

## The Tenancy Deposit Schemes (Scotland) Regulations 2010



### RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle

your response appropriately

#### 1. Name/Organisation

Organisation Name

Edinburgh Cyrenians

Title Mr  Ms  Mrs  Miss  Dr  *Please tick as appropriate*

Surname

Forename

#### 2. Postal Address

19b South Bridge Street

Bathgate

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Postcode EH48 1TU

Phone

Email

### 3. Permissions - I am responding as...

Individual

/ Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate  Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate  Yes  No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

## Safeguarding Tenancy Deposit Protection

**Consultation Date: August 2010**

**Response from: Edinburgh Cyrenian Trust**

**Response Date: 15<sup>th</sup> September 2010**

Edinburgh Cyrenians has been providing services to people vulnerable to homelessness since 1968. Our approach to housing is a holistic one, supporting people with all aspects of their lives, empowering people to aspire to a home which is, not just a roof over their heads, but a place of safety and security from which they can lead aspirational and fulfilled lives.

We have a track record of developing innovative approaches, including the Smartmove service opening access to the private rented sector for people who in housing need and the Homelessness Prevention Service which works to stop people who have not been homeless in the past from becoming homeless in the future.

Cyrenians services regularly encounter people who are in dispute over their tenancy deposit and are at risk of homelessness as a result. Cyrenians are able to offer advice and assistance to customers to help them resolve the dispute, but understand that there are times when deposits are still withheld unfairly.

The proposed tenancy deposit protection scheme is welcomed by Cyrenians. The scheme would benefit landlords and tenants and would support other regulations in the sector, such as Landlord Registration and the Private Rented Housing Panel. The following is Cyrenians response to the questions in the proposal.

Question 1: Do you support the proposal that the tenancy types covered by a tenancy deposit scheme should be aligned with existing landlord registration legislation?	Yes The existing landlord registration legislation adequately regulates the sector and covers landlord and agents as necessary. Aligning tenancy deposit protection with this would ensure consistency within the sector and would provide opportunity to administer the scheme through landlord registration and the private rented housing panel.
Question 2: Do you agree with the provisions relating to the date that the duty to comply should take effect for tenancies covered by tenancy deposit regulations?	Yes 6 months after the regulations come into force would give adequate time to set up and implement a scheme. Having a phased introduction with new tenancies first and then existing tenancies at the point of tenancy renewal would ensure the scheme implemented well.
Questions 3 & 4: Do you consider that the sanctions are appropriate and proportionate to the action or inaction that prompts them?	Yes The proposed sanctions seem fair and proportionate.

<p>Are there additional sanctions that you think would be more appropriate and effective? If so, what are these and would they be enforced?</p>	
<p>Question 5 &amp; 6: The regulations currently provide sanctions to apply to the person who receives the deposit and fails to comply with tenancy deposit regulations. Do you agree with this? If your response to Q5 is no, who do you think sanctions should apply to and in what circumstances?</p>	<p>Yes It is reasonable to apply these regulations to the person who receives the deposit. In circumstances where this is an agent it is reasonable to expect the agent to act within these regulations as the landlord/property owner is paying the agent to act on their behalf in relation to the tenancy and property management.</p>
<p>Question 7: Do you think that the regulations should require a financial penalty to be imposed in all cases?</p>	<p>No Financial penalties serve a purpose, however ensuring landlords and agents are more aware of their responsibilities is also key to ensure a healthy and sustainable private rented sector. Making provision for landlords to attend training on the Core Standards would be beneficial and would mean landlords become better educated in good property management and the regulations of the sector.</p>
<p>Question 8 &amp; 9: Should the court have discretion to decide on the amount of financial penalty? If your response to Q8 is yes, do you think there should be a minimum penalty e.g. at least an amount equal to the deposit?</p>	<p>Yes, however this should be monitored so that only reasonable penalties are given. There needs to be consistency across Scotland and penalties should be fair and proportionate to the charge. Having a minimum amount would not be advantageous.</p>
<p>Question 10: The regulations permit a scheme to hold deposits in a designated interest bearing account. Do you have any views on whether other types of investment should be allowed?</p>	<p>No, although ensuring the scheme is run simply and transparently is of benefit to landlords and tenants.</p>
<p>Question 11: Do you have any views on the provisions relating to the use of excess income accrued on deposits?</p>	<p>Income accrued on deposits should be adequate to administer the scheme and any additional income should be re-invested into the development of the scheme or the sector. Where interest/income is being accrued on a deposit the landlord/agent will need to ensure the tenant is aware of this and has agreed that interest/income accrued will not be paid</p>

	when returning the deposit as per tenancy law.
<p>Question 12 &amp; 13: Do you have any particular views on the requirement for schemes (particularly insurance schemes) to be available to all landlords? Do you consider that both custodial and insurance scheme models afford adequate protection for tenancy deposits and should be permitted in the regulations?</p>	<p>The provision of schemes should be open to all landlords and agents and there should be a limit to the number of schemes available to make the system easy to understand for tenants and landlords.</p> <p>The preferred scheme would be custodial as it provides better protection for tenancy deposits and easier for tenants to access and raise disputes. The insurance model is more open to misuse and unscrupulous landlords to not meet with the regulations.</p>
<p>Question 14 &amp; 15: The regulations currently only provide for fees to be charged in respect of insurance schemes. Do you think that fees should also be permitted for custodial schemes? If you answer to Q13 is yes, what would be an appropriate fee structure?</p>	<p>The custodial scheme should be able to generate enough income through interest to be self financing therefore there should be no need to charge a fee. It would be unreasonable to place another fee on landlords in addition to the fees already incurred through landlord registration. Implementing a fee potentially may discourage landlords from protecting deposits.</p>
<p>Question 16 &amp; 17: What are your views on whether the regulations should specify an amount or maximum amount of any fee which may be charged and the impact this might have on a scheme's ability to be self financing? If you think a specific amount or maximum amount of any fee charged should be set, what would be an appropriate level?</p>	<p>If a fee is to be charged, this should be reasonable and reflective of the costs incurred in the administration of the scheme.</p>
<p>Question 18: What are your views on whether approved schemes should repay deposits to lead tenants if so used, or to individual tenants?</p>	<p>The issue of lead tenants is wider and a landlord should have the responsibility for setting up a shared tenancy correctly and with individual tenancy agreement, albeit with joint and several liability. With this in mind the landlord should collect a deposit for each tenancy agreement individually and protect as individuals.</p>
<p>Question 19: Are you content with</p>	<p>Yes</p>

<p>the proposals that ADR should be provided and funded by approved tenancy deposit schemes or do you think there might be more effective and affordable alternatives?</p>	
<p>Question 20: Is the proposal to apply a lower limit of £15 for disputes an appropriate approach to ensuring that the costs of ADR are not disproportionate to the amount of deposit that may be disputed?</p>	<p>Yes, £15 is reasonable as a lower limit.</p>
<p>Question 21 &amp; 22: Are You content with the proposal for ADR to be free of charge for tenants and landlord, at the point of access? If your response to Q21 is no, what would be an appropriate charging structure?</p>	<p>ADR should be free at the point of access for landlord and tenants. Introducing a charge to either party may discourage use of ADR. ADR is an effective mechanism for resolving disputes positively for all concerned and is more cost effective than the court system.</p>
<p>Question 23: Do you have additional views on how approved schemes should be publicised?</p>	<p>It is vital that tenancy deposit protection is widely publicised to everyone. Although the current provision for publicity is good, it relies on good practice from landlords and for tenants to know that they have a right for their deposit to be protected.</p> <p>As so many private rented properties are let by landlords who only own 1 or 2 properties and are advertised so informally there is a risk that unscrupulous landlords are still operating out with the regulations.</p> <p>The needs to be a comprehensive marketing campaign when tenancy deposit protection is introduced to ensure it is widely known about. There should also be an emphasis placed on landlord registration teams, local authority private rented sector teams and private rented access schemes to be publicising and ensuring landlord and tenants are aware of their rights and responsibilities.</p>
<p>Question 24: Do you support the proposals in relation to the requirement for a landlord to provide information about his or</p>	<p>Yes, Landlord should be required to give their registration number or show they have applied for registration and scheme administrators should be required to verify this. In addition if it appears a landlord or property is not registered the scheme administrator should be required to report this to the relevant local authority and the local authority</p>

<p>her registration status?</p>	<p>should be required to follow this up. The tenancy Deposit Protection Scheme and Landlord Registration should be working together.</p>
<p>Question25: Are there any other circumstance in which you think it would be appropriate for a scheme administrator to share information with local authorities? For example, of sanctions and penalties applied to a landlord, or the outcome of an adjudication found against a landlord.</p>	<p>Again it is vital that any tenancy deposit protection scheme is operating hand in hand with landlord registration and should be required to inform landlord registration of any incidences which may impact on the landlords property/tenancy management and should be considered in the 'fit and proper' person test.</p>
<p>Question 26: Do you agree with the proposals relating to the requirement for approved schemes to submit annual and quarterly reports to Scottish Ministers?</p>	<p>Yes, ongoing monitoring of schemes is important to track success and also to monitor trends in the sector. This will help to understand the private rented sector and to develop new opportunities in the sector.</p>
<p>Question 27: Do you have any other ideas which might help the problems encountered by tenants when their deposit is unfairly withheld? As part of this, what is your view on the desirability of banning the practice of taking of tenancy deposits in Scotland?</p>	<p>Landlords and agents need to be able to take a deposit for security against damage and theft. However there should be prescribed reasons why a landlord can withhold a deposit and guidance on how much can be withheld for different items/reasons.</p>