

Plans for Guernsey deposit protection scheme to be laid out before the end of the year

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It was announced today (24 August 2018) that Environment & Infrastructure expect to set out plans for a new deposit protection scheme before the end of the year. The announcement follows news that a local estate agent has ceased trading leaving some tenants and landlords uncertain of their position with regards to rents and deposits that were being held by that agent.

We understand that the proposal is likely to be that Guernsey should introduce a scheme which is similar, if not identical, to the scheme already in place in Jersey.

What follows is a brief explanation of how the Jersey scheme operates, and from that we may be able to get an idea of what scheme will be proposed for Guernsey.

A landlord taking a rent deposit must enter into an agreement with the States appointed administrator – in Jersey called "mydeposits" – and to place any deposit monies with them within 30 days of the commencement of the lease. Any landlord failing to comply risks being fined.

The scheme applies to leases of self-contained dwellings with a lease term of 9 years or less, or weekly or monthly tenancies made after the law came into force.

A rent deposit protection scheme does very much as the name implies. A tenant's deposit is protected for the duration of the lease and will be returned to the tenant if they have complied with the terms of the lease, they have not damaged the property and they have paid their rent and any bills. The cost for the protection of the scheme is £21, and this is taken out of the tenant's deposit at the end of the lease.

The deposit is transferred to a regulated bank and held there, so the tenant is protected if either the landlord or the landlord's agent goes out of business. The scheme also provides protection against the bank or mydeposits failing.

As important as knowing your deposit is safe is knowing that there is a mechanism for resolving any dispute. It has been known for tenants to fall behind in their rent, or possibly fail to look after the property in the manner provided for in the lease. In some cases it is clear that the whole of the deposit should be handed over to the landlord, but in cases where only a part of the deposit should be withheld mydeposits will provide a free dispute resolution service. Either party can also take the matter to court – for example if the landlord's losses are greater than the amount of the deposit.

Letting agents can become members of mydeposits so they can pay in and manage deposits on behalf of landlords.

Tenants are given further protection under the Jersey law which include, for example, a right to have a copy of the signed lease, a receipt and a right not to pay full rent if a part of the accommodation becomes uninhabitable. A lease of self-contained accommodation must also

contain certain information, which are things that would be in any properly drafted lease in any event. A compliant lease will also make it clear that a tenant can remove anything he has affixed to the unit, provided he makes good any damage caused by the removal of the item – leases could say, though in practice rarely do, that anything that is affixed to the premises becomes the landlord's property, so this provision makes things clear for both parties.

The Jersey law also changed the position with regard to evictions and stays of eviction. It remains to be seen whether the proposals will be that the law in Guernsey should also be changed.

The tenant's deposit scheme has clear benefits for both landlord and tenants, but as good as it may be, it is unlikely to be the answer to all problems. For example, the law may not provide protection in cases where a landlord or agent ceases trading before placing the money with the scheme. Any such scheme needs to be run efficiently so that the tenant can have the deposit returned promptly at the end of the lease – after all, they may need the deposit to rent another property.

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