

Tenancy Deposit Protection

Overview

Introduction

Tenancy Deposit Protection (TDP) will add to measures, set out in the Housing Act 2004, to raise standards in the private rented sector. 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 assured shorthold tenancies.

TDP will start on 6 April 2007, and be applicable to all new ASTs 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, he or she can be assured that this will happen.
2. To assist with the resolution of disputes by having an alternative dispute resolution (ADR) service. It will also encourage tenants and landlords to agree - at the start of the tenancy - the condition and contents of the property.

Tenancy Deposit Protection in summary

- Landlords will be required to protect their tenants' deposits under a statutory tenancy deposit scheme.
- This will mean that deposits are safeguarded.
- If tenants have kept the property in good condition and paid the rent, and made sure that any other charges due under the tenancy are up to date, they will be able to get their deposit back.
- The scheme offers a free service to assist in resolving disputes.

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 in England and Wales must be protected by a tenancy deposit protection scheme. (These are the usual tenancies made between a private landlord and his tenants.)

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

How does Tenancy Deposit Protection work?

Landlords will be able to choose between two types of scheme: a custodial scheme or one of the two insurance-based schemes that have been set up to safeguard deposits.

Custodial scheme:

- The tenant pays the deposit to the landlord;
- The landlord then pays the deposit into the scheme within 14 days of receipt;
- Within 14 days of receiving a deposit, the landlord must give the tenant the information listed at Annex A;
- At the end of the tenancy, if the landlord and tenant agree how the deposit should be divided, the scheme will pay out in accordance with that agreement;
- If there is a dispute, the scheme will repay any undisputed amount with interest to the person entitled to it, and hold the disputed amount until the dispute is resolved;
- The interest earned by deposits in the scheme will be used to pay for the running of the scheme. A proportion of the interest earned will be added to the deposit amount when it is returned to the person entitled to it.

Insurance-based scheme:

- The tenant pays the deposit to the landlord;
- The landlord retains the deposit but pays a fee to the scheme and the scheme will insure against the landlord unlawfully retaining the deposit at the end of the tenancy;
- Within 14 days of receiving a deposit, the landlord must give the tenant the information listed at annex A;

- At the end of the tenancy, the landlord pays the tenant any part of the deposit that is not disputed;
- If there is a dispute over the repayment of any part of the deposit, 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 scheme will ensure the return of such part of the deposit to the tenant as he is entitled to, and recover any part that it has to pay from the landlord. Any interest earned on such disputed deposits shall be retained by the scheme.

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 he moved in. Both agree to go to ADR, so the disputed £200 will be transferred by the landlord to the scheme administrator until the dispute is settled.

For insurance-based schemes, the deposit, or if there is a dispute, the part of it that is not disputed as being payable to the tenant, must be paid to him within 10 days of the landlord and tenant agreeing it should be paid. The disputed part must be paid within 10 days following notification of an ADR/court decision.

Frequently asked questions and answers

Note: References 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 When will the schemes come into effect?

Tenancy Deposit Protection (TDP) will start, in England and Wales, on 6 April 2007.

Q.2 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.3 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 that the minority of bad landlords act responsibly by safeguarding tenancy deposits.

TDP puts into place a simple process for all landlords to ensure that tenancy deposits are safeguarded, supported by a free alternative dispute resolution (ADR) service. This is in the interests of both landlords and tenants.

Q.4 What sort of tenancies will deposit protection apply to?

TDP will apply to all deposits taken by landlords in relation to assured shorthold tenancies (ASTs) – the most common form of new tenancy – in England and Wales.

Q.5 Does tenancy deposit protection apply to landlords who live overseas?

Yes. If a landlord lives overseas but lets a property in England or Wales on an AST, the landlord will have to protect the tenant’s deposit in one of the three schemes.

Q.6 What is the average deposit for an AST?

The most recent Survey of English Housing (2005/06) found that the average deposit for an AST in England is £695.

Q.7 A tenancy cannot be an AST if the rent exceeds £25000 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 plans at present to review this limit.

Q.8 How will deposit protection work in practice?

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

The landlord – not the tenant – will have the option to choose whether to safeguard the deposit in the custodial scheme or in one of two insurance-based schemes. *The names of the schemes, and their contact details, are set out in Q. 16.*

A landlord will have 14 days to safeguard a deposit from the day he receives it. The landlord will have to provide the tenant with certain information about the scheme safeguarding the deposit within that period. This information has been prescribed in secondary legislation, commencing on 6 April 2007, and is set out at [annex A](#).

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

Q.9 How can tenants find out if their deposit is protected?

When a tenant pays a deposit, he should ask his landlord this question: “how will my deposit be protected?” Within 14 days of the landlord receiving the deposit from the tenant (which could be in the form of cash, cheque, money transfer, etc), the landlord must provide the tenant with the information about the scheme providing the protection. The 14 days runs from the time the deposit is received, and not from when the funds are cleared. A tenant will be able to contact the scheme to find out if his deposit has been protected.

Q.10 I am an agent and take a cleaning fee paid in advance, but redeemable against leaving the property in good condition. Will that constitute a deposit under the Act?

Yes. Any money taken for security in respect of a tenant’s obligations or liabilities connected with the tenancy (including his liability to clear the property on vacating it) must be secured in a scheme.

Q.11 I am a landlord. I won't take deposits from 6 April. Instead I plan to charge the tenant extra rent each month to offset against excessive cleaning or damage. If there is no need for me to take the extra rent, I'll hand it back to the tenant. I'll set this out in the tenancy agreement. Will I need to protect the extra payments?

Yes, you will. The extra payments are clearly required by you as security against the tenant not carrying out his obligations under the lease, and so such payments must be protected in a scheme.

Q.12 From 6 April, I won't take a deposit. Instead, I'll take two or three months rent in advance. I take it this will not be subject to TDP?

No. Rent paid in advance is not a deposit. However, you will have nothing to offset against damage etc. at the end of the tenancy and your tenant will stop paying his rent two or three months before the tenancy ends.

Q.13. What happens if a landlord sells a property with a tenant *in situ*? Or where a mortgage company regains possession of the property with the tenant *in situ*? The deposit will have been held by the original landlord.

If the deposit has been paid into the custodial scheme, it will stay there until the end of the tenancy and, provided there is no dispute about it being repaid to you, the scheme will repay it to you. If there is a dispute, the disputed deposit amount will remain protected until the dispute is resolved. If it has been protected in an insurance-based scheme, your new landlord may not have been provided with the details, but you will still remain protected. It would be in your interest to contact the scheme immediately you discover that your landlord is selling, or when you get the notice from the mortgage company that it intends to take possession. It is very unlikely that the mortgage company will permit you to remain in occupation once it has taken possession, but your deposit will still remain protected. The new owner of the property will be your new landlord and so you will need to contact him if you consider you are entitled to the return of all or part of your deposit.

Q.14 Many agents are let-only. How will a tenant know that, when he has paid a deposit to a let-only agent, it has actually been passed to the landlord?

It's good practice for a let-only agent to write to the tenant telling him his deposit has been passed to the landlord. In any event, the tenant must be told by either the landlord or his agent within 14 days how the deposit is protected. Please note that, under the Housing Act 2004, the landlord is ultimately responsible for protecting the deposit. See [annex B](#) for more on the implications of TDP on let-only agents

Q.15 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, it will be treated by the benefits system as capital rather than income. Provided that the housing benefit claimant's capital remains under £6,000 then the capital will continue to be disregarded. If the deposit and the interest received raises the claimant's capital to over £16,000 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.

Schemes

Q.16 Who will be running the schemes?

On 22 November 2006, the Government awarded contracts to three service providers to run tenancy deposit schemes. The three schemes are:

The Deposit Protection Service (DPS)

DPS is the only custodial deposit protection scheme. It 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 is supported by a dedicated call centre and an independent dispute resolution service. For more information, visit www.depositprotection.com or call 0870 707 1 707.

Tenancy Deposit Solutions Ltd (TDSL)

TDSL is an insurance-based scheme sponsored by the National Landlord Association and administered by Hamilton Fraser Insurance Services. It is open to all landlords and letting agents. A fee is payable to insure the scheme against any misappropriation of the deposit. The scheme is supported by a dedicated call centre and an independent dispute resolution service. For more information, visit www.mydeposits.co.uk or call 0871 703 0552.

The Tenancy Deposit Scheme (TDS)

TDS is an insurance-based deposit and dispute resolution scheme. It is open to all landlords and letting agents. A fee is payable to insure the scheme against any misappropriation of the deposit. The scheme is supported by a dedicated call centre and an independent dispute resolution service. For more information, visit www.tds.gb.com or call 0845 226 7837.

Custodial Scheme

Q.17 How will the custodial scheme work?

The tenant will pay the deposit to the landlord as now. But 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 apportioned, they will tell the scheme, and the scheme will pay out the money as agreed. Refer to Qs. 35-39 for what happens in the event of a dispute in the custodial scheme.

Q.18 Will landlords have to pay to transfer the deposit to the custodial scheme?

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

Q.19 How will the custodial scheme be paid for?

Deposits held in the custodial scheme will earn interest, which the scheme will use to pay for its running costs. A proportion of the interest earned on a deposit will be paid to the person entitled to the deposit at the end of the tenancy. Where the deposit is divided between the landlord and tenant, the interest will be allocated pro-rata.

Q.20 What happens if the landlord or tenant cannot contact the other party to agree how the deposit should be returned (eg the other party has moved and has given no forwarding address, and his whereabouts are not known)?

Either the landlord or the tenant can make a single claim application to the scheme for the return of all or part of the deposit in these circumstances.

The party claiming must make a statutory declaration in which he has to provide certain information to the scheme about the tenancy and the steps he has taken, unsuccessfully, to try to contact the other party. He must also indicate whether or not he agrees to the ADR service being used (in case the other party turns out to be contactable and contests the claim).

Q.21 What happens where the both parties are contactable but one party fails to respond to the other's written notice regarding the repayment of the deposit?

If both the landlord or tenant are contactable, but one party fails to respond to the other's written notice regarding the repayment of the deposit within 14 calendar days of the end of the tenancy, then one party can make a single claim application to the scheme for the release of the deposit. Again, the party making the application needs to make a statutory declaration in which he must provide certain details about the tenancy and the steps he has tried to take to agree the apportionment. He must also indicate whether or not he agrees to the ADR service being used (in case the other party responds and contests the claim).

Q. 22 What does the scheme do when it receives a single claim application?

On receipt of the application the scheme will send a copy of the application and statutory declaration to the other party. The scheme will also send the other party a notice warning him that if he does not indicate whether or not he wishes to use the ADR service, then he will be treated as having consented to the use of the service (if he is contactable). If the scheme receives no response from the other party, then the scheme will pay out the requested claim amount. In contrast, if the scheme is satisfied that the other party has received the documents, but gets no response from him as to whether he agrees to using the ADR service, then he will be treated as having agreed to use the ADR service. (Note though, that if he objects to the use of the service then he cannot be forced to use it). The scheme will then continue to hold the deposit until such time as the parties have either agreed how it should be divided, or the ADR service or court has reached a decision.

Insurance-based Scheme

Q.23 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 fee to the scheme, which will insure against the landlord unlawfully retaining the deposit at the end of the tenancy. At the end of the tenancy, if the landlord and tenant agree how the deposit should be divided, the landlord will return it in the agreed way and inform the scheme that the protection of the deposit can cease. Refer to Qs. 35-39 for what happens in the event of a dispute in the insurance-based scheme.

Q.24 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.

Q.25 How much will the fee be?

The fees for both insurance-based schemes are fixed by the scheme providers and are available on their websites. (See Q. 16 for the websites)

Q.26 Will the proposed insurance-based scheme be open only to landlords who are members of a trade body or professional organisation?

No. The schemes will establish membership criteria for landlords to join and protect deposits with the scheme, but membership of either of the insurance-based schemes will not be dependent on membership of any trade body or professional organisation.

Q.27 At the end of a tenancy what happens if the tenant cannot contact his landlord?

This will be rare. However, if the tenant considers that he is due all or part of the deposit but he receives no response from the landlord to his request for its return then the tenant should notify the scheme that he has requested its return but has not received it within 10 days of requesting it. At the same time, he must tell the scheme whether he is willing for any dispute over the amount to be repaid to be resolved through the ADR service. The scheme will then direct the landlord to pay the disputed deposit amount to the scheme to be held in a designated account until the dispute is resolved. The scheme will also send the landlord a notice in which he will ask the landlord whether he accepts that the tenant is entitled to the money (or part of it) that he is claiming and if not, whether he agrees to the dispute being resolved through the use of the ADR service.

Q.28 What if the landlord doesn't receive the documents from the scheme?

The direction from the scheme to the landlord to pay over the disputed deposit amount is treated as having been received two days after it is sent by first class post to the address last notified to the scheme as the landlord's address for correspondence. But the notice regarding how the landlord wants to resolve the dispute (i.e. ADR or court) is treated differently. If the scheme receives no response to the notice from the landlord indicating whether he accepts the claim of the tenant (or a part of it) then the scheme must treat that lack of response as an indication that the landlord does not accept the tenant's claim. If the scheme is satisfied that the landlord has received the notice (but for whatever reason is not responding to it) then the landlord will be treated as having agreed to the dispute being resolved through the use of the ADR service. The scheme will inform the tenant that this is the case and the scheme will then wait until the decision of the ADR service has been made. Once the decision has been made, and if the decision is that the tenant is entitled to the return of some or all of the deposit then if the landlord hasn't yet sent the disputed funds to the designated account the scheme must send another direction to the landlord telling to pay the amount that is due to the tenant.

However, if the scheme is not satisfied that the landlord received the notice then the scheme cannot treat the landlord as having consented to use ADR, and the ADR service cannot be used. The scheme must inform the tenant, who will need to obtain a decision from the court as to whether or not he is entitled to the return of any or all of the deposit.

The schemes are insured against a landlord's failure to comply with a direction to pay the disputed deposit into the scheme's designated bank account, so even if the landlord is uncontactable and has not paid any money to the scheme as directed, the tenant will get back the amount of the deposit he is entitled to, in accordance with the court's or ADR service's decision.

Students

Q.29 Will students who pay deposits be subject to tenancy deposit schemes?

Where student accommodation is let under an AST, the deposit must be safeguarded in a scheme.

Rooms in halls of residence are not let on ASTs 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.30 What happens where a parent pays the deposit on a student's behalf?

See Question 49 regarding payments by a third party.

Q.31 How would the deposit be repaid once an overseas student returns home?

Schemes will be able to return deposits into foreign bank accounts. There may be a charge for this that would need to be paid by the tenant.

Q.32 A student pays a full deposit which is taken before 6 April 2007 (e.g. in March) for an AST starting after 6 April 2007 (e.g. in September 2007). Will the deposit need to be protected under an authorised scheme and, if so, at what point?

No. No tenancy deposit taken before 6th April will be required to be held under an authorised scheme.

Q.33 A full deposit is taken on or after 6 April 2007 (e.g. 1 May 2007) for an AST which starts after 6 April 2007 (e.g. in September 2007). Will the deposit need to be protected under an authorised scheme and, if so, at what point?

Yes. If a deposit is taken on or after 6 April 2007, for a property which the tenant will take up occupation in September 2007, the landlord will be required to protect the deposit in an authorised Scheme within 14 days of receipt (in this example, by the 15 May 2007).

Q.34 Is a holding deposit (i.e. a deposit that is taken before the landlord and tenant have entered into an agreement in respect of a tenancy of a specific property) that is taken on or after 6 April 2007, a tenancy deposit that has to be protected in a scheme?

No. A holding deposit taken in these circumstances is not a tenancy deposit for the purposes of section 212 of the Housing Act 2004 and will not be required to be held under an authorised Scheme. A deposit is only required to be placed in a scheme if it is money held which is paid as security for the performance of any obligations of the tenant or the discharge of any liability of his, arising under or in connection with the tenancy. So if the tenancy agreement has not been entered

into, or there are no contractual obligations resting on the tenant when he pays the holding deposit, then the deposit paid is not a deposit for the purposes of the Act.

However, if a landlord is holding a holding deposit in respect of a person who subsequently becomes his tenant, then the landlord must either return the holding deposit to the tenant (so that the tenant can give it to him again as a tenancy deposit) or retain it, and protect it in a scheme within 14 days of the tenant agreeing to enter into a tenancy (i.e. from the date that the holding deposit becomes a tenancy deposit).

Disputes

Q.35 What happens when there is a dispute over the return of the deposit?

Each scheme will offer an ADR service to deal with disputes related to the tenancy deposit. Both the landlord and tenant must let the scheme know whether or not they agree to using the ADR service. Where both parties consent to use the ADR, the decision made by the adjudicator will be binding.

Disputes relating to the deposit may go to the courts if either the landlord or tenant does not agree to use the ADR service, or in the case where there is a dispute in respect of a deposit held under an insurance based scheme and the landlord is uncontactable (see also Insurance scheme section Qs 27 and 28).

Q.36 Will there be a charge for the use of ADR?

No. The ADR service will be free of charge for both landlords and tenants.

Q.37 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. Any undisputed deposit amounts that the tenant is entitled to should be returned to him.

The scheme administrator will divide the disputed amount in accordance with the ADR service's, or court's, decision within 10 days of being notified of such decision or agreement

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 considers he is entitled to retain £200, he must return the remainder of the deposit (£800) to the tenant. The disputed £200 will then be transferred to the scheme administrator, who will retain it until the dispute is settled.

Q.38 What happens if the landlord fails to transfer the disputed amount into the insurance-based scheme?

Irrespective of whether the landlord transfers the disputed amounts into the scheme, the scheme will pay the amount due to the tenant as a result of the ADR or court decision within 10 days of being notified of such decision. The scheme is then entitled to recover the money from the landlord. Both insurance schemes have in place insurance policies to cover the deposits protected, in the event that a landlord does not pay in the disputed amount to the scheme.

Q.39 In the event of a dispute in the custodial scheme, what happens to the deposit?

If there is a dispute, the scheme will repay any undisputed amount in accordance with the agreement notified to the scheme by the parties. The scheme will continue to hold the disputed amount until the ADR or courts decide how the disputed amount should be apportioned between the landlord and tenant.

The scheme administrator will then apportion the disputed amount in accordance with the decision of the ADR service, or court.

Treatment of deposits at the end of the tenancy

Q.40 When must deposits be paid back?

Any part of the deposit that is not disputed should be repaid as soon as possible, but no longer than 10 days from the notification of agreement between the tenant and the landlord.

In the custodial scheme: the scheme must pay it to the person entitled to it within 10 days of the scheme being notified by the landlord and tenant that they have reached agreement, or being notified of the ADR/court decision.

In the insurance-based scheme: the landlord must repay any undisputed deposit, or part thereof, to the tenant within 10 days of the tenant requesting it.

In the event of a dispute, the landlord must pay the disputed amount to the scheme within 10 days of the scheme directing him to do so. Once the dispute has been resolved, and irrespective of whether the landlord pays in the disputed deposit into the scheme, the scheme must pay the disputed amount in the amounts decided within 10 days of being notified of the ADR service's, or court's, decision.

Q.41 Can't it be paid back before then – i.e. on the last day of the tenancy?

Yes. 10 days is the maximum timescale for repayment. In practice, the Government would like to see deposits returned more quickly, where that is feasible. 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.42 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 return deposits to tenants in cash.

Q.43 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 has given the tenant at least two months' written notice (under Section 21 of the Housing Act 1988). This is known as 'notice-only grounds'.

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

b) Payment to the tenant

Tenants can make an application to a county court if they believe that their deposit is not being safeguarded or where they have not been given the prescribed information about the scheme in which the deposit is safeguarded within 14 days of the landlord receiving the deposit.

Where the court is satisfied 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.44 What if a tenant moves out of the rented property before realising that his deposit hasn't been protected?

The tenant will need to apply for a court order and if the court finds in favour of the tenant the court will order the landlord to repay the deposit amount to him.

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.

Q.45 How will this affect deposits paid for assured shorthold tenancies which start before 6 April 2007?

Deposits received before 6 April 2007, for tenancy agreements which start before 6 April 2007 do not need to be safeguarded by a tenancy deposit. Similarly, if a deposit is taken before the 6 April 2007 in respect of a specific tenancy which begins after 6th April, then the deposit will not need to be protected under a scheme.

Q. 46 What happens if the tenant has a tenancy agreement that was taken out before 6 April 2007 but he continues occupying the property after the end of that tenancy?

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

- **For a statutory periodic tenancy** – i.e. the tenancy continues with no new agreement – TDP will not apply, as no new AST will have been created.
- **For a replacement / renewal tenancy** - This is a new AST and so TDP will apply. The deposit previously paid under the earlier tenancy is repayable to the tenant at the end of that tenancy, so it should be returned to the tenant. Alternatively, if the landlord wishes to continue to hold it as security in respect of the new tenancy it must be protected under scheme.

Q.47 Can landlords avoid TDP by not taking a deposit at all?

Yes. Landlords are not required to receive a deposit from their tenants. 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.48 Where do these provisions leave organisations that already have voluntary schemes up and running?

TDP will replace voluntary schemes. All new deposits related to assured shorthold tenancies in England and Wales from 6 April 2007 will require to be protected with one of the three Government-authorized schemes.

Rent deposit schemes and payment of deposits by third parties

Q.49 In some instances, local authorities, voluntary bodies or other third parties will pay the deposit directly to the landlord on the tenant's behalf. Will these be covered by TDP?

Where a third party pays a deposit directly to the landlord on behalf of the tenant for an AST, then this will need to be protected by TDP (the third party could be a

local authority or voluntary body, or could simply be a friend or relative of the tenant). The landlord must give both the tenant and the third party who paid the deposit the prescribed information at annex A, or if both parties agree, to either the tenant or the third party.

At the end of the tenancy, either the tenant, third party or both could be involved in the procedures that apply when the deposit is to cease to be protected. However, the landlord should establish at the start of protection how the third party wishes to be involved, if at all, and what their relationship is with the tenant, and inform the scheme of these arrangements. For example, setting out who the deposit should be returned to at the end of protection (or following a dispute).

If there is more than one third party that has paid the deposit the landlord should determine which of the third parties will be responsible for the purposes of receiving the prescribed information or dealing with the scheme and landlord in the event of a dispute. However, it may not always be possible for there to be just one third party for these purposes.

Q.50 If a local authority pays the deposit to a landlord who then places it with the custodial scheme - and then the actual tenant leaves and the local authority wants to put another tenant into the same property does the deposit need to be returned and then re-submitted to the scheme?

If the landlord makes no claim on the deposit, and both he and the local authority are content with the deposit remaining in the scheme, then it can remain, to be used for the next tenant. The tenant information held by the scheme administrator will however need to be updated by the landlord.

Q.51 A voluntary body runs a rent deposit scheme which operates its deposit as a deposit bond, using a savings scheme where tenants must save towards their deposit. When the tenant has saved the full amount, this is handed over to the landlord who then holds a cash deposit and the organisation's liability ends. If the tenancy has moved into a statutory periodic tenancy when the deposit is handed over, what should the landlord do, as he has now received a cash deposit but has not started a new tenancy?

The landlord will need to protect the deposit as set out in Q.49 above.

Q.52 Some local authorities and voluntary bodies operate rent guarantee schemes. Will these be covered by TDP?

Where the rent deposit scheme offers a letter of guarantee, no money passes to the landlord, so TDP will not apply.

Q.53 What must I do if I am letting my property to several tenants on one tenancy agreement?

The treatment of joint tenants will vary depending on the type of scheme used by the landlord. Where possible, a lead tenant should be nominated by the other tenants to deal with issues concerning the deposit.

Registered Social landlords

Q.54 If my landlord is a registered social landlord, does the deposit need to be protected?

Only if the tenancy is an AST. Some registered social landlords take deposits to secure against damage to furniture, so if the tenancy is assured shorthold, such a deposit will need to be protected.

Law commission review

Q.55 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.56 Will an inventory be compulsory?

We asked this question in a TDP consultation document published in November 2005. The majority of responses were that inventories should not be compulsory because properties differed too much to suit one inventory, prescribed in legislation. However, landlord and tenants recognise that the use of inventories and schedules of condition, where appropriate, can significantly reduce the incidence of disputes at the end of the tenancy and, where disputes do arise, provide the evidence-base to make resolution much easier - either through ADR or by the courts.

Enquiries

Q.57 Who should landlords and tenants contact for more information about tenancy deposit protection?

A representative body e.g. landlords association, or NUS, Shelter and or your local Citizens Advice Bureau.

Communities and Local Government's Tenancy Deposit Protection Team:

Telephone: 020 7944 4400

Email: tenancy.deposits@communities.gsi.gov.uk

By 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, whose contact details are set out in Q.16 above.

Annex A

Prescribed Information

Sections 213(5) and 213(6) of the Housing Act 2004 place a requirement on a landlord to provide information to the tenant within 14 days of receiving the deposit. The information that must be supplied by the landlord to his tenant and any relevant person (i.e. anyone who has paid the deposit on the tenant's behalf) is as follows.

Generic Information (which scheme must supply to landlord)	Tenancy-specific Information (to be completed by landlord and tenant)
Name, address and contact details of the scheme administrator of the tenancy deposit scheme that is safeguarding the deposit.	The amount of the deposit paid and the address of the property to which it relates
Name, address and contact details of the ADR service offered by the scheme for enabling disputes relating to the deposit to be resolved without recourse to the courts	Landlord's name, address and contact details
Information on the procedures applying for the release of the deposit (including in the event of a dispute).	Tenant(s) names, address(es) and contact details, including such details that should be used for the purposes of contacting the tenant(s) at the end of the tenancy
Procedures that apply under the scheme when either the landlord or tenant is not contactable at the end of the tenancy.	The name, address and contact details of any "relevant person" (any third party who has paid the deposit to the landlord on behalf of the tenant).
Standard information leaflet explaining how the deposit is protected by the Housing Act 2004 provisions. This leaflet will be provided to landlords by scheme administrators.	The circumstances when the landlord will be entitled to retain some or all of the deposit paid, by reference to the terms of the tenancy

The landlord is required to confirm (by certifying) that the information he provides is correct to his knowledge and belief and he must give his tenant(s) the opportunity to sign the information by way of confirmation that the information is accurate to the best of his tenant's knowledge and belief.

Annex B

Let-only agents

A landlord is ultimately responsible for ensuring that any deposit he takes from a tenant in respect of an AST is protected and that the statutory requirements of tenancy deposit protection are met. However, a landlord may choose to use an agent in respect of these tasks. This note relates to the scenario of 'let-only' agents whereby the agent arranges the letting and receives the deposit from the tenant, but generally passes it straight on to the landlord. The responsibilities of the landlord and agent in relation to deposit protection in this scenario will depend on the contractual arrangements between them.

a) Let-only agent, with landlord completely responsible

If the contractual arrangements are such that the agent is not tasked with any responsibilities in relation to protecting the deposit, when a let-only agent receives the deposit, he would pass it straight to the landlord. The landlord would need to protect it with a scheme himself, and provide the prescribed information to the tenant within 14 days from the agent having received the deposit. Clearly in this scenario it is in the interest of the landlord to ensure that the agent is aware of his contractual responsibility to pass over the deposit promptly to facilitate this process for the landlord. However, if the agent does not pass over the deposit promptly, the landlord is still responsible for protecting the deposit within 14 days of the agent having received it.

b) Let-only agent, with agent tasked with acting on behalf of the landlord

Section 212(9) of the Housing Act states that references to a landlord in relation to any shorthold tenancy include references to a person acting on his behalf in connection with the tenancy. The landlord can therefore task an agent to act on his behalf in terms of protecting the deposit. If the arrangements between the agent and landlord are such that the let-only agent is contractually responsible for protecting the deposit on the landlord's behalf, then the agent would be responsible and is potentially liable to prosecution if he fails to do so (by the landlord). The landlord would be well advised to satisfy himself that the deposit has been protected, and that the statutory requirements have been complied with, so that he can take action against his agent if necessary (outside of the scheme).

Note that in a let-only scenario, the full value of the deposit must always be protected, even if the agent takes some fees off of the deposit for their services to the landlord.