
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

The Tenancy Deposit Schemes (Scotland) Regulations 2011

PART 1

Introductory and General

Citation and commencement

1. These Regulations may be cited as the Tenancy Deposit Schemes (Scotland) Regulations 2011 and come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

“the Act” means the Housing (Scotland) Act 2006;

“the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004⁽¹⁾;

“adjudicator” means a person appointed by an approved scheme to resolve disputes relating to tenancy deposits held by that scheme;

“approval” and “approved” refer to approval by the Scottish Ministers under section 122 (approval of tenancy deposit schemes) of the Act;

“approved scheme” means a tenancy deposit scheme that has been approved by virtue of section 122 of the Act;

“designated account” means an account held by the scheme administrator in accordance with regulation 16;

“landlord” refers to a landlord, within the meaning conferred by the Act, of a relevant tenancy;

“operational”, in relation to a tenancy deposit scheme, means that the scheme is in a position to accept and safeguard deposits as referred to in regulation 14(1)(a);

“relevant tenancy” has the meaning given by regulation 3(3) and references to a “tenancy” are to be construed accordingly;

“scheme administrator” refers to the person or body who may administer an approved scheme;

“tenancy deposit” has the meaning conferred by section 120(1) (tenancy deposits: preliminary) of the Act;

“tenancy deposit scheme” has the meaning conferred by section 120(2) of the Act;

“tenant” refers to a tenant of a relevant tenancy and includes joint tenants and former tenants by whom a tenancy deposit was paid;

“working day” means a day that is not a Saturday or Sunday, nor any day that is a bank holiday under the Banking and Financial Dealings Act 1971⁽²⁾ in any part of the United Kingdom; and

(1) 2004 asp 8.

(2) 1971 c.80.

“write” and “writing” include electronic communications within the meaning of section 15 (general interpretation) of the Electronic Communications Act 2000(3).

Duties in relation to tenancy deposits

3.—(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—

- (a) pay the deposit to the scheme administrator of an approved scheme; and
- (b) provide the tenant with the information required under regulation 42.

(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.

(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—

- (a) in respect of which the landlord is a relevant person; and
- (b) by virtue of which a house is occupied by an unconnected person,

unless the use of the house is of a type described in section 83(6) (application for registration) of the 2004 Act.

(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by section 83(8) of the 2004 Act.

Circumstances in which tenancy deposit duties apply

4. Subject to regulations 47 and 48, the duties in regulation 3 apply from the date which falls on the expiry of a period of 3 months beginning with the first date on which an approved scheme becomes operational.

5. The duties in regulation 3 do not apply if no approved scheme is operational.

Conditions for approval of a tenancy deposit scheme

6.—(1) A tenancy deposit scheme must meet the following conditions before it can be approved—

- (a) the proposed scheme administrator must meet the requirements of regulation 7;
- (b) the tenancy deposit scheme must satisfy the requirements of Parts 3 and 4;
- (c) the tenancy deposit scheme must be intended to operate on the basis of procedures that will enable it to satisfy the requirements of Part 5; and
- (d) the tenancy deposit scheme must have a dispute resolution mechanism which satisfies the requirements of regulation 33 and which will operate on the basis of the procedures set out in regulations 34 to 38.

(2) The person or body making the proposal for a tenancy deposit scheme (whether the proposed scheme administrator or any other person) must provide the Scottish Ministers with any information they may reasonably require in order to assess whether the tenancy deposit scheme meets the conditions in paragraph (1).

(3) 2000 c.7. Section 15(1) was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

Scheme administrator to be a fit and proper person

- 7.—(1) A person who acts as scheme administrator must be a fit and proper person to do so.
- (2) A proposal for a tenancy deposit scheme must include a declaration of—
- (a) whether paragraph (3) applies to any person who is proposed to act as scheme administrator; and
 - (b) details of any of the matters set out in paragraph (3) that apply.
- (3) This paragraph applies if the person has—
- (a) been convicted of any offence involving fraud or other dishonesty;
 - (b) been declared bankrupt; or
 - (c) been disqualified from being a director of a company.
- (4) The Scottish Ministers must take into account the declaration made under paragraph (2), and any other material they consider relevant, in assessing whether a person is fit and proper for the purposes of paragraph (1).
- (5) The proposed scheme administrator must provide the Scottish Ministers with any information they require for the purpose of that assessment.

Power of Scottish Ministers to provide financial assistance

8. The Scottish Ministers may make payments, or give guarantees or other assistance in connection with—
- (a) the creation, administration or operation of an approved scheme; and
 - (b) the resolution of disputes relating to an approved scheme.