

# STATES OF JERSEY



## RENTAL DEPOSIT SCHEME TO PROTECT TENANTS' DEPOSITS (P.130-2009): COMMENTS

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Presented to the States on 2nd October 2009  
by the Minister for Housing

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STATES GREFFE

## COMMENTS

### 1. Introduction

As Housing Minister, I am very pleased that the Residential Tenancy (Jersey) Law 200- (“the RTL”) was brought before the States on 14th July by Deputy Sean Power, my Assistant Minister for Housing who acted as Rapporteur.

I stand accused now of delaying, when the reality is that the RTL has been adopted, and had always been drafted such that protection for tenants’ deposits could, if decided upon, be introduced by way of Regulation. As I said during the debate, a Report will be made in the Autumn on progress with regards the establishing of deposit protection. This Report will be published by the end of October at the latest, but its key points are highlighted in this Comment. They include –

- (a) an outline of further research undertaken, including the Jersey Annual Social Survey results, and policy developments both in Jersey and in the United Kingdom, that have occurred since October 2008;
- (b) an outline of possible alternatives for deposit protection, including deposits schemes which are custodial or insurance-based, and a wider landlord registration scheme to include deposit protection measures;
- (c) consideration of the costs of such schemes and supporting income streams, whether from interest or fees;
- (d) consideration and comparison of dispute resolution processes for resolving deposit and other landlord tenant disputes, for example, 75% of contested cases in the Petty Debts Court are settled by mediation;
- (e) proposal to introduce Condition Reports at the time the RTL is introduced to assist in the resolution of deposit disputes.

As to my earlier pronouncements on these issues, I have consistently said that there is a need to provide peace of mind to both tenants and landlords with regards the return of deposits, but that any proposals need proper consultation, evidence, and advice.

Since the RTL debate, I have considered the issues in consultation with my Assistant Minister and other ministerial colleagues, and have consulted with a number of interested parties, including the Citizen’s Advice Bureau, the Court Service, and the local debt collection agencies and potential providers. Furthermore, shortly after the debate, I arranged a meeting with the Health, Social Security and Housing Panel, of which Deputy Southern is a member, to discuss our developing proposals as I remain keen to engage with the Panel.

**A healthy rental market is necessary, and for the most part it is healthy. However, the proposals outlined in this Comment will demonstrate that I remain committed to developing greater protections, including deposit protection, for all those who rent or lodge in the Island. I urge members to reject this Projet and let my work proceed.**

## 2. Protection for Unqualified / Registered Persons

My Assistant Minister and I have made clear the link between deposit protection and the Migration policy because of our desire to offer protection to the lodging sector as well.

Discussions have been held between the Population Office and the Law Draftsman and the Law Officers as to the best way of extending the protection of the RTL, and any potential TDS introduced under the RTL, to those in the unqualified sector following the proposed repeal of the Housing Law and introduction of the Migration Law. In combination, this is already a considerable body of work for Law Officers and the Law Draftsman, and is significantly advanced –

- The RTL has been approved by the States;
- Draft versions of the Registration provisions of the Migration Law and the Jersey Names and Address Register Law have been completed and published; and
- Consultation of Part 2 of the Migration Law to replace the Housing Law and Regulation of Undertakings and Developments Law has closed. Discussions with the Law Draftsman on development of Part 2 of the Law have already begun, and it is expected that drafting will commence imminently.

We therefore have some strong confidence that the Laws to introduce a new migration system will be published early in the new year, be available for debate in mid 2010, and subject to approval, the new system will be operational by May, 2011.

At this point, *both* newcomers and more established residents will also be entitled to certain protections, including deposit protection. This is a critical element in improving the fairness in our society, and it is where attention should be focused.

## 3. The statistics relating to tenants and lodgers

The 2008 Jersey in Figures statistics released by the Statistics Unit show that there are 14,000 units of rental and lodging accommodation in the Island –

- 22% of Islanders live in qualified private rental accommodation (9,000 units);
- 13% in non-qualified accommodation (3,500 units);
- 4% in Housing Trust properties (1,500 units);
- 12% in housing provided by the States (4,600 units).

The Jersey Annual Social Survey results have now been received and they do not demonstrate a high incidence of disputes over the return of deposits. **5% of people who had rented accommodation reported a deposit dispute in the last 5 years.** Of these, 80% were in qualified rentals and 20% in unqualified lodgings – the qualified market being substantially larger than the lodgings market.

The Citizen's Advice Bureau ("CAB") statistics continue to show an average of 4 issues raised a week with regards deposits to mid-August this year. Total claims to that point were 134, of these 80 were in the qualified sector and 54 in the unqualified

sectors. As to the Consumer Council, they estimate they receive up to 100 deposit complaints a year.

Anecdotal evidence lends some credence to the suggestion that a small number of landlords and tenants cause a disproportionate number of disputes. You therefore have to question as to whether a deposit scheme which applies to every landlord in Jersey is a proportionate response to this issue.

In addition, CAB recorded a further 421 landlord / tenant complaints in the same period *in addition to deposit disputes*, of which 82 related to unqualified lodgings and 38 to Housing Trusts. It is clear therefore that disputes over the return of deposits are not the most common type of dispute, and many more disputes relating to general landlord and tenant relations arise, some of which the new RTL will help address.

Overall, it would appear that the majority of people sort matters out for themselves or take no further action. However, I recognise that because a dispute is resolved, does not mean that the resolution is amicable, and further protections are highly desirable.

#### **4. A Landlord Registration Scheme**

The U.K. government finished consulting at the beginning of August on proposals for a Landlord Registration Scheme. Consultation findings results are expected later in the autumn.

The U.K. proposals emphasise the need to recognise the role of a landlord as that of someone managing a business or commercial venture. The proposed register in the U.K. is intended to promote good behaviour and is likely to provide sanctions against bad behaviour. Those who do not maintain standards could risk losing their registration.

A similar Landlord Registration Scheme could be suited to Jersey, and as well as supporting landlords and tenants relations in general, including deposits issues, could support and complement other policy initiatives –

- (a) the creation and maintenance of a Landlord Register, in the main using existing resources, would compliment the Population Office when processing change of address notifications planned to be obligatory under the Migration Law, which will maintain the Jersey Names and Address Register (“**JNAR**”);
- (b) a Register would assist the Health Protection Service, by providing a full list of relevant accommodation and owners and occupiers as a ‘spine’ for the management of public health and standards of rental accommodation;
- (c) the administration of the Lodging House (Registration) Law<sup>1</sup> could form part of, or be subsumed within, a wider Landlord Registration scheme to improve and maintain living standards across both the rental and lodging sectors;
- (d) a Landlord Registration Scheme could also be expected to benefit the Fire Service when planning fire inspections and responding to incidents;

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<sup>1</sup> This Law is currently administered by the Population Office

- (e) a Registration Scheme could assist in providing practical information, guidance and support on the RTL and other relevant policies, for example in relation to tenancy agreements. Indeed, it could be used to promote general good practise and to help landlords.

*In the context of such a scheme, the word “Landlord” includes anyone having control over a property, i.e. to include agents as well as owners, and would cover private rental, Registered Lodging Houses, and lodging in someone’s home.*

A registration number would be given to every Landlord for each unit of property. It would be a legal requirement for these registration numbers to be cited on accommodation agreements. This could help with enforcement and advice under both a Registration Scheme and the RTL.

Some set up and running costs, in particular in relation to policing and dispute resolution, will be incurred, and would need to be funded by a fee and not by the tax payer. The U.K. scheme envisages an annual registration fee of £50. Registration costs in Jersey need to be considered further, but they would need to be realistic, perhaps between £10–£20 per unit, depending on the extent to which the fee supported the policing of minimum health and safety standards. Any fee would also need to be cheap to collect. As a point of comparison, Lodging House proprietors currently pay a registration fee per year per “bed” of £11.47 – total income, £75,000 per annum. These are clearly matters that need more investigation, and support.

***A Landlord Registration Scheme could be introduced by May, 2011, subject to Law Drafting time.***

## **5. A Tenants’ Deposit Scheme (TDS)**

The viability of establishing a scheme restricted to the protection of tenant deposits, in particular, a self-funding custodial type TDS, has also been considered.

A TDS has two parts, namely the registration element whereby a landlord registers and hands over deposits received to a third party who holds them until such time as their return is required, and the dispute resolution service to resolve any disputes that occur. This is the model upon which the U.K. custodial scheme presently operates in the United Kingdom.

In consultation on the RTL, the message was clear that no taxpayers money should be spent on a TDS. It is expected that notwithstanding low interest rates, options potentially exist to make a TDS self-funding, in particular –

- (a) if a long term contract was entered into, extending into future periods of anticipated higher interest rates; and
- (b) if a scheme was retrospective, i.e. if it obtained, over a short period of time, not only all new deposits but also *deposits already collected* by landlords – and in this way, a large sum could be accumulated quickly.

It is estimated that a TDS could eventually collect in the region of £11 million – £13 million from deposit monies. (This is the sum currently estimated to reflect the amount of deposits currently held by landlords). Interest on such monies would

normally accrue to landlords and instead could fund the administration of a scheme, including mediation and arbitration.

After discussion with the Court Service, a conservative estimate is that £30,000 would be needed to pay for mediation services to support a TDS. The provision of arbitration services would be a further additional cost, perhaps £10,000. These costs would need to be funded from interest. Assuming a Landlord Registration Scheme also had a mediation and dispute resolution element, the costs could be expected to be similar, depending on how designed.

In the United Kingdom, as well as a custodial TDS, landlords also have the option of joining an insurance scheme, whereby a premium is paid. Under this arrangement, the landlord holds onto the deposit, and only in the event of dispute is the deposit handed over to scheme administrators and it becomes subject to mediation and arbitration processes. In addition, in the event of a default, the insurance arrangements ensure repayment of the deposit.<sup>2</sup>

***It is anticipated that a Tenant Deposit Scheme could be introduced by December, 2010, subject to Law Drafting time and appointment of a suitable provider.***

***Given some immediate Officer time would be needed to prepare complex drafting instructions to meet this timetable, this would likely cause a delay in the new Migration Law following the re-prioritisation of resources.***

## **6. Dispute resolution**

The need for tenants to be able to get their deposits back swiftly in order to pay for a new deposit or simply to leave the Island has always been considered a key requirement of any Jersey scheme.

- Most landlords and tenants agree over the return of a deposit and the amount due, and a cheque is paid promptly to the tenant.

If agreement cannot be reached, currently the main avenue for resolution of claims is the Petty Debts Court. The Petty Debts Court handles small claims actions including those relating to tenants deposits. Few small claims are contested, for example, in the period January – September 2008, of the 99 claims contested, 13 related to deposit disputes, the majority of which are directed through the Petty Debts Court mediation process, which is private and settles 75% of contested claims. This appears a successful outcome *for those that reach this stage*.

- The Petty Debts Court mediation process takes, on average, 3–4 weeks from the filing of the complaint to conclusion of the mediation.
- If the matter is heard before the Petty Debts Court itself, it is likely to take considerably longer as it will take at least 6 weeks to complete the pleadings process after which a date for trial will be set.

Apart from the mediation process managed through the Petty Debts Court, the Jersey Legal Information Board have offered a trial community mediation service since April 2009, but no mediations involving tenants' deposits have been requested.

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<sup>2</sup> The Citizen's Advice Bureau, among others, support a custodial type TDS.

- In contrast, the U.K. custodial deposit protection scheme requires deposit monies to be returned within 10 days if there is no dispute about the amounts. In practice, returns are made within a maximum of 5 days.

If there is a dispute, the U.K. custodial deposit scheme provides a resolution process using both mediation and arbitration. Any undisputed amounts are returned as normal and disputed amounts withheld pending mediation or arbitration. The process is paper based with the parties submitting written evidence. If agreement cannot be reached then the provider makes a decision on the amounts to be returned to either party.

- Deposit disputes are resolved in a maximum of 2 months using this process, including 2 weeks for each party to present evidence and 4 weeks for a decision.

**It would appear that three questions need to be asked:**

*Firstly, whether, on balance, the introduction of a TDS will make any real difference in cases where landlords and tenants are reasonable with each other, which appears to be in the majority of cases?*

In cases where there is no dispute or the parties agree the amounts to be returned or retained, it would appear that the current situation whereby landlords retain deposits and they are returned immediately would be more satisfactory.

*Secondly, in those cases where there are disputes, do the systems that are currently available offer as good a resolution option as would be provided by the introduction of a TDS affecting every landlord?*

The key difference between a court based and custodial system approach is that if the money is held by a third party there is a potential for greater equality between the parties in cases involving dispute.

Individuals are wary of going to court when there is a dispute and the ability to seek redress through a private forum is often preferred. Significant benefit is also attached to the compulsory nature of a third party system where monies are retained and only released once a decision is made either after mediation involving the parties or after arbitration by an independent third party.

However, the timescales relating to the return of any monies held by a third party in a custodial TDS once a dispute has arisen do not appear to be very different to those options currently available in Jersey.

*Thirdly, does the scale of the problem in the current economic climate warrant the creation of a separate dispute resolution system which would deal with a TDS alone?*

It would appear not, but we want up to date comments from landlords and tenants on the merits of a TDS. There is also potential value in an accessible and speedy “intermediary” dispute resolution system dealing with a wider range of landlord tenant disputes.

It is proposed that such a intermediary dispute resolution system could be adopted as part of the Landlord Registration Scheme, enabling the sanctioning of landlords who fail to meet the requirements of the Scheme, for example –

- failing to Register; or
- failing to comply with instructions following a fire check, or accommodation standards; or
- failing to return a deposit within any statutory time limit, or in accordance with condition reports, or without providing evidence as to deductions;
- failing to comply with some other requirement of the Residential Tenancy Law or other relevant requirement.

This need not mean that reference to the Courts would not take place, as penalties, such as fines, may be appropriate. Furthermore, the exact form of any dispute resolution, its powers, and its relationship to the Court and Minister need further consultation and thought. However, some advice and form of enforcement mechanism, including an enforcement officer, supported by mediation and arbitration, or perhaps a Tribunal or Ombudsman, seem possibilities. Further advice and comment will be sought on these aspects during consultation.

Any dispute resolution mechanisms would need to be open to a speedy and fair process of complaint, investigation, and resolution. Sanctions might include higher registration fees for non-compliant landlords, or de-registration, such that landlords could not let either any or a specific unit of accommodation. Ultimately, the responsibilities of being a landlord carry obligations also.

Equally, **any such mechanism would need to assist landlords in a speedy resolution** where they have properly withheld the deposit, and indeed, the Landlord Registration Scheme would seek to support Landlords through the provision of advice and guidance.

## **7. Condition Reports**

The RTL already specifies that a tenancy agreement must contain the amount of a deposit, and how and when it is to be repaid. This will ensure that no doubt exists over the amount of a deposit and how it should be repaid.

It is understood that some tenants are treated unfairly by their landlords when seeking the return of their deposits, and indeed that both landlords and tenant are unable to prove the original condition of a property.



Therefore, as an immediate and positive step, it is proposed to introduce an Order under Article 23(2) of the RTL as soon as possible after the implementation of the RTL requiring the provision of a mandatory “Statement of Condition Report” each time a new tenancy agreement is agreed.

The Report would have to include photographs of the property and be signed by both parties and be dated and attached to the agreement, copies of which are to be held by both parties. Failure to provide such a Condition Report at the start of the tenancy agreement would be an offence punishable by a fine. This requirement should be simple, practical and helpful.

This proposal would meet with the suggestion of the Jersey Rights Association and the Consumer Council and the good practice advocated by CAB, and will work with the other provisions of the RTL to diminish the scope for disputes.

## **8. Conclusions and Timings**

**No-one denies that there are both good and bad landlords and good and bad tenants. To coin a phrase what we must not do is “introduce a sledgehammer to crack a nut”. Equally, while this has been a topic for many years, the evidence does not support a need to rush a decision without proper consultation.**

Indeed, should this projet be approved, it remains likely that its ultimate implementation will be December, 2010, compared to May, 2011 for a wider, more comprehensive Landlord Registration Scheme. **As such, the differences in timescales are relatively minor.**

I stand by my wish to protect tenants but I must also have regard to landlords who offer this Island an invaluable service by providing accommodation to those who are unable or do not wish to purchase in their own right.

There are many issues to be taken into account. I have summarised just some of the thinking and research that has been undertaken over recent months.

We, as an Assembly, have to decide whether the extra administration and also the obligation placed on landlords to hand over deposit monies into a TDS justifies the bureaucracy when the statistics would seem to show that the problem is not huge, and where it appears that a TDS will not guarantee the return of deposit monies to individuals any quicker than present arrangements where no dispute exists.

There has also not been an official recent review of the working of the U.K. custodial deposit scheme and while it appears that coverage has been broad and organisations such as CAB remain supportive, it is prudent to monitor the success of the U.K. scheme for slightly longer, and await the results of the U.K. Landlord Registration Scheme consultation.

I therefore **ask members to reject this Projet** and instead propose –

- (i) a Report for Consultation will be released by the end of October 2009 expanding on the issues explained herein;
- (ii) a Consultation Findings Report will be written by April 2010;

- (iii) subject to the results of the Consultation and Law Drafting time, I will bring forward to the States by May, 2011 proposals to improve deposit protection, ideally to also include a set of broader measures to support public health and to improve landlord and tenant relations;
- (iv) an Order for Statement of Condition Reports under the RTL will now be introduced immediately upon the return of the RTL from the Privy Council.