013 and, to give effect to the States’ decision of October 2009, the Minister has lodged, under Article 24 of the Law, the Draft Residential Tenancy (Deposit Scheme) (Jersey) Regulations 201-. As such, it was not possible to bring these Regulations forward in advance of the introduction of the enabling Law in May 2013.

The Regulations are part of a continuing programme of work aimed at modernising and improving statutory oversight of, and support for, the residential rental sector in Jersey. This includes a framework of rights and responsibilities for both landlords and tenants outlined in the Residential Tenancy Law; setting maximum charges for utilities where landlords re-sell these services to tenants; and updating the standard form of residential tenancy agreement.

In addition, the deposit scheme will be assisted by the introduction of compulsory property condition reports, which the Minister will bring forward by Order before the scheme comes into effect. A condition report ensures an accurate record is available, either in a visual or written form, of the physical state and condition of a property at the beginning and end of a tenancy agreement. This provides evidence when determining the amount of deposit to be retained by a landlord or repaid to a tenant, and can be referred back to in the event of a dispute arising.

It is already common practise for a landlord to prepare an inventory when a tenant moves into a property, and a condition report will have a similar purpose. The Minister will prescribe in the Order matters including: the purpose of a condition report; the process by which both parties must complete a report; and the minimum contents of reports, e.g. a description of the condition of each room in a residential unit and statements as to whether each party agrees or disagrees with the report. A standard template will be made available, although landlords who already follow good practise will be able to use their own documents, providing they meet the minimum prescribed contents.

3. The need for a Tenants’ Deposit Scheme

Figures from the Citizens’ Advice Bureau show the extent of complaints it has received in relation to the return of rental deposits in the past 5 years. These figures represent about 10% of the total complaints about tenancy matters received by the Bureau. The other 90% relates to issues around conditions, standards, environmental and neighbour issues, and termination of tenancy issues. These other issues will be assisted by additional measures, e.g. Residential Tenancy Law, Condition Reports, Health and Safety Dwellings Law.

Citizens Advice Bureau Rental Deposit Issues

2009	2010	2011	2012	2013
209	177	203	162	182

The 2008 Jersey Annual Social Survey (JASS) also indicated that, whilst most tenancies ended without any problem, around 20% of respondents living in rental

property had experienced problems over the return of their deposits over the previous 5 years.¹

At the same time, 46% of households in Jersey live in rental accommodation,² 32% of these households in the private rental (qualified or non-qualified) sector. This equates to 7,800 households in qualified accommodation and another 5,600 in non-qualified. In comparison, the proportion of households living in rented accommodation in Guernsey is 35.3%, including 27.5%³ in the private sector. In addition, the 2011 Census indicates that 36%⁴ of households in England and Wales lived in rented property, which was evenly split between the social and private rental sectors.

The Statistics Unit also estimates that the average rent for a mid-range property at the end of 2012 was £1,144 per month, roughly equivalent to the average rental deposit of one month's rent.

On this basis, it is estimated that the total amount of deposits held by private landlords at any time is around £15 million. Therefore, it is reasonable to conclude that there is a significant opportunity for disputes to arise over the return of tenants' deposit money, taking into account the proportion of people living in private rental housing, together with the sizeable sums of money being dealt with.

These figures for deposit disputes are likely to make up only part of the picture, and the advantages of a deposit scheme should also be considered in the context of the improvements it will make to tenancy management practise and enhancing confidence in the wider private rental sector.

It is anticipated that a tenancy deposit scheme will, for example, support and encourage genuine complainants from tenants who may have previously accepted the decision of the landlord because they felt there was little other choice than to do so. Instead of following a formal court process, landlords and tenants will have a more user-friendly and swift means to resolve their disputes, without the need to pursue action through the Court, which is often a costly and time-consuming process.

However, a scheme could equally temper poor behaviour and reduce the number of disputes over the return of deposit money. If there is a greater incentive for landlords and tenants to ensure good practise in handling deposits, as their oversight will be the function of an impartial third-party, then it may encourage parties to behave in a more professional and responsible manner at the outset of a tenancy.

Overall, the Minister recognises that the majority of landlords are reputable and manage rental deposits well. The same, too, applies to the majority of tenants, who maintain their properties to a high standard. For them, the introduction of a deposit scheme will provide an additional means of support and assurance by way of a straightforward mechanism, and will eliminate uncertainty.

At the same time, there are a minority of landlords who withhold deposit money unfairly and, similarly, a small number of tenants who do not meet their obligations under tenancy agreements. In such cases, the tenancy deposit scheme will make the rental residential sector function more effectively, providing a secure, efficient and equitable means through which rental deposits can be managed and any disputes resolved.

¹ Jersey Annual Social Survey 2008, States Statistics Unit, p.25

² Jersey in Figures 2013, States Statistics Unit, p.45

³ Guernsey Annual Housing Bulletin 2013, States of Guernsey Policy Council, p.9

⁴ Home ownership and renting in England and Wales – Detailed Characteristic, Office for National Statistics, June 2013

4. The custodial deposit scheme model

A government-backed tenancy deposit scheme has operated in England and Wales since 2007, and separate schemes also operate in Scotland and Northern Ireland. In the UK, the regulatory frameworks differ to the one proposed in Jersey inasmuch as they make provision for several national scheme providers and permit them to offer either insurance or custodial model-based schemes.

England and Wales, Scotland and Northern Ireland each currently have 3 schemes in operation, but only one scheme will be set up in Jersey to ensure sufficient funds are generated to make it viable. Simply, Jersey is too small to support more than one deposit scheme. The Minister's preference is to introduce a custodial scheme, because it is more straightforward to administer and much easier for landlords and tenants to use than an insurance model.

An insurance model requires landlords to pay a security premium against the deposits they hold, and then to pay the money in, if there is dispute. The Minister believes that an insurance model does not create a sufficient incentive for landlords to manage a deposit properly or promote better practise, because they will still hold on to the deposit in their own accounts. In contrast, a custodial scheme holds deposits independently with a third party, which gives tenants greater confidence that their money is being held securely and professionally, and will be paid out smoothly at the end of a tenancy agreement.

The Regulations therefore provide the scheme administrator with a framework to establish a custodial tenancy deposit scheme. In a custodial scheme, a landlord, upon receipt of a tenant's deposit, is required to pay the deposit to the third party scheme administrator who holds the deposit money in a dedicated account for the duration of the residential tenancy agreement.

When the tenancy agreement ends, if the landlord and tenant agree to the amount of deposit 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.

In the event of either party disputing how much deposit money should be returned to whom, the scheme administrator will hold onto the deposit until the dispute has been resolved. This will follow either the parties coming to an agreement between themselves, or upon the decision of the adjudicator to a dispute resolution process, or by order of the Petty Debts Court.

5. The Regulations

The Explanatory Note accompanying the draft Regulations provides a concise explanation of the purpose of each Regulation. However, the following paragraphs detail the main elements of the proposed tenancy deposit scheme, and particular provisions that warrant mention.

Appointment of the scheme administrator

Regulation 3(1) provides that the Minister for Housing will appoint a scheme administrator to set up a tenancy deposit scheme. The scheme administrator will be responsible for safekeeping and managing deposits in accordance with the Regulations and the directions of the Minister.

In the absence of a scheme administrator, **Regulation 3(3)** ensures that the Minister will be responsible for the deposit scheme.

An "expressions of interest" process has been undertaken with the States Procurement Unit to identify the level of interest there might be amongst providers to operate a tenancy deposit scheme in Jersey, and to assess their likely resource requirements.

An important element of the scheme is that it must be administered by a third party and at no cost to the States. Discussions with several possible tenderers have provided assurance that there are firms capable of managing a viable scheme. These include private organisations on and off-Island, including one of the established providers in the United Kingdom, and a charitable organisation.

If the States approve the draft Regulations, the process to appoint a scheme administrator will begin soon afterwards. The Minister anticipates that the administrator will be in place by the end of 2014, and an approved scheme will come into effect in 2015. This is subject to the Minister, as a condition of approval, being satisfied that the scheme administrator has set up a deposit scheme structure with robust, secure and reliable banking, administrative, financing and governance practises, as described below.

Minister to be satisfied of the ability of the scheme administrator

Regulation 4 specifies that the Minister must appoint a “fit and proper person” to fulfil the functions of the scheme administrator. The Regulation does not define what this term means, and it will be for the Minister to determine whether a person is “fit and proper”, taking into consideration such matters as whether the person has committed an offence in the past or has previously been declared bankrupt.

Termination of appointment

Regulation 5 provides that the Minister may terminate the scheme administrator’s appointment if the administrator fails to comply with the duties imposed upon him by the Regulations or is unable to fulfil his functions.

Scheme Account

Regulation 6(a) instructs the scheme administrator to hold deposits in one or more dedicated scheme accounts. The scheme administrator must also ensure that deposits and other amounts held in the scheme account are not subject to any security interest or other such burdens under **Regulation 6(b)**.

Regulation 6(c) states that the scheme account must be used solely for the purposes of holding sums of deposit money, accrued interest and any other amounts that the scheme administrator is permitted to keep in exercise of his functions.

If, by virtue of Regulation 5, the deposit scheme terminates or the Minister decides to terminate the scheme administrator’s appointment, then deposits must be held or transferred in accordance with the directions of the Minister, as specified by **Regulation 6(c)**.

Provision is also made at **Regulation 6(d)** in respect of the conditions under which amounts may be withdrawn from the scheme account. These conditions include deposit amounts to be repaid to a landlord and tenant at the end of a tenancy, and to meet the scheme administrator’s costs in managing the tenancy deposit scheme.

Investment of funds

A specific provision has been included at **Regulation 7** to ensure that the Minister is given priority to specify the way in which sums of money held in the scheme account may be invested.

Regulation 7(1) specifies that the Minister must produce an investment strategy for the deposit funds, having taken advice from professional investment advisers, as directed by **Regulation 7(2)**.

In doing so, **Regulation 7(3)** ensures the Minister takes measures to assure himself that the investment strategy does not pose a risk to the funds held in the scheme account, and that sufficient funds are readily available to make repayments to

landlords and tenants as they become due. There will be a requirement, for example, to ensure that deposits are held in an account with a bank regulated by the Jersey Financial Services Commission and, in the unlikely event of a banking institution failure, that a mechanism for the compensation of deposits has been established between the Minister and the scheme administrator.

Use of interest earned on the scheme account

Regulation 8 details how interest on the scheme account may be used. Interest accrued can be used for the purposes of administering the deposit scheme and meeting its operational costs or, alternatively, provided to tenants as interest earned on their deposits whilst held in the account.

It will be at the discretion of the Minister to decide how interest accrued on the scheme account may be used. However, since the deposit scheme must be self-funding, it is intended that any interest accrued will be utilised by the scheme administrator to fulfil his functions and ensure the scheme's viability. This follows how the UK custodial schemes are funded.

The means of funding the tenancy deposit scheme are explained under the financial implications section in more detail.

Annual report on the scheme

Regulation 9 specifies that the Scheme Administrator must provide the Minister with an Annual Report each year, which the Minister will present to the States. This should provide details about the operation of the scheme and include the deposit amounts paid in and out.

Publication of scheme and guidance

Regulation 10(1) requires the scheme administrator to prepare and publish a scheme outlining the principles and procedures under which the deposit scheme is meant to operate. In preparing the scheme, the scheme administrator will take into account the extent to which the Regulations already prescribe how the scheme must operate and any matters that the Minister has directed should be included in the scheme.

The scheme will, amongst the matters prescribed in **Regulation 10(2)**, set out the rights and obligations of both tenants and landlords; the processes that apply when tenants and landlords recover deposit money either in whole or in part between them; the protocol that should apply if a tenant disputes the repayment amount; and facilities available to enable disputes relating to deposits to be resolved.

The Minister will also use the discretion afforded to him under Regulation 10(2) to specify other relevant matters that should be included in the scheme. For example, the procedures that relate to the management of joint tenancies; information with which landlords and tenants must be provided; the payment of fees; and how complaints about the administration of the scheme must be dealt.

On the latter point, **Regulation 11** requires the scheme administrator to establish a complaints facility to allow parties to address complaints they might have about the administration of the scheme.

The effectiveness of the tenancy deposit scheme depends on there being sufficient information about the scheme available to landlords, tenants and the general public. **Regulation 10(3)** therefore requires information and publicity details from the scheme administrator, which shall be in a manner directed by the Minister. This will include information about the operation of the scheme; the rights and responsibilities of parties; and provision of standard forms and guidance.

Regulation 10(5) outlines that the Minister must give his approval to the scheme and ensures that all relevant matters are covered before it is published.

Unclaimed deposits

Regulation 12 provides that, if a deposit remains unclaimed in the scheme account for 5 years after the end of a tenancy, such sums must be paid to the Minister, though they remain claimable by the parties.

Deposits to and debits from the scheme account

Regulation 13 makes it a statutory responsibility for the scheme administrator to credit deposits into the scheme account and to debit the deposit money at the end of a tenancy agreement. It also states the conditions when the administrator may not credit or debit any deposit amount to the scheme account; for example, if it is not accompanied by appropriate documentation or any fees required by the Regulations.

Paying out deposit money

Regulations 14–23 outline the processes that the scheme administrator must follow when paying out the relevant amount of deposit money in accordance with the joint instructions of a landlord and tenant. The Regulations also establish the procedures that apply when there is a dispute over the return of all or part of the money; and the procedure for paying out deposit money upon the decision of an adjudicator or on the order of the Court. These Regulations will be supplemented by the scheme rules, as directed by Regulation 10.

Regulation 14 explains how deposit money should be returned if both a landlord and tenant agree to the amount to be returned. It should be noted that under **Regulation 14(2)**, the scheme administrator cannot release any deposit money unless they have been notified by the landlord and tenant in writing, advising that both parties have agreed to the proportion of deposit money to be recovered between them. The administrator must release the amount agreed between the parties within 5 days of receipt of notice.

Regulation 15 establishes a procedure for the scheme administrator to make payment of deposit money following a decision of an adjudicator or upon the order of the Court. The administrator, on being satisfied that such a decision has been made, must make payment of the relevant amount to the parties within 5 days.

Regulations 16 and 17 outline the process that the scheme administrator must follow if the landlord and tenant have not reached an agreement about the amount of deposit to be recovered between them, and either party wishes to claim all or part of that amount.

In cases of a dispute, under **Regulations 16(4) or 17(4)**, one of the parties (claimants) should file a notice indicating their claim. If no response is received from the other party within 14 days, the claimant can file a claim with the scheme administrator who, in turn, must serve a further notice on the other party in line with **Regulation 18**.

Again, a 14 day limit applies within which a response must be received. Under **Regulation 19**, if the other party agrees to the disputed amount, the scheme administrator must make payment out within 5 days to the parties based on the amounts in the claim filed by the claimant.

Regulation 20 applies in cases where the other party does not accept the amounts in the claim filed by the claimant. The scheme administrator must, accordingly, inform the claimant whether the other party consents to the use of the dispute resolution service; and make payment out to either or both the parties, based on the decision of

an adjudicator or the Court. This should be read in accordance with the procedures established at Regulation 23.

If the other party agrees to part of the claimed amount filed by the claimant, **Regulation 21** sets out that the scheme administrator must pay out part of the deposit amount; and the remainder of the disputed amount will be subject to either the dispute resolution process or Court proceedings. The amount of the remaining deposit will be paid out by the scheme administrator as determined by the adjudicator or Court.

In the event that the other party does not respond to the deposit notice issued by the claimant within 14 days, indicating whether or not they agree with the whole or part of the amount claimed, **Regulation 22** permits the scheme administrator to make payment of the claimed amount to the claimant and any remainder to the other party.

Finally, **Regulation 23(1)** ensures that if the other party responds to a claim indicating that they do not accept whole or part of the amount claimed, but do not indicate whether or not they agree to the use of the alternative dispute resolution service, for the purposes of the scheme, they are taken to have consented to the use of alternative dispute resolution.

Under Regulation 23(2), if the other party does not agree to use alternative dispute resolution, they will need to demonstrate evidence (e.g. a copy of the summons) to the administrator within 7 days that court proceedings have been initiated. If such evidence is not produced, they will be taken to have agreed to the use of alternative dispute resolution. Moreover, if the party initiates court proceedings but later discontinues them, they will again be deemed to have agreed to the use of alternative dispute resolution.

Information on whether a deposit is being held in the scheme

Regulation 24 provides further support for both landlords and tenants by ensuring that the scheme administrator responds to requests by the parties as to whether their deposit money is being held in the account.

It should be noted that, under Regulation 33(3), the scheme administrator already has a legal responsibility to provide tenants with confirmation that their deposit money is being held under the tenancy deposit scheme when such amounts are paid in by landlords.

Dispute resolution service

One of the main components of the deposit scheme is the provision of access to an alternative means of dispute resolution. **Regulation 25** specifies that the scheme administrator must set up and manage an alternative dispute resolution (ADR) service to which cases will be referred and resolved, where parties cannot agree on the amounts to be returned between themselves.

This will encourage a quick, fair and cost-effective means of resolving disputes over deposits without the need to go to Court.

The ADR service is to be funded by the scheme administrator as part of his overall operational costs. **Regulation 25(c)** allows the scheme administrator to charge for this service, although it is expected that it will be provided at no additional charge to the initial protection fee. This is explained in the financial implications section of this report.

The structure of the proposed ADR service is not prescribed in the Regulations because dispute resolution can take several different forms. Instead, adopting a flexible approach allows the scheme administrator to develop a model that is effective in light of the circumstances of the local residential rental sector. However, it will be

for the Minister to make the final decision as to whether the proposed ADR service is appropriate and approve its coming into effect.

Based on the UK tenancy deposit schemes, the most widely-used form of ADR is an electronic or paper-based service. This requires a landlord and a tenant to submit relevant information to an adjudicator (e.g. copies of the tenancy agreement, condition report, visual material and any other correspondence), who will examine the evidence and make a decision concerning whether a deduction from the deposit amount is reasonable and, if so, the repayment of money between the parties.

ADR will be non-compulsory (except to the extent provided by Regulation 23) and there will be no obligation placed upon landlords and tenants to use the service. Parties may still go to the Petty Debts Court, either instead of the ADR process, or to dispute the ADR process. The scheme administrator will return the deposit depending on the Court's decision.

However, there is a reasonable expectation that both parties will desire a speedy resolution – which will be the ADR process – as until then, neither party receives any payment from the deposit, and that the decision of the Court will be materially the same as the ADR decision.

The Court process can take between 4 and 5 months and a person wishing to use this service will have to pay a fee, which is £80 for claims between £500 and £1,000, and £80 for claims between £1,000 and £5,000, which reflects the likely deposit amounts. The Court would also seek to use its own mediation service before a date is set for Court proceedings.

An adjudicator under an ADR service will only determine disputes that relate to deposits, and will not be able to deal with any other matters or disputes in respect of a tenancy agreement. This will remain the exclusive jurisdiction of the Petty Debts Court under the Residential Tenancy Law.

The scheme administrator will only be able to deal with a disputed amount where both a tenant and landlord agree to the use of the ADR service. However, if either of the parties does not make a decision within 14 days of the deposit notice being received, then they will be deemed to have given consent to use the ADR service.

Joint tenancies

Regulation 26 provides the scheme administrator with direction in circumstances where there is more than one landlord or tenant. The Regulation specifies that the administrator should take reasonable steps to pay out the deposit money in appropriate shares or in accordance with the decision of the Court or adjudicator. This will be specified further in the scheme rules.

Obligations of landlords and tenants

Regulation 28 makes it an offence for a landlord to demand any other security payment to secure the obligations of a tenant or discharge any liabilities of the tenant. This will prevent landlords avoiding the tenancy deposit scheme by asking for other or additional amounts to a deposit.

Payment by a landlord into the tenancy deposit scheme

Regulation 29 makes it compulsory for a landlord who is in receipt of a deposit to pay the amount into the tenancy deposit scheme either on entering a new residential tenancy agreement, or when an agreement is renewed or varied.

These provisions will only apply where a landlord requires a tenant to pay a deposit in respect of a residential tenancy agreement, and is in receipt of that amount. The

landlord will have an obligation to pay the total amount of deposit money to the scheme administrator, who will credit it to the scheme account.

It is the responsibility of the landlord to pay deposit money into the scheme: this will encourage compliance with the conditions set out by the Regulations, and provide tenants with a means to seek sanctions against landlords who fail to comply.

There is a strict timescale for compliance set out in the Regulations, and if a landlord fails to make payment into the deposit scheme within 14 days, they will have committed an offence and will be liable to a fine of level 3 on the standard scale (£2,000).

The tenancy deposit scheme is not retrospective, although under **Regulation 30**, landlords may choose to pay the total amount of deposit money held into the deposit scheme, even if the tenancy agreement came into effect before the deposit scheme became operational.

Information required from a landlord

Regulation 31 outlines the information with which a landlord is required to provide the scheme administrator when they make payment of deposit money into the scheme account. This will include the address of the property to which the deposit relates; the name, address and contact information of the landlord or managing agent; the names of the tenants and their contact information; and the amount of deposit taken.

The scheme administrator will provide a standard form that contains this information. Under Regulation 13(3)(a), the scheme administrator will not accept a deposit if it is not accompanied by a deposit form. Landlords will have committed an offence if they fail to comply with this Regulation.

Regulation 31(3) ensures that tenants are made aware that their deposits are being held under the tenancy deposit scheme, by requiring that the scheme administrator must provide a copy of the form accompanying the deposit payment to each of them.

Fees

The rationale for charging fees is described in the financial implications below. **Regulation 33** provides a mechanism of charging fees, either as a separate charge (**Regulation 31(a)**) or as a deduction taken from the deposit (**Regulation 31(b)**). Accordingly, for this purpose, a deposit is defined in **Regulation 2** as being an amount held in the scheme, less any fee deducted.

The Minister will determine the means of fee payment, and the amount of fee to be charged, by Ministerial Order.

6. Financial and manpower implications

The tenancy deposit scheme is expected to be self-financing and to operate without the need for financial support from the States. Instead, it will be operated by an arm's-length independent body with the organisational capabilities to manage a scheme, and be funded by interest earned on the money held in the scheme account.

This position has been adopted following an assessment of the financial models of the custodial deposit schemes in the UK. These are funded by the interest accrued from invested deposit money and, although the scale of the tenancy deposit scheme will be significantly smaller in Jersey than the equivalent UK schemes, it is considered that a self-financing scheme is still a viable and sustainable option.

As explained, Regulation 8 makes provision for the scheme administrator to apply the interest accrued on the scheme account for the purposes of meeting the costs of the scheme, including set-up costs and ongoing running and maintenance costs. For

example, costs may include any outlays associated with recruitment; the purchase of IT equipment; publicity material; and making available a disputes resolution facility.

However, funding the tenancy deposit scheme from interest raised on money held in the scheme account will not be sufficient to meet all of the costs associated with the deposit scheme, at least in the first 3 years of the life of the scheme. Interest rates have been at a rate of 0.5% since 2009 and, although these are likely to rise as the UK economy improves, the projected Bank of England interest rate for early 2017 is still only 2%. Furthermore, as the majority of tenancy agreements are for one to 3 years, and deposits are required to be paid in for new tenancies, or renewals or variations, it will take 3 years to reach a point where the funds under management are near to the £15 million level.

In view of this, **Regulation 33** prescribes that the scheme administrator may charge or deduct fees from deposits paid into the scheme. The amount of fee will be prescribed by Order of the Minister, following completion of the tender process, depending on the submissions made. The Minister believes that the most straightforward option is to deduct a small sum of money from a deposit when it is paid into the scheme. Based on an initial “expressions of interest” process for potential scheme administrators, a fee of between £10 and £20 per residential unit should be sufficient to ensure the scheme is fully funded.

In any event, this fee seems modest as a means of providing assurance to the tenant as to a proper return of a much more substantial deposit amount; indeed, the fee might be seen as a small amount paid by the tenant from their deposit to prevent much larger unwarranted deductions, i.e. an insurance premium.

It will be necessary to discuss financing with prospective scheme administrators as part of the tender process. In advance, a definitive cost cannot be provided. Tenders will, in any case, need to submit a business case that demonstrates how they propose to finance the scheme within the scope of the Regulations, and their expected costs and associated turnover.

In respect of resource implications for the States, there will be some very minor costs as a result of the regulatory oversight which the Minister is afforded over the scheme by way of the Regulations and the Service Level Agreement. These will include the costs of monitoring the scheme and its performance; periodic review of financial accounts and the investment strategy; and dealing with any day-to-day correspondence.

However, on an ongoing basis, any ministerial or officer involvement will be limited and accounted for within existing resources. It should be noted that the Regulations do permit the Minister to be reimbursed of his costs, but this would be a contingency, and cannot be raised by fees, only from interest earned.

Explanatory Note

These Regulations provide for the establishment of a scheme for the holding of deposits paid by residential tenants.

Part 1 – Interpretation

Regulation 1 provides for the interpretation of expressions used in the Regulations. In particular, it should be noted that the “relevant amount” means a deposit and, if interest is due to the tenant on the deposit, the interest.

Regulation 2 provides for the interpretation of references in the Regulations to a deposit and to a residential tenancy. A reference to a deposit means a deposit net of any fee deducted and includes the amount of the deposit plus any accrued interest that, in accordance with the Regulations, is required to be paid to the tenant. A reference to a residential tenancy or residential tenancy agreement is a reference to such a tenancy or agreement to which the Residential Tenancy (Jersey) Law 2011 applies.

Part 2 – Administration of Scheme

Regulation 3 requires the Minister for Housing (the “Minister”) to appoint a scheme administrator to establish and maintain a residential tenancy deposit scheme. If the Minister does not make an appointment, the Minister is, by default, the scheme administrator. Paragraph (4) sets out the general responsibilities of the scheme administrator.

Regulation 4 provides that the Minister must not appoint a person as scheme administrator unless the Minister is satisfied that the person is fit and proper to exercise the functions of that appointment.

Regulation 5 specifies circumstances in which a scheme administrator’s appointment may be ended or shall end. The Minister has a discretion to terminate an appointment if the scheme administrator does not comply either with the requirements of the Regulations or of the scheme. The Minister also has a discretion to terminate an appointment if he or she is no longer satisfied that the scheme administrator is fit and proper to exercise the functions of that appointment. A person automatically ceases to be a scheme administrator upon the termination of his or her period of appointment, upon becoming bankrupt or, if the scheme administrator is an individual, upon his or her death.

Regulation 6 provides for the holding of money under the scheme in a scheme account. Deposits and other amounts held must not be subject to any security interest or other burden. Deposits, accrued interest and other amounts held by the scheme administrator in his or her capacity as such must be held in the scheme account, which must be a dedicated account. If the scheme is terminated, or the scheme administrator’s appointment is terminated, the monies must be held or transferred as directed by the Minister. Money may be paid out from the scheme account only in accordance with the Regulations and the scheme.

Regulation 7 requires that the balance in the scheme account is invested in accordance with directions given by the Minister. The account must not be overdrawn, and there must always be sufficient funds readily available to pay amounts as required by the Regulations and the scheme.

Regulation 8 specifies how interest accrued on the scheme account may be used. The interest may be applied to meet the scheme administrator’s costs; to pay interest to tenants on their deposits; to reimburse the Minister’s costs of administering the Regulations; or for any other purpose, as directed by the Minister. There is also

provision for the Minister to issue directions to the scheme administrator specifying the priority to be applied in using the interest for those purposes.

Regulation 9 requires the scheme administrator to report to the Minister annually upon the operation of the scheme and upon the scheme account. The Minister must present the report to the States.

Regulation 10 requires the scheme administrator to prepare and publish a scheme, if there is not one already in force. Paragraph (2) specifies the contents of the scheme. The scheme administrator must also prepare and publish information on the operation of the scheme, in accordance with paragraph (3). Any subsequent changes to the content of the scheme or the information on its operation must also be published. The scheme and information must be approved by the Minister before publication and must be published in the manner directed by the Minister.

Regulation 11 requires the scheme administrator to establish and maintain a facility for complaints to be made about the administration of the scheme and for the resolution of such complaints. The facility requires the Minister's approval.

Regulation 12 requires the scheme administrator to pay to the Minister any deposit that remains unclaimed 5 years after the end of the residential tenancy to which it related. However, if the Petty Debts Court (the "Court") or an adjudicator acting under the dispute resolution service subsequently finds that the deposit is payable to a person, the Minister must repay the money to the scheme administrator.

Part 3 – Operation of Scheme

Regulation 13 requires that a deposit paid by a landlord to the scheme administrator must be paid into the scheme account. An amount to be paid to a landlord or tenant under the scheme must be paid out of the scheme account.

Regulation 14 requires the scheme administrator to pay out the relevant amount in accordance with the joint instructions of the landlord and tenant. Such instructions may be given whether or not the tenancy has ended.

Regulation 15 applies where a tenancy has ended and the Court or an adjudicator has made a decision about the distribution of the relevant amount. The scheme administrator must pay out the relevant amount in accordance with the decision of the Court or adjudicator.

Regulations 16 and 17 provide for a case where a residential tenancy has ended, the landlord and tenant have not agreed how the relevant amount is to be distributed between them and either one of them wishes to claim all or part of the relevant amount. If the claimant is the landlord, the claim may be for unpaid rent or other amounts due to the landlord under the tenancy agreement, or for the cost of meeting the tenant's liability for damage to the premises. If the claimant is the tenant, the claim may be for any amount claimed by the tenant from the landlord in respect of the tenancy.

In order to initiate the claim, the claimant must complete a statement containing the information required by Regulation 16(4) or 17(4), as the case requires. In so doing, the claimant must establish either that he or she has no current address or other means of contacting the other party to the tenancy agreement or that the claimant has given the other party written notice of the amount claimed, but the other party has not responded to the notice.

Regulation 18 sets out the steps that the scheme administrator must take upon receipt of a statement under Regulation 16(4) or 17(4). In this Regulation and the remainder of this Part, "person B" means the claimant who gave the statement and "person A" means the other party to the tenancy agreement.

The scheme administrator must give a copy of the statement and a deposit notice to person A (and, for this purpose, Regulation 27 makes provision as to the address at which the administrator may validly serve a person with a notice). The deposit notice asks if person A accepts that person B should be paid the whole or part of the amount claimed. The notice also asks person A to indicate, if he or she disputes the amount claimed, whether he or she consents to the dispute being resolved through the dispute resolution service required by Regulation 25. The notice must warn person A of the consequences of failing to respond at all, or in full, to the notice.

If person A responds to the deposit notice to say that he or she agrees that the amount claimed should be paid to person B, *Regulation 19* requires the scheme administrator to pay the amount claimed to person B and any balance to person A.

If person A responds to the deposit notice to say that he or she does not agree that any of the amount claimed should be paid to person B, *Regulation 20* requires the scheme administrator to inform person B and make any payments as are directed by an adjudicator (if the dispute is resolved by the dispute resolution process) or by the Court. Any balance remaining must then be paid to person A.

If person A responds to the deposit notice to say that he or she accepts that part of the amount claimed should be paid to person B, *Regulation 21* requires the scheme administrator to pay that part to person B and then make any payments of the remainder as are directed by an adjudicator (if the dispute is resolved by the dispute resolution process) or by the Court. Any balance still remaining after that must be paid to person A.

If person A does not respond to the deposit notice, *Regulation 22* requires the scheme administrator to pay the claimed amount to person B and any balance remaining to person A.

Regulation 23 provides for circumstances in which person A is taken to have consented to the use of the dispute resolution service. These are where, in responding to a deposit notice, person A indicates that person B's claim is disputed but does not say whether or not person A agrees to the use of that service, and where person A refuses the use of that service and then fails to provide evidence to the scheme administrator of the initiation of Court proceedings or later discontinues them.

Regulation 24 requires the scheme administrator to notify a landlord or tenant, upon that person's request, of whether a deposit is being held in accordance with the scheme or whether payment has been made to the administrator in connection with the tenancy (and, if so, when and how much) and whether the notice required by Regulation 31(1) has been given. The scheme administrator may refuse a request for information under this Regulation if the administrator considers that the person making the request has provided insufficient information or has not adequately proved his or her identity as a landlord or tenant.

Regulation 25 requires that the scheme makes provision for a dispute resolution service, use of which must be (subject to the presumption in Regulation 23) voluntary. Use of the scheme may be provided either free of charge or be subject to payment by either or both of the parties to the dispute.

Regulation 26 provides for the apportionment of payments due to a landlord or tenant, in the event that more than one person is the landlord or more than one person is the tenant.

Regulation 27 provides for the addresses that may be used by the scheme administrator to effect service of a notice under the Regulations on a landlord or tenant.

Part 4 – Obligations of landlords and tenants

Regulation 28 makes it an offence for a landlord, in connection with a residential tenancy agreement, to demand any security other than a deposit to secure the obligations and liabilities of the tenant. The penalty for the offence is a fine not exceeding level 3 on the standard scale (£2,000).

Regulation 29 makes it an offence for a landlord who receives a deposit from a tenant under a residential tenancy agreement whilst a scheme is in force to fail to pay an amount equal to the deposit to the scheme administrator. The penalty for the offence is a fine not exceeding level 3 on the standard scale.

Regulation 30 applies where a landlord received a deposit from a tenant under a residential tenancy agreement before a scheme came into force. The landlord must, upon the first occasion that the agreement is varied or renewed whilst a scheme is in force, pay an amount equal to the deposit to the scheme administrator. A failure to do so is an offence for which the penalty is a fine not exceeding level 3 on the standard scale. Regulation 30 also allows a landlord who has received a deposit before a scheme came into force to pay it into the scheme at any time.

Regulation 31 requires a landlord, when paying a deposit to the scheme administrator, to include with it a notice setting out certain basic information about the tenancy and contact information relating to the parties. The scheme administrator must give a copy of the notice to the tenant, together with a copy of the scheme and the information published in relation to it. A landlord who does not comply with this Regulation commits an offence for which the penalty is a fine not exceeding level 3 on the standard scale.

Regulation 32 makes it an offence for a landlord or tenant, knowingly and wilfully, to include false or misleading information in a notice given to the scheme administrator under these Regulations. Again, the penalty for the offence is a fine not exceeding level 3 on the standard scale.

Regulation 33 requires the landlord and/or the tenant to pay, at the time when the deposit is paid into the scheme, any fee that is prescribed by Order of the Minister. The scheme administrator must deduct from the deposit the amount of any fees prescribed to be so deducted. A failure by the landlord or tenant to pay any required fee is an offence for which the penalty is a fine not exceeding level 3 on the standard scale.

Part 5 – Citation and commencement

Regulation 34 provides for the citation of these Regulations and their commencement 28 days after they are made by the States.



Jersey

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

Arrangement

Regulation

PART 1	21
INTERPRETATION	21
1 Interpretation	21
2 References to deposit and residential tenancy.....	22
PART 2	22
ADMINISTRATION OF SCHEME	22
3 Minister to appoint scheme administrator	22
4 Minister to be satisfied of ability of scheme administrator	22
5 Termination of appointment.....	23
6 Scheme account.....	23
7 Investment of funds in scheme account	23
8 Use of interest earned on scheme account.....	24
9 Annual report on scheme.....	24
10 Scheme administrator to publish scheme and information about scheme.....	24
11 Scheme administrator to establish complaints facility	25
12 Scheme administrator to pay unclaimed deposits to Minister.....	25
PART 3	26
OPERATION OF SCHEME	26
13 Deposits to and debits from the scheme account	26
14 Paying out deposit – where parties agree	26
15 Paying out deposit – adjudicator or Court decision	26
16 Paying out deposit – landlord claims amount	27
17 Paying out deposit – tenant claims amount	28
18 Scheme administrator’s response where dispute notified	30
19 Where it is agreed that the amount claimed should be paid.....	30
20 Where it is not agreed that the amount claimed should be paid.....	31
21 Where it is agreed that part of the amount claimed should be paid	31
22 Failure to respond to deposit notice	31
23 Deemed consent to use of dispute resolution service.....	32

24	Notice on request as to deposit held in scheme	32
25	Dispute resolution service to be provided.....	33
26	If there is more than one landlord or tenant.....	33
27	Receipt of notice given by post.....	33
PART 4		33
OBLIGATIONS OF LANDLORDS AND TENANTS		33
28	Guarantees etc. not permitted unless in form of deposit.....	33
29	Landlord to pay deposit to scheme – new residential tenancy agreement.....	34
30	Landlord to pay deposit to scheme – variation or renewal of residential tenancy agreement.....	34
31	Obligation on landlord and scheme administrator to provide information.....	34
32	False information	35
33	Fees	35
PART 5		36
CITATION AND COMMENCEMENT		36
34	Citation and commencement.....	36



Jersey

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

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 –

PART 1 **INTERPRETATION**

1 Interpretation

In these Regulations, unless the context otherwise requires –

“adjudicator” means an adjudicator acting under the dispute resolution service;

“administrator” means scheme administrator;

“deposit notice” means a notice in accordance with Regulation 18;

“direction” means a direction in writing by the Minister to the scheme administrator;

“dispute resolution service” means the service referred to in Regulation 25;

“dispute statement” means a statement referred to in Regulation 16(1)(e) or 17(1)(e);

“function” means any function that by or under these Regulations, or by the terms of the instrument of appointment of a scheme administrator, the scheme administrator is required or enabled to perform in relation to a scheme;

“relevant amount” in respect of a deposit –

- (a) means an amount equal to the amount paid to the scheme administrator by way of deposit; and
- (b) where, under Regulation 8, interest is required to be paid on that amount to the tenant, includes interest that has accrued on the amount;

“relevant party” means a person who is the landlord or tenant in relation to a residential tenancy;

“residential tenancy deposit scheme” means the scheme published under Regulation 10;

“scheme” means a residential tenancy deposit scheme;

“scheme account” means the account or accounts required to be held under Regulation 6;

“scheme administrator” means the person who for the time being performs functions in relation to a scheme.

2 References to deposit and residential tenancy

In these Regulations –

- (a) a reference to a deposit held or to be held in accordance with the scheme –
 - (i) means a deposit less any fee deducted under Regulation 33(1)(b);
 - (ii) includes a reference to the relevant amount representing the deposit held or to be held in accordance with the scheme;
- (b) a reference to a residential tenancy or to a residential tenancy agreement is a reference to one to which the Residential Tenancy (Jersey) Law 2011 applies.

PART 2

ADMINISTRATION OF SCHEME

3 Minister to appoint scheme administrator

- (1) The Minister must, as soon as is reasonably possible after these Regulations come into force, or if a scheme has come to an end, appoint a person to establish and maintain a residential tenancy deposit scheme.
- (2) The Minister must, as soon as is reasonably possible after an appointment under paragraph (1) is terminated, appoint a person to maintain a scheme that has already been established.
- (3) In the absence of a scheme administrator appointed under this Regulation, the Minister is the scheme administrator.
- (4) The scheme administrator is responsible for maintaining the scheme, and the safekeeping and management of the deposits under the scheme, in conformity with the scheme and with these Regulations.

4 Minister to be satisfied of ability of scheme administrator

The Minister must not appoint a person as scheme administrator unless the Minister is satisfied that the person is fit and proper to exercise the functions of scheme administrator.

5 Termination of appointment

- (1) The Minister may terminate the appointment of a person as scheme administrator if the person fails to comply with any requirement imposed on the administrator by a scheme or by or under these Regulations or if the Minister is no longer satisfied that the person is fit and proper to exercise the functions of a scheme administrator.
- (2) A person ceases to be a scheme administrator if –
 - (a) the person is appointed as scheme administrator for a period and the period comes to an end;
 - (b) the person becomes bankrupt;
 - (c) the appointment of the person is terminated under paragraph (1); or
 - (d) in a case where the person is an individual, the person dies.

6 Scheme account

The scheme administrator –

- (a) must not do anything to cause or permit deposits, or other amounts, held under the scheme to be subject to any security interest or other burden;
- (b) must hold, in one or more accounts dedicated to the purpose –
 - (i) deposits,
 - (ii) interest that accrues on the deposits,
 - (iii) any amount repaid to the scheme administrator by the Minister under Regulation 12 in respect of an unclaimed deposit, and
 - (iv) any other amounts that are permitted or required to be kept in exercise of the administrator's functions;
- (c) must hold, or transfer, those deposits, and other amounts, in accordance with the directions of the Minister if the scheme is terminated or if the appointment of the scheme administrator is terminated by or under these Regulations; and
- (d) may pay out from those deposits, and other amounts, only –
 - (i) amounts to be paid to landlords and tenants in accordance with the scheme and these Regulations,
 - (ii) amounts to be paid for the uses referred to in Regulation 8, and
 - (iii) amounts required to be paid to the Minister under Regulation 12.

7 Investment of funds in scheme account

- (1) The balance in the scheme account must be invested in accordance with an investment strategy as directed by the Minister.
- (2) In carrying out his or her functions under paragraph (1) the Minister must seek the advice of suitably qualified and experienced persons.
- (3) The scheme account –
 - (a) must not be overdrawn; and

- (b) must be operated in such a way that there are sufficient funds readily available to pay amounts payable for the purposes of the scheme as they become due.

8 Use of interest earned on scheme account

- (1) Interest on the scheme account may be used –
 - (a) to meet the costs of the scheme administrator in administering the scheme;
 - (b) to provide to tenants interest on their deposits accruing while those deposits are held by the administrator;
 - (c) to reimburse the Minister's costs in administering these Regulations; and
 - (d) otherwise in accordance with directions of the Minister.
- (2) However, the priority as between the uses specified in paragraph (1) must be in accordance with directions of the Minister.

9 Annual report on scheme

- (1) The scheme administrator must, within 3 months of each anniversary of the start of a scheme, provide the Minister with a report that –
 - (a) sets out details of the scheme as at that anniversary, including in particular the total value of payments into the scheme, the number of deposits held by the scheme, their total value, the interest earned on the deposits and the values of payments out of the scheme for each of the uses referred to in Regulation 8; and
 - (b) generally comments on the manner in which the scheme has worked over the year ending on that anniversary.
- (2) The scheme administrator must provide to the Minister, in accordance with the directions of the Minister, such information, in respect of the administrator, the scheme, the scheme account and the operation of the scheme and the scheme account, as the Minister may specify in the directions.
- (3) The Minister must present a copy of the report prepared in accordance with paragraph (1) to the States.
- (4) The reference in paragraph (1) to an anniversary of the start of a scheme does not include an anniversary that falls more than 12 months after a scheme has ended.

10 Scheme administrator to publish scheme and information about scheme

- (1) The scheme administrator must prepare and publish a scheme if none is currently in force.
- (2) The scheme must set out the following to the extent that they are not already set out in these Regulations –
 - (a) the respective rights and obligations of landlords and tenants in relation to the scheme;

-
- (b) the procedures that apply under the scheme by which an amount in respect of a deposit may be paid to the tenant at the end of the tenancy;
 - (c) the procedures that apply under the scheme where either the landlord or the tenant is not contactable at the end of the tenancy;
 - (d) the procedures that apply under the scheme in circumstances in which, in accordance with these Regulations, all or part of the deposit may be retained by the landlord;
 - (e) the procedures that apply under the scheme if the landlord and the tenant dispute the amount to be paid to the tenant in respect of the deposit;
 - (f) the facilities available under the scheme to enable a dispute relating to the deposit to be resolved without recourse to litigation;
 - (g) such other matters as the Minister specifies by direction.
- (3) The scheme administrator must prepare and publish information (if none is currently available to the public under this paragraph) on the following –
- (a) how the scheme works;
 - (b) the application of these Regulations in general;
 - (c) the procedure for making a complaint using the facility referred to in Regulation 11;
 - (d) the respective rights and obligations of landlords and tenants under the scheme and under these Regulations;
 - (e) such other matters as the Minister specifies by direction.
- (4) The scheme administrator must prepare and publish revisions of the scheme, and of the information, as necessary or when the Minister so requires by direction.
- (5) The scheme, the information, and any revision must be –
- (a) approved by the Minister before being published; and
 - (b) published in such manner and at such times as the Minister requires by direction.

11 Scheme administrator to establish complaints facility

The scheme administrator must establish and administer a facility approved by the Minister that enables persons to make complaints about the administration of the scheme and to seek resolution of those complaints.

12 Scheme administrator to pay unclaimed deposits to Minister

- (1) The scheme administrator must pay to the Minister the amount of any unclaimed deposit.
- (2) That amount must be paid from the scheme account as soon as the scheme administrator becomes aware of the existence of the unclaimed deposit.

- (3) However, the Minister must repay to the scheme administrator any amount paid under paragraph (1) to the extent that an adjudicator, or the Court, decides that the amount is in fact payable to any person.
- (4) In this Regulation, “unclaimed deposit” means such part of a relevant amount held by the scheme administrator under the scheme as has not been claimed 5 years after the residential tenancy in relation to which the amount was paid has ended.

PART 3

OPERATION OF SCHEME

13 Deposits to and debits from the scheme account

- (1) A deposit paid to the scheme administrator by a landlord must be credited to the scheme account.
- (2) An amount paid under the scheme to a landlord or to a tenant must be debited to the scheme account.
- (3) However, the scheme administrator is not required to credit or debit any amount to the scheme account under this Regulation if –
 - (a) the notice required by Regulation 31 did not accompany the payment; or
 - (b) the fees (if any) required by Regulation 33(1)(a) have not been paid.

14 Paying out deposit – where parties agree

- (1) Within 5 days of the conditions specified in paragraph (2) both being satisfied, the scheme administrator must pay the relevant amount in accordance with the agreement mentioned in paragraph (2)(b).
- (2) The conditions are –
 - (a) a deposit in relation to a residential tenancy is held by the scheme administrator; and
 - (b) the relevant parties have both notified the scheme administrator in writing –
 - (i) that the tenancy has ended and that they have agreed that the relevant amount should be paid wholly to one of them or partly to one and partly to the other, or
 - (ii) that though the tenancy has not ended, they have agreed that the relevant amount should be paid wholly to one of them or partly to one and partly to the other.

15 Paying out deposit – adjudicator or Court decision

- (1) Within 5 days of the conditions specified in paragraph (2) all being satisfied, the scheme administrator must pay the relevant amount in accordance with the decision referred to in paragraph (2)(c).

-
- (2) The conditions are –
 - (a) a deposit in relation to a residential tenancy is held by the scheme administrator;
 - (b) the scheme administrator is satisfied that the residential tenancy has ended;
 - (c) a decision referred to in paragraph (3) has been made;
 - (d) the decision, if a decision of the Court, has become final; and
 - (e) a copy of the decision, certified by or on behalf of the adjudicator or the Court (as the case requires), has been provided to the scheme administrator.
 - (3) The decision is a binding decision by an adjudicator, or a decision of the Court, to the effect that the relevant amount is payable either wholly to the landlord or tenant or partly to one and partly to the other.
 - (4) For the purposes of this Regulation, a decision of the Court becomes final –
 - (a) if not appealed against, at the end of the period for bringing an appeal; or
 - (b) if appealed against, at the time when the appeal (or any further appeal) is disposed of.
 - (5) For the purposes of paragraph (4), an appeal is disposed of –
 - (a) if it is determined and the period for bringing any further appeal has ended; or
 - (b) if it is abandoned or otherwise ceases to have effect.

16 Paying out deposit – landlord claims amount

- (1) When all of the following conditions are satisfied, the scheme administrator must act in accordance with Regulation 18 –
 - (a) a deposit in relation to a residential tenancy is held by the scheme administrator in accordance with the scheme;
 - (b) the residential tenancy has ended;
 - (c) at least 14 days have elapsed since it ended;
 - (d) the relevant parties have not agreed on how much of the relevant amount each should receive;
 - (e) the landlord has given the scheme administrator a statement that complies with paragraph (4) (a “dispute statement”);
 - (f) either paragraph (2) or (3) applies.
- (2) This paragraph applies if the landlord has no current address for, or other means of contacting, the tenant.
- (3) This paragraph applies if –
 - (a) the landlord has, since the residential tenancy ended, given the tenant a written notice asking whether the tenant accepts that the landlord should be paid the claimed amount; and

-
- (b) the tenant has failed to respond to the notice, within 14 days after being given it, by indicating to the landlord whether or not the tenant accepts that the landlord should be paid the claimed amount.
- (4) A statement complies with this paragraph if it specifies –
- (a) the date on which the tenancy ended;
 - (b) that the landlord and the tenant have not reached agreement in respect of the claimed amount;
 - (c) a summary of any communications between them about how much of the relevant amount each should receive;
 - (d) the claimed amount and the basis upon which it has been calculated, with particulars of any facts relied upon to justify claiming the amount;
 - (e) if the landlord relies on the application of paragraph (2), that the landlord has no current address for, or other means of contacting, the tenant, with particulars of any address (other than the premises that were the subject of the residential tenancy) and other contact details (including telephone numbers and e-mail addresses) that the landlord has had for the tenant;
 - (f) if the landlord relies on the application of paragraph (3), that the requirements of that paragraph have been met, with particulars of the facts relied upon to demonstrate that they have been met and attaching a copy of the notice given to the tenant;
 - (g) any information that the landlord has as to the whereabouts of the tenant;
 - (h) whether the landlord consents, if the tenant disputes that the landlord should be paid the claimed amount, to the resolution of the dispute through the use of the dispute resolution service; and
 - (i) that the landlord considers that he or she is entitled to be paid the claimed amount.
- (5) In this Regulation, “the claimed amount”, in respect of a residential tenancy, means the amount claimed by the landlord and equal to the sum of –
- (a) any unpaid rent or any other amount due to the landlord under the terms of the relevant residential tenancy agreement; and
 - (b) the cost of meeting the tenant’s liability under the relevant residential tenancy agreement for any damage to the premises that were the subject of the residential tenancy or for loss of or damage to any property of the landlord on those premises.
- (6) For the purposes of this Regulation, the claimed amount cannot exceed the relevant amount.

17 Paying out deposit – tenant claims amount

- (1) When all of the following conditions are satisfied, the scheme administrator must act in accordance with Regulation 18 –
- (a) a deposit in relation to a residential tenancy is held by the scheme administrator in accordance with the scheme;

-
- (b) the residential tenancy has ended;
 - (c) at least 14 days have elapsed since it ended;
 - (d) the relevant parties have not agreed on how much of the relevant amount each should receive;
 - (e) the tenant has given the scheme administrator a statement that complies with paragraph (4) (a “dispute statement”);
 - (f) either paragraph (2) or (3) applies.
- (2) This paragraph applies if the tenant has no current address for, or other means of contacting, the landlord.
- (3) This paragraph applies if –
- (a) the tenant has, since the residential tenancy ended, given the landlord a written notice asking whether the landlord accepts that the tenant should be paid the claimed amount; and
 - (b) the landlord has failed to respond to that notice, within 14 days after being given it, by indicating to the tenant whether or not the landlord accepts that the tenant should be paid the claimed amount.
- (4) A statement complies with this paragraph if it specifies –
- (a) the date on which the tenancy ended;
 - (b) that the landlord and the tenant have not reached agreement in respect of the claimed amount;
 - (c) a summary of any communications between them about how much of the relevant amount each should receive;
 - (d) the claimed amount and the basis upon which it has been calculated, with particulars of any facts relied upon to justify claiming the amount;
 - (e) if the tenant relies on the application of paragraph (2), that he or she has no current address for, or other means of contacting, the landlord, with particulars of any address and other contact details (including telephone numbers and e-mail addresses) that the tenant has had for the landlord;
 - (f) if the tenant relies on the application of paragraph (3), that the requirements of that paragraph have been met, with particulars of the facts relied on to demonstrate that they have been met and attaching a copy of the notice given to the landlord;
 - (g) any information that the tenant has as to the whereabouts of the landlord;
 - (h) whether the tenant consents, if the landlord disputes that the tenant should be paid the claimed amount, to the resolution of the dispute through the use of the dispute resolution service; and
 - (i) that the tenant considers that he or she is entitled to be paid the claimed amount.
- (5) In this Regulation, “the claimed amount”, in respect of a residential tenancy, means the amount claimed, by the tenant from the landlord, in respect of the tenancy.

-
- (6) For the purposes of this Regulation, the claimed amount cannot exceed the relevant amount.

18 Scheme administrator's response where dispute notified

- (1) If the scheme administrator receives a dispute statement from a landlord or tenant, the administrator must take the action set out in this Regulation and, as the case requires, in Regulation 19, 20, 21 or 22 and, where applicable, in Regulation 23.
- (2) The administrator must give a copy of the dispute statement and a deposit notice to the tenant or landlord (being the party other than the party who gave the dispute statement to the administrator).
- (3) The deposit notice must ask the person to whom it is given (referred to as "person A" in this Part) –
- (a) whether he or she accepts that the person who gave the dispute statement (referred to as "person B" in this Part) to the scheme administrator should be paid the whole or a part of the amount claimed by person B;
 - (b) if person A accepts that part of the amount claimed should be paid, the part that he or she accepts should be paid; and
 - (c) if person A does not accept that the whole of the amount claimed should be paid, whether he or she consents for the dispute to be resolved through the use of the dispute resolution service.
- (4) A deposit notice must warn person A that, if he or she does not, within 14 days after being given the notice, inform the scheme administrator that person A does not accept that the whole of the amount claimed should be paid to person B –
- (a) the amount claimed will be paid to person B; and
 - (b) the remaining part (if any) of the relevant amount will be paid to person A.
- (5) A deposit notice must also warn person A that if, within 14 days after being given the notice, person A –
- (a) informs the scheme administrator that person A does not accept that the whole of the amount claimed should be paid to person B; but
 - (b) fails to respond to the question referred to in paragraph (3)(c),
- person A will be treated as having given his or her consent for the dispute to be resolved through the use of the dispute resolution service.

19 Where it is agreed that the amount claimed should be paid

- (1) This Regulation applies if, within 14 days of being given a deposit notice, person A informs the scheme administrator that person A accepts that the amount claimed should be paid to person B.
- (2) The administrator must –

-
- (a) pay the amount claimed to person B within 5 days after being so informed; and
 - (b) within those 5 days pay any remaining part of the relevant amount to person A.

20 Where it is not agreed that the amount claimed should be paid

- (1) This Regulation applies if, within 14 days of being given a deposit notice, person A informs the scheme administrator that person A does not accept that any part of the amount claimed should be paid to person B.
- (2) The administrator must –
 - (a) inform person B whether or not person A has given his or her consent for the dispute to be resolved through the use of the dispute resolution service; and
 - (b) pay such amounts to either or both of those persons as an adjudicator or the Court decides.
- (3) If, after the administrator has paid those amounts, part of the relevant amount remains unpaid, the administrator must pay that part to person A.

21 Where it is agreed that part of the amount claimed should be paid

- (1) This Regulation applies if within 14 days of being given a deposit notice, person A informs the scheme administrator that person A accepts that part of the amount claimed should be paid to person B.
- (2) The administrator must –
 - (a) pay that part of the amount to person B within 5 days after being so informed; and
 - (b) act in accordance with paragraph (3) in respect of the remainder of the amount claimed.
- (3) The administrator must –
 - (a) inform person B whether or not person A has given his or her consent for the dispute to be resolved through the use of the dispute resolution service; and
 - (b) pay such amounts to either or both of those persons as an adjudicator or the Court decides.
- (4) If, after the administrator has paid out those amounts, part of the relevant amount remains unpaid, the administrator must pay that part to person A.

22 Failure to respond to deposit notice

- (1) This Regulation applies if, more than 14 days after being given a deposit notice, person A has not informed the scheme administrator whether person A accepts that the amount claimed or part of it should be paid to person B.
- (2) The scheme administrator must –

-
- (a) pay the amount claimed to person B within 5 days; and
 - (b) within those 5 days pay any remaining part of the relevant amount to person A.

23 Deemed consent to use of dispute resolution service

- (1) This Regulation applies if, within 14 days of being given a deposit notice, person A –
 - (a) informs the scheme administrator that person A does not accept that the whole or a part of the amount claimed should be paid to person B; but
 - (b) fails to respond to the question whether or not person A consents to the resolution of the dispute through the use of the dispute resolution service.
- (2) This Regulation also applies if person A responds to the question mentioned in paragraph (1)(b) to refuse such consent and –
 - (a) within 7 days of such response fails to provide evidence to the scheme administrator that the person has initiated Court proceedings in respect of the matter mentioned in the deposit notice; or
 - (b) having initiated such proceedings discontinues them before their conclusion.
- (3) For the purposes of the scheme and these Regulations, person A is to be taken to have given his or her consent to the use of that service.
- (4) Accordingly, the scheme administrator must inform person B that the consent is to be taken to have been given.

24 Notice on request as to deposit held in scheme

- (1) The scheme administrator must, on request by a relevant party, provide to the party written notice stating whether or not a deposit paid in connection with the tenancy is being held in accordance with the scheme.
- (2) The scheme administrator must, on request by a relevant party, provide notice to the party of the following matters –
 - (a) whether payment has been made to the scheme administrator in connection with the tenancy;
 - (b) the date on which the payment was made;
 - (c) the amount so paid;
 - (d) whether the scheme administrator has been given the notice required by Regulation 31(1).
- (3) The scheme administrator may refuse a request referred to in this Regulation if the scheme administrator considers that the terms of the request do not provide sufficient detail to the scheme administrator or that the person making the request has not, to the satisfaction of the scheme administrator, established his or her identity as a relevant party.

25 Dispute resolution service to be provided

The scheme must make provision for a service to resolve disputes that relate to deposits, being a service that –

- (a) is without recourse to litigation;
- (b) except to the extent provided in Regulation 23, is not compulsory; and
- (c) may be free or subject to payment by one or more of the parties to a dispute.

26 If there is more than one landlord or tenant

The scheme must provide that if a residential tenancy agreement specifies more than one person as landlord or as tenant, the administrator must take reasonable steps to make the payments under the scheme in appropriate shares, according to –

- (a) the information before the administrator; or
- (b) a decision of an adjudicator or the Court.

27 Receipt of notice given by post

(1) Where, for the purposes of these Regulations or the scheme, the scheme administrator is required to give a notice to a relevant party, the party is to be treated as having been given the notice in the normal course of post if the notice has been sent by post to –

- (a) the address (if any) last provided to the scheme administrator by the party as the address to which correspondence may be sent to the party; or
- (b) if no such address has been provided –
 - (i) except if clause (ii) applies, the address provided to the scheme administrator by the tenant as the landlord's last known address or by the landlord as the tenant's last known address, as the case requires, or
 - (ii) if the scheme administrator has a more recent address for the person, that address.

(2) Nothing in this Regulation prevents a notice from being given otherwise than by post.

PART 4

OBLIGATIONS OF LANDLORDS AND TENANTS

28 Guarantees etc. not permitted unless in form of deposit

(1) A landlord must not demand or accept the giving of anything (whether as security, guarantee or otherwise) other than a deposit for the purposes of securing, guaranteeing or ensuring –

- (a) the performance of any obligations of the tenant; or
 - (b) the discharge of any liability of the tenant,
arising under or in connection with a residential tenancy agreement.
- (2) A landlord who does anything in breach of paragraph (1) is guilty of an offence and is liable to a fine of level 3 on the standard scale.

29 Landlord to pay deposit to scheme – new residential tenancy agreement

- (1) A landlord who receives a deposit in relation to a residential tenancy, where the relevant residential tenancy agreement was entered into while a scheme is in force, must pay to the scheme administrator an amount equal to the value of the deposit within 14 days after receiving the deposit.
- (2) A landlord who fails to comply with the requirement in paragraph (1) is guilty of an offence and is liable to a fine of level 3 on the standard scale.

30 Landlord to pay deposit to scheme – variation or renewal of residential tenancy agreement

- (1) A landlord who –
- (a) received a deposit in relation to a residential tenancy where the relevant residential tenancy agreement was entered into at any time when there was no scheme in force; and
 - (b) has not paid an amount equal to the deposit to the scheme administrator, as described in paragraph (3),
- must pay to the scheme administrator an amount equal to the deposit within 14 days after the time when the relevant residential tenancy agreement is first varied or renewed at a time when a scheme is in force.
- (2) A landlord who fails to comply with the requirement in paragraph (1) is guilty of an offence and is liable to a fine of level 3 on the standard scale.
- (3) A landlord who received a deposit in relation to a residential tenancy where the relevant residential tenancy agreement was entered into at any time when there was no scheme in force may, while a scheme is in force, pay to the scheme administrator an amount equal to the deposit even if not required to do so under paragraph (1).

31 Obligation on landlord and scheme administrator to provide information

- (1) When a landlord pays to the scheme administrator an amount under Regulation 29(1) or 30(1) or (3), the payment must be accompanied by a notice that includes the following information –
- (a) the address of the residential unit;
 - (b) the commencement date of the residential tenancy;
 - (c) the date on which the residential tenancy ends;
 - (d) the type of property that is the subject of the tenancy;
 - (e) the amount of the deposit payable in respect of the residential tenancy;

-
- (f) the date on which the deposit was paid;
 - (g) the name, address and contact information of the landlord;
 - (h) the name and contact information of each tenant;
 - (i) the name and business address of any managing agent;
 - (j) the signature of the landlord (or any managing agent) and each tenant;
 - (k) any other information required by the scheme administrator.
- (2) However, the notice is not incomplete just because it does not have the signature of each tenant if the landlord has taken reasonable steps to obtain any missing signatures.
 - (3) The scheme administrator must send a copy of the notice to each tenant.
 - (4) A landlord who fails to comply with paragraph (1) is guilty of an offence and is liable to a fine of level 3 on the standard scale.

32 False information

A landlord or tenant who –

- (a) gives to the scheme administrator a notice permitted or required by these Regulations; and
- (b) knowingly and wilfully includes in the notice any false or misleading information,

is guilty of an offence and is liable to a fine of level 3 on the standard scale.

33 Fees

- (1) When the landlord pays a deposit to the scheme administrator –
 - (a) the landlord and the tenant must pay any fee prescribed under paragraph (4) to be paid by the landlord or tenant or both of them as the case may be, to the scheme administrator; and
 - (b) the scheme administrator must deduct the amount of any fee prescribed under paragraph (4) to be taken from the deposit, from that deposit.
- (2) A person who fails to pay any required fee under paragraph (1)(a) is guilty of an offence and is liable to a fine of level 3 on the standard scale.
- (3) Fees paid or deducted under this Regulation must be applied by the scheme administrator to pay the scheme administrator's debts or expenses in relation to the scheme or to discharge any other liability or obligation of the scheme administrator in relation to the scheme.
- (4) The Minister may by Order prescribe fees for the purposes of this Regulation.

PART 5

CITATION AND COMMENCEMENT

34 Citation and commencement

These Regulations may be cited as the Residential Tenancy (Deposit Scheme) (Jersey) Regulations 201- and come into force 28 days after they are made.

¹ *chapter 18.720*