

Draft Regulations laid before the Assembly under Article 72(3) of the Private Tenancies (Northern Ireland) Order 2006 for approval

DRAFT STATUTORY RULES OF NORTHERN IRELAND

2012 No. []

LANDLORD AND TENANT

**The Tenancy Deposit Schemes
Regulations (Northern Ireland) 2012**

Made - - - - []
Coming into operation []

The Department for Social Development, makes the following Regulations in exercise of the powers conferred on it by Article 5A(1) and (3) and Article 5B(5) and (6) and Article 73(1) of the Private Tenancies (Northern Ireland) Order 2006(1).

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Tenancy Deposit Scheme Regulations (Northern Ireland) 2012 and shall come into operation on [].

Interpretation

2. In these Regulations:—

“approved tenancy deposit scheme” means a scheme which has been approved by the Department for the purposes of safeguarding deposits paid in connection with private tenancies;

“designated account” means an account which cannot contain any sums other than:—

- (a) the whole or any part of tenancy deposits paid into it;
- (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- (c) such sums of money as may be necessary to replace any sum which by error has been withdrawn from the account; and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;
- “dispute regulation mechanism” means the mechanism for resolving disputes specified in regulation 30;
- “the Order” means the Private Tenancies (Northern Ireland) Order 2006 (N.I. 10);
- “working day” means a day that is not a Saturday, Sunday or a public holiday.

PART 2

Appointment of Scheme Administrator

Appointment of Scheme Administrator

3.—(1) The Department may appoint a person who has applied to the Department to establish and maintain a tenancy deposit scheme of a description prescribed in Part 3 where the Department has approved that application under the Regulations.

- (2) The Department must not approve an application where the applicant:—
- (a) has been convicted of any offence involving fraud or dishonesty;
 - (b) is a bankrupt; or
 - (c) is disqualified from being a director of a company.

Coming into force of a scheme and amendments

4. Upon application by a person approved under regulation 3 neither a tenancy deposit scheme nor any amendment to that scheme shall come into force unless approved by the Department.

Approval of a tenancy deposit scheme

5. The Department shall not approve a tenancy deposit scheme where:—
- (a) the scheme is not of a description prescribed in Part 3 (description of schemes);
 - (b) the scheme administrator and the scheme do not satisfy the requirements of Part 4 (financing and accountability requirements);
 - (c) the scheme administrator does not satisfy the requirements of Part 6 (dispute resolution);
 - (d) the scheme does not include a customer service facility which is available to users of tenancy deposit schemes for the purposes of, in particular:—
 - (i) handling enquiries in relation to the tenancy deposit scheme whether made by telephone, letter, or electronic means; and
 - (ii) dealing with complaints about the tenancy deposit scheme, including complaints about the service provided by the scheme administrator;
 - (e) the tenancy deposit scheme is not available to all landlords, including those living outside of the Northern Ireland jurisdiction but operating in Northern Ireland, and their tenants.

PART 3

Description of Schemes

Types of schemes

6. A tenancy deposit scheme shall be either:—
- (a) a custodial scheme, as specified in regulation 7; or
 - (b) an insurance scheme, as specified in regulation 8.

Custodial scheme

7. A custodial scheme is a scheme under which:—
- (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, known as a designated account, which is maintained for the purpose of holding accounts; and
 - (d) the tenancy deposit is held in a designated account until it falls to be repaid in accordance with these Regulations.

Insurance scheme

8. An insurance scheme is a scheme under which:—
- (a) the tenancy deposit is retained by the landlord and a fee and any contribution towards insurance is payable by the landlord to the scheme administrator in respect of participation in the scheme on the basis that, at the end of the tenancy:—
 - (i) such amount in respect of the deposit as may be agreed between the tenant and the landlord shall be repaid by the landlord to the tenant; and
 - (ii) any disputed amount which is not so repaid shall, in accordance with directions given by the scheme administrator, be paid by the landlord into a designated account held by the scheme administrator;
 - (b) amounts paid into a designated account under regulation 8(a)(ii) are kept by the scheme administrator in the account until such time as, in accordance with the scheme, it falls to be paid (wholly or in part) to the landlord or tenant;
 - (c) the landlord undertakes to reimburse the scheme administrator, in accordance with directions given to the landlord by the scheme administrator, such amounts of the deposit paid to the tenant by the scheme administrator, other than amounts paid to the tenant as mentioned in paragraph 8(a)(ii); and
 - (d) insurance is maintained by the scheme administrator in respect of failure by a landlord to comply with directions under regulation 8(a)(ii).

PART 4

Financing and Accountability Requirements

Operational arrangements

- 9.—(1) A scheme administrator of a custodial tenancy deposit scheme must:—
- (a) ensure that the scheme is capable of covering the cost of its operations using only its own finances, including interest;
 - (b) have access to sufficient working capital to fund the establishment and operation of the tenancy deposit scheme from the date of approval until the date on which the tenancy deposit scheme becomes self-financing;
 - (c) 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;
 - (d) have contingency measures and procedures in place to safeguard, and ensure the repayment in accordance with these Regulations of, tenancy deposits held in designated accounts in the event that the tenancy deposit scheme fails or otherwise ceases to be operational; and
 - (e) have appropriate procedures in place to identify if the scheme is likely to fail or otherwise cease to be operational, and will give notice to:—
 - (i) all landlords and tenants whose deposits are held by the scheme; and
 - (ii) the Department.
- (2) A scheme administrator of an insurance based tenancy deposit scheme must:—
- (a) make provision as to the requirements that are to be complied with by the landlord where:—
 - (i) a landlord wishes to retain a tenancy deposit under the scheme; or
 - (ii) a landlord retaining a tenancy deposit under the scheme (in relation to a tenancy that has not terminated) gives notice to the scheme administrator that he no longer wishes to retain the deposit under the scheme;
 - (b) provide that any landlord by whom a tenancy deposit is retained under the scheme shall give the scheme administrator an undertaking that, if the scheme administrator directs the landlord to pay to the scheme administrator any amount in respect of the deposit in accordance with regulation 24(4) to (8), the landlord will comply with such a direction;
 - (c) maintain in force adequate insurance in respect of failures by a landlord by whom a tenancy deposit is retained under the scheme to comply with such directions;
 - (d) make provision enabling the scheme administrator to determine that, by virtue of a landlord's failure to comply with a relevant obligation, a tenancy deposit which has previously been retained by the landlord under the scheme (and which relates to a tenancy which has not ended) is to cease to be retained under the scheme in accordance with regulation 28;
 - (e) before making a determination, give a notice to the landlord stating that the scheme administrator proposes to make such a determination and the reasons for the proposal;
 - (f) ensure that, where 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 to comply with a relevant obligation;

- (g) before determining that the landlord's membership be terminated, give a notice to the landlord in accordance with regulation 28, stating that the scheme administrator proposes to make such a determination and the reasons for the proposal;
- (h) on the termination of a landlord's membership, ensure that:—
 - (i) any tenancy deposit previously protected by the landlord under the scheme in relation to tenancies which had not ended before the termination, cease to be protected under the scheme; but
 - (ii) the scheme continues to apply to a tenancy deposit retained by the landlord under the scheme in relation to a tenancy which ended before the termination of the landlord's membership;
- (i) ensure that the landlord on termination of membership of a scheme pays to the scheme administrator any balance still owing in respect of:—
 - (i) fees charged by the scheme; and
 - (ii) contributions in respect of the cost of the insurance referred to in sub-paragraph (c).

Designated accounts

10.—(1) A scheme administrator shall hold one or more designated accounts for the purposes of regulation 9.

(2) A scheme administrator must ensure that:—

- (a) tenancy deposits received by the scheme administrator are paid without delay into the relevant designated account;
- (b) 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 at any time less than the total of the amounts of tenancy deposits held by the tenancy deposit scheme; and
- (c) each tenancy deposit held in a designated account is at all times attributable to the landlord on whose behalf it was paid into the account, as well as to the tenant to whom it relates.

(3) A scheme administrator may only withdraw sums from a designated account for the following purposes:—

- (a) repayment of tenancy deposits in accordance with these Regulations; or
- (b) meeting the costs of the scheme, where this is a custodial scheme, from interest accrued.

PART 5

Procedures for safeguarding and repaying tenancy deposits

Requirement on landlord to supply information

11. A scheme administrator must accept any tenancy deposit offered to him under a scheme by a landlord who has received the deposit in connection with a tenancy.

12. Where a landlord safeguards a tenancy deposit in a scheme, he must:—

- (a) within 14 days of receipt of the deposit furnish the information specified in paragraph 1 of Schedule 1, to the scheme administrator; and
- (b) within 28 days of receipt of the deposit furnish the information specified in paragraph 3 of Schedule 1 to the tenant.

Protection of deposits in a scheme

13. On acceptance of a tenancy deposit under regulation 11 and receipt of the information furnished under regulation 12, the scheme administrator must:

- (a) safeguard the tenancy deposit into a tenancy deposit scheme;
- (b) issue written confirmation to the landlord confirming the amount of the deposit received and that it has been safeguarded with a scheme; and
- (c) provide to the landlord the information specified in paragraph 2 of Schedule 1 and the information leaflet specified in regulation 37.

Landlord application to transfer a deposit

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

(2) On receipt of such an application, the scheme administrator must:—

- (a) if so requested, pay the tenancy deposit to the other 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 scheme or repaid to the landlord.

Application for repayment of a deposit – custodial schemes

15.—(1) A landlord must apply to the scheme administrator for repayment of any tenancy deposit paid to a 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 a tenancy deposit to the scheme administrator and must specify the date on which the tenancy ended and the amount of the tenancy deposit which in the view of the tenant, shall be:—

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

(4) If an application for repayment has been made by the landlord in accordance with paragraph (1), or is made within 30 working days of the tenant's application, the scheme administrator must not progress the tenant's application.

16.—(1) On receipt of an application from a landlord under regulation 15(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 15(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 18; and

- (e) inform the tenant of the availability of the dispute resolution mechanism and of the procedures for requesting a referral as described in Part 6.
- (2) Where an application is accepted from a tenant under regulation 15(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 15(3);
 - (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 15(2); and
 - (c) explain the effect of regulation 19.

Repayment by the scheme administrator where there is no disputed amount

17.—(1) Paragraph (2) applies where the scheme administrator receives confirmation as mentioned in regulation 16(1)(b) or 16(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 confirmation that repayment of the tenancy deposit as applied for is agreed, repay the tenancy deposit in accordance with the amounts specified in the application.

18.—(1) Paragraph (2) applies where the scheme administrator does not receive confirmation that repayment of the tenancy deposit as applied for is agreed, and notification from the tenant as required by regulation 16(1)(b) and (c) within 30 working days of writing to the tenant in accordance with regulation 16(1) is not received.

(2) The scheme administrator must:—

- (a) if the amount specified under regulation 15(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 15(2)(b) within 5 working days of the expiry of the 30 working day period.

19.—(1) Paragraph (2) applies where the scheme administrator does not receive confirmation that repayment of the tenancy deposit as applied for is agreed, and application from the landlord as required by regulation 16(2)(b) within 30 working days of writing to the landlord in accordance with regulation 16(2) is not received.

(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

20.—(1) Where the scheme administrator receives notification from the tenant of a disputed amount as mentioned in regulation 16(1)(c), the scheme administrator shall 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 reasonably practicable.

(3) The scheme administrator shall manage the disputed amount of tenancy deposit in accordance with regulations 21 to 23.

21. 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.

22.—(1) Paragraphs (2) and (3) apply where, following receipt of the notification referred to in regulation 20(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 referred to in regulation 20(1), the scheme administrator must write to the tenant to explain the effect of paragraph (3).

(3) On the 30th working day after receipt of the notification referred to in regulation 20(1), 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.

23.—(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 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 under Part 6, the scheme administrator must allow 10 working days for receipt of any request for review of that decision and, unless such request is received in that period, shall then repay the tenancy deposit in accordance with that decision within the following 5 working days.

Application for repayment of a deposit – insurance schemes

24.—(1) An insurance scheme must provide that, where:—

- (a) a tenancy deposit has been protected by the landlord under the scheme, and
- (b) the tenancy has ended, and
- (c) there is no dispute,

the landlord must repay to the tenant the full amount of the deposit as requested by the tenant within 5 working days beginning with the date on which the request was made.

(2) Paragraphs (4) to (9) apply where the tenant notifies the scheme administrator that:—

- (a) the tenant has requested the landlord to repay the whole or any part of the deposit; and
- (b) the amount in question (“the outstanding amount”) has not been repaid to the tenant within the period of 5 working days beginning with the date on which the request was made.

(3) Where a tenant gives notice under paragraph (2) the tenant must also indicate whether he consents to a dispute as to the amount to be repaid being resolved through the use of the dispute resolution mechanism.

(4) On receiving a notification in accordance with 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 5 working days beginning with the date on which the direction is received by the landlord.

(5) The following paragraphs apply where the tenant or the landlord subsequently notifies the scheme administrator:—

- (a) 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; or
- (b) that a person acting as an adjudicator under Part 6 has made a decision that the outstanding amount is payable either wholly to one of them or partly to one and partly to the other.

(6) If the scheme administrator is satisfied as to the matters mentioned in paragraph (5) (a) or (b) as the case may be, the scheme administrator must:—

- (a) pay to the tenant any amount due to him in accordance with the adjudicator's decision or an agreement between the tenant and the landlord and, to the extent possible, pay that amount out of any amount held by the scheme administrator by virtue of paragraph (4); and
- (b) comply with paragraph (7) or (8), as the case may be.

(7) Where any amount held by the scheme administrator by virtue of paragraph (4) is more than any amount due to the tenant in accordance with the adjudicator's decision or agreement, the scheme administrator must pay the balance to the landlord.

(8) Where any amount so held by the scheme administrator is less than any amount so due to the tenant, the scheme administrator shall direct the landlord to pay him the difference within the period of 5 working days beginning with the date on which the direction given by the scheme administrator is received by the landlord.

(9) The scheme administrator must pay any amounts required to be paid to the tenant or the landlord as mentioned in paragraph (6)(a) or (7) within 5 working days beginning with the date on which the notification is received by the scheme administrator.

(10) The landlord must comply with any direction given in accordance with paragraphs (4) or (8).

25.—(1) This paragraph applies where the scheme administrator gives a direction under regulation 24(4) to a landlord.

(2) The scheme administrator must also send to the landlord a notice:—

- (a) asking the landlord to indicate:—
 - (i) whether the landlord accepts that the tenant should be repaid the whole or part of the outstanding amount; or
 - (ii) if the landlord accepts that part of it should be repaid, the amount the landlord accepts should be repaid and his proposals to do so;
- (b) warning that if the landlord does not accept that the tenant should be repaid the whole or part of the outstanding amount and fails to respond within the relevant period to the question mentioned in paragraph (2)(a), the dispute will be resolved through the use of the dispute resolution mechanism.

(3) If the scheme administrator does not, within 5 working days receive a response from the landlord indicating whether the landlord accepts that the whole or part of the outstanding amount should be repaid to the tenant the scheme administrator must:—

- (a) treat the lack of a response as an indication that the landlord does not accept that the tenant should be repaid any of the outstanding amount;
- (b) determine forthwith whether the notice was received by the landlord;
- (c) if satisfied that the notice was received by the landlord, that the dispute will be resolved through the use of the dispute resolution mechanism;
- (d) inform the tenant and the landlord that the dispute will be resolved in this way; and

- (e) inform the tenant and the landlord the date on which all papers referring to the dispute have been forwarded to the dispute resolution mechanism.
- (4) If within the relevant period the scheme administrator receives a response to the notice under paragraph (2) to the effect that the landlord does not accept that the tenant should be repaid the whole or part of the outstanding amount, the dispute will be resolved through the dispute resolution mechanism:—
 - (a) the scheme administrator must inform the tenant and the landlord that the dispute will be resolved in this way; and
 - (b) the date on which all papers referring to the dispute have been forwarded for dispute resolution.
- (5) In this paragraph:—
 - the “outstanding amount” has the same meaning as in regulation 24(2)(b);
 - the “relevant period” means the period of 10 working days beginning with the day after that on which the notice referred to in paragraph (2) is sent.

26.—(1) The scheme administrator shall ensure that the designated account must not contain anything other than amounts paid into it as mentioned in regulation 10 and 24(4) and any interest accruing on such amounts.

(2) Subject to paragraph (3), the scheme administrator shall retain any interest accruing on such amounts in respect of the period during which the relevant amount remains in the designated account.

(3) With the exception of any interest retained in accordance with paragraph (2), nothing contained in the designated account may be used to fund the administration of the scheme.

27.—(1) The scheme must make provision for preventing double recovery by a tenant in respect of the whole or part of the deposit, and must in that connection make provision:

- (a) for excluding or modifying any requirement imposed by the scheme in accordance with regulation 24; and
- (b) for requiring the repayment of amounts paid to the tenant by the scheme administrator.

(2) In this regulation “double recovery”, in relation to an amount of a tenancy deposit, means recovering that amount both from the scheme administrator and from the landlord.

Requirements when deposit ceases to be protected under an insurance scheme

28.—(1) A deposit must cease to be protected under an insurance scheme as and from the date that the landlord’s membership of the insurance scheme is terminated by the scheme administrator.

(2) Where the scheme administrator proposes to terminate the landlord’s membership of an insurance scheme, the scheme administrator shall send a written notification to the landlord which must:—

- (a) state that the scheme administrator proposes to terminate the landlord’s membership and the reason why;
- (b) identify the tenancy deposit or in the event of multiple tenancies, all of the tenancy deposits in question;
- (c) state the date when the deposit may cease to be protected under the scheme and give a general explanation of the effect of the proposed termination on any tenancy deposit protected by the landlord under the scheme and that any such deposit held by the landlord will no longer be protected by the scheme; and
- (d) inform the landlord if the scheme administrator does not receive a response to the notification within 14 days beginning with the day on which the notification is received

by the landlord, the scheme administrator must make a decision on the question of membership based on the facts at hand.

(3) Where the scheme administrator does not receive a response within the 14 days as mentioned in paragraph (2)(d), he shall:—

- (a) decide whether the landlord should remain a member of the scheme and if the membership is to continue he must notify the landlord in writing of that decision;
- (b) decide whether to terminate the landlord’s membership and, if so, the date on which the membership is to terminate;
- (c) if the decision is that the membership should be terminated, send a notification to the landlord and to the tenant where the deposit retained in respect of a tenancy is affected by the decision, informing the recipients of the date on which the membership ceases; and
- (d) advise both the landlord and the tenant of the effect the termination of the landlord’s membership will have on any tenancy deposits protected by the landlord under the scheme and that any such deposits will no longer be protected by the scheme from the date of termination.

(4) The actual date to be used as the date of termination of the landlord’s membership must not be within the 3 month period beginning with the day on which the original notification as mentioned in paragraph (2) was received by the landlord.

Notification to tenants – all scheme models

29.—(1) Every custodial or insurance scheme must provide for the scheme administrator to respond as soon as is reasonably practicable from receipt of a request under paragraph (2).

(2) A request is within this regulation 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.

PART 6

Dispute Resolution

Dispute resolution mechanism

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

(2) The dispute resolution mechanism made available by the scheme administrator must specify:

- (a) the proposed provider of the dispute resolution mechanism 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.

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

(2) The scheme administrator must comply with any reasonable request by the landlord or the tenant to refer a dispute to the dispute resolution mechanism.

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

32.—(1) The scheme administrator must 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 shall 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

33.—(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.

34.—(1) 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 33, 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 (or both).

(3) Where an application for review by a landlord or tenant is rejected by the scheme administrator, no further application by that person for review of the adjudicator's decision must be accepted.

(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 the other party may apply for review under paragraph (1).

35.—(1) If, after consideration of an application under regulation 34(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 (or both), the scheme administrator must accept the application and refer the decision of the adjudicator under regulation 33 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 33; or
- (b) substitute a different decision for that decision;

and in either case shall give notice of the review decision in accordance with regulation 33(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.

PART 7

Information and requirements in relation to tenancy deposit schemes

Duty to publicise schemes

36. The scheme administrator must ensure that the scheme is publicised across Northern Ireland:

- (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 coming into force and for a reasonable period of time thereafter.

Duty to produce an information leaflet

37.—(1) Before a tenancy deposit scheme comes into force, the scheme administrator must have available an information leaflet detailing:—

- (a) how the scheme operates;
- (b) the terms and conditions relating to participation in the scheme;
- (c) the procedures governing the payment, holding and repayment of tenancy deposits in accordance with these Regulations; and
- (d) the dispute resolution mechanism.

(2) Where a scheme administrator furnishes an information leaflet to a landlord under regulation 13, that landlord shall furnish a copy of the leaflet to the tenant within 28 days of receipt of the deposit as specified in Regulation 12.

Duty to provide updated information

38. Where information required to be provided by the scheme administrator or the landlord becomes inaccurate, the person required to provide that information must ensure that the revised information is provided as soon as is reasonably practicable.

Duty to disclose information

39.—(1) The scheme administrator must disclose all information, provided by landlords under the scheme requirements and held by the scheme administrator, in response to any request from an officer authorised by a council for the purposes of enabling or assisting that council to exercise its functions under any provision of Part 2, 3 or 4 of the Order.

(2) Any request for information under (1) must specify:—

- (a) the extent and detail of the information which is to be supplied;
- (b) the form in which that information is to be supplied; and
- (c) the date by which that information is to be supplied.

PART 8

Performance Reporting

Duty to provide annual report to the Department

40.—(1) Within 3 calendar months following the end of each financial year, the scheme administrator must send to the Department an annual report of the operation of the 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;
- (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; and
- (h) details of any complaints received about the scheme including any relating to the dispute resolution mechanism.

- (3) Any requirements under paragraph (2) must specify:
- (a) the description of relevant information which is to be supplied;
 - (b) the form in which that information is to be supplied; and
 - (c) the date by which that information is to be supplied.

Sealed with the official seal of the Department for Social Development on []

Jim Wilkinson
A senior officer of the Department for Social
Development

SCHEDULE 1

Regulations 12, 13 and 37

The prescribed information to be provided when the tenancy deposit is protected in a tenancy deposit scheme

1. Written information must be supplied by the landlord to the scheme administrator within 14 days from the receipt of the deposit from the tenant detailing:—

- (a) the amount of the deposit paid and the full address to which it relates, including the post code;
- (b) the landlord's full name and date of birth;
- (c) the landlord's contact details to include the address, telephone number(s) including mobile telephone number and a contact email address;
- (d) the landlord's correspondence address (must be in Northern Ireland) if different from (c);
- (e) the name, address and contact number of any agent acting on the landlord's behalf; and
- (f) confirmation of the tenant's contact details including confirmation of the contact details of any relevant person acting on behalf of the tenant.

2. Written confirmation must be supplied by the scheme administrator to the landlord as soon as is reasonably practicable on receipt of the deposit from the landlord confirming:—

- (a) the amount of the deposit protected and the full postal address to which it relates including the postcode;
- (b) details of the tenant including contact details (confirmation of any relevant person details) etc;
- (c) details of the scheme in which the deposit has been protected;
- (d) details of the dispute resolution mechanism associated with that scheme;
- (e) details of how the deposit will be refunded and confirming under what circumstances the landlord may retain some or all of the deposit;
- (f) that the onus is on the landlord to ensure the scheme administrator is notified immediately of any change to the details previously supplied; and
- (g) the procedures that apply under the scheme when the landlord is not contactable at the end of the tenancy.

The scheme administrator must also provide to the landlord a copy of the information leaflet as described in regulation 37 for sharing with the tenant.

3. Written information must be supplied by the landlord to their tenant and any relevant person (i.e. anyone who has paid the deposit on the tenant's behalf) within 28 days from the receipt of the deposit and must detail:—

- (a) the amount of the deposit protected and the full address to which it relates, including the postcode;
- (b) the landlord's full name;
- (c) the name, address and contact number of any agent acting on the landlord's behalf;
- (d) the landlord's contact details to include the address, telephone number(s) including mobile telephone number and a contact email address;
- (e) the landlord's correspondence address (must be in Northern Ireland) if different from (d);
- (f) confirmation of the tenant's contact details including confirmation of the contact details of any relevant person acting on behalf of the tenant;

- (g) details of the scheme in which the deposit will be protected including the details of the dispute resolution mechanism;
- (h) details of how the deposit will be refunded and the circumstances under which the landlord may retain some or all of the deposit; and
- (i) procedures that apply under the scheme when the tenant is not contactable at the end of the tenancy.

The landlord is required to certify that the written information he provides is correct to his knowledge and belief and he shall give his tenant the opportunity to sign the information document by way of confirmation that the information is accurate to the best of his tenant's knowledge and belief.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for tenancy deposit schemes for the purposes of Articles 5A and 5B of the Private Tenancies (Northern Ireland) Order 2006 (N.I. 10). Such schemes require to be approved by the Department for Social Development. The Regulations provide for the appointment of a scheme administrator and approval of tenancy deposit schemes.

Part 2 sets out the conditions which have to be met for the approval of the scheme administrator and for the approval of a tenancy deposit scheme. Regulation 3 states that the Department shall appoint a scheme administrator to establish and maintain a tenancy deposit scheme of a prescribed description which will include the facilitation of disputes between landlord and tenant. Regulation 5 sets out the conditions under which the Department shall not approve a scheme administrator and a tenancy deposit scheme.

Part 3 sets out the two types of scheme models. Regulation 7 refers to the custodial scheme. The custodial scheme is where all the deposit is handed over by the landlord to the scheme administrator for safe keeping in a designated account and either the tenant or the landlord can apply at the end of the tenancy for repayment of the deposit. In the event of a dispute the scheme administrator will hold on to the disputed amount until the dispute is resolved.

Regulation 8 refers to the insurance scheme. The insurance scheme is where the landlord holds on to the deposit and pays a fee/insurance premium to the scheme administrator. The landlord refunds the tenant when the deposit is due to be refunded and in the case where there is dispute, the landlord hands over to the scheme administrator the disputed amount to safeguard until the dispute is resolved.

Part 4 sets out the financing and accountability requirements of a tenancy deposit scheme. Regulation 9(1) sets out the operational arrangements for the custodial scheme and regulation 9(2) the operational arrangements for the insurance scheme. Regulation 10 refers to the designated account which the scheme administrator must maintain solely for tenancy deposits received by the scheme administrator, and to the management of such an account in respect of interest accrued and the conditions under which sums shall be withdrawn.

Part 5 sets out the procedures for safeguarding and repaying tenancy deposits. Regulation 12 sets out the information which the landlord shall supply to the scheme administrator when the deposit is to be safeguarded in a scheme. Regulation 13 sets out the requirements on the scheme administrator once he receives and safeguards such a deposit. Regulation 14 deals with a landlord's request to transfer a deposit. Regulations 15-19 set out the procedures to follow for the repayment of a deposit

from a custodial scheme, including as described in regulations 20-23 where there is a dispute over the amount to be repaid. Regulations 24-27 set out the procedures to follow for the repayment of a deposit from an insurance scheme and the procedures to follow where there is a dispute over the amount to be repaid.

Regulation 28 sets out the requirements when a deposit ceases to be retained under an insurance scheme such as in the event of a landlord's membership of the scheme being terminated. Regulation 29 requires the scheme administrator to respond to a request from the tenant confirming the protection of the deposit in either scheme.

Part 6 sets out the type of dispute resolution mechanism that shall be made available. The dispute resolution mechanism shall be fair and cost effective and shall incorporate the principles and procedures in regulations 30-35. These include that dispute resolution shall be provided free of charge and shall not be compulsory for tenants. Adjudicators shall be independent and their decisions binding on the scheme administrator and that the 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.

Part 8 requires a scheme administrator to submit an annual report to the Department about the operation of the scheme.

Schedule 1 details the information which the landlord must provide to the scheme administrator and to the tenant, and the information which the scheme administrator must supply to the landlord.

A Regulatory Impact Assessment has been prepared for these Regulations. Copies may be obtained from Housing Division, Lighthouse Building, Gasworks Business Park, Ormeau Rd, Belfast or at www.dsdni.gov.uk.