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## EXPLANATORY NOTE

*(This note is not part of the Order)*

Under section 212 of the Housing Act 2004 (“the Act”) the appropriate national authority (being, in England, the Secretary of State, and in Wales, the National Assembly for Wales) must make arrangements for securing that one or more tenancy deposit schemes are available for the purpose of safeguarding tenancy deposits paid in connection with shorthold tenancies. Such a scheme must comply with the requirements of Schedule 10.

This Order, which extends to England and Wales, inserts new provisions into Schedule 10 to the Act in the following respects.

The Order inserts new paragraphs 4A, 4B and 4C which set out the procedures that apply after a tenancy is terminated but the parties are not able to agree to whom a deposit held in a custodial scheme should be paid, either because one of the parties has no current address for, or other means of contacting the other party, or because one party has failed to respond to the communications of the other within the period specified (*article 3*).

The Order inserts new sub-paragraphs into paragraph 5 and inserts new paragraph 5A. These paragraphs require insurance schemes to make provision as to the requirements that fall to be complied with by a landlord or scheme administrator where a landlord retaining a deposit under an insurance scheme gives notice to the scheme administrator that he no longer wishes to retain the deposit under the scheme. These paragraphs also require insurance schemes to make provision enabling the scheme administrator, by virtue of the landlord’s failure to comply with a relevant obligation, to determine that a tenancy deposit retained by a landlord under its scheme is to cease to be so retained. It requires provision to be made in the schemes to require the scheme administrator to give certain notices and information to the landlord and tenant. These paragraphs also require insurance schemes to make provisions to require scheme administrators, before terminating a landlord’s membership of a scheme after a landlord’s failure to comply with a relevant obligation, to give certain notices and information to a landlord and any of his tenants who will be affected by the termination. A “relevant obligation” is a duty to comply with a direction given by the scheme administrator to the landlord under paragraph 6(3) or (7) or any obligation under the scheme which is specified in the scheme as a relevant obligation for the purposes of paragraph 5A (*articles 4 and 5*).

The Order inserts a new sub-paragraph (2A) into paragraph 6. This requires a tenant, when notifying the scheme administrator of an insurance scheme under paragraph 6(2) that his landlord has not paid him the whole or part of the deposit he has requested, to indicate whether he consents to the use of the scheme’s dispute resolution service to resolve any dispute as to the amount of deposit to be paid to him by his landlord (*article 6*).

The Order inserts new paragraph 6A which makes provision for the scheme administrator of an insurance scheme, when giving a direction to a landlord to pay an amount into the designated account held by the scheme administrator, to send a notice to the landlord requesting certain information from him. In particular the scheme administrator must ask the landlord to indicate whether he agrees to any dispute being resolved through the use of the scheme’s dispute resolution service. If the scheme administrator determines that he is satisfied that the landlord has received the notice requesting this information, but the landlord fails to indicate whether or not he so consents within the period specified in the paragraph, he will be treated as having agreed to the use of the scheme’s dispute resolution service (*article 7*).

**Status:** *This is the original version (as it was originally made).*

The Order inserts new sub-paragraphs into paragraph 10. New paragraph 10(3) provides that the provision of a dispute resolution service may confer a power on the person acting as an adjudicator in relation that service to decline to proceed with a dispute (or to continue to proceed with it). (*article 8*).

The Order inserts new paragraphs 10A, 10B and 10C, which make provision for the service of documents (*article 9*).

Finally, the Order makes some minor consequential amendments to paragraphs 2, 3 and 7 (*articles 10 to 12*).