

Tenancy Deposit Scheme

Rules of membership

*A scheme open to all landlords
and agents concerned with the
letting of residential property*



THE DISPUTE SERVICE

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THE DISPUTE SERVICE

TDS Limited, PO Box 541
Amersham HP6 9ZR

Telephone: 0845 2267837
Fax: 01494 431123
email: deposits@tds.gb.com
website: www.tds.gb.com

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Definitions

Accreditation Scheme means a scheme run by a local authority, university or similar body under which landlords and agents volunteer to comply with its standards concerning the condition and management of their properties and their relationship with their tenants.

the Act means the Housing Act 2004, in which the statutory requirements for tenancy deposit protection are contained

Agent means an individual or company who lets or manages property on behalf of its owner.

Approved Body means a Professional Body, Accreditation Scheme or Trade Association approved after assessment by the Company to give their members a streamlined application process and possibly other benefits.

An **Assured Shorthold Tenancy (AST)** is the usual form of letting for a private tenant renting from a private landlord; where the tenancy began on or after 15 January 1989; the annual rent does not exceed £25,000; the house or flat is let as separate accommodation and is the tenant's main home.

the Board means the Board of directors of the Company.

Bonding or bonded means that the member has arranged and maintains, usually through a professional body, Client Money Protection Insurance which will reimburse the public in the event of fraudulent or dishonest misappropriation of clients' money; and that the extent of cover meets the minimum criteria set from time to time by the Board of The Dispute Service.

Client Account means an account set up in a bank, building society or other financial institution specifically to hold money held on behalf of clients.

Company limited-by-guarantee means a company which is normally incorporated for non-profit making functions. It has no share capital and has members rather than shareholders. Any surpluses are re-invested in the business.

Department means the Department of Communities and Local Government (DCLG), or any other Government Department which becomes responsible for the oversight of tenancy deposit schemes.

Deposit means any sum collected from the tenant at the start of the tenancy, as prescribed in the tenancy agreement and held by the Member on behalf of the tenant as security against performance of obligations under the tenancy agreement; any damage to the property etc.; and/or non-payment of rent during the tenancy period.

the ICE means the Independent Case Examiner.

Landlord means an individual or company who lets property.

Member means an agent or landlord who has joined TDS

Office(s) means a branch or branches operated by a Member from where any letting and/or management function or activity takes place.

Professional Body means an organisation which acts in some form to regulate or supervise the activities of its members.

Private Rented Sector or PRS means the industry concerned with the letting of residential property owned by private landlords.

TDS or the Scheme or the statutory scheme means the Tenancy Deposit Scheme run by the Company for the protection of tenancy deposits and the resolution of disputes between landlords, agents and tenants concerning the return of deposits at the end of tenancies; and which has been set up in accordance with the Housing Act 2004 and under contract to the Department.

TDSRA means the Tenancy Deposit Scheme for Regulated Agents run by the Company for the resolution of disputes between landlords, agents and tenants concerning the return of deposits at the end of tenancies, and for which only regulated agents were eligible to join. It has been superseded by TDS, but it may be continued at the discretion of the Company for those of its Members who wish to continue protection for existing tenancies and new tenancies which fall outside the scope of the statutory scheme.

The Dispute Service, TDS Ltd or the Company means The Dispute Service Limited, a company limited by guarantee registered in England and Wales with registered number; 4851694.

Tenant means an individual or company who holds or possesses property for a time in return for the payment of rent.

Trade Association means an association of people or companies in a particular business or trade, organised to promote their common interests.

Introduction

What is the Tenancy Deposit Scheme?

In the private sector many tenants give their landlords a deposit against possible non-payment of rent, or damage to property. When a tenancy comes to an end, there is usually no disagreement about the return of the deposit. But sometimes there is, and this can cause much hardship, delay and inconvenience to landlords, tenants and Members.

The Housing Act 2004 (“the Act”) requires anyone – landlord or agent – who accepts a deposit for an Assured Shorthold Tenancy (AST) to belong to a designated scheme to protect it. The scheme must also provide a resolution service should a dispute arise about the allocation of the deposit on expiry of the tenancy. The majority of private tenancies are ASTs.

The Tenancy Deposit Scheme (TDS) is a designated scheme under the Act. It is designed to ensure that tenancy deposits are securely held, and that disputes about their return are resolved quickly, cheaply and fairly. TDS is based on the pilot Tenancy Deposit Scheme run by Independent Housing Ombudsman Limited on behalf of the Office of the Deputy Prime Minister from 2000 – 2003; and on the Tenancy Deposit Scheme for Regulated Agents, which replaced it.

TDS is managed by The Dispute Service Ltd, a company limited-by-guarantee. Deposits held by Scheme Members and covered by TDS are protected during the tenancy so that they are available

to be returned to the tenants if they have met the terms of the tenancy agreement. Where there is no dispute at the end of the tenancy, Scheme Members undertake to return the deposit promptly. Where there is a dispute about the allocation of the deposit and it cannot be resolved after negotiation, the Member will transfer the disputed deposit and submit appropriate documentation to The Dispute Service. The matter will be dealt with by the Independent Case Examiner (ICE) fairly, quickly and impartially. He will apportion the disputed amount and pay it to the parties on the basis of his adjudication.

The Dispute Service maintains a cash reserve so that if the Member fails to transfer the deposit within the prescribed timescale, the ICE will still adjudicate the dispute. He will draw on the reserve to pay out the deposit. The Dispute Service has arranged an insurance policy underwritten by Norwich Union and Royal & Sun Alliance Insurance to provide indemnity for deposits which are not paid over to TDS by Members. The company will also pursue the Member to recover outstanding sums and will take legal action when necessary

This document sets out the Member’s obligations under the rules and procedures of TDS. It does not apply to other schemes which have been authorised for the protection of deposits. A summary of landlords’ obligations concerning tenancy deposits is at Appendix 1.

Rules of membership

1 Eligibility

1.1 Membership of the Scheme is open to all landlords and agents in the PRS. Prospective Members will be asked to complete an application form to provide, amongst other things, the following information:

- a Do they hold separate clients accounts for deposits and other client money?
- b Are they covered by a Client Money Protection Scheme?
- c Do they hold Professional Indemnity insurance?
- d Do they adhere to a recognised Code of Practice?
- e Are they Members of an accreditation scheme?
- f Are they Members of a trade or professional body?
- g Have they ever been refused a licence to operate an HMO under the mandatory requirements of the Housing Act 2004?

and other matters at the Board's discretion.

Their answers will determine the insurers' estimate of risk and affect their annual subscription.

1.2 Applications from landlords and agents who are not Members of an Approved Body (see section 2) will be considered on an individual basis and referred to Insurers for approval. Among the additional factors which may be taken into account in assessing their applications will be:

- a Length of time the firm has been established
- b Staff training and qualifications
- c Credit ratings of the firm and its Directors.

1.3 The Board may require applicants to provide documentation to demonstrate that they meet the criteria set out paragraphs 1.1 and 1.2. It may review these criteria from time to time and may alter them at its discretion (see section 17 "Amendments").

1.4 Applicants will be refused membership if:

- a Information supplied as part of their application proves false
- b They refuse to agree to comply with the rules of the Scheme
- c They fail to pay their initial subscription
- d The information provided caused the insurers to decline to provide cover under the policy.

1.5 Members of the Tenancy Deposit Scheme for Regulated Agents who have been in good standing for the three months prior to the implementation of TDS will automatically qualify to become Members of TDS. If they choose to do so they will be required to submit a written declaration of compliance with the rules of TDS.

1.6 The Scheme Administrator may reject applications to join TDS, at his discretion. His decision is final.

2 Approved Bodies

2.1 Membership organisations operating in the PRS will be able to apply to become Approved Bodies for the purposes of TDS. This will give their Members a streamlined application process and alleviate their subscriptions.

2.2 The Dispute Service has established the three categories for Approved Bodies:

- a Approved Professional Body
- b Approved Accreditation Scheme
- c Approved Trade Association

2.3 Criteria for acceptance of applications for Approved Body status are detailed in Appendix 2.

2.4 Members of any of the approved bodies will automatically be granted Membership of TDS subject to:

- a satisfactory completion of the on-line application form (available on-line)
- b written declaration of compliance to the rules of TDS
- c confirmation that they are a current Member in good standing and are not subject to recent or on-going disciplinary procedures
- d payment of the relevant subscription.

3 Cost of Membership

3.1 Members will pay a yearly subscription to cover:

- a the costs of administering TDS;
- b the Insurers' assessment of the risk that a Member will default on their obligations under the Scheme and cause the Company to make a claim on its insurance;
- c resolution of tenancy deposit disputes.

- 3.2 The Board of The Dispute Service will fix the method of calculating the subscription and the amount each year. Members will not gain access to any of the benefits of Membership until their subscription has been paid.
- 3.3 Members will also pay a one-off application fee which will be set by the Board from time to time.
- 3.4 The extent to which a Member meets the criteria set out in section 1 will affect their subscription.
- 3.5 The Company may, at its discretion, proportionately reduce a Member's first year subscription according to the point in the year in which their invoice falls due.
- 3.6 Where the Member is an agent, they will be entitled at their discretion, to recover the outlay of subscription costs from their landlord clients. It is a matter for agents to determine how they do so, but the subscription must not be charged directly to the tenants. The Dispute Service and the Approved Bodies would consider it to be unprofessional and undesirable to make undue profit from such recharges. Such conduct will be grounds for the exclusion of the Member from TDS and for disciplinary action by the Approved Body. Further advice is contained in TDS D *Operational procedures and advice for Members*. Members may also consult The Dispute Service.
- 3.7 The Dispute Service may carry out an audit at the Member's expense if it reasonably considers that this is necessary to verify the accuracy of their returns for the purpose of calculating their subscription.
- 3.8 Where a Member has not renewed their subscription within the prescribed period their Membership of the Scheme will be suspended. They will have to pay the costs of resolving disputes which arise from a tenancy granted during its suspension as if it was a pre-existing tenancy (paragraph 4.3). During the period of suspension the Member will be in breach of the Housing Act 2004 if they continue to take deposits. This will continue until the suspension is lifted or the Member joins another scheme.

4 Status of tenancies for inclusion under TDS

- 4.1 All *new* tenancies entered into from the date the Member has paid their subscription are covered by the scheme. There are the following exceptions to this:

4.1.1 If the Member does not hold the deposit, it cannot be protected by TDS. Where the Member is an agent but will not be holding the deposit they should make it clear to the landlord, including contractually, that it is the landlord's responsibility to ensure the deposit is protected by another authorised scheme. Even if the Agent physically receives the deposit from the tenant, if they have no intention of holding the deposit, it must be clear to all parties that the landlord is individually responsible for protecting the deposit. If the Member is a landlord, and the deposit is being held by an agent, the landlord must ensure that the agent arranges protection through an authorised scheme (be it TDS or another scheme).

4.1.2 TDS will cover tenancies owned or managed by a member which are not Assured Shorthold Tenancies (ASTs), unless the Member specifically requests otherwise. These tenancies will be outside the statutory scheme.

4.1.3 If the Member specifies that particular ASTs are not to be covered by TDS they must ensure that these deposits are covered by another designated scheme.

4.1.4 Strictly speaking, protection cannot be extended to tenancies where the information specified in paragraph 14.4 has not been entered into the TDS tenancy database. However, TDS will cover them as long as the deposit is held by a Member. But if there is a dispute at the end of the tenancy, the deposit will be awarded to the tenant without adjudication.

4.2 As long as the subscription is paid within 28 days, any disputes arising from tenancies granted during that period where the agreement does not contain the relevant clauses (see section 16), will nevertheless be adjudicated without further charge. If payment is delayed beyond 28 days, any disputes arising from tenancies granted prior to payment will be subject to a charge. It will be fixed each year by the Board of The Dispute Service.

4.3 Disputes concerning the deposits of any *pre-existing* tenancies – which started no earlier than 1st July 2006 and up to the date the firm became a Member of TDS – where the Member holds the deposit, may be submitted to the ICE for adjudication subject to:

4.3.1 the written consent of the relevant parties at the time the dispute arises (Form TDS 4);

4.3.2 the payment of an adjudication fee, the amount to be fixed from time to time by the Board of The Dispute Service;

4.3.3 the discretion of the ICE.

- 4.4 Where pre-existing ASTs are formally *extended* or *renewed* after the Member has joined TDS, the new tenancy agreement must include the relevant clauses (please see section 16), unless the landlord has decided that the deposit will be protected by another designated scheme. That tenancy will then be considered a *new* tenancy for the purposes of adjudication under the TDS.
- 4.5 Where pre-existing non-ASTs are formally *extended* or *renewed* after the Member has joined TDS, the new tenancy agreement should – with the consent of the parties – include the relevant clauses. That tenancy will then be considered a *new* tenancy for the purposes of adjudication under TDS.
- 4.6 Tenancies protected by TDSRA will continue to be covered as long as the Members concerned transfer to TDS. If they do not, they will have to make other arrangements.

5 Joint tenancies

- 5.1 The tenancy agreement should stipulate to whom the deposit should be paid at the end of the tenancy. If it does not, the ICE will allocate his award to the tenants equally to each of those named in the tenancy agreement. He will send each of them the appropriate amount separately, by cheque or bank transfer as requested.
- 5.2 The only exception to this will be where the joint tenants authorise a different allocation of the award, in writing and signed by all of them.
- 5.3 It is the responsibility of joint tenants to inform the Member if one of them moves out so that the Member can modify the tenancy agreement accordingly.
- 5.4 Where one or more of the joint tenants refuses to accept the landlord/agent's proposal for the return of the deposit, they will be able to submit a dispute – whether or not they are in the majority.

6 Holding the deposit

- 6.1 Members of a Professional Body must hold the deposit during the tenancy in accordance with its relevant rules or byelaws concerning accounting and dealing with client money. If the Member has Client Money Protection Bonding it must hold the deposit in accordance with the requirements of its insurers. At the very least, the Member must hold the deposit in a specified Client Account.

- 6.2 Any part of the deposit which is disputed or unpaid must be submitted to TDS in accordance with paragraph 7.6. Members must not release or utilise a disputed deposit held under the TDS until the ICE has made his adjudication. It is recognised that they may need to have works done so they can re-let a property, in advance of the adjudication. They must accept that they do so at their own risk, and out of their own resources. They must not use the disputed deposit for this purpose and must submit it to TDS in accordance with paragraph 7.6. Members should, however, release any part of the deposit over which there is no disagreement.
- 6.3 Agent Members must hold deposits for ASTs as stakeholders¹. The legislation effectively does away with the ability to hold the deposit as “Agent for the Landlord” and to deploy it at the landlord’s discretion. It prohibits the holder of the deposit from disbursing the deposit without the agreement of the landlord and tenant. A disputed deposit can only be paid out following a decision by an adjudicator or the courts. Even if a landlord wishes to insist that the Agent holds the deposit as “Agent for the Landlord”, the agent would not be able to release any of the deposit to the landlord, at any point during the tenancy.

7 At the end of the tenancy

- 7.1 If there is no dispute the Member will keep or repay the deposit, according to their agreements with the landlord and the tenant.
- 7.2 In the event of a dispute arising Members must try to resolve it in a timely manner (see section 8 below). If they cannot do so they must draw the attention of the parties to TDS.
- 7.3 It is not compulsory for the parties to refer the dispute to the ICE. They may, if they choose, seek the decision of the courts. However, this is likely to take longer and may be more expensive. Judges may, in the knowledge of TDS, refer the dispute back to the ICE for adjudication. If the parties do agree that the dispute should be resolved by the ICE, they must accept his decision as final and binding.
- 7.4 If there is a dispute about who has better claim to the deposit at the end of the tenancy, raised by any of the parties (the agent/the landlord and/or the tenant), which remains unresolved, any of them can refer it to the ICE. The Member must be able to show that they have tried to negotiate a resolution to the dispute before referring it to the ICE. Where a tenant or landlord refers the matter to the ICE, a Member agent must always cooperate.

- 7.5** Any of the parties: agent, landlord or tenant can instigate a dispute by completing the *Notification of Dispute* form (TDS.2) and submitting it to the ICE.
- 7.6** Where a Member instigates a dispute they must send with the *Notification of Dispute* to the Company the **full** deposit, **less** any amounts already agreed by the parties **and** paid over to them. Where one of the other parties raises the dispute, the Member must send the relevant amount with their response documents within 10 working days of being told that a dispute has been registered *whether or not they want to contest it*. Failure to do so will not delay the adjudication but the company will take appropriate action to recover the deposit and discipline the Member.
- 7.7** Members must co-operate with the ICE in his consideration of the dispute and follow his recommendations concerning the method of its resolution.

8 Timescales

- 8.1** The Housing Act 2004 (c. 34) Part 6 Chapter 4 paragraph 171 (3) states that:
Where a landlord receives a tenancy deposit in connection with a shorthold tenancy, the initial requirements of an authorised scheme must be complied with by the landlord in relation to the deposit within the period of 14 days beginning with the date on which it is received.
- 8.2** For TDS this means that within fourteen days of the relevant events:
- 8.2.1** the tenant(s) must have received the information specified in paragraph 14.3 by its inclusion in the tenancy agreement; and
- 8.2.2** the information specified in paragraphs 14.2 – 5 must have been lodged on the TDS tenancy database.
- 8.3** When the landlord and tenant agree how the deposit should be returned, in full or in part, it must be paid back within ten working days. Failure to return the deposit within the specified period will be grounds for the tenant to refer the matter directly to the ICE.
- 8.4** The tenants should make their best endeavours to inform the Member if they wish to raise a dispute about the deposit within 20 working days after the lawful end of tenancy and vacation of the property – unless a different period is specified in the tenancy agreement. The ICE may, subject to paragraph 8.9, regard failure to do so as putting the dispute out of time and refuse to accept it if subsequently asked to resolve it.

- 8.5** A Member has a maximum of 10 working days to resolve the dispute – unless a different period is specified in the tenancy agreement. If they cannot do so, or if either the landlord or the tenant remains dissatisfied, the dispute should be referred promptly to the ICE. Similarly, if the tenant does not want to deal with the Member, they are free to submit the dispute directly to the ICE. However, if all parties feel that the dispute could be resolved without reference to the ICE given some more time, they should inform him promptly. He may, at his discretion, agree a time-limited extension.
- 8.6** The dispute may be referred to the ICE before the end of the period if all the parties agree that they cannot resolve it.
- 8.7** The ICE will aim to resolve the dispute within 28 days of receiving the final documentation i.e. once all the evidence considered necessary has been gathered.
- 8.8** The Scheme will pay out the money within 10 working days of the ICE's decision.
- 8.9** The timescales specified may be varied at his discretion if the ICE considers it necessary to seek legal or other expert advice, or in exceptional circumstances at his discretion e.g. if one of the parties is in hospital.

9 Role of the Independent Case Examiner

- 9.1** The ICE will:
- 9.1.1** deal with the dispute promptly, and within the timescales set by:
- a *the Housing Act 2004*
 - b *the contract between the Department and the Company*
 - c *the Board of The Dispute Service*
- 9.1.2** make a decision about the fair allocation of the deposit within 28 working days of receiving all the necessary information.
- 9.1.3** instruct the Scheme Administrator to make the resulting payments to the landlord and the tenant.
- 9.1.4** deal with disputes even if the Member has not submitted the deposit.
- 9.2** The ICE will not deal with disputes:
- 9.2.1** where one of the parties has registered their intention to take legal action for the resolution of the dispute;

9.2.2 that have been resolved through litigation. He will generally refuse to deal with new matters, which the parties had the opportunity to raise in court, and failed to do so. However, he may at his discretion deal with any outstanding aspects which were not dealt with by the court.

9.2.3 where the amount of the deposit in dispute for a non-AST is £5,000 or more, although he may do so at his discretion if he considers it would be appropriate to the facts of the case. In such circumstances he will discuss the appropriate method of resolution with the parties and seek their written consent to proceed.

9.3 The ICE may at his discretion award the disputed deposit to the tenant without adjudication where:

9.3.1 The full disputed amount has not been submitted within the time specified in paragraph 7.6

9.3.2 The tenancy is not subject to a written tenancy agreement

9.3.3 There is a written tenancy agreement but it does not contain appropriate reference to the TDS as prescribed (please see paragraph 16.3 for tenancies which start after a Member has joined the Scheme and before they have been able to change their documentation)

9.3.4 There is either no check-in or no check-out inventory

9.3.5 In the opinion of the ICE the Member has unreasonably sought to delay the repayment of the deposit or the referral of the dispute

9.3.6 The information prescribed in paragraphs 14.2 – 3 has not been given to the tenant.

9.4 The ICE may also reject disputes which are, in his opinion:

9.4.1 being pursued in an unreasonable manner;

9.4.2 frivolous;

9.4.3 vexatious;

9.4.4 or seek to raise again and unreasonably in his opinion, matters which:

a he has already adjudicated upon;

b have already been determined by another similar dispute resolution process; or

c have been determined by litigation.

9.5 The ICE will:

9.5.1 publish his procedures for reporting and disseminating information. He must seek approval from the parties for the transfer of personal details for the purposes of assisting his adjudication or the conduct of research or publicity for TDS

9.5.2 make and publish arrangements for receiving and dealing with complaints from Members, landlords and tenants about how a dispute was handled.

9.5.3 draw to the Board's attention any Member he believes is abusing or ignoring the rules of TDS, and take such action as he feels is reasonable

9.5.4 recommend to the Board the expulsion of Members who refuse to abide by these terms and conditions.

10 Withdrawal from TDS by a Member

10.1 Any Member may resign from TDS if it complies with the following conditions:

10.1.1 It must give at least 6 months' notice in writing to the ICE of its intention to resign, copied to its Professional Body. It must not offer TDS to new or renewed tenancies. The balance of the subscription will not be reimbursed.

10.1.2 The resigning Member must also give a written undertaking, in a form to be decided by the Board, that they will:

- a comply with the ICE's decisions in respect of all outstanding disputes whether or not they are completed by the date of resignation;*
- b pay any outstanding sums which the Company may certify as due in respect of its Membership of TDS, whether or not such a certificate is given before Membership ceases;*
- c pay the costs of any disputes arising out of tenancies covered at the time of its resignation and after the Member's subscription has run out i.e. to pay a fee for the resolution of the dispute equivalent to that charged for disputes arising over tenancies commencing before the Member joined the Scheme;*
- d not state or imply that they remain a Member of TDS.*

10.2 Where the firm resigns by failing to renew its subscription the same terms will apply, except the Member will not be required to give six months notice.

10.3 The Dispute Service will:

10.3.1 inform the other parties that the protection afforded to deposits collected and registered under the scheme will continue, including access to the ICE for dispute resolution, despite the Member's withdrawal:

- a for a period of 12 months from the initial commencement date of the tenancy or*
- b for a period of 3 months from the date of cessation of Membership whichever is the later, but only until the landlord/agent has made alternative arrangements for the protection of any deposit.*

whichever is the later, but only until the landlord/agent has made alternative arrangements for the protection of any deposits.

10.3.2 inform the Department that the firm is no longer a Member of the TDS;

10.3.3 alert the other tenancy deposit schemes that the firm may apply to join them².

11 Removal of Member from TDS

11.1 The Board may terminate a Membership if, in its reasonable opinion, the Member:

11.1.1 has not complied with TDS or with undertakings given to the Company as a term of admission;

11.1.2 is considered to have acted unprofessionally or failed to co-operate with the ICE in the manner expected;

11.1.3 has failed to pay over any money due to The Dispute Service (whether subscription or otherwise) in a timely manner;

11.1.4 has changed the status on which its Membership was based and/or failed to maintain its client account.

11.2 The Board must:

11.2.1 give notice to the Member, and its Approved Body where relevant, that it proposes to end the Membership together with a statement of its reasons;

11.2.2 allow the Member to make representations within such a period as the Board may decide, which will be not less than 20 working days;

11.2.3 consider any representations before reaching a decision on whether to terminate the Membership.

11.3 If the Board maintains its decision to terminate the Membership, it must give written notice to the Member explaining its reasons and:

11.3.1 that there will be no protection of deposits for tenancies entered into after the date specified in the notice;

11.3.2 the Member must undertake the actions specified in paragraph 10.2 as if it had itself given notice of resignation from TDS;

11.3.3 The Dispute Service will undertake the actions specified in paragraph 10.3.

11.4 If the Board decides to terminate a Member's membership the ICE may publish the fact and circumstance of its removal from TDS. The ICE may also notify the Member's professional body, trade association, accreditation scheme, local authority or any other relevant body or organisation of their removal from TDS³.

11.5 Members who are excluded may also be subject to sanctions and or disciplinary action by their Approved Body or Client Money Protection Bonding Scheme where relevant. (See also TDS D, *Operational procedures and advice for Members*).

11.6 The Board may also review the status of an Approved Body in the event of persistent breaches of the rules by a number of its Members; and if, in the opinion of the Board, the Approved Body does not seek to ensure the compliance of its Members with the rules of the scheme.

12 Continuation of cover in the event of a cessation of membership

12.1 If an agent or landlord fails to renew their Membership of the Scheme, or the Membership is cancelled mid-term, the protection afforded to deposits collected and registered under the scheme will continue, including access to the ICE for dispute resolution:

12.1.1 for a period of 12 months from the initial commencement date of the tenancy or

12.1.2 for a period of 3 months from the date of cessation of Membership whichever is the later, but only until the landlord/agent has made alternative arrangements for the protection of any deposit.

whichever is the later, but only until the landlord has made alternative arrangements for the protection of any deposit.

² To be confirmed by the Information Commissioner

³ To be confirmed by the Information Commissioner

- 12.2** On receipt of notification from the agent or landlord that their membership will not be renewed, the Scheme Administrator will immediately write to all tenants to inform them of the date that their protection will cease. He will seek confirmation from the agent or landlord of the alternative arrangements they are making to ensure ongoing compliance with the law including liaison with other scheme providers, as necessary.
- 12.3** In the event that the Scheme wishes to terminate the membership of a landlord or agent as a result of a serious breach of the scheme rules, this termination will not prejudice the protection afforded to tenants whose deposits are registered with the Scheme prior to date of termination of the Membership.
- 12.4** The Scheme will, as a priority, seek to inform tenants of their rights under the scheme and to ensure they are able to recover sums due to them or to have the protection transferred to another scheme.

13 Changes of Ownership or Management

- 13.1** The terms and conditions of TDS continue to apply as long as the existing tenancy agreement remains in place, regardless of a change to the ownership or management of the business or the property, as long as the subscription continues to be paid. If it is not, the provisions of paragraphs 11 or 12 will apply, as appropriate.
- 13.2** Members must promptly inform the tenants, and within no more than 10 working days, of those properties covered by TDS that they are transferring to another Member (or manager); or otherwise are ceasing to manage or own their properties. They must also tell them who is now managing the property and confirm either that:
- 13.2.1** the rules of TDS still apply (if the new manager is already a member of TDS) or
- 13.2.2** that their deposit will be covered by another specified, designated scheme (if the new manager is not a member of TDS).
- 13.3** The Member must inform the selling landlord in writing of the need to tell the purchaser, or the new Member, of their contractual obligations relating to the tenancy deposit under TDS.

14 Provision of information

- 14.1** All documentation relating to TDS including these rules etc are available for public viewing or to be downloaded from the website www.tds.gb.com.

- 14.2** The regulations contained in The Housing (Tenancy Deposits) (Prescribed Information) Order 2004 require **The Dispute Service to provide the following information to Members to pass on to their tenants:**
- The name, address and contact details of the scheme that is protecting the deposit i.e. TDS.*
 - The name, address and contact details of the ADR service offered by the scheme i.e. The Dispute Service.*
 - Information on the procedures applying for the release of the deposit and in the event of dispute, including when the landlord cannot be contacted and no payment can be agreed.*
 - Standard information leaflet explaining how the deposit is protected by the Housing Act 2004 provisions.*
 - Information about The Dispute Service Ltd's complaints procedure.*

The information specified in paragraphs (a) – (c) is to be included in the tenancy agreement, and the management agreement/terms of business where relevant, in the form prescribed in TDS G Clauses *to be included in tenancy agreements and terms of business*. The documents specified in paragraphs (d) – (e) must be referred to in the tenancy agreement, and the management agreement/terms of business where relevant, but not included in them. The tenants must also be provided with a separate document, signed by the them and a representative of the Member (TDS H). (see also Section 5)

- 14.3** The regulations also require the following information to be agreed and signed by Members and their tenants:
- The value of the deposit and the address to which it relates*
 - Landlord's contact details*
 - The name(s) of the tenants(s); or the name(s) of the person(s) paying the deposit on behalf of the tenant(s)*
 - Alternative contact address(es) for the tenant(s) (if known)*
 - Information explaining the purpose of the deposit.*

The above information is to be included in the tenancy agreement, and the management agreement/terms of business where relevant, in the form prescribed in TDS G Clauses *to be included in tenancy agreements and terms of business*.

- 14.4** The Dispute Service is obliged to collect and maintain appropriate data on each deposit that it protects. Members must record the following data and enter it directly on the TDS database **within fourteen days of the start of a tenancy:**

- a Names of all tenants party to the tenancy agreement;
- b Contact details of tenant(s);
- c Name and address of Landlord;
- d Property address to which the deposit relates;
- e Total value of the deposit;
- f Date on which deposit is paid to the Member...
- g ...and date on which tenancy begins if different.

If they are unable to enter the data directly, Members may record it on form TDS 5 and submit it to the Scheme **within seven days of the start of the tenancy**. There will be an extra charge to cover transcription costs.

- 14.5** Any of the following **changes during the course of the tenancy** must also be recorded and entered directly on the TDS database by the landlord or agent as appropriate **within fourteen days** of taking place:

- a Names or contact details of tenant(s);
- b Sale of the property;
- c Change in ownership and managing agent;
- d Fresh inventory/schedule of condition;
- e Issue of new tenancy agreement.

If they are unable to enter the data directly, Members may record it on form TDS 8 and submit it to the Scheme. There will be an extra charge to cover transcription costs.

- 14.7** If there is **no dispute** about the deposit, Members must input the following data **within fourteen days** of the end of the tenancy or when they reach agreement with the tenants:

- a Date that the deposit protection ended i.e. when agreement on the deposit has been formalised
- b The amount of the deposit to be returned to each party

- 14.8** The Scheme may collect such other information as it sees fit provided that it is necessary for the purpose of the Scheme.

- 14.9** The Scheme must collect and maintain the following data **for each dispute**:

- a name and contact details of tenant(s)
- b property address to which the deposit relates
- c name and address of the Landlord

- d total value of the Deposit
- e total value of the Deposit in dispute
- f nature of the dispute
- g outcome of the dispute

- 14.10** The Scheme may collect such other information as it sees fit provided that it is necessary for the purposes of the ADR Service.

- 14.11** Failure by a Member to supply the information required from them may be considered a breach of the terms of TDS and could result in the Member being removed from the Scheme.

15 Data Protection Act – Provision of information

- 15.1** The Dispute Service is registered with the Information Commissioner under the Data Protection Act and is aware of its obligations relating to the obtaining, recording, holding or disclosing of personal data; and has suitable systems and controls to comply with the eight general principles of the Act which say that such personal data must be: – fairly and lawfully processed; processed for limited purposes; adequate, relevant and not excessive; accurate; not kept longer than necessary; processed in accordance with the data subject's rights; secure; not transferable to other countries without adequate protection.

- 15.2** Members must provide The Dispute Service with such information, as it reasonably requires, both regularly and on a one-off basis, on the appropriate form, on-line, by computer disc or by e-mail. Forms are available direct from The Dispute Service or by downloading from the website: **www.tds.gb.com**.

- 15.3** Members must, without charge, provide copies of or – at his request – allow the ICE to examine, any records and documents that he considers may be relevant to a dispute. Members must provide such other reasonable help as the ICE may request from time to time.

- 15.4** Members give The Dispute Service their consent to copy information they may supply concerning their Membership of TDS and deposit disputes in which they are involved, to:

- a other parties and organisations who the ICE considers appropriate to the resolution of the dispute;
- b for use in confidential survey and research purposes;
- c to relevant professional bodies who have an interest and duty to maintain and sustain good practice and the integrity of TDS⁴.

16 Clauses for inclusion in Tenancy Agreements and Terms of Business

- 16.1 Relevant clauses must be inserted in, or appended to, the tenancy agreements created on all properties where the Member is to hold the deposit.
- 16.2 Similarly, relevant clauses must be inserted in, or appended to, the Terms of Business between Landlord and Agent where appropriate.
- 16.3 It is recognised that new Members will take some time to modify their written agreements. In those cases they must produce the clauses on a separate piece of paper, to be signed and dated by the parties, and attached to the agreements currently in use.
- 16.4 The appropriate wording is provided in TDS G (op cit) which can be downloaded from the Members-only section of the website, or is available from The Dispute Service.

17 Amendments

- 17.1 These rules may be amended from time to time by resolution of the Board and all such amendments shall be deemed incorporated into these rules with effect from the date on which such changes are notified to Scheme Members.
- 17.2 If in the reasonable opinion of the Board, any proposed changes to these rules are significant, it shall consult with Scheme Members to the extent and in the manner it deems appropriate. If any changes incorporated into these rules are in the reasonable opinion of any Scheme Member material and unreasonable, such Member may notify The Dispute Service of its intention to withdraw from TDS in accordance with the provisions of paragraph 11. In that event, the rules in force immediately prior to such amendment shall continue to apply to the relevant tenancies of such Member.

For further information about TDS please visit www.tds.gb.com or contact:

TDS Ltd
PO Box 541
Amersham
HP6 9ZR

email: deposits@tds.gb.com

Appendix 1

Summary of landlords' obligations concerning tenancy deposits

The provisions in the Housing Act 2004 make it a requirement that any landlord who wishes to take a monetary deposit must safeguard that deposit with a tenancy deposit scheme. The provisions only apply to deposits taken in relation to assured shorthold tenancies, the most common form of new tenancy, and have two main aims:

- to safeguard tenancy deposits; and
- facilitate the resolution of disputes arising in connection with such deposits.

There will be civil sanctions against non-complying landlords. A landlord (or the person who takes the deposit on behalf of the landlord) must ensure that a deposit is safeguarded by ensuring that it is dealt with in accordance with an authorised scheme. The landlord, within 14 days of receiving a deposit, must provide the tenant (or the person who paid the deposit on his behalf) with information relating to the authorised scheme applying to the deposit.

If the landlord fails to comply with any of these requirements, he will lose the right to serve a tenant with a notice under section 21(1)(b) or (4)(a) of the Housing Act 1988 for recovery of possession on termination of the shorthold tenancy until such time as the requirements are complied with.

The tenant can apply for a court order requiring the deposit to be safeguarded or the prescribed information to be given to him. Where the court is satisfied that the landlord has failed to comply with these requirements, or is not satisfied that the deposit is being held in accordance with an authorised scheme, then the court must, as it thinks fit, either order the landlord within 14 days of the making of the order to repay the deposit or order him to pay it into the designated account held by the scheme administrator under an authorised scheme. The court must also order the landlord to pay to the tenant (or person who paid the deposit on his behalf) an amount equivalent to three times the deposit amount within 14 days of the making of the order.

Appendix 2

Criteria for approved bodies

The following is list of the questions and criteria against which a potential Approved Body will be assessed. If it is accepted it will be assigned to one of the Membership categories listed in Rule 2.2.

Some questions and criteria will carry a differential weighting to reflect their importance to the Company, and of risks associated with particular groups of prospective Members. It is not expected that all the questions and criteria will apply to all prospective Approved Bodies.

Does the organisation:

- a have defined minimum entry standards?
- b enforce a comprehensive code of practice?
- c have defined service standards?
- d require annual financial reporting?
- e impose rules for the handling of clients money through properly designated clients accounts?
- f have a pro-active compliance monitoring regime?
- g require its Members to have client money protection insurance, and if so to what limits?
- h require Members to hold professional indemnity insurance; and if so to what limits?
- i require Members to have an internal complaints procedure?
- j have defined and effective disciplinary procedures?
- k offer a training and qualification programme?
- l have recognition as a statutory regulator under any government scheme or legislation?
- m have endorsement by Accreditation Network UK?

Will the organisation be able to offer The Dispute Service:

- n an unconditional guarantee in the event of financial default by any of its Members?
And if so, to what extent?
- o assistance with Membership administration e.g. collection of subscriptions?

Appendix 3

Documents and forms available from The Dispute Service

Documents

TDS A Rules of Membership for Members

TDS B Management and administration of the Tenancy Deposit Scheme

TDS C The obligations of Professional Bodies

TDS D Operational procedures and advice for Members

TDS E Consumer Leaflet "What is the Tenancy Deposit Scheme?"

TDS F Procedure for complaining about the way the ICE handled your case

TDS G Clauses to be included in tenancy agreements and terms of business

Forms

TDS 1A Application for an agent to join TDS

TDS 1B Application for a landlord to join TDS

TDS 2 Notification/Referral of a deposit dispute

TDS 3 Report of adjudication

TDS 4 Consent to submit to adjudication disputes on tenancies which started before the Member joined TDS

TDS 5 Registration of a tenancy

TDS 6 Response to dispute

TDS 7 Notification of an office opening/closure

TDS 8 Changes during the tenancy

TDS 9 End of tenancy

TDS 10 Application to be an Approved Body

TDS 11 Declaration by TDSRA members

They may also be downloaded from the website www.tds.gb.com

TDS Ltd
PO Box 541
Amersham
HP6 9ZR

email: deposits@tds.gb.com



THE DISPUTE SERVICE

TDS Limited, PO Box 541, Amersham HP6 9ZR
Telephone: 0845 2267837 Fax: 01494 431 123
email: deposits@tds.gb.com
website: www.tds.gb.com