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STATUTORY INSTRUMENTS

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**2007 No. 796**

**The Housing (Tenancy Deposit Schemes) Order 2007**

**Further provision about custodial schemes**

3.—(1) Paragraph 4 (Custodial Schemes: general) is amended as follows.

(2) After sub-paragraph (4) insert—

“(4A) Sub-paragraph (5) also applies where the tenant or the landlord notifies the scheme administrator that a person acting as an adjudicator under the provision made under paragraph 10 has made a binding decision that the relevant amount is payable either wholly to one of them or partly to one and partly to the other.”

(3) In sub-paragraph (5), for “such a notification” substitute “a notification as mentioned in sub-paragraph (4) or (4A)” and for “sub-paragraph (4)(a) and (b)” substitute “that sub-paragraph”.

(4) After paragraph 4 insert—

“Custodial schemes: termination of tenancies - absent or un-cooperative landlord or tenant

(1) The provision made by a custodial scheme for the purposes of paragraph 4(1) in relation to the treatment of the relevant amount at the end of a tenancy must include provision—

- (a) for enabling the landlord, if he considers that the conditions set out in sub-paragraph (2) are met, to apply to the scheme administrator for the whole or a specified part of the relevant amount (“the amount claimed”) to be paid to him; and
- (b) for such an application to be dealt with by the scheme administrator in accordance with the provisions of paragraph 4C.

(2) Such an application may be made if—

- (a) at least 14 days have elapsed since the day on which the tenancy ended;
- (b) the landlord and tenant have not reached an agreement under paragraph 4(2) with respect to the amount claimed;
- (c) either sub-paragraph (3) or sub-paragraph (4) applies; and
- (d) the landlord believes that he is entitled to be paid the amount claimed and that the amount claimed is referable to sums falling within sub-paragraph (5).

(3) This sub-paragraph applies if the landlord has no current address for, or other means of contacting, the tenant.

(4) This sub-paragraph applies if—

- (a) the tenant has, since the tenancy ended, received from the landlord a written notice asking whether the tenant accepts that the landlord should be paid the whole or a specified part of the relevant amount; and
- (b) the tenant has failed to respond to that notice within the period of 14 days beginning with the day on which he received the notice by indicating to the landlord whether he accepts that the landlord should be paid the relevant amount or the specified part of it (as the case may be).

(5) The amount claimed must be referable to—

- (a) an amount of unpaid rent or any other sum due under the terms of the tenancy; or

- (b) a liability of the tenant to the landlord arising under or in connection with the tenancy in respect of—
  - (i) damage to the premises subject to the tenancy, or
  - (ii) loss of or damage to property on those premises,

other than damage caused by fair wear and tear.

(6) If sub-paragraph (4) applies and the notice specifies part of the relevant amount, the amount claimed in the application must not exceed the specified part.

(7) The application must be accompanied by a statutory declaration made by the landlord stating—

- (a) the date on which the tenancy ended;
- (b) that the landlord and the tenant have not reached any agreement under paragraph 4(2) with respect to the amount claimed, with details of any communications between them since that date (whether relating to the relevant amount or otherwise);
- (c) the basis on which the amount claimed is calculated, with particulars of any facts relied on to justify claiming that amount;
- (d) if the landlord relies on the condition in sub-paragraph (3), that he has no current address for, or other means of contacting, the tenant, giving particulars of any address (other than the premises subject to the tenancy) and other contact details (including telephone numbers or e mail addresses) which the landlord has had for the tenant;
- (e) if the landlord relies on the condition in sub-paragraph (4), that the condition is met, with particulars of the facts relied on to demonstrate that it is met and attaching a copy of the notice given to the tenant;
- (f) any information he has as to the whereabouts of the tenant;
- (g) that he gives his consent, in the event of the tenant disputing that the landlord should be paid the amount claimed, for the dispute to be resolved through the use of the dispute resolution service;
- (h) that he considers that he is entitled to be paid the amount claimed; and
- (i) that he makes the statutory declaration knowing that if he knowingly and wilfully makes a false declaration he may be liable to prosecution under the Perjury Act 1911(1).

(1) The provision made by a custodial scheme for the purposes of paragraph 4(1) in relation to the treatment of the relevant amount at the end of a tenancy must include provision—

- (a) for enabling the tenant, if he considers that the conditions set out in sub-paragraph (2) are met, to apply to the scheme administrator for the whole or a specified part of the relevant amount (“the amount claimed”) to be paid to him; and
- (b) for such an application to be dealt with by the scheme administrator in accordance with the provisions of paragraph 4C.

(2) Such an application may be made if—

- (a) at least 14 days have elapsed since the day on which the tenancy ended;
- (b) the landlord and tenant have not reached an agreement under paragraph 4(2) with respect to the amount claimed;
- (c) either sub-paragraph (3) or sub-paragraph (4) applies; and
- (d) the tenant believes that he is entitled to be paid the amount claimed.

(3) This sub-paragraph applies if the tenant has no current address for, or other means of contacting, the landlord.

(4) This sub-paragraph applies if—

- (a) the landlord has, since the tenancy ended, received from the tenant a written notice asking whether the landlord accepts that the tenant should be paid the whole or a specified part of the relevant amount; and
- (b) the landlord has failed to respond to that notice within the period of 14 days beginning with the day on which he received the notice by indicating to the tenant whether he accepts that the tenant should be paid the relevant amount or the specified part of it (as the case may be).

(5) If sub-paragraph (4) applies and the notice specifies part of the relevant amount, the amount claimed in the application must not exceed the specified part.

(6) The application must be accompanied by a statutory declaration made by the tenant stating—

- (a) the date on which the tenancy ended;
- (b) that the landlord and the tenant have not reached any agreement under paragraph 4(2) with respect to the amount claimed, with details of any communications between them since that date (whether relating to the relevant amount or otherwise);
- (c) if the tenant relies on the condition in sub-paragraph (3), that he has no current address for, or other means of contacting, the landlord, giving particulars of any address and other contact details (including telephone numbers or e mail addresses) which the tenant has had for the landlord;
- (d) if the tenant relies on the condition in sub-paragraph (4), that the condition is met, with particulars of the facts relied on to demonstrate that it is met and attaching a copy of the notice given to the landlord;
- (e) any information he has as to the whereabouts of the landlord;
- (f) that he gives his consent, in the event of the landlord disputing that the tenant should be paid the amount claimed, for the dispute to be resolved through the use of the dispute resolution service;
- (g) that he considers that he is entitled to be paid the amount claimed; and
- (h) that he makes the statutory declaration knowing that if he knowingly and wilfully makes a false declaration he may be liable to prosecution under the Perjury Act 1911(2).

(1) Immediately upon receipt of—

- (a) a duly completed application from the landlord, accompanied by a statutory declaration which appears to meet the requirements of paragraph 4A(7), or
- (b) a duly completed application from the tenant, accompanied by a statutory declaration which appears to meet the requirements of paragraph 4B(6),

the scheme administrator must give to the tenant or, as the case may be, the landlord (“the other party”) a copy of the application and accompanying statutory declaration and a notice under sub-paragraph (2).

(2) A notice under this sub-paragraph is a notice—

- (a) asking the other party to indicate—
  - (i) whether he accepts that the applicant should be paid the whole or part of the amount claimed;

- (ii) if he accepts that part of the amount claimed should be paid, the amount he accepts should be paid; and
  - (iii) if he does not accept that the applicant should be paid the whole of the amount claimed, whether he consents to the dispute being resolved through the use of the dispute resolution service; and
- (b) warning the other party that—
  - (i) the amount claimed will be paid to the applicant unless, within the relevant period, the other party informs the scheme administrator that he does not accept that the whole of the amount claimed should be paid to the applicant; and
  - (ii) if the other party responds to the scheme administrator informing him that he does not accept that the whole of the amount claimed should be paid to the applicant, but fails to respond within the relevant period to the question mentioned in paragraph (a) (iii), he will be treated as having given his consent for the dispute to be resolved through the use of the dispute resolution service.
- (3) If within the relevant period the scheme administrator receives a response from the other party to the effect that he accepts that the amount claimed should be paid to the applicant—
  - (a) the application must be granted; and
  - (b) the scheme administrator must arrange for the amount claimed to be paid to the applicant within the period of 10 days beginning with the day on which the scheme administrator receives that response.
- (4) If within the relevant period the scheme administrator receives a response from the other party to the effect that he does not accept that the applicant should be paid any of the amount claimed—
  - (a) the application must be refused;
  - (b) the scheme administrator must not pay the amount claimed to either party except in accordance with the relevant provisions of paragraph 4; and
  - (c) the scheme administrator must inform the applicant of the other party's response to the questions asked in the notice under sub-paragraph (2).
- (5) If within the relevant period the scheme administrator receives a response from the other party to the effect that he accepts that part of the amount claimed should be paid to the applicant—
  - (a) sub-paragraph (3) applies in relation to that part of the amount claimed; and
  - (b) sub-paragraph (4) applies to so much of the application as relates to the rest of the amount claimed.
- (6) If the scheme administrator does not, within the relevant period, receive a response from the other party indicating whether he accepts that the whole or part of the amount claimed should be paid to the applicant, the scheme administrator must arrange for the amount claimed to be paid to the applicant within the period of 10 days beginning with the day after the last day of the relevant period.
- (7) If within the relevant period the scheme administrator receives a response from the other party to the effect that he does not accept that the applicant should be paid the whole of the amount claimed but the other party fails within that period to indicate whether he consents to the dispute being resolved through the use of the dispute resolution service—
  - (a) the other party is to be treated as having given his consent to the use of that service; and
  - (b) the scheme administrator must inform the applicant that such consent is treated as having been given.
- (8) In this paragraph “the relevant period”, in relation to the application, means the period of 14 days beginning with the day on which the notice mentioned in sub-paragraph (2) is received by the other party.”

