

## SCHEDULES

### SCHEDULE 10

Section 212

#### PROVISIONS RELATING TO TENANCY DEPOSIT SCHEMES

##### *Schemes to be custodial schemes or insurance schemes*

- 1 (1) A tenancy deposit scheme must be either—
- (a) a custodial scheme, or
  - (b) an insurance scheme.
- (2) A “custodial scheme” is a scheme under which—
- (a) tenancy deposits in connection with shorthold tenancies are paid to the landlords under the tenancies,
  - (b) amounts representing the deposits are then paid by the landlords into a designated account held by the scheme administrator, and
  - (c) those amounts are kept by the scheme administrator in that account until such time as, in accordance with the scheme, they fall to be paid (wholly or in part) to the landlords or tenants under the tenancies.
- (3) An “insurance scheme” is a scheme under which—
- (a) tenancy deposits in connection with shorthold tenancies are paid to the landlords under the tenancies,
  - (b) such deposits are retained by the landlords on the basis that, at the end of the tenancies—
    - (i) such amounts in respect of the deposits as are agreed between the tenants and the landlords will be repaid to the tenants, and
    - (ii) such amounts as the tenants request to be repaid to them and which are not so repaid will, in accordance with directions given by the scheme administrator, be paid into a designated account held by the scheme administrator,
  - (c) amounts paid into that account are kept by the scheme administrator in the account until such time as, in accordance with the scheme, they fall to be paid (wholly or in part) to the landlords or tenants under the tenancies,
  - (d) landlords undertake to reimburse the scheme administrator, in accordance with directions given by him, in respect of any amounts in respect of the deposits paid to the tenants by the scheme administrator (other than amounts paid to the tenants as mentioned in paragraph (c)), and
  - (e) insurance is maintained by the scheme administrator in respect of failures by landlords to comply with such directions.

##### *Provisions applying to custodial and insurance schemes*

- 2 (1) A custodial scheme must conform with the following provisions—  
paragraphs 3 and 4, and

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paragraphs 9 and 10.

- (2) An insurance scheme must conform with the following provisions—  
 paragraphs 5 to 8, and  
 paragraphs 9 and 10.

*Custodial schemes: general*

- 3 (1) This paragraph applies to a custodial scheme.
- (2) The scheme must provide for any landlord who receives a tenancy deposit in connection with a shorthold tenancy to pay an amount equal to the deposit into a designated account held by the scheme administrator.
- (3) The designated account must not contain anything other than amounts paid into it as mentioned in sub-paragraph (2) and any interest accruing on such amounts.
- (4) Subject to sub-paragraph (5), the scheme administrator may retain any interest accruing on such amounts.
- (5) The relevant arrangements under section 212(1) may provide for any amount paid in accordance with paragraph 4 to be paid with interest—
- (a) in respect of the period during which the relevant amount has remained in the designated account, and
  - (b) at such rate as the appropriate national authority may specify by order.
- (6) With the exception of any interest retained in accordance with sub-paragraph (4), nothing contained in the designated account may be used to fund the administration of the scheme.
- (7) In this paragraph “the relevant amount”, in relation to a tenancy deposit, means the amount paid into the designated account in respect of the deposit.

*Custodial schemes: termination of tenancies*

- 4 (1) A custodial scheme must make provision—
- (a) for enabling the tenant and the landlord under a shorthold tenancy in connection with which a tenancy deposit is held in accordance with the scheme to apply, at any time after the tenancy has ended, for the whole or part of the relevant amount to be paid to him, and
  - (b) for such an application to be dealt with by the scheme administrator in accordance with the following provisions of this paragraph.
- (2) Sub-paragraph (3) applies where the tenant and the landlord notify the scheme administrator that they have agreed that the relevant amount should be paid—
- (a) wholly to one of them, or
  - (b) partly to the one and partly to the other.
- (3) If, having received such a notification, the scheme administrator is satisfied that the tenant and the landlord have so agreed, the scheme administrator must arrange for the relevant amount to be paid, in accordance with the agreement, within the period of 10 days beginning with the date on which the notification is received by the scheme administrator.

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- (4) Sub-paragraph (5) applies where the tenant or the landlord notifies the scheme administrator that—
  - (a) a court has decided that the relevant amount is payable either wholly to one of them or partly to the one and partly to the other, and
  - (b) that decision has become final.
- (5) If, having received such a notification, the scheme administrator is satisfied as to the matters mentioned in sub-paragraph (4)(a) and (b), the scheme administrator must arrange for the relevant amount to be paid, in accordance with the decision, within the period of 10 days beginning with the date on which the notification is received by the scheme administrator.
- (6) For the purposes of this Schedule a decision 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.
- (7) 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.
- (8) In this paragraph “the relevant amount” has the meaning given by paragraph 3(7).

*Insurance schemes: general*

- 5 (1) This paragraph applies to an insurance scheme.
- (2) The scheme must provide that any landlord by whom a tenancy deposit is retained under the scheme must give the scheme administrator an undertaking that, if the scheme administrator directs the landlord to pay him any amount in respect of the deposit in accordance with paragraph 6(3) or (7), the landlord will comply with such a direction.
- (3) The scheme must require the scheme administrator to effect, and maintain in force, adequate insurance in respect of failures by landlords by whom tenancy deposits are retained under the scheme to comply with such directions as are mentioned in sub-paragraph (2).
- (4) If the scheme provides for landlords participating in the scheme to be members of the scheme, the scheme may provide for a landlord’s membership to be terminated by the scheme administrator in the event of any such failure on the part of the landlord.
- (5) The scheme may provide for landlords participating in the scheme to pay to the scheme administrator—
  - (a) fees in respect of the administration of the scheme, and
  - (b) contributions in respect of the cost of the insurance referred to in sub-paragraph (3).

*Insurance schemes: termination of tenancies*

- 6 (1) An insurance scheme must make provision in accordance with this paragraph and paragraphs 7 and 8 in relation to the respective obligations of the landlord and the scheme administrator where—

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- (a) a tenancy deposit has been retained by the landlord under the scheme, and
  - (b) the tenancy has ended.
- (2) Sub-paragraphs (3) to (9) apply where the tenant notifies the scheme administrator that—
- (a) the tenant has requested the landlord to repay to him the whole or any part of the deposit, and
  - (b) the amount in question (“the outstanding amount”) has not been repaid to him within the period of 10 days beginning with the date on which the request was made.
- (3) On receiving a notification in accordance with sub-paragraph (2), the scheme administrator must direct the landlord—
- (a) to pay an amount equal to the outstanding amount into a designated account held by the scheme administrator, and
  - (b) to do so within the period of 10 days beginning with the date on which the direction is received by the landlord.
- (4) The following sub-paragraphs apply where the tenant or the landlord notifies the scheme administrator—
- (a) that a court has decided that the outstanding amount is payable either wholly to one of them or partly to the one and partly to the other and the decision has become final (see paragraph 4(6) and (7)), or
  - (b) that the tenant and landlord have agreed that such an amount is to be paid either wholly to one of them or partly to the one and partly to the other.
- (5) If the scheme administrator is satisfied as to the matters mentioned in sub-paragraph (4)(a) or (b) (as the case may be), he must—
- (a) pay to the tenant any amount due to him in accordance with the decision or agreement (and, to the extent possible, pay that amount out of any amount held by him by virtue of sub-paragraph (3)), and
  - (b) comply with sub-paragraph (6) or (7), as the case may be.
- (6) Where any amount held by the scheme administrator by virtue of sub-paragraph (3) is more than any amount due to the tenant in accordance with the decision or agreement, the scheme administrator must pay the balance to the landlord.
- (7) Where any amount so held by the scheme administrator is less than any amount so due to the tenant, the scheme administrator must direct the landlord to pay him the difference within the period of 10 days beginning with the date on which the direction is received by the landlord.
- (8) The scheme administrator must pay any amounts required to be paid to the tenant or the landlord as mentioned in sub-paragraph (5)(a) or (6) within 10 days beginning with the date on which the notification is received by the scheme administrator.
- (9) The landlord must comply with any direction given in accordance with sub-paragraph (3) or (7).
- 7 (1) The designated account held by the scheme administrator must not contain anything other than amounts paid into it as mentioned in paragraph 6(3) and any interest accruing on such amounts.
- (2) Subject to sub-paragraph (3), the scheme administrator may retain any interest accruing on such amounts.

- (3) The relevant arrangements under section 212(1) may provide for any amount paid in accordance with paragraph 6(5)(a) or (6) to be paid with interest—
    - (a) in respect of the period during which the relevant amount has remained in the designated account, and
    - (b) at such rate as the appropriate national authority may specify for the purposes of paragraph 3(5)(b).
  - (4) With the exception of any interest retained in accordance with sub-paragraph (2), nothing contained in the designated account may be used to fund the administration of the scheme.
  - (5) In this paragraph “the relevant amount”, in relation to a tenancy deposit, means the amount, in respect of the deposit, paid into the designated account by virtue of a direction given in accordance with paragraph 6(3).
- 8
- (1) The scheme must make provision for preventing double recovery by a tenant in respect of the whole or part of the deposit, and may in that connection make provision—
    - (a) for excluding or modifying any requirement imposed by the scheme in accordance with paragraph 6 or 7, and
    - (b) for requiring the repayment of amounts paid to the tenant by the scheme administrator.
  - (2) In this paragraph “double recovery”, in relation to an amount of a tenancy deposit, means recovering that amount both from the scheme administrator and from the landlord.

#### *Notifications to tenants*

- 9
- (1) Every custodial scheme or insurance scheme must provide for the scheme administrator to respond as soon as is practicable to any request within sub-paragraph (2) made by the tenant under a shorthold tenancy.
  - (2) A request is within this sub-paragraph if it is a request by the tenant to receive confirmation that a deposit paid in connection with the tenancy is being held in accordance with the scheme.

#### *Dispute resolution procedures*

- 10
- (1) Every custodial scheme or insurance scheme must provide for facilities to be available for enabling disputes relating to tenancy deposits subject to the scheme to be resolved without recourse to litigation.
  - (2) The scheme must not, however, make the use of such facilities compulsory in the event of such a dispute.

#### *Power to amend*

- 11
- The appropriate national authority may by order make such amendments of this Schedule as it considers appropriate.

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*Interpretation*

- 12 In this Schedule references to tenants under shorthold tenancies include references to persons who, in accordance with arrangements made with such tenants, have paid tenancy deposits on behalf of the tenants.