

POLICY NOTE

THE TENANCY DEPOSIT SCHEMES (SCOTLAND) AMENDMENT REGULATIONS 2019

SSI 2019/331

1. The above instrument is made in exercise of the powers conferred by sections 121(1) and 191(2) of the Housing (Scotland) Act 2006 (the Act) and all other powers enabling them to do so. S191(5) makes the regulations subject to the affirmative resolution procedure of the Scottish Parliament.

Purpose of the instrument.

2. These regulations amend the principal Regulations and respond directly to issues raised by landlords, tenants and the tenancy deposit schemes through the [review](#) of the tenancy deposit schemes. The Regulations make minor improvements to the operation of tenancy deposit schemes to address new legislation, payment by instalments and best practice.

Policy Objectives

3 The Tenancy Deposit Schemes (Scotland) Regulations 2011 establish the regulatory framework for tenancy deposit schemes in Scotland, including conditions for the approval of schemes by Ministers (“the principal Regulations”).

4. The Minister for Local Government and Housing and Planning decided that as the schemes were approaching the end of the fifth year of operation, the time was right for a review of the three approved schemes.

5. The original objectives for bringing forward tenancy deposit regulations and approved tenancy deposit schemes were:

- to reduce the number of unfairly withheld tenancy deposits;
- ensure that deposits are safeguarded throughout the duration of the tenancy;
- ensure that deposits are returned quickly and fairly, particularly where there is a dispute over the return of the deposit, or proportion of it, to tenant or landlord.

6. The policy remains consistent with the broader objective of supporting the growth of a professional, high quality private rented sector that can be considered as a desirable and sustainable housing solution.

7. The following tenancy deposit schemes (the schemes) were established in July 2012:

- Letting Protection Service Scotland
- MyDeposits Scotland
- Safe Deposits Scotland

Amendment Regulations

8. These regulations address issues relating to the termination of a private residential tenancy which can take place before the deadline to lodge a deposit. This brings the principal Regulations in line with the Private Housing (Tenancies) (Scotland) Act 2016.

9. Amending regulation 2(5) streamlines procedure to ensure prompt payment to the tenant where the landlord confirms that no monies are due to the landlord at the end of a tenancy.

10. Amending regulation 2(7) changes the date for delivery of an annual report from the Schemes from May to August.

11. The tenancy deposit schemes have seen an increase in the number of deposits paid to the landlord by instalments and subsequently lodged with the tenancy deposit schemes. These amendment regulations make clear that any instalment is granted the same protection as a single deposit. For example, when a deposit is lodged with the schemes at the start of a tenancy, the scheme must provide certain information about the tenancy deposit to the tenant and to the landlord under 22(2) of the principal regulations. Amending regulation 2(3) adds a requirement for the landlord to also provide information to the tenant and landlord about sanctions.

12. Part 2 of the principal Regulations provide sanctions for failure to comply with the duties, on an application by a tenant to the First-tier Tribunal¹, and require the First-tier Tribunal to impose a financial penalty on the landlord. In addition, the First-tier Tribunal has discretion to order the landlord to take action to comply with their duties. The amendment only serves as a reminder to lodge timely deposits – there is no change to the law on sanctions.

Consultation

13. The [review](#) of the tenancy deposit schemes concludes that there is a broad consensus that the principal Regulations continue to provide a robust regulatory framework for the protection of tenants' deposits and the conditions for the operation of the schemes.

14. We developed the regulations in close consultation with the 3 tenancy deposit schemes to ensure that the improvements have the desired operational effect.

15. We also consulted with interested parties including tenants, landlords, SHELTER, and the Scottish Association of Landlords and tenants.

¹ As amended by The Housing (Scotland) Act 2014 (Consequential Provisions) Order 2017

Impact Assessments

16. All three schemes have equality policies in place. There is a clear investment to promote equality and eliminate discrimination across all schemes which is mainly developed at corporate level to ensure consistent local delivery across the companies.

17. No specific equality issues were raised during the review and consultation process.

Financial Effects

18. A full Business and Regulatory Impact Assessment was prepared for the principal Regulations in 2011.

19. The Minister for Local Government Housing and Planning confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government Housing and Social Justice Directorate

June 2019