

*Draft Regulations laid before the Scottish Parliament under section 191(5) of the Housing (Scotland)
Act 2006, for approval by resolution of the Scottish Parliament.*

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

HOUSING

The Tenancy Deposit Schemes (Scotland) Regulations 2011

Made - - - -

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 121(1) and 191(2) of the Housing (Scotland) Act 2006⁽¹⁾, and all other powers enabling them to do so.

In accordance with section 191(5) of that Act, a draft of this instrument has been laid before and approved by the Scottish Parliament.

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⁽²⁾;

“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;

(1) 2006 asp 1.
(2) 2004 asp 8.

“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(3) in any part of the United Kingdom; and

“write” and “writing” include electronic communications within the meaning of section 15 (general interpretation) of the Electronic Communications Act 2000(4).

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.

(3) 1971 c.80.

(4) 2000 c.7. Section 15(1) was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

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).

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.

PART 2

Sanctions

Court orders

9.—(1) A tenant who has paid a tenancy deposit may apply to the sheriff for an order under regulation 10 where the landlord did not comply with any duty in regulation 3 in respect of that tenancy deposit.

(2) An application under paragraph (1) must be made by summary application and must be made no later than 3 months after the tenancy has ended.

10. If satisfied that the landlord did not comply with any duty in regulation 3 the sheriff—

- (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and
- (b) may, as the sheriff considers appropriate in the circumstances of the application, order the landlord to—
 - (i) pay the tenancy deposit to an approved scheme; or
 - (ii) provide the tenant with the information required under regulation 42.

PART 3

Model for operation of tenancy deposit scheme

Scheme model

11. A tenancy deposit scheme must be based on the following model—

- (a) no fee is payable by the landlord to the scheme administrator in respect of participation in, or otherwise in connection with, the scheme;
- (b) the tenancy deposit is paid by the landlord to the scheme administrator;
- (c) the scheme administrator pays the tenancy deposit into an account maintained for the purpose of holding tenancy deposits;
- (d) the tenancy deposit is held in that account until it falls to be repaid in accordance with these Regulations.

Agents

12. A tenancy deposit scheme must not operate to prevent an agent from acting on behalf of the landlord in relation to any tenancy deposit held in connection with a relevant tenancy.

Geographical coverage and administrative requirements

13.—(1) A tenancy deposit scheme must be available to all landlords and their tenants.

(2) For the purposes of paragraph (1), a tenancy deposit scheme must put suitable procedures in place to allow—

- (a) all landlords to participate in the scheme;
- (b) all landlords to pay tenancy deposits directly to the scheme administrator;

- (c) all landlords and their tenants to apply to the scheme for repayment of the tenancy deposit in accordance with the scheme; and
 - (d) all landlords and their tenants to make use of the dispute resolution mechanism provided or made available by the scheme.
- (3) An appropriate customer service facility must be available to landlords, tenants and the general public for the purposes of, in particular—
- (a) handling enquiries in relation to the scheme whether made by telephone or in writing; and
 - (b) dealing with complaints about the scheme, including complaints about the service provided by the scheme administrator.

Financing and sustainability

14.—(1) A tenancy deposit scheme must operate on the basis of a business plan which will enable it, within a number of months to be specified in that business plan, to be—

- (a) in a position to accept and safeguard tenancy deposits for the purposes of Part 4 of the Act and in accordance with these Regulations; and
- (b) able to cover the cost of its operations using only its own finances, including interest (“self-financing”).

(2) A tenancy deposit scheme must ensure that sufficient resources will be available to fund the establishment and operation of the tenancy deposit scheme from the date of approval until the date on which the scheme becomes self-financing.

(3) A tenancy deposit scheme must have appropriate strategies in place in relation to the investment of tenancy deposits and accrued interest to support the sustainability of the tenancy deposit scheme.

Protection of deposits in the event of scheme failure etc.

15.—(1) A tenancy deposit scheme must have procedures to safeguard, and ensure the repayment in accordance with these Regulations of, tenancy deposits held by the scheme administrator in the event that the scheme fails or otherwise ceases to be operational.

(2) A tenancy deposit scheme must have appropriate procedures by which as soon as the scheme administrator becomes aware that the scheme is likely to fail or otherwise cease to be operational the scheme administrator will give notice to—

- (a) all landlords and tenants whose deposits are held by the scheme; and
- (b) the Scottish Ministers.

PART 4

Accounting requirements in relation to tenancy deposit schemes

Designated accounts

16.—(1) A scheme administrator must hold one or more designated accounts for the purposes of regulation 11(c).

(2) Designated accounts must not contain any sums other than—

- (a) tenancy deposits paid into them by the scheme administrator;
- (b) such sums of money belonging to the scheme administrator as may be necessary for the purpose of opening the account;

- (c) such sums of money as may be necessary to replace any sum which by error has been withdrawn from the account; and
 - (d) interest.
- 17.** A scheme administrator must follow appropriate accounting and administrative practices to ensure that—
- (a) tenancy deposits received by the scheme administrator are paid without delay into the relevant designated account;
 - (b) at all times the sum at the credit of the designated account, or where there are more such accounts than one, the total of the sums at the credit of those accounts, is not less than the total of the amounts of tenancy deposits held by the tenancy deposit scheme; and
 - (c) at all times each tenancy deposit held in a designated account is attributable to the landlord on whose behalf it was paid in to the account, as well as to the tenant to whom it relates.
- 18.** Sums may be withdrawn from a designated account only for the following purposes—
- (a) repayment of tenancy deposits in accordance with these Regulations;
 - (b) meeting the costs of the scheme from interest accrued;
 - (c) improving the quality of service provided by the scheme administrator from interest accrued, where the interest is surplus to that required to meet the costs of the scheme; and
 - (d) distributing, applying or investing interest accrued, where the conditions in regulation 19 are met.
- 19.** The conditions for withdrawal of sums under regulation 18(d) are—
- (a) the income derived from interest accrued exceeds that required for the purposes set out in regulation 18(a), (b) and (c);
 - (b) the distribution, application or investment of that income will not adversely affect the sustainability of the tenancy deposit scheme or its ability to be self-financing within the meaning of regulation 14; and
 - (c) where the income is to be invested, the proposed investment is in accordance with the strategies referred to in regulation 14(3).

PART 5

Procedures for payment, holding and repayment of deposits

Payment of tenancy deposits to a tenancy deposit scheme

20. A scheme administrator must accept any tenancy deposit paid to an approved scheme by or on behalf of a landlord who has received the deposit in connection with a relevant tenancy, whether it was paid in compliance with regulation 3(1)(a) or at a later date.

21. A tenancy deposit paid to an approved scheme must be accompanied by sufficient information to enable the scheme administrator, both on receipt and at the end of the tenancy, to—

- (a) identify and contact the landlord and tenant; and
- (b) identify the tenancy and the property in connection with which the tenancy deposit was paid to the landlord.

22.—(1) On receipt of a tenancy deposit and the required accompanying information, the scheme administrator must—

- (a) pay the tenancy deposit into a designated account; and
 - (b) issue written confirmation to the landlord and tenant that the tenancy deposit has been received and paid into a designated account.
- (2) The scheme administrator must also advise the landlord and tenant of—
- (a) the amount of the deposit;
 - (b) the date on which the deposit was received by the scheme administrator;
 - (c) the address of the property to which the tenancy deposit relates;
 - (d) the name and contact details of the landlord; and
 - (e) details of how to contact the scheme administrator to notify any inaccuracies in the information in sub-paragraphs (a) to (d).

Landlord application to transfer a tenancy deposit

23.—(1) A landlord may apply for repayment of a tenancy deposit from an approved scheme for the purpose of transferring it to another approved scheme.

- (2) On receipt of such an application, the scheme administrator must—
- (a) if so requested, pay the tenancy deposit to the other approved scheme on the landlord's behalf; or
 - (b) in any other case, repay the tenancy deposit to the landlord.

(3) The scheme administrator must notify the tenant in writing of the date on which the deposit was paid to the other approved scheme or repaid to the landlord.

Application for repayment of a tenancy deposit

24.—(1) A landlord must apply to the scheme administrator for repayment of any tenancy deposit paid to an approved scheme on, or as soon as is reasonably practicable after, the end of the tenancy.

(2) The landlord's application must specify the date on which the tenancy ended and the amount of the tenancy deposit which, in the view of the landlord, should be—

- (a) repaid to the tenant; and
- (b) repaid to the landlord.

(3) The tenant may apply for repayment of the tenancy deposit, but if an application for repayment has been made by the landlord in accordance with paragraph (1), or is made within working 30 days of the tenant's application, the scheme administrator must not progress the application.

(4) The tenant's application must be made to the scheme administrator and specify the date on which the tenancy ended and the amount of the tenancy deposit which, in the view of the tenant, should be—

- (a) repaid to the tenant; and
- (b) repaid to the landlord.

25.—(1) On receipt of an application from a landlord under regulation 24(1), the scheme administrator must write to the tenant to—

- (a) notify the tenant of that application, including details of the amounts specified under regulation 24(2);
- (b) require the tenant to contact the scheme administrator to confirm either that the tenant agrees to repayment as applied for by the landlord or that the tenant disputes the amounts specified;

- (c) require that the tenant notify the scheme administrator of the amount of the tenancy deposit which the tenant considers should be repaid to the tenant (the “disputed amount”), if different from the amount specified;
 - (d) explain the effect of regulation 27, and
 - (e) inform the tenant of the availability of the dispute resolution mechanism made available under Part 6 and of the procedures for requesting a referral to that mechanism.
- (2) Where an application is accepted from a tenant under regulation 24(3), the scheme administrator must write to the landlord to—
- (a) notify the landlord of that application, including details of the amounts specified under regulation 24(4);
 - (b) require the landlord to contact the scheme administrator to confirm either that the landlord agrees to repayment as applied for by the tenant or to submit an alternative application in accordance with regulation 24(2); and
 - (c) explain the effect of regulation 28.

Repayment by the scheme administrator where there is no disputed amount

26.—(1) Paragraph (2) applies where the scheme administrator receives confirmation as mentioned in regulation 25(1)(b) or (2)(b) that repayment of the tenancy deposit as applied for is agreed.

(2) The scheme administrator must, within 5 working days of receipt of that confirmation, repay the tenancy deposit in accordance with the amounts specified in the application.

27.—(1) Paragraph (2) applies where the scheme administrator does not receive the confirmation and notification from the tenant as required by regulation 25(1)(b) and (c) within 30 working days of writing to the tenant in accordance with regulation 25(1).

(2) The scheme administrator must—

- (a) if the amount specified under regulation 24(2)(a) is more than zero, hold that amount in a designated account (in case it is applied for by the tenant at a later date); and
- (b) repay to the landlord the amount specified under regulation 24(2)(b) within 5 working days of the expiry of the 30 working day period.

28.—(1) Paragraph (2) applies where the scheme administrator does not receive the confirmation or application from the landlord as required by regulation 25(2)(b) within 30 working days of writing to the landlord in accordance with regulation 25(2).

(2) The scheme administrator must repay the full amount of the tenancy deposit to the tenant within 5 working days of the expiry of the 30 working day period.

Repayment by the scheme administrator where there is a disputed amount

29.—(1) Where the scheme administrator receives notification from the tenant of a disputed amount as mentioned in regulation 25(1)(c), the scheme administrator must hold that amount in a designated account until the dispute is resolved.

(2) If any proportion of the tenancy deposit is undisputed, the scheme administrator must repay that amount as soon as is practicable.

(3) The scheme administrator must repay the disputed amount of tenancy deposit in accordance with the procedures set out in regulations 30 to 32.

30. If the scheme administrator receives notification that the dispute has been resolved by agreement between the landlord and tenant, the scheme administrator must repay the tenancy deposit in accordance with that agreement within 5 working days.

31.—(1) Paragraphs (2) and (3) apply where, following receipt of the notification referred to in regulation 29(1) the administrator does not receive from the tenant a request for, or consent to, use of the dispute resolution mechanism made available by the scheme administrator and the tenant does not otherwise agree with the landlord the amounts to be repaid.

(2) On the 15th working day after receipt of the notification the scheme administrator must write to the tenant—

- (a) to remind the tenant of the procedure for requesting a referral to the dispute resolution mechanism made available by the scheme administrator; and
- (b) to explain the effect of paragraph (3).

(3) On the 30th working day after receipt of the notification, the scheme administrator must—

- (a) advise the tenant that the tenancy deposit is to be repaid in accordance with the amounts specified in the landlord’s application; and
- (b) within the next 5 working days, repay the tenancy deposit in accordance with that application.

32.—(1) Paragraphs (2) and (3) apply where the landlord and tenant agree to use the dispute resolution mechanism made available by the scheme administrator.

(2) If the scheme administrator is notified that the dispute resolution process has been abandoned before a decision has been made by the adjudicator, the scheme administrator must within 5 working days of that notification repay the tenancy deposit—

- (a) where the parties have reached an agreement, in accordance with that agreement; or
- (b) in any other case, in accordance with the amounts specified in the landlord’s application.

(3) On receipt of an adjudicator’s decision, the scheme administrator must allow 10 working days for receipt of any request for review of that decision (in terms of regulation 37) and, unless such request is received in that period, must then repay the tenancy deposit in accordance with that decision within the following 5 working days.

PART 6

Dispute resolution

Dispute resolution mechanism

33.—(1) A scheme administrator must make available a mechanism for the resolution by an adjudicator of disputes between landlords and tenants about the amount of the tenancy deposit to be repaid to the tenant at the end of the tenancy (“dispute resolution”).

(2) The dispute resolution mechanism must be fair and cost-efficient having regard, in particular, to—

- (a) the proposed provider of dispute resolution and the number of adjudicators that will be available;
- (b) the circumstances in which and the procedures by which disputes may be notified to the scheme administrator;

- (c) the procedures by which the scheme administrator will refer disputes to the dispute resolution mechanism;
- (d) the type of supporting material which the landlord and the tenant will be required to submit to the scheme administrator for the purposes of that referral;
- (e) the estimated costs of running the dispute resolution mechanism and how those costs will be met by the scheme;
- (f) the basis on which decisions will be made by an adjudicator;
- (g) the procedure by which an adjudicator will decide disputes including the procedures by which the adjudicator may seek further supporting material or submissions;
- (h) the extent to which that procedure will be proportionate to the value of the disputed amount; and
- (i) the circumstances in which and the procedures by which the decision of the adjudicator may be reviewed.

34.—(1) The dispute resolution mechanism must be provided free of charge to the landlord and to the tenant.

(2) Adjudicators must be, and appear to be, independent of the landlord and the tenant.

(3) Both the landlord and the tenant must be permitted to request that the scheme administrator refer a dispute to the dispute resolution mechanism.

(4) Use of the dispute resolution mechanism must not be compulsory, but the tenancy deposit scheme must require a landlord who has submitted a deposit to it to use the dispute resolution mechanism in any case where the tenant requests a referral.

35.—(1) Procedures must be in place whereby the scheme administrator will refer all disputes to the dispute resolution mechanism, regardless of the value of the disputed amount, where—

- (a) either the landlord or tenant requests the referral (although if the request is made by the landlord the referral must be made only if the tenant consents to use of the dispute resolution mechanism); and
- (b) the scheme administrator is satisfied that attempts to resolve the dispute without recourse to the dispute resolution mechanism have been made and have not been successful.

(2) The procedures referred to in paragraph (1) must—

- (a) specify the timescale within which a referral to the dispute resolution mechanism may be requested by the landlord or tenant; and
- (b) provide that where a dispute has been referred to the dispute resolution mechanism it may only be suspended or abandoned with the consent of both parties.

The decision of the adjudicator

36.—(1) The adjudicator must decide any dispute within 20 working days of receipt by the adjudicator of the referral.

(2) Within 5 working days of reaching a decision on a dispute, the adjudicator must give notice of a decision in writing to the scheme administrator, the landlord and the tenant and must set out—

- (a) the facts on which the decision is based;
- (b) the reasons for the decision; and
- (c) the amounts of tenancy deposit to be repaid by the scheme administrator to the tenant and to the landlord.

Review

37.—(1) Procedures must be in place whereby either the landlord or the tenant may apply to the scheme administrator, within 10 working days of an adjudicator giving notice of a decision under regulation 36, for review of that decision but only on the grounds that the adjudicator has erred in fact or in law (or both).

(2) On receipt of such an application the scheme administrator must decide whether to accept or reject it, but may not accept it without inviting written representations from the other party to the dispute to enable the scheme administrator to consider whether the adjudicator may have erred in fact or in law.

(3) Where an application for review by a landlord or tenant is rejected by the scheme administrator, that person may not make a further application for review of the adjudicator's decision.

(4) Where an application for review is rejected by the scheme administrator, the scheme administrator must repay the tenancy deposit as soon as is reasonably practicable, but not before the expiry of the time within which another person may request review in terms of paragraph (1).

38.—(1) If, after consideration of the application under regulation 37(1) and any representations regarding it, the scheme administrator considers that there is a reasonable ground for believing that the adjudicator may have erred in fact or in law, the scheme administrator must accept the application and refer the decision of the adjudicator under regulation 36 for review by an adjudicator who was not involved in deciding the original referral.

(2) The adjudicator carrying out the review under paragraph (1) may—

- (a) affirm the decision made under regulation 36; or
- (b) substitute a different decision for that decision,

and in either case must give notice of the review decision in accordance with regulation 36(2).

(3) A decision of an adjudicator under paragraph (2) on a review is final.

(4) The scheme administrator must repay the tenancy deposit in accordance with the adjudicator's decision on the review within 5 working days of receipt of the notice of that decision

Information about dispute resolution

39. The scheme administrator must collect and maintain information about disputes referred to the dispute resolution mechanism, in particular—

- (a) the name and contact details of both the tenant and the landlord;
- (b) the amount of the tenancy deposit required in respect of that tenancy;
- (c) the disputed amount of the tenancy deposit;
- (d) the nature of the dispute;
- (e) the outcome of the referral to the dispute resolution mechanism, including details of any review of the adjudicator's decision; and
- (f) the cost to the scheme administrator of the referral.

PART 7

Information and publicity requirements in relation to tenancy deposit schemes

Duty to publicise approved schemes

40.—(1) The scheme administrator must ensure that an approved scheme is publicised across Scotland, for the purposes of paragraph (2)—

- (a) on, or as soon as is reasonably practicable after, the tenancy deposit scheme being approved; and
 - (b) immediately prior to the tenancy deposit scheme becoming operational and for a reasonable period of time thereafter.
- (2) The purposes are to—
- (a) inform landlords about the tenancy deposit scheme and the services it provides;
 - (b) make landlords, tenants and the general public aware of the date on which the scheme will become operational; and
 - (c) promote tenants' understanding of landlords' duties in relation to tenancy deposits.

Duty to produce an information leaflet

41.—(1) Before an approved tenancy deposit scheme becomes operational, the scheme administrator must have available an information leaflet detailing—

- (a) the principles in accordance with which the approved scheme operates;
- (b) the terms and conditions relating to participation in the approved scheme;
- (c) the procedures governing the payment, holding and repayment of tenancy deposits in accordance with these Regulations; and
- (d) the procedures relating to the dispute resolution mechanism made available by the scheme administrator in accordance with Part 6 of these Regulations.

(2) The scheme administrator must provide a copy of the information leaflet to the landlord and the tenant when issuing them with confirmation under regulation 22(1)(b) and also when requested to do so.

Landlord's duty to provide information to the tenant

42.—(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).

- (2) The information is—
- (a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;
 - (b) the date on which the tenancy deposit was paid to the scheme administrator;
 - (c) the address of the property to which the tenancy deposit relates;
 - (d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under section 82 (registers) of the 2004 Act;
 - (e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and
 - (f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.

- (3) The information in paragraph (2) must be provided—
- (a) where the tenancy deposit is paid in compliance with regulation 3(1), within the timescale set out in that regulation; or
 - (b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.

Duty to provide updated information

43. Where information required to be provided by the scheme administrator under regulation 22 or by the landlord under regulation 42 becomes inaccurate the person required to provide that information must ensure that revised information is provided.

Landlord's duty to provide information to the scheme administrator relating to landlord registration

44.—(1) In addition to the information required under regulation 21, when paying a tenancy deposit to a scheme administrator a landlord must provide information to the scheme administrator demonstrating that the landlord—

- (a) is entered;
- (b) has made an application to be entered which has not yet been determined; or
- (c) is not entered but is appealing a decision to remove the landlord's entry, or refuse the landlord's application for entry,

in the register maintained by the local authority for the area in which the relevant property is situated under section 82(1) of the 2004 Act and that, where relevant, the entry specifies (by virtue of section 84(5)(5) (registration) of the 2004 Act) the address of the house to which the tenancy deposit relates.

(2) Details of the information received from the landlord under paragraph (1), or of the landlord's failure to provide such information, must be notified by the scheme administrator to the local authority mentioned in that paragraph.

PART 8

Performance reporting

Duty to provide annual report to the Scottish Ministers

45.—(1) By 15th May following the end of each financial year, the scheme administrator must send to the Scottish Ministers a report of the operation of the approved scheme and of the performance of the scheme administrator during that financial year.

- (2) The report must include the following information—
- (a) the number of tenancy deposits paid to the scheme;
 - (b) the total value of tenancy deposits held in designated accounts at the end of the financial year in question;
 - (c) the total value of tenancy deposits repaid to tenants;

(5) Section 84(5) was amended by section 176(4) of the Housing (Scotland) Act 2006 (asp 1).

- (d) a statement of the financial position of the scheme, including a set of independently audited accounts and a breakdown of income and expenditure during the financial year assessed against the projected income and expenditure for that year;
- (e) a statement of how accrued interest has been distributed, applied or invested during the financial year;
- (f) a forecast budget for the following financial year;
- (g) details of all referrals to the dispute resolution mechanism including—
 - (i) the number of referrals requested by landlords;
 - (ii) the number of referrals requested by tenants;
 - (iii) the basis of the dispute;
 - (iv) the time taken to resolve the dispute;
 - (v) the outcome of the referral; and
 - (vi) the time taken to repay the deposit in accordance with the decision;
- (h) details of any complaints received about the scheme including any relating to the dispute resolution mechanism.

Duty to provide a quarterly performance report

46.—(1) Within 15 working days after the end of June, September, December and March during any financial year in which an approved scheme is operational, the scheme administrator must send to the Scottish Ministers a report of the scheme’s performance measured against the key performance indicators in the Schedule to these Regulations.

(2) The report must measure performance during the three month period to the end of the relevant month, as referred to in paragraph (1).

(3) Where a monthly average for a key performance indicator fails to achieve the key indicator for acceptable performance given in the Schedule, the scheme administrator must report the reason for that failure and describe the steps which are being taken to improve performance.

PART 9

Transitional provisions

Transitional provisions

47. Where the tenancy deposit was paid to the landlord before the day on which these Regulations come into force, regulation 3 applies with the modification that the tenancy deposit must be paid, and the information provided, within 30 working days of the date determined under paragraph (a) or (b)—

- (a) where the tenancy is renewed, by express agreement or by the operation of tacit relocation, on a day that falls three months or more, but less than nine months, after the first day on which an approved scheme becomes operational, the date of that renewal;
- (b) in any other case, the date which falls nine months after the first day on which an approved scheme becomes operational.

48. Where the tenancy deposit was paid to the landlord on or after the day on which these Regulations come into force and before the first day on which an approved scheme becomes operational, regulation 3 applies with the modification that the tenancy deposit must be paid and the

information provided within 30 working days of the date which falls three months after the first day on which such a scheme becomes operational.

St Andrew's House,
Edinburgh
Date

Authorised to sign by the Scottish Ministers

SCHEDULE

Regulation 46

<i>Performance Area</i>	<i>Acceptable performance time</i>	<i>Key indicator for acceptable performance (% of instances in which performance is achieved)</i>
1. Response to customer enquiry or complaint	15 working days from receipt of enquiry or complaint	100%
2. Return of undisputed deposit	5 working days (in accordance with regulation 26(2), 27(2) (b) or 28(2))	100%
3. Resolution of a referral to dispute resolution	20 working days from referral of dispute	95%
4. Notification of dispute resolution decision	5 working days from resolution decision	100%
5. Return of deposit following notification of dispute resolution decision	5 working days from receipt of resolution decision, unless review requested	100%
6. Accept or reject request for review of adjudicator decision in dispute resolution	5 working days from receipt of request	100%
7. Complete review of adjudicator decision	10 working days from referral under regulation 38(1)	95%

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about tenancy deposit schemes for the purposes of sections 120 to 122 of the Housing (Scotland) Act 2006. Such schemes require to be approved by the Scottish Ministers and will safeguard tenancy deposits. The Regulations set conditions which schemes must meet before they will be approved and establish the regulatory framework for such schemes.

Part 1 imposes duties on landlords to pay a tenancy deposit to an approved scheme, to provide information to the tenant, and to ensure that a deposit is held by an approved scheme throughout a tenancy.

Regulation 6 and Parts 3 to 6 set out the conditions which a scheme must meet before it can be approved. Regulation 7 requires the scheme administrator to be a fit and proper person. Regulation 8 allows the Scottish Ministers to give financial assistance in connection with an approved scheme

Part 2 provides sanctions for failure to comply with the duties, on an application by a tenant to the sheriff, and require the sheriff to impose a financial penalty on the landlord. In addition, the sheriff has discretion to order the landlord to take action to comply with their duties.

Part 3 sets out the model that the scheme must be based on, the geographical coverage and administrative requirements, arrangements for financing and sustainability and the requirements for protection of deposits.

Part 4 makes provision about designated accounts. In particular, it provides for the sums which may be held in designated accounts, accounting and administrative practices to be followed by the scheme administrator, the purposes for which sums may be withdrawn and the circumstances in which interest accrued may be distributed, applied or invested.

Part 5 provides principles and procedures which must be incorporated into any scheme including arrangements for payment of deposits to a scheme and withdrawal and repayment.

Part 6 sets out the type of dispute resolution mechanism that must be made available. The dispute resolution mechanism must be fair and cost-effective and must incorporate the principles and procedures in regulations 34 and 35. These include that dispute resolution must be provided free of charge and must not be compulsory for tenants. Adjudicators must be independent and their decisions binding on the scheme administrator. That administrator is required to collect and maintain information about dispute resolution.

Part 7 imposes information and publicity requirements on schemes, including issue of an information leaflet. Regulation 44 requires landlords to provide information about their landlord registration status, which the scheme administrator will notify to the relevant local authority.

Part 8 requires a scheme administrator to submit an annual report to the Scottish Ministers about the operation of the scheme and, during any year in which a scheme is operational, quarterly reports about its performance measured against key indicators.

Part 9 sets out the basis upon which the Regulations will apply to tenancy deposits which have been received by landlords before the Regulations come into force or before a scheme has been approved.

A Business and Regulatory Impact Assessment has been prepared for this instrument and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Business Support Team, Housing Markets and Supply Division, Scottish Government, Area 1J South, Victoria Quay, Edinburgh EH6 6QQ.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: The Tenancy Deposit Schemes (Scotland) Regulations 2011 No. 176