EXPLANATORY MEMORANDUM TO

The Tenancy Deposit Scheme Regulations (Northern Ireland) 2012

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the above Regulations which are laid under the draft affirmative resolution process before the Northern Ireland Assembly.

1.2 These Regulations are made under Article 5A and 5B of the Private Tenancies (Northern Ireland) Order 2006.

2. Purpose

2.1 The purpose of the Regulations is to give effect to a tenancy deposit scheme or schemes including the functions and responsibilities of the scheme administrator and which places on private landlords certain obligations relating to such schemes. They detail the information which a landlord must provide to the scheme administrator in order to protect the tenants deposit in a tenancy deposit scheme and in turn the information that the scheme administrator must provide to the landlord for sharing with the tenant once the deposit has been protected.

3. Background

3.1 In March 2010, the Department published its strategy for the private rented sector 'Building Sound Foundations' which included a number of recommendations for the sector including the introduction of a tenancy deposit scheme in Northern Ireland.

3.2 **A tenancy deposit i**s a sum of money which a landlord may ask a tenant to pay at the start of a tenancy. The landlord requires the money as security against the tenant not meeting their obligations in connection with a tenancy arrangement. The tenancy agreement should set out the circumstances in which

the deposit may be withheld by the landlord at the end of the tenancy. For example, the landlord may decide to keep some or all of a deposit if it is needed to pay for:

- damage the tenant has caused to the property;
- cleaning bills if the property has been left in poor condition;
- bills that are left unpaid, for example fuel or telephone bills;
- any unpaid rent.

3.3 **A tenancy deposit scheme** is an independent third party scheme which has been approved by the Department to protect tenant's deposits until they need to be repaid at the end of the tenancy. It will provide benefits for both landlords and tenants by encouraging a more professional approach to tenancy deposit practice, minimise disputes and will go some way towards improving the sector's reputation as a desirable housing option. It is not intended that the scheme will make deposits compulsory, but **will** apply where a landlord decides to take a deposit from the tenant. For every new tenancy where a deposit is required, the landlord must be covered by a tenancy deposit scheme, approved by the Department and which includes a dispute resolution mechanism.

4. Consultation

4.1 In order to develop an appropriate approach to the introduction of a tenancy deposit scheme, a stakeholder forum representing all relevant parties with an interest in the private rented sector was established. The group examined the ongoing development of a tenancy deposit scheme in Scotland and used the learning and experience from England and Wales where tenancy deposit schemes have been operational since April 2007, to examine the various types of schemes and subsequently develop a set of draft regulations.

5. Equality Impact

5.1 The Department considers that this legislation is in compliance with Section 75 of the Northern Ireland Act 1998. A full equality impact assessment did not have to be carried out as the policy has been screened out. No adverse equality differentials are foreseen on Section 75 groups and it will have a positive impact on all equality groups.

6. Regulatory Impact

6.1 A Regulatory Impact Assessment (RIA) has been prepared for the Tenancy Deposit Scheme Regulations (Northern Ireland) 2012 and is attached to this memorandum at Annex A.

6.2 The Department has considered how the Regulations meet with the requirement for better regulation of the private rented sector and it is considered that although there is a cost for landlords a tenancy deposit scheme will have a positive impact on tenancy management practice and on the private rented sector.

7. Financial Implications

7.1 There will be no Initial start up costs or running costs incurred by the Department. The Regulations allow for the setting up of two types of tenancy deposit schemes, an Insurance scheme and a Custodial scheme. The running and maintenance costs for the Insurance scheme will be met by the scheme administrator through a fee and/or an insurance premium payable by the landlord as and when required by the scheme administrator. The running and maintenance costs for the Custodial scheme will be met by the scheme administrator from the interest accrued on the deposits lodged into a designated account.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department has considered its obligations under section 24 of the Northern Ireland Act 1998. It is the Department's judgement that the Tenancy Deposit Scheme Regulations (Northern Ireland) 2012:-

- are not incompatible with the Convention rights;
- are not incompatible with Community law;
- do not discriminate against any person or class of person on the ground of religious belief or political opinion; and
- do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1 Not applicable

10. Parity or Replicatory Measure

10.1 This is stand alone legislation for Northern Ireland and there is no impact on GB devolved administrations.

10.2 Provision for tenancy deposit schemes in **England and Wales** is made by Section 212 of and Schedule 10 to the Housing Act 2004. Both the Insurance and Custodial type schemes have been in operation since 6th April 2007.

10.3 In **Scotland** provisions for tenancy deposit schemes are contained in The Tenancy Deposit Schemes (Scotland) Regulations 2011. Tenancy deposit schemes were introduced in Scotland on 2nd July 2012. Only Custodial type schemes are permitted to operate.

10.4 The **Republic of Ireland** does not have provision for tenancy deposit schemes however the Private Residential Tenancies Board in Dublin deals with issues around non return of deposits.

11. Additional Information

11.1 Not applicable

ANNEX A

Regulatory Impact Assessment – Tenancy Deposit Scheme

Proposed and intended effect of Measure

The consultation document, 'Building Sound Foundations (15 May 2009 to 7 August 2009) proposed the introduction of a rent deposit scheme as a means of improving accessibility to private rental accommodation and safeguarding tenant's deposits while allowing for any disputes which may arise to be dealt with speedily and independently. With the exception of one landlord group and 2 individuals, all other respondents to the consultation supported the proposals in principal for a rent deposit and associated disputes handling scheme. As a result, the Department made primary legislation to allow for the appointment of Scheme Administrators who will establish and maintain a rent deposit scheme/s (known as a tenancy deposit scheme) in accordance with laid down regulations. It is **not** intended that such schemes will make deposits compulsory but will only apply where a landlord requires a deposit. The purpose of this assessment is to consider the impact which the implementation of tenancy deposit schemes may have on business and the ability of those working in the sector to carry out their business.

Objective

Implementation of a tenancy deposit scheme has a number of objectives including:

- the safeguarding of the tenants deposit which will minimise the current difficulties that can occur between landlord and tenant surrounding the return of a deposit.
- a speedy and independent dispute handling service which is free to either party.
- improved accessibility to private rental accommodation for low income families and the most vulnerable.
- providing essential information for councils in support of their enforcement and compliance activities: and
- gathering relevant data on tenancy deposits, the dispute service and the performance of the scheme administrator in order to underpin future policy development.

Options

1. Do nothing.
2. Mediation/arbitration
3. A mandatory tenancy deposit scheme/s to include dispute resolution

Option 3 is the preferred option.

Option 1 - to do nothing would not meet any of the policy objectives. The evidence from the public consultation presented a clear case for the need for a rent deposit and an associated disputes handling scheme.

Option 2 - may deal with management issues such as withholding deposits, anti social behaviour, harassment and illegal eviction and issues over repairs, however it is too restrictive in that it would not satisfy the policy objective on safeguarding the deposit or on collecting data.

Option 3 - the preferred option, will meet all policy objectives and put in place arrangements which safeguard tenancy deposits and provide a means to allow disputes between landlords and tenants around such deposits to be dealt with independently and speedily at no extra cost to either party.

Benefits

A mandatory tenancy deposit scheme/s to include dispute resolution will:

- Safeguard the tenant's deposit at no cost to the tenant
- Provide a free service while protecting the deposit to help resolve any disputes
- Have rigid timescales (with sanctions for non compliance) ensuring disputes are resolved and deposits returned quickly
- Have an independent adjudicator with considerable experience in this field and their decision will be final and binding
- Enhance confidence in the private rental sector (given the difficulties associated with tenants getting their deposits back in the past)
- Give the landlord and the tenant real encouragement to behave properly and look after the property

Costs

The scheme is expected to be self financing through interest accrued on the deposits held or through fees payable by landlords depending on whether the deposit is lodged into a custodial scheme and held by the scheme administrator in a designated account or the deposit is retained by the landlord and he pays a fee and/or insurance to the Scheme administrator (an insurance scheme). All of the monies payable to the scheme administrator in either interest on the deposits or in landlords fees will be used to fund the administration and operation of the scheme/s including the dispute resolution service.

Consultation with Small Business- the Small Business Impact Test

The majority of landlords in Northern Ireland operate on a small scale. Research undertaken by the University of Ulster in 2011[1] on behalf of the

[1] 'Gray, P. and McAnulty, U (2011): Private Rented Sector in Northern Ireland. Living in the Private Rented Sector: Landlord Perspectives Report. Report 6'.

Northern Ireland Housing Executive indicates that approximately 70% of those who responded were small scale landlords owning 5 properties or less. A stakeholder forum involving landlord representation was set up to assist the Department in the development of an appropriate scheme which would best meet the needs of tenants and landlords in Northern Ireland. With the help of the forum, the Department developed a specification document and draft regulations which reflected the advice of stakeholders and made provision that both custodial and insurance schemes should operate in Northern Ireland.

While it is envisaged that the introduction of a tenancy deposit scheme/s will have a positive impact on the private rental sector as a housing option, the forum recognised that there will be additional costs such as fees and/or insurance premiums for landlords who choose to secure the deposit in an Insurance scheme, however by being able to retain the deposit until it needs to be repaid to the tenant, the landlord could make interest on the deposit amount.

A landlord who chooses to secure the deposit through a custodial scheme will not have to pay any fees but he will not be able to accumulate any interest on the deposit as it will have been lodged with the scheme administrator to hold in a designated account.

The benefit of the free dispute resolution mechanism will ensure that disputes between tenants and landlords including unpaid rent will be easier resolved. The main incentive for the landlord is that the tenant is encouraged to look after the property they are renting in order to get their deposit back.

Enforcement & Sanctions

The Private Tenancies (Northern Ireland) Order 2006 (the legislation governing the private rented sector) includes provision that where an authorised officer of a district council finds that a landlord is guilty of an offence in relation to a tenancy deposit, he will issue the landlord with a fixed penalty notice. The landlord shall have 14 days to make good the offence by payment of the fixed penalty notice and avoid court proceedings. Where the landlord fails to pay the fine within the specified time, court proceedings will be instituted.

The landlord is guilty of an offence where:

- he takes a deposit which consists of property other than money
- he fails to safeguard the tenant's deposit in an approved tenancy deposit scheme within the proper timescale of 14 days.
- he fails to supply to the tenant within 28 day timescale details of the approved scheme applying to the deposit.

Monitoring & Review

Following the date of implementation, the scheme will be evaluated on an annual basis to assess and measure its impact and contribution towards achieving the primary objectives mentioned earlier.

Consultation

Date	**Issue**
May – August 2009	Public consultation on proposals for the private rented sector, including a proposal to introduce a rent deposit scheme. Responses received indicated a strong level of support for the introduction of a mandatory tenancy deposit scheme.
March 2010	Strategy for the private rented sector (Building Sound Foundations) launched by Minister Ritchie. Included measures for the introduction of a tenancy deposit scheme.
May 2010	Stakeholder forum established to assist in the development of the detail of the scheme. The forum represented all relevant bodies to ensure that the development and introduction of a tenancy deposit scheme will meet the needs of landlords and tenants. The forum will shortly receive for consideration/comment the draft Regulations to enable the practical application of the measures included in the tenancy deposit scheme (November 2011).
May 2011	Housing (Amendment) Act (Northern Ireland) 2011 which includes provision for the introduction of a tenancy deposit scheme receives Royal Assent.

Summary & Recommendations

It is recommended that the Department continues to implement a mandatory tenancy deposit scheme/s to include an independent and free dispute resolution mechanism which will offer a number of positive benefits. It will make private renting a more attractive option by putting safeguards in place which will protect the tenants deposit and ensure they get it back when they become entitled to it. The speedy return of the deposit will help ensure that low income and vulnerable families can move home more easily. It will create an environment where the tenant will be encouraged to look after the property they are renting in order to get the deposit back.

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