COLLAS CRILL

A Deposit Protection Scheme in the pipeline for Guernsey?

MARCH 2020

The Committee for the Environment & Infrastructure has published a policy letter which asks the States to approve a single legislative framework that will seek to regulate conditions across all housing on-island and provide greater protection to tenants, without significant detriment to responsible landlords and property owners. It is hoped the Committee's proposals will be debated by the States next month (April 2020).

One of the priority areas for which policy approval is sought is to introduce a requirement for a deposit protection scheme; influenced by last year's difficulties over the collapse of Sarnia Estate Agents.

Currently, Guernsey does not have any legal framework for tenancy deposit/deposit protection schemes, and minimum standards in tenants' rights against their landlords and obligations of landlords. Tenants and landlords negotiate terms between themselves on a contractual basis, and courts rely on these contracts to resolve tenancy disputes.

Of the most recent statistics provided, 750 private tenancy issues were reported to the Guernsey Citizens Advice Bureau with 92 relating to deposits and 52 directly relating to the lack of a tenancy deposit scheme.

It has been considered that of the options available, a custodial scheme be most suitable, as monies will be held by an independent third party and dispute resolution is more straightforward; the third party would hold the deposit for the lifetime of the tenancy. Landlords would be compelled by legislation to pay the deposit to the agency or face a fine (eg in Jersey, landlords who fail to pay into the scheme within 21 days are fined £2,000). Tenants are also liable to pay a one-off holding fee to the agency. The cost of this depends on the agency, but as a guide: 'mydeposits' (used in Jersey) charge £21 per tenancy, TDS in England charge fees starting from £13.20, and in Northern Ireland the charge for administering the scheme is paid for through interest earned on the deposit held.

The introduction of a deposit protection scheme would aim to:

- Contribute towards the ongoing States programme of work aimed at modernising and improving the statutory oversight of, and support for, the residential rental sector in Guernsey
- Provide protection for both landlords and a large proportion of the public as around 20 per cent of the population rent privately
- Enhance Guernsey’s reputation by complying with international best practice, and addressing the existing gap in the protection of the rights of landlords and tenants in the private rental property market

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

On the whole, this seems a sensible way forward for the better protection of tenants. From a landlords' perspective, in isolation, this proposal, (if approved) should not cause any obvious difficulties, although the procedure for using part of the deposit to rectify breaches is not yet clear; further clarification on this would be welcome. Also how would a dispute over the return of the deposit be dealt with? Presumably it would revert to the disputes resolution mechanism under the lease, if any. Alternatively would the scheme include a very simple, cost effective and DIY way of mediating over that dispute? It will be interesting to see how this transpires when debated in the States.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

COLLAS CRILL

For more information please contact:



Jason Green

Senior Partner (Advocate) | Guernsey

t: +44 (0) 1481 734216 | **e:** jason.green@collascrill.com



Paul Nettleship

Consultant (Advocate) | Guernsey

t: +44 (0) 1481 734200 | **e:** paul.nettleship@collascrill.com



Jessica Burgess

Associate* | Guernsey

t: +44 (0) 1481 734245 | **e:** jess.burgess@collascrill.com

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.