

Tenancy Deposit Protection

Overview

Introduction

Tenancy Deposit Protection (TDP) will add to the measures already brought in to drive up standards in the private rented sector set out in Housing Act 2004. Those measures include licensing multiple occupancy homes and new safety rules.

TDP will apply to all assured shorthold tenancies (ASTs) in England and Wales, where a deposit is taken. Virtually all new contracts to let a property are ASTs.

It will start on 6 April 2007, and be valid for all new tenancy agreements from this date.

There are two main aims:

- 1 To ensure good practice in deposit handling, so that when a tenant pays a deposit, and is entitled to get it back, they can be assured that this will happen.
- 2 To assist with the resolution of disputes by having an alternative dispute resolution service (ADR). It will also encourage tenants and landlords to have in place, from the outset, clear agreement on the condition of the property through best practice, such as the use of inventories, and agreement on the condition of the property.

Tenancy Deposit Protection in summary

- Landlords will be required to join a statutory tenancy deposit scheme, if they take deposits.
- This will mean that deposits are safeguarded.
- Tenants will get all or part of their deposit back, if they have kept the property in good condition and are entitled to get their deposit back.
- The scheme offers alternative ways of resolving disputes which aims to be faster and cheaper than taking court action.

An overview of Tenancy Deposit Protection

What is Tenancy Deposit Protection?

From 6 April 2007, all deposits taken by landlords for what is called Assured Shorthold Tenancies – the vast majority of tenancies – in England and Wales must be protected by a tenancy deposit protection scheme.

To avoid disputes going to court, each scheme will be supported by an alternative dispute resolution service (ADR), whose aim is to make disputes faster and cheaper to resolve.

How does Tenancy Deposit Protection work?

Landlords will be able to choose between two types of scheme: a single custodial scheme and two insurance-based schemes.

Custodial scheme:

- The tenant pays the deposit to the landlord;
- The landlord then pays the deposit into the scheme;
- Within 14 days of receiving a deposit, the landlord must give the tenant the prescribed information (to be set out in secondary legislation) about the scheme being used;
- At the end of the tenancy, if the landlord and tenant agree how the deposit should be divided, they will tell the scheme which returns the deposit, divided in the way agreed by both parties;
- If there is a dispute, the scheme will hold the disputed amount until the dispute resolution service or courts decide what is fair;
- The interest accrued by deposits in the scheme will be used to pay for the running of the scheme and any surplus will be used to offer interest to the tenant, or landlord if the tenant isn't entitled to it.

Insurance-based schemes:

- The tenant pays the deposit to the landlord;
- The landlord retains the deposit and pays a premium to the insurer – the key difference to the custodial scheme;
- Within 14 days of receiving a deposit, the landlord must give the tenant prescribed information (to be set out in secondary legislation) about the scheme being used;
- At the end of the tenancy, if the landlord and tenant agree how the deposit should be divided, the landlord returns all or some of the deposit;
- If there is a dispute, the landlord must hand over the disputed amount to the scheme for safekeeping until the dispute is resolved.
- If for any reason the landlord fails to comply, the insurance arrangements will ensure the return of the deposit to the tenant if they are entitled to it.

Example: a tenant pays a deposit of £1000. At the end of the tenancy, the landlord says he wishes to keep £200 to pay for replacing damaged furniture. The remaining £800 will be returned to the tenant.

The tenant disagrees, claiming the furniture was damaged when they moved in. Both agree to go to ADR, so the disputed £200 will be transferred to the scheme administrator until the dispute is settled.

In each scheme, the deposit must be returned within 10 days of the landlord and tenant agreeing how the deposit should be divided, or within 10 days following notification of an ADR/court decision.

The Schemes

The Government awarded contracts to three companies to run its tenancy deposit schemes on 22 November 2006.

The three schemes are:

The Deposit Protection Service (The DPS) – the only custodial deposit protection scheme – is free to use and open to all Landlords and Letting Agents. The service is funded entirely from the interest earned from deposits held. Landlords and Letting Agents will be able to register and make transactions online. Paper forms will also be available should internet access be an issue. The scheme will be supported by a dedicated call centre and an independent dispute resolution service. For more information, visit www.depositprotection.com

Tenancy Deposit Solutions Ltd (TDSL) is a partnership between the National Landlords Association and Hamilton Fraser Insurance. The insurance-based tenancy deposit protection scheme is designed primarily to enable landlords to continue holding deposits. Agents can also join the scheme. For more information, visit www.mydeposits.co.uk

The Tenancy Deposit Scheme (TDS) is an insurance-backed deposit protection and dispute resolution scheme run by The Dispute Service. It was established in 2003 to provide dispute resolution and complaints handling for the lettings industry, including a voluntary deposit scheme for regulated agents which TDS will now absorb. It is designed primarily to enable letting agents to continue holding deposits, but landlords can also join the scheme. For more information, visit www.tds.gb.com or call **0845 226 7837**.

Frequently asked questions and answers

Note: Reference below to “landlord” should also be taken to include any other person that takes the deposit on the landlord’s behalf e.g. a letting agent.

General

Q.1 Why should the Government protect tenants’ deposits?

So that, when a tenant pays a deposit, and he or she is entitled to get all or part of it back, the tenant can be assured that this will happen.

Q.2 Aren’t these provisions unfair on good landlords?

No. Most landlords deal fairly with tenancy deposits and are already acting responsibly by safeguarding deposits.

However, these provisions need to be put into place to ensure the minority of bad landlords to act responsibly by safeguarding tenancy deposits.

TDP puts into place a simple process for all landlords to ensure tenancy deposits are safeguarded. This is in the interests of both landlords and tenants.

Q.3 What sort of tenancies will deposit protection apply to?

All deposits taken by landlords in relation to assured shorthold tenancies (AST) – the most common form of new tenancy – in England and Wales.

Q.4 Does tenancy deposit protection apply to landlords who live overseas?

If a landlord lives overseas but lets a property in England or Wales on an assured shorthold tenancy (AST) and takes a deposit, the landlord will have to protect their tenants’ deposit.

Q.5 What is the average deposit for an assured shorthold tenancy (AST)?

The most recent Survey of English Housing (05/06) found that the average deposit for an AST in England is £695.

Q.6 An AST is a tenancy where the rent does not exceed £25k per annum. Are there any plans to review this limit as rents have increased over time?

The £25k upper limit is set out in schedule 1 of the Housing Act 1988. There are no immediate plans to review this limit.

Q.7 How will deposit protection work in practice?

There are two types of scheme: a custodial scheme and two insurance-based schemes.

The landlord – not the tenant – will have the option to choose whether to safeguard the deposit in the custodial or insurance-based scheme.

A landlord will have 14 days to safeguard a deposit from the day he receives it.

The landlord will have to provide the tenant prescribed information about the scheme safeguarding the deposit within these 14 days.

To avoid disputes having to go to the courts, both schemes will be supported by an alternative dispute resolution (ADR) service – although the use of this will not be compulsory.

Q.8 How can tenants find out if their deposit is protected?

Within 14 days of receiving a deposit, landlords will have to provide tenants with details of which scheme is protecting the deposit. The scheme will be able to confirm if the deposit is protected.

Q.9 When will the schemes come into effect?

Tenancy Deposit Protection (TDP) will start on 6 April 2007.

Schemes

Q.10 Who will be running the schemes?

The Government awarded contracts to three companies to run its tenancy deposit schemes on 22 November 2006. The three schemes are:

The Deposit Protection Service (The DPS) – the only custodial deposit protection scheme – is free to use and open to all Landlords and Letting Agents. The service is funded entirely from the interest earned from deposits held. Landlords and Letting Agents will be able to register and make transactions online. Paper forms will also be available should internet access be an issue. The scheme will be supported by a dedicated call centre and an independent dispute resolution service. For more information, visit www.depositprotection.com

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Q.11 How was the procurement exercise run?

5th August 2005 – Two notices were placed in the Official Journal of the European Union (OJEU) (as required under European Union procurement rules) inviting expressions of interest from private organisations to set up and administer schemes.

Summer 2006 – Detailed negotiations with short-listed suppliers were completed.

October 2006 – Suppliers submitted their Best and Final Offers.

22nd November 2006 – Scheme providers were awarded contracts to run the schemes.

Custodial Scheme

Q.12 How will the custodial scheme work?

The tenant will pay the deposit to the landlord as now. But – and here's the difference with the insurance-based scheme – the landlord will then pay the deposit

into the custodial scheme. At the end of the tenancy, if the landlord and tenant agree how the deposit should be allocated, they will tell the scheme, which will pay out the money as agreed.

Q.13 What happens if the landlord or tenant cannot contact the other party to agree how the deposit should be returned, or where one party is being un-cooperative?

A 'single claim' can be submitted in these circumstances.

If the landlord is unable to contact the tenant, he can submit a single claim indicating the reason for the claim, including evidence.

If a tenant cannot contact the landlord and makes a single claim, no other reason is required as the deposit is the tenant's money.

A single claim can also be made, if both the landlord or tenant are contactable, but one party refuses to co-operate – either in agreeing deposit release or agreeing to resolve any dispute via ADR or court.

Refer to Q.24 for what happens in the event of a dispute.

Q.14 Will landlords have to pay to transfer the deposit to the custodial scheme?

No. The custodial scheme will be free to use by landlords and tenants.

Q.15 How will the custodial scheme be paid for?

Deposits held in the custodial scheme will earn interest which will go to the contractor to pay for the running of the scheme. The remainder will be used to pay interest to the tenant/landlord. Where the deposit, or part of it, is divided between the landlord and tenant the interest will be allocated pro-rata.

Q.16 Will the addition of interest on the deposit affect a tenant's entitlement to housing benefit?

During the period of the tenancy, the interest that accrues on the deposit will be disregarded for the purposes of housing benefit. This is because the tenant is unable to use the deposit and any interest accrued.

However, at the end of the tenancy the position may change. When the deposit and any interest is returned, provided that the housing benefit claimant's capital remains under £6K then the capital will continue to be disregarded. If the deposit and the interest received raises the claimant's capital to over £16K then benefit will cease to be paid.

In practice, however, since it is likely that the deposit will be transferred to a new tenancy, the returned deposit plus any accrued interest may only have a minimal, if any, effect on entitlement to benefit.

Insurance-based Scheme

Q.17 How will an insurance-based scheme work?

The tenant will pay the deposit to the landlord. The landlord will retain the deposit and pay a premium to the insurer. At the end of the tenancy, if the landlord and tenant agree how the deposit should be divided, the landlord returns all or some of the deposit.

Refer to Q.26 for what happens in the event of a dispute.

- Q.18 Will a landlord pay for the deposit to be covered by an insurance-based scheme?
Yes. Landlords will pay a fee to belong to an insurance-based scheme. This will safeguard the deposit, should it be misappropriated.
- Q.19 How much will the fee be?
The scheme administrators will decide on these arrangements.
- Q.20 Will the proposed insurance-based scheme be open only to landlords who are members of a trade body or professional organisation?
No. The use of any scheme will not be dependent on membership of any trade body or professional organisation.

Students

- Q.21 Will students who pay deposits be subject to tenancy deposit schemes?
Where student accommodation is let under an assured shorthold tenancy (AST), the deposit must be safeguarded.

Halls of residence are not let on an AST if they are controlled by the university. However, some universities lease their halls of residence to private companies. These companies may let the accommodation on an AST.
- Q.22 What happens where a parent pays the deposit on a student tenant's behalf?
Where the deposit is paid for an assured shorthold tenancy, it would still need to be safeguarded in a scheme.
- Q.23 How would the deposit be repaid once an overseas student returns home?
Schemes will be able to return deposits into foreign bank accounts. There would be a charge for this that would need to be paid by the tenant.

Disputes

- Q.24 What happens when there is a dispute over the return of the deposit?
Each scheme will contain an alternative dispute resolution (ADR) service.

When a dispute occurs, and if landlord and tenant both agree to use the ADR service, they will also have agreed to be bound by its decision with no recourse to the courts.

Disputes will only go to the courts if the landlord and tenant do not agree to use the ADR service.

In the custodial scheme, where a landlord or tenant does not co-operate in order to release the deposit, i.e. by not agreeing to the release of full or part of the deposit; and not agreeing to resolve the dispute through ADR or court, ADR will be the default way in which to resolve a dispute.

In the Insurance-based scheme, where the landlord is contactable by the scheme but is refusing to co-operate with the scheme in terms of choosing ADR or the courts, it will be mandatory for the case to be referred to the scheme for resolution through its ADR service.

Q.25 Will there be a charge for the use of ADR?

No, ADR will be free of charge for landlords and tenants.

Q.26 In the event of a dispute in the insurance-based scheme, what happens to the deposit?

If there is a dispute and the deposit is safeguarded by an insurance-based scheme, the landlord must hand over the disputed amount to the scheme for safekeeping until the dispute is resolved.

The scheme administrator will divide the disputed amount in accordance with the ADR service's, or court's, decision.

For example, say that a tenant has paid £1000 as a deposit. At the end of the tenancy the landlord states that he wishes to retain £200 to pay for replacing damaged furniture, but the tenant disagrees claiming the property was already in that condition when he or she moved in. If the landlord only wishes to retain £200, the remainder of the deposit (£800) has therefore been agreed to belong to the tenant and should be returned to him/her. The disputed £200 will then be transferred to the scheme administrator until the dispute is settled.

Q.27 What happens if the landlord fails to transfer the disputed amount into the insurance-based scheme?

The scheme itself will pay the amount due to the tenant as a result of the ADR service's or court's decision. The scheme will then recover the money from the landlord.

Q.28 In the event of a dispute in the custodial scheme, what happens to the deposit?

If there is a dispute, the scheme will continue to hold the amount until the ADR or courts decide what is fair.

The scheme administrator will divide the disputed amount as a result of the ADR service's, or court's, decision.

Treatment of deposits

Q.29 When must deposits be paid back?

When the landlord and tenant agree how the deposit should be returned, in full or in part, it must be paid back within 10 days as follows:

In the custodial scheme: within 10 days of the scheme being notified of agreement between the landlord and tenant or notified of an ADR/court decision.

In the insurance-based scheme: within 10 days of the tenant requesting that the landlord return his deposit

In case of a dispute: within 10 days of the scheme being notified of the ADR service's, or court's, decision.

Q.30 Can't it be paid back before then – i.e. on the last day of the tenancy?

Yes. 10 days is the maximum. In practice, the Department would like to see deposits returned more quickly and will be working with scheme administrators to see how this can best be achieved.

Many landlords currently pay the deposit back on the last day of the tenancy. In the insurance-based scheme, if the landlord and tenant agree on the amount to be returned, the deposit can be returned on the last day of the tenancy.

Q.31 Will schemes return cash to tenants without bank accounts?

The custodial scheme will not be able to return cash to tenants. It will return deposits electronically or via cheque.

Landlords in insurance-based schemes can continue to give deposits back in cash.

Q.32 What happens if a deposit has not been protected ?

a) Unable to use 'notice only'

Currently, a landlord can obtain an order for possession of an AST at any point after the first six months of the tenancy providing any fixed term has expired and the landlord gives the tenant at least two months' written notice (Under Section 21 of the Housing Act 1988). This is known as 'notice-only'.

However, under TDP, the landlord is unable to regain possession of the property using the usual 'notice only grounds', if the deposit has not been safeguarded and the prescribed information passed onto the tenant within 14 days of the landlord receiving it.

b) Payment to the tenant

Tenants can apply for a court order requiring the deposit to be safeguarded or the prescribed information to be given to him about the scheme in which the deposit is safeguarded.

Where the court believes that the landlord has failed to comply with these requirements, or the deposit is not being held in an authorised scheme, the court must either order the landlord within 14 days of the making of the order to repay the deposit; or order the landlord to pay the deposit to the custodial scheme administrator.

The court must also order the landlord to pay the tenant three times the deposit amount within 14 days of the making of the order.

Q.33 What if a tenant moves out of their home before realising that their deposit hasn't been protected?

The tenant will need to apply for a court order and the court will order the landlord to repay the deposit amount to the tenant.

In order to avoid this situation, tenants should make sure that their landlord has given them the prescribed information relating to the scheme that is safeguarding their deposit, and check that the deposit is safeguarded, within 14 days of paying the deposit.

Q.34 How will this affect deposits paid for ASTs which start before 6 April 2007?

The legislation will only apply to new deposits paid for ASTs entered into on or after 6 April 2007. Any deposit paid before this date will not need to be safeguarded by a tenancy deposit scheme.

Q. 35 What happens if the tenant renews their contract after 6 April 2007?

If the tenant decides to remain in their existing rented property beyond the initial fixed term of 6 months, how the deposit is treated will depend on how the tenancy is continued:

Periodic tenancy – i.e. the tenancy continues with no new agreement – TDP will not apply, as no new AST will have been created.

Replacement tenancy – i.e. a new AST is created between the same landlord and tenant for the same property on substantially the same basis – TDP will apply to the initial deposit that was paid prior to 6 April 2007.

Q.36 Can landlords avoid TDP by not taking a deposit at all?

Other options have always been open to landlords but most landlords will want to continue to take a deposit in order to protect their interests.

Existing deposit schemes

Q.37 Where do these provisions leave organisations that already have voluntary schemes up and running?

TDP will replace voluntary schemes. Voluntary schemes will not be permitted to take new deposits in England and Wales from 6 April 2007.

Any private organisation was eligible, under the competitive tendering process, to submit a bid to run a scheme. The Department recognises the specialised knowledge that such organisations have and they were welcome to submit bids in response to the two Notices published in the Official Journal of the European Union in August 2005.

Q.38 Some local authorities operate rent deposit schemes. Will these be covered by TDP?

It depends. Where a rent deposit scheme actually pays money to the landlord on behalf of the tenant, then this will need to be protected by TDP. However, where the rent deposit scheme offers a letter of guarantee, no money passes to the landlord, so TDP will not apply.

Consultation

Q.39 Has the Department consulted on this scheme?

When preparing TDP proposals, the Department (formerly ODPM) undertook consultations with landlords, tenants and their representative bodies. This consultation will continue throughout the initial implementation process.

Q.40 What consultation activities have taken place?

- Government consultation in 2002 showed that most people wanted a better system and that paved the way for the implementation of TDP in Housing Act 2004.
- PKF consultants held discussions with a wide range of stakeholders about the implementation of TDP and published a report to ODPM in August 2005.
- There was further consultation in November 2005 on the information requirements that landlords would need to provide tenants with at the beginning and end of a

tenancy. The consultation ended on 1 February 2006 and resulted in 67 responses.

- The TDP Advisory Group was set up in April 2005 and meets every two months. The Group consists of representatives from the British Property Federation, Citizens Advice, Council of Mortgage Lenders, Grainger Residential Management, Guildford Borough Council, HM Courts Service, the Welsh Assembly Government, National Federation of Residential Landlords, National Union of Students, Office of Fair Trading, Shelter and Unipol.
- A sub-Group of the TDP Advisory Group was set up in June 2006 to act as a sounding board for the TDP publicity campaign. Members are drawn from the Advisory Group.

Q.41 What was the result of the consultation in November 2005?

Two key agreements include:

- Consultees agreed that, in the case of the custodial scheme, where the tenant (or landlord) could not be found then in most circumstances just one signature should be sufficient to trigger the release of the deposit. The Department and the National Assembly of Wales will be making a joint Statutory Instrument to provide for this.
- Those consulted agreed the minimum level of information that should be set out at the beginning and end of a tenancy.

A summary of consultation responses was published on the Communities website on 23 June 2006. www.communities.gov.uk/index.asp?id=1500987

Law commission review

Q.42 How does all this fit in with the Law Commission's Review of Tenure?

The Law Commission's Review of tenure, which resulted in their 'Renting Homes' report published in November 2003, was followed by a draft Bill published in May 2006. The Commission's proposals will have far-reaching consequences for both the private rented and social sectors and will need careful consideration. We continue to see linking the safeguarding of tenancy deposits to standard written agreements (which the report advocates) as a sensible measure. www.lawcom.gov.uk

Inventories

Q.43 Will an inventory be compulsory?

The responses to the consultation document published in November 2005 found that, although inventories and schedules of condition were strongly recommended, it was not viewed as practical to define a single inventory in law.

The Government agrees with respondents' comments on the difficulties of drawing up minimum standards for inventories due to the large variances in properties, and that making inventories a mandatory requirement adds a cost and administrative burden on landlords.

Although it will not be a legal requirement to complete an inventory, the Department wants to see the continued use of inventories as standard good practice to reduce the potential of a dispute at the end of the tenancy.

Enquiries

Q.44 Who should landlords and tenants contact for more information about tenancy deposit protection?

For more information, please contact:

- A representative body eg landlords association, or NUS, Shelter and Citizens Advice

- Communities and Local Government's Tenancy Deposit Protection Team

Telephone

[020 7944 4400](tel:02079444400)

Email

tenancy.deposits@communities.gsi.gov.uk

Post

The TDP Team,
Private Renting and Leasehold Division,
Communities and Local Government,
Zone 2/J10,
Eland House,
Bressenden Place,
London,
SW1 5DU

- The scheme providers
The Deposit Protection Service
www.depositprotection.com

Tenancy Deposit Solutions

www.mydeposits.co.uk

The Tenancy Deposit Scheme

www.tds.gb.com