

HOUSING (SCOTLAND) ACT 2006

EXPLANATORY NOTES

COMMENTARY ON PARTS

Part 4– Tenancy Deposits

147. **Section 120** defines “tenancy deposit” and “tenancy deposit scheme” for the purpose of this Part.
148. **Section 121** provides Ministers with a power to make regulations which would set out the conditions a tenancy deposit scheme must meet before they can approve it. Such regulations may make further provision about tenancy deposit schemes as Ministers think fit. **Subsection (2)** lists issues which the regulations might cover, but **subsection (3)** prevents Ministers from using these regulations to introduce a requirement that a deposit be sought for all tenancies or occupancy arrangements and also prevents them from creating new criminal offences relating to tenancy deposits.
149. **Section 122** gives Ministers a power to approve a tenancy deposit scheme, which may be devised by themselves or any other person. The regulations made under **section 121** must be in force before Ministers can approve any scheme and such approval must be in accordance with the conditions contained in those regulations. Before approving a scheme, Ministers must publicise the terms of the scheme in any way they think fit and consult landlord and tenant representative bodies and any other persons as they consider appropriate. **Subsection (4)** obliges Ministers to review each scheme from time to time and gives them power, once they have done so, to ensure that any scheme is revised. Ministers can also withdraw their approval of any scheme following a review. **Subsections (1) to (4)** apply to new schemes or schemes which have been subjected to a review. This means that during a review of a scheme, Ministers must also follow the publicising and consultation obligations in **subsection (3)**, except where they think that the review is unlikely to have a significant adverse affect on anyone. **Subsection (6)** provides that Ministers can approve different schemes for different type of tenancy or occupancy arrangement or more than one scheme for the same type of tenancy or occupancy arrangement.
150. Section 90(3) of the Rent (Scotland) Act 1984 declares that a tenancy deposit is not to be treated as a premium, but is given as security for a tenant’s obligations for utility accounts, damage and so on. This list does not include ‘rent’. **Section 123** inserts ‘rent’ as a further ground for which a deposit can be held as security.