

Tenancy Deposit Scheme

# Rules of membership

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

*Fifth edition*



THE DISPUTE SERVICE



THE DISPUTE SERVICE

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# Contents

<b>Definitions</b>	2
<b>Introduction</b>	
What is the Tenancy Deposit Scheme?	4
<b>Rules of membership</b>	
1 Eligibility	6
2 Categories of membership and Approved Bodies	7
3 Cost of Membership	8
4 Status of tenancies for inclusion under TDS	9
5 Joint tenancies	11
6 Holding the deposit	11
7 At the end of the tenancy	12
8 Timescales	13
9 Role of the Independent Case Examiner	15
10 Resignation from TDS by a Member	16
11 Removal of Member from TDS	17
12 Continuation of cover in the event of a cessation of membership	19
13 Changes of ownership or management	19
14 Provision of information	20
15 Data Protection Act – Provision of information	22
16 Clauses for inclusion in Tenancy Agreements and Terms of Business	23
17 Amendments	23
<b>Appendices</b>	
Appendix 1 <i>Summary of landlords' obligations concerning tenancy deposits</i>	24
Appendix 2 <i>Criteria for Approved Bodies</i>	25
Appendix 3 <i>Housing (Tenancy Deposit Schemes) Order 2007</i>	26
Appendix 4 <i>Housing (Tenancy Deposit Schemes) (Prescribed Information) Order 2007</i>	38
Appendix 5 <i>The Assured tenancies (Amendment) (England) Order 2010</i>	41
Appendix 6 <i>Documents and forms available from The Dispute Service</i>	44
Appendix 7 <i>CLG Detailed Fair Processing Notice</i>	45

# Definitions

**Accreditation Scheme** means a scheme run by a local authority, university or similar body; or a body established for this purpose 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 in Wales and Northern Ireland, or £100,000 in England; the house or flat is let as separate accommodation; and is the tenant's main home. A copy of The Assured Tenancies (Amendment) (England) Order 2010 (Statutory Instrument 2010 Number 908) is at Appendix 5.

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 retained on behalf of clients.

**Company limited-by-guarantee** means a company that 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, (or within 14 days of the tenancy becoming an Assured Shorthold Tenancy within the meaning of the Housing Act 1988 if this occurs after the receipt of the deposit), 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.

**Insurer** means the company/broker appointed by the Board from time to time to arrange the necessary insurance cover required to operate TDS.

**Landlord** means an individual or company who lets property.

**Member** means an agent or landlord who has joined TDS.

**Notice** any reference to Notice or Notification means written notice, sent by first class post, to the relevant party and such notice will be deemed served 2 working days after posting.

**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.

A **relevant obligation** is a duty on the landlord to comply with a direction given by the scheme administrator to the landlord under paragraph 4(2) of the Housing (Tenancy Deposit Schemes) Order 2007 or any obligation under the scheme which is specific in the scheme as a relevant obligation. If a landlord does not fulfil a relevant obligation (e.g. paying membership dues on time) then the Scheme Administrator has the power to cancel their membership, or cease protection of a particular deposit held under the scheme.

**Stakeholder** means an individual or company, e.g. a letting agent or a solicitor, who holds the deposit as a quasi-trustee on behalf of both parties. Whenever possible the agreement of both parties should be obtained (in writing) as to how the deposit is to be disbursed. Under the rules of TDS if there is a dispute the stakeholder cannot release the deposit (or the disputed part of it) and must submit to the ICE for disbursement following his adjudication.

**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 voluntary 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 that fall outside the scope of the statutory scheme. The TDSRA Scheme will remain available to relevant tenancies that fall outside the scope of the statutory scheme, provided these are created before 1st October 2010. Beyond this date, TDS will continue to offer Members alternative dispute resolution for tenancies that fall outside the scope of the statutory scheme – subject to the consent of the parties, the submission of the disputed deposit, and the payment of the appropriate fee. The tenancy agreement must contain the relevant clauses contained in TDS G relating to non-ASTs.

**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 amount 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 disputed deposit amount to TDS within the prescribed time scale, 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 disputed deposit amounts 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 subject to the approval of the Insurers. 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 *Do they have a written complaints procedure?*
- c *Are they covered by a Client Money Protection Scheme?*
- d *Do they hold Professional Indemnity insurance?*
- e *Do they adhere to a recognised Code of Practice?*
- f *Are they members of a self-regulatory body?*
- g *Are they members of an accreditation scheme?*
- h *Are they members of a trade or professional body?*
- i *Are they members of an Approved Body?*
- j *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 fee.

1.2 Applications from landlords and agents will be considered on an individual basis and referred to Insurers for approval. The Insurers approval will be final and could be subject to change during the annual subscription period and any subsequent renewal. Among the additional factors that 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 or Partners.*

1.3 The Board may require applicants to provide documentation to demonstrate that they meet the criteria set out in 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 or their membership could be withdrawn, subject to the relevant procedure (Rule 11), by the Board 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 Information provided causes 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, after consultation with the Board, reject or withdraw applications to join TDS, or subsequent renewals, at his discretion as set out in Rule 11. His decision is final.

## **2 Categories of membership and Approved Bodies**

### **2.1 Categories of membership**

**2.1.1 Agents** will be assigned to one of the following categories according to their applications, for the purposes of calculating their subscription if their application is successful:

- a Member of self regulatory/professional body*
- b Member of accreditation scheme, and not a member of (a)*
- c Member of trade association, and not a member of (a) or (b)*
- d Unaffiliated*

**2.1.1 Landlords** will be assigned to one of the following categories according to their applications, for the purposes of calculating their subscription if their application is successful:

- a Corporate landlord*
- b Member of landlord accreditation scheme, and not qualifying as (a)*
- c Member of trade association, and not qualifying as (a), or a member of (b)*
- d Unaffiliated*

### **2.2 Approved Bodies**

**2.2.1** Membership organisations operating in the PRS, including the types of bodies referred to in paragraph 2.2.2 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.

**2.2.2** The Dispute Service has established three classes of Approved Bodies:

- a Approved Self-regulatory Body*
- b Approved Accreditation Scheme*
- c Approved Trade Association*

**2.2.3** Criteria for assessment of applications for Approved Body status are detailed in Appendix 2.

**2.2.4** Members of any of the Approved Bodies will automatically be granted Membership of TDS subject to:

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

**2.2.5** The Company may, at its discretion, reach agreements with one or more Approved Bodies to provide other assistance to it in administering the Scheme.

### **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** The extent to which a Member meets the criteria set out in section 1 will affect their subscription.

**3.4** 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.

**3.5** 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.

**3.6** Where a Member has not renewed their subscription within the prescribed period their Membership of the Scheme will be suspended and they will no longer be able to protect any new deposits with the Scheme. 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 and do not protect them in another scheme. This will continue until the suspension is lifted or the Member joins another scheme. For further information, please refer to Appendix 3, Housing (Tenancy Deposit Schemes) Order 2007.

- 3.7 It is free to Members to enter data on the tenancy database electronically i.e. by self-keying or automatic upload. Where members submit data for entry on paper, there will be a charge for each document. Please note that the data will not be entered until the fee has been paid.
- 3.8 Details of subscriptions and transcription fees will be posted on the website [www.thedisputeservice.co.uk](http://www.thedisputeservice.co.uk) from time to time.

## 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, and they have no intention of holding it, they must make it 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 and their details must **not** be entered onto the tenancy database. However, relevant clauses must be inserted in, or appended to, the tenancy agreement. The relevant clauses can be found in TDS G (Clauses for inclusion in tenancy agreements and terms of business) – Appendix 5 refers.

**4.1.3** The Independent Case Examiner (ICE) may agree to resolve any disputes over the allocation of deposits relating to non-ASTs, where such tenancies are created after 1st October 2010, by agreement. If he does:

- *The ICE will propose what he considers the most effective method of resolving the dispute;*

- *The tenancy agreement must contain the relevant clauses referred to in paragraph 4.1.2 above*
- *Landlord, tenant and agent must consent in writing to his proposal;*
- *Disputes will be subject to a fee of £500 + VAT, or 10% of the deposit + VAT, whichever is the greater;*
- *The resolution process will not start until the parties' consent, the disputed amount and the fee have been received.*

**4.1.4** 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.

**4.1.5** If the information specified in paragraph 14.3 is not entered, TDS will cover the deposit as long as it is held by a Member. But if there is a dispute at the end of the tenancy, and information has not been entered into the TDS database, the deposit will be awarded to the tenant without formal 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 fee. The fee 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.

Please note: their details must **not** be entered onto the tenancy database,

**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** 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 of any disputed amount 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 bye-laws 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, Members must hold tenancy deposits in a ring-fenced Client Account.
- 6.2** When there is a dispute, the Member must transfer the disputed deposit amount to the scheme (see paragraph 7.6), and must not use the disputed amount for other purposes. It is recognised that they may need to have works done so they can re-let a property in advance of the adjudication by the ICE. They must accept that they do so at their own risk, and out of their own resources. 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 stakeholders<sup>1</sup>. 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 The Member must tell the tenant within 10 working days of the end of the tenancy, (or as specified in the tenancy agreement) if they propose to make any deductions from the deposit.
- 7.2 If there is no dispute the Member will keep or repay the deposit, according to the agreed deductions and the conditions of the tenancy agreement. Payment of the deposit or any balance of it will be made within 10 working days of the Landlord and the Tenant agreeing the allocation of the deposit.
- 7.3 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.
- 7.4 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.
- 7.5 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 for resolution. 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.
- 7.6 Any of the parties: agent, landlord or tenant can instigate a dispute by completing the *Notification of Deposit Dispute* form (TDS.2) and submitting it to the ICE.
- 7.7 Where a Member instigates a dispute they must send with the *Notification of Deposit 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.

- 7.8 Members must co-operate with the ICE in his consideration of the dispute and follow his recommendations concerning the method of its resolution.
- 7.9 In the event that a Member does not pay over to the Company the amount of the deposit which is the subject of the dispute, the Company will proceed with the adjudication and pay over to the tenant(s) the amount of any award up to the value of the original deposit. The Company will then instigate action against the Member including Court Proceedings to recover any sums paid to tenants and the Member will indemnify the Company for any costs including all legal costs and disbursements incurred in such a recovery action and procedures to enforce a judgement.

## 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 14 days of the tenant paying over a deposit to a member, or within 14 days of the tenancy becoming an Assured Shorthold Tenancy within the meaning of the Housing Act 1988 if this occurs after the receipt of the deposit, whether or not the funds have been cleared:

**8.2.1** the tenant(s) must have received the information specified in paragraph 14.2 by its inclusion in the tenancy agreement; and

**8.2.2** the information specified in paragraphs 14.3 must have been lodged on the TDS tenancy database.

**Paragraph 8.2 comprises the initial requirements of the Tenancy Deposit Scheme (Housing Act 2004, Section 213 (4)).**

- 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 10 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 consent of both parties and all the evidence considered necessary has been gathered. Evidence must be provided along with consent to use ADR.
- 8.8** The Scheme will pay out the money within 10 working days of the ICE's decision.
- 8.9** The time-scales 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.
- 8.10** The ICE will not normally accept disputes submitted six months or more after the end of a tenancy. However, he may exercise his discretion to do so, particularly where he considers that:
  - 8.10.1** the parties have been making efforts to resolve the dispute during that time.
  - 8.10.2** the delay has been caused by the Member's procrastination.

## 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.

**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 formal adjudication where:

**9.3.1** The Member has not paid their subscription in full.

**9.3.2** The full disputed amount has not been submitted within the time specified in paragraph 7.7.

**9.3.3** The tenancy is not subject to a written tenancy agreement.

**9.3.4** 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).

**9.3.5** There is either no check-in or no check-out inventory.

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

**9.3.7** The information prescribed in paragraphs 14.2 and 14.3 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:

*a determining an application for Membership of the Scheme*

*b assisting his adjudications*

*c the conduct of research or marketing 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 Resignation 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 Trade or Accreditation Body, as appropriate. 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 inform:

**10.3.1** 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 and 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.

The cover will end within that period if the landlord/agent makes alternative arrangements for the protection of any deposit.

**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 them<sup>2</sup>.

## **11 Removal of Member from TDS**

**11.1** The following constitute relevant obligations. The Board may terminate a Membership if, in its reasonable opinion, the Member has:

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

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

**11.1.3** failed to supply the information prescribed by statute or required by the Scheme; or

- 11.1.4** has failed to pay over any money due to The Dispute Service (whether subscription or otherwise) in a timely manner; or
- 11.1.5** 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 14 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 10.1 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 TDS.
- 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.
- 11.7** The Board may also withdraw membership of a Member upon the Insurers request. Such withdrawal will be subject to the relevant procedure.

**11.8** The Board may also withdraw membership of a Member following a change in the Rules of Membership. Such withdrawal will be subject to the relevant procedure.

## **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 as a result of termination or withdrawal, 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.

**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. If they are not currently a Member of TDS, they will be given the opportunity to apply.

## **14 Provision of information**

**14.1** Documentation relating to TDS including these rules etc. are available for public viewing and can be downloaded from the website [www.thedisputeservice.co.uk](http://www.thedisputeservice.co.uk)

**14.2** The regulations contained in The Housing (Tenancy Deposits) (Prescribed Information) Order 2007 require The Dispute Service to provide certain information and documentation to Members to pass on to their tenants. This can be found in Appendix 4. The information should be included in the tenancy agreement as specified in TDS G Clauses to be included in tenancy agreements and terms of business. The documents will be provided by The Dispute Service Ltd, either in hard copy (for which there will be a charge fixed by the Board from time to time) or electronically, for Members to pass on to their tenants.

**14.3** 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 14 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 the deposit holder;*

*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 7 days of the start of the tenancy** in order that details may be entered within the time specified. There will be an extra charge to cover transcription costs, fixed by the Board from time to time, which must be paid before the data can be entered.

- 14.4** Members will be provided with a certificate of registration (TDS H) when the tenancy details have been entered on to the tenancy database, which they must then pass on to the tenants.
- 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 14 days of their 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, fixed by the Board from time to time, which must be paid before the data can be entered.

- 14.7** If there is **no dispute** about the deposit, Members must input the following data **within 14 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 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*

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

## 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.thedisputeservice.co.uk](http://www.thedisputeservice.co.uk)**.
- 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 TDS.*
- 15.5 Communities and Local Government has appointed The Dispute Service Ltd as a scheme administrator to act on its behalf to gather and process the information you provide together with information from other sources for the purpose of providing a tenancy deposit scheme as regulated by the Housing Act 2004. This includes the provision of Alternative Dispute Resolution Services. For further information, please review TDS website **[www.thedisputeservice.co.uk](http://www.thedisputeservice.co.uk)** or contact:

The Dispute Service Ltd  
PO Box 1255  
Hemel Hempstead  
Herts  
HP1 9GN

*Tel:* 0845 226 7837  
*email:* [deposits@tds.gb.com](mailto:deposits@tds.gb.com)  
*Fax:* 01442 253 193

**15.6** Please also see Appendix 7 for CLG's Fair Process Notice.

## **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.thedisputeservice.co.uk](http://www.thedisputeservice.co.uk) or contact:**

TDS Ltd  
PO Box 1255  
Hemel Hempstead  
HP1 9GN

*email:* [deposits@tds.gb.com](mailto: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 a 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 2.2.2.

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

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STATUTORY INSTRUMENTS

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**2007 No. 796**

## **HOUSING, ENGLAND AND WALES**

### **The Housing (Tenancy Deposit Schemes) Order 2007**

*Made* - - - - *13th March 2007*

*Coming into force* - - *6th April 2007*

The Secretary of State, as respects England, and the National Assembly for Wales, as respects Wales, in exercise of the power conferred by paragraph 11 of Schedule 10 to the Housing Act 2004(a) make this Order.

A draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament in accordance with section 250(6) of that Act.

#### **Citation and commencement**

1. This Order may be cited as the Housing (Tenancy Deposit Schemes) Order 2007 and shall come into force on 6th April 2007.

#### **Amendments to Schedule 10 to the Housing Act 2004**

2. Schedule 10 to the Housing Act 2004 (provisions relating to tenancy deposit schemes) is amended as follows.

#### **Further provision about custodial schemes**

3.—(1) Paragraph 4 (Custodial Schemes: general) is amended as follows.

(2) After sub-paragraph (4) insert—

“(4A) Sub-paragraph (5) also applies where the tenant or the landlord notifies the scheme administrator that a person acting as an adjudicator under the provision made under paragraph 10 has made a binding decision that the relevant amount is payable either wholly to one of them or partly to one and partly to the other.”

(3) In sub-paragraph (5), for “such a notification” substitute “a notification as mentioned in sub-paragraph (4) or (4A)” and for “sub-paragraph (4)(a) and (b)” substitute “that sub-paragraph”.

(4) After paragraph 4 insert—

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(a) 2004 c. 34. The powers conferred by paragraph 11 of Schedule 10 to the Housing Act 2004 are exercisable, as respects England, by the Secretary of State and, as respects Wales, by the National Assembly for Wales. See the definition of the appropriate national authority in section 261(1) of the Act.

*“Custodial schemes: termination of tenancies - absent or un-cooperative landlord or tenant*

**4A.**—(1) The provision made by a custodial scheme for the purposes of paragraph 4(1) in relation to the treatment of the relevant amount at the end of a tenancy must include provision—

- (a) for enabling the landlord, if he considers that the conditions set out in sub-paragraph (2) are met, to apply to the scheme administrator for the whole or a specified part of the relevant amount (“the amount claimed”) to be paid to him; and
- (b) for such an application to be dealt with by the scheme administrator in accordance with the provisions of paragraph 4C.

(2) Such an application may be made if—

- (a) at least 14 days have elapsed since the day on which the tenancy ended;
- (b) the landlord and tenant have not reached an agreement under paragraph 4(2) with respect to the amount claimed;
- (c) either sub-paragraph (3) or sub-paragraph (4) applies; and
- (d) the landlord believes that he is entitled to be paid the amount claimed and that the amount claimed is referable to sums falling within sub-paragraph (5).

(3) This sub-paragraph applies if the landlord has no current address for, or other means of contacting, the tenant.

(4) This sub-paragraph applies if—

- (a) the tenant has, since the tenancy ended, received from the landlord a written notice asking whether the tenant accepts that the landlord should be paid the whole or a specified part of the relevant amount; and
- (b) the tenant has failed to respond to that notice within the period of 14 days beginning with the day on which he received the notice by indicating to the landlord whether he accepts that the landlord should be paid the relevant amount or the specified part of it (as the case may be).

(5) The amount claimed must be referable to—

- (a) an amount of unpaid rent or any other sum due under the terms of the tenancy; or
- (b) a liability of the tenant to the landlord arising under or in connection with the tenancy in respect of—
  - (i) damage to the premises subject to the tenancy, or
  - (ii) loss of or damage to property on those premises,

other than damage caused by fair wear and tear.

(6) If sub-paragraph (4) applies and the notice specifies part of the relevant amount, the amount claimed in the application must not exceed the specified part.

(7) The application must be accompanied by a statutory declaration made by the landlord stating—

- (a) the date on which the tenancy ended;
- (b) that the landlord and the tenant have not reached any agreement under paragraph 4(2) with respect to the amount claimed, with details of any communications between them since that date (whether relating to the relevant amount or otherwise);
- (c) the basis on which the amount claimed is calculated, with particulars of any facts relied on to justify claiming that amount;
- (d) if the landlord relies on the condition in sub-paragraph (3), that he has no current address for, or other means of contacting, the tenant, giving particulars of any

address (other than the premises subject to the tenancy) and other contact details (including telephone numbers or e mail addresses) which the landlord has had for the tenant;

- (e) if the landlord relies on the condition in sub-paragraph (4), that the condition is met, with particulars of the facts relied on to demonstrate that it is met and attaching a copy of the notice given to the tenant;
- (f) any information he has as to the whereabouts of the tenant;
- (g) that he gives his consent, in the event of the tenant disputing that the landlord should be paid the amount claimed, for the dispute to be resolved through the use of the dispute resolution service;
- (h) that he considers that he is entitled to be paid the amount claimed; and
- (i) that he makes the statutory declaration knowing that if he knowingly and wilfully makes a false declaration he may be liable to prosecution under the Perjury Act 1911(a).

**4B.**—(1) The provision made by a custodial scheme for the purposes of paragraph 4(1) in relation to the treatment of the relevant amount at the end of a tenancy must include provision—

- (a) for enabling the tenant, if he considers that the conditions set out in sub-paragraph (2) are met, to apply to the scheme administrator for the whole or a specified part of the relevant amount (“the amount claimed”) to be paid to him; and
- (b) for such an application to be dealt with by the scheme administrator in accordance with the provisions of paragraph 4C.

(2) Such an application may be made if—

- (a) at least 14 days have elapsed since the day on which the tenancy ended;
- (b) the landlord and tenant have not reached an agreement under paragraph 4(2) with respect to the amount claimed;
- (c) either sub-paragraph (3) or sub-paragraph (4) applies; and
- (d) the tenant believes that he is entitled to be paid the amount claimed.

(3) This sub-paragraph applies if the tenant has no current address for, or other means of contacting, the landlord.

(4) This sub-paragraph applies if—

- (a) the landlord has, since the tenancy ended, received from the tenant a written notice asking whether the landlord accepts that the tenant should be paid the whole or a specified part of the relevant amount; and
- (b) the landlord has failed to respond to that notice within the period of 14 days beginning with the day on which he received the notice by indicating to the tenant whether he accepts that the tenant should be paid the relevant amount or the specified part of it (as the case may be).

(5) If sub-paragraph (4) applies and the notice specifies part of the relevant amount, the amount claimed in the application must not exceed the specified part.

(6) The application must be accompanied by a statutory declaration made by the tenant stating—

- (a) the date on which the tenancy ended;
- (b) that the landlord and the tenant have not reached any agreement under paragraph 4(2) with respect to the amount claimed, with details of any communications between them since that date (whether relating to the relevant amount or otherwise);

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(a) 1911. c 6.

- (c) if the tenant relies on the condition in sub-paragraph (3), that he has no current address for, or other means of contacting, the landlord, giving particulars of any address and other contact details (including telephone numbers or e mail addresses) which the tenant has had for the landlord;
- (d) if the tenant relies on the condition in sub-paragraph (4), that the condition is met, with particulars of the facts relied on to demonstrate that it is met and attaching a copy of the notice given to the landlord;
- (e) any information he has as to the whereabouts of the landlord;
- (f) that he gives his consent, in the event of the landlord disputing that the tenant should be paid the amount claimed, for the dispute to be resolved through the use of the dispute resolution service;
- (g) that he considers that he is entitled to be paid the amount claimed; and
- (h) that he makes the statutory declaration knowing that if he knowingly and wilfully makes a false declaration he may be liable to prosecution under the Perjury Act 1911(a).

4C.—(1) Immediately upon receipt of—

- (a) a duly completed application from the landlord, accompanied by a statutory declaration which appears to meet the requirements of paragraph 4A(7), or
  - (b) a duly completed application from the tenant, accompanied by a statutory declaration which appears to meet the requirements of paragraph 4B(6),
- the scheme administrator must give to the tenant or, as the case may be, the landlord (“the other party”) a copy of the application and accompanying statutory declaration and a notice under sub-paragraph (2).

(2) A notice under this sub-paragraph is a notice—

- (a) asking the other party to indicate—
  - (i) whether he accepts that the applicant should be paid the whole or part of the amount claimed;
  - (ii) if he accepts that part of the amount claimed should be paid, the amount he accepts should be paid; and
  - (iii) if he does not accept that the applicant should be paid the whole of the amount claimed, whether he consents to the dispute being resolved through the use of the dispute resolution service; and
- (b) warning the other party that—
  - (i) the amount claimed will be paid to the applicant unless, within the relevant period, the other party informs the scheme administrator that he does not accept that the whole of the amount claimed should be paid to the applicant; and
  - (ii) if the other party responds to the scheme administrator informing him that he does not accept that the whole of the amount claimed should be paid to the applicant, but fails to respond within the relevant period to the question mentioned in paragraph (a)(iii), he will be treated as having given his consent for the dispute to be resolved through the use of the dispute resolution service.

(3) If within the relevant period the scheme administrator receives a response from the other party to the effect that he accepts that the amount claimed should be paid to the applicant—

- (a) the application must be granted; and

- (b) the scheme administrator must arrange for the amount claimed to be paid to the applicant within the period of 10 days beginning with the day on which the scheme administrator receives that response.
- (4) If within the relevant period the scheme administrator receives a response from the other party to the effect that he does not accept that the applicant should be paid any of the amount claimed—
- (a) the application must be refused;
  - (b) the scheme administrator must not pay the amount claimed to either party except in accordance with the relevant provisions of paragraph 4; and
  - (c) the scheme administrator must inform the applicant of the other party’s response to the questions asked in the notice under sub-paragraph (2).
- (5) If within the relevant period the scheme administrator receives a response from the other party to the effect that he accepts that part of the amount claimed should be paid to the applicant—
- (a) sub-paragraph (3) applies in relation to that part of the amount claimed; and
  - (b) sub-paragraph (4) applies to so much of the application as relates to the rest of the amount claimed.
- (6) If the scheme administrator does not, within the relevant period, receive a response from the other party indicating whether he accepts that the whole or part of the amount claimed should be paid to the applicant, the scheme administrator must arrange for the amount claimed to be paid to the applicant within the period of 10 days beginning with the day after the last day of the relevant period.
- (7) If within the relevant period the scheme administrator receives a response from the other party to the effect that he does not accept that the applicant should be paid the whole of the amount claimed but the other party fails within that period to indicate whether he consents to the dispute being resolved through the use of the dispute resolution service—
- (a) the other party is to be treated as having given his consent to the use of that service; and
  - (b) the scheme administrator must inform the applicant that such consent is treated as having been given.
- (8) In this paragraph “the relevant period”, in relation to the application, means the period of 14 days beginning with the day on which the notice mentioned in sub-paragraph (2) is received by the other party.”

**Further provision about insurance schemes**

- 4.—(1) Paragraph 5 (insurance schemes: general) is amended as follows.
- (2) After sub-paragraph (1) insert—
- “(1A) The scheme must make provision as to the requirements that fall to be complied with by the landlord or by the scheme administrator where—
- (a) a landlord wishes to retain a tenancy deposit under the scheme; or
  - (b) a landlord retaining a tenancy deposit under the scheme (in relation to a tenancy that has not terminated) gives notice to the scheme administrator that he no longer wishes to retain the deposit under that scheme.”
- (3) After sub-paragraph (3) insert—
- “(3A) The scheme may make provision enabling the scheme administrator to determine that, by virtue of the landlord’s failure to comply with a relevant obligation, a tenancy deposit which has previously been retained by a landlord under the scheme (and which relates to a tenancy which has not ended) is to cease to be retained under the scheme.

(3B) Provision under sub-paragraph (3A) must require the scheme administrator, before making a determination, to give a notice to the landlord stating that the scheme administrator proposes to make such a determination and the reasons for the proposal.”

(4) In sub-paragraph (4), for “such failure on the part of the landlord” substitute “failure by the landlord to comply with a relevant obligation”.

(5) After sub-paragraph (4) insert—

“(4A) Provision made under sub-paragraph (4) must require the scheme administrator, before determining that the landlord’s membership be terminated, to give a notice to the landlord stating that the scheme administrator proposes to make such a determination and the reasons for the proposal.

(4B) On the termination of a landlord’s membership under sub-paragraph (4)—

- (a) any tenancy deposits previously retained by the landlord under the scheme (in relation to tenancies which had not ended before the termination) cease to be retained under the scheme; but
- (b) the scheme continues to apply to a tenancy deposit retained by the landlord under the scheme in relation to a tenancy which ended before the termination as if the landlord were still a member.”

(6) After sub-paragraph (5) insert—

“(6) Paragraph 5A makes further provision in relation to the procedure to be followed after a notice of the kind mentioned in sub-paragraph (1A)(b), (3B) or (4A) has been given in accordance with the scheme.

(7) In this paragraph “relevant obligation” means—

- (a) the duty to comply with a direction mentioned in sub-paragraph (2); or
- (b) any obligation under the scheme which is specified in the scheme as a relevant obligation for the purposes of this paragraph.”

5. After paragraph 5 insert—

*“Requirements where deposit is to cease to be retained under an insurance scheme*

5A.—(1) This paragraph applies in relation to—

- (a) a notice of the kind mentioned in paragraph 5(1A)(b) or (3B), or
- (b) a notice from the scheme administrator stating that he proposes to terminate a landlord’s membership of the scheme under paragraph 5(4),

given in accordance with an insurance scheme.

(2) The scheme must make provision for the scheme administrator, in the case of a notice of the kind mentioned in paragraph 5(1A)(b) which has not been not withdrawn—

- (a) to determine the date on which the tenancy deposit is to cease to be retained under the scheme; and
- (b) to give a notice under sub-paragraph (4) to the landlord and to the tenant.

(3) The scheme must make provision for the scheme administrator, in the case of a notice of the kind mentioned in paragraph 5(3B), to take the following steps after the end of the period of 14 days beginning with the day on which that notice is received—

- (a) to determine whether the deposit should cease to be retained under the scheme and, if so, the date on which it is to cease to be so retained;
- (b) if the determination is that the deposit should continue to be retained under the scheme, to give a notice of the determination to the landlord;
- (c) if the determination is that the deposit should cease to be so retained, to give a notice under sub-paragraph (4) to the landlord and to the tenant.

(4) A notice under this sub-paragraph is a notice—

- (a) identifying the tenancy deposit in question;

- (b) informing the recipients of the notice of the determination made by the scheme administrator and stating the date when the deposit ceases to be retained under the scheme; and
- (c) giving a general explanation of the continuing effect of sections 213 to 215 of this Act in relation to the deposit (including in particular the effect of section 213 as modified by sub-paragraph (9)).

(5) The scheme must make provision for the scheme administrator, in the case of a notice of the kind mentioned in sub-paragraph (1)(b), to take the following steps after the end of the period of 14 days beginning with the day on which that notice is received—

- (a) to determine whether to terminate the landlord’s membership and, if so, the date on which his membership is to terminate;
- (b) if the determination is that the landlord should continue as a member, to give a notice of the determination to the landlord; and
- (c) if the determination is that the membership should be terminated, to give a notice under sub-paragraph (6) to the landlord and to the tenant under any tenancy in relation to which a deposit affected by the determination is retained under the scheme.

(6) A notice under this sub-paragraph is a notice—

- (a) informing the recipients of the notice of the determination by the scheme administrator that the landlord’s membership of the scheme is to be terminated and stating the date on which his membership terminates;
- (b) giving a general explanation of the effect of the termination on any tenancy deposits retained by the landlord under the scheme; and
- (c) giving a general explanation of the continuing effect of sections 213 to 215 of this Act in relation to any tenancy deposits that cease to be retained under the scheme as a result of the termination of membership (including in particular the effect of section 213 as modified by sub-paragraph (9)).

(7) The date determined under sub-paragraph (2)(a), (3)(a) or (5)(a) must not be within the period of three months beginning with the day on which the original notice mentioned in sub-paragraph (1) was received.

(8) A notice under sub-paragraph (4) or (6) must be given at least two months before the date on which the deposit ceases to be retained under the scheme or the landlord’s membership terminates (as the case may be).

(9) In the application of section 213 to a tenancy deposit which ceases to be retained under an insurance scheme (“the old scheme”) by virtue of a determination mentioned in this paragraph—

- (a) references to receiving the deposit include a reference to ceasing to retain it under the terms of the old scheme;
- (b) subsection (3) has effect as if for the words “within the period of 14 days beginning with the date on which it is received” there were substituted “before the deposit ceases to be retained under the old scheme”; and
- (c) subsection (6)(b) has effect as if the reference to the date on which the landlord receives the deposit were a reference to the date on which the deposit ceases to be retained under the old scheme.”

6.—(1) Paragraph 6 is amended as follows.

(2) In sub-paragraph (1), for “7 and” substitute “6A to”.

(3) After sub-paragraph (2) insert—

“(2A) When a tenant gives notice under sub-paragraph (2) he must also indicate whether he consents to any dispute as to the amount to be repaid to him being resolved through the use of the dispute resolution service.”

(4) In sub-paragraph (4)—

- (a) omit “or” after paragraph (a); and
- (b) after paragraph (b) insert—

“or

- (c) that a person acting as an adjudicator under the provision made under paragraph 10 has made a binding decision that the outstanding amount is payable either wholly to one of them or partly to one and partly to the other.”

(5) In sub-paragraph (5) for “or (b)” substitute “, (b) or (c)”.

7. After paragraph 6 insert—

*“Notice to be sent to landlord when a direction under paragraph 6(3) is given*

**6A.**—(1) This paragraph applies where the scheme administrator of an insurance scheme gives a direction under paragraph 6(3) to a landlord.

(2) The scheme administrator must also send to the landlord a notice—

(a) asking the landlord to indicate—

- (i) whether he accepts that the tenant should be repaid the whole or part of the outstanding amount;
- (ii) if he accepts that part of it should be repaid, the amount he accepts should be repaid; and
- (iii) if he does not accept that the tenant should be repaid the whole of the outstanding amount, whether he consents to the dispute being resolved through the use of the dispute resolution service; and

(b) warning the landlord that if he does not accept that the tenant should be repaid the whole of the outstanding amount but fails to respond within the relevant period to the question mentioned in paragraph (a)(iii), he will be treated as having given his consent for the dispute to be resolved through the use of that service.

(3) If the scheme administrator does not, within the relevant period, receive a response from the landlord indicating whether he accepts that the whole or part of the outstanding amount should be paid to the tenant—

- (a) the scheme administrator must treat the lack of a response as an indication that the landlord does not accept that the tenant should be repaid any of the outstanding amount;
- (b) the scheme administrator must determine forthwith whether he is satisfied that the notice was received by the landlord;
- (c) if the scheme administrator determines that he is satisfied that it was so received, the landlord is to be treated as having given his consent for the dispute to be resolved through the use of the dispute resolution service; and
- (d) the scheme administrator must inform the tenant and the landlord whether or not such consent is to be treated as having been given.

(4) If within the relevant period the scheme administrator receives a response to the notice under sub-paragraph (2) to the effect that the landlord does not accept that the tenant should be repaid the whole of the outstanding amount but the landlord fails within that period to indicate whether he consents to the dispute being resolved through the dispute resolution service—

- (a) the landlord is to be treated as having given his consent for the dispute to be resolved through the use of that service; and
- (b) the scheme administrator must inform the tenant and the landlord that such consent is to be treated as given.

(5) In this paragraph—

“the outstanding amount” has the same meaning as in paragraph 6;  
“the relevant period” means the period of 10 working days beginning with the day after that on which the notice referred to in sub-paragraph (2) is sent; and  
“working days” shall be taken to exclude Saturdays, Sundays, Christmas Day, Good Friday and any day which, under the Banking and Financial Dealings Act 1971(a), is a bank holiday in England and Wales.”

## General

8. In paragraph 10 (dispute resolution procedures), after sub-paragraph (2) insert—

“(3) The provision made under this paragraph may confer power on a person acting as an adjudicator in relation to such a dispute to decline to proceed, or continue to proceed, with the case.

(4) In this Schedule, in relation to a custodial scheme or an insurance scheme, “the dispute resolution service” means the facilities provided by the scheme in accordance with this paragraph.”

9. After paragraph 10 insert—

*“Service of documents: general*

**10A.** A tenancy deposit scheme may make provision as to the methods which may be used for giving or sending any direction, notice or other document which falls to be given or sent under the scheme.

*Service of documents by scheme administrator on landlords*

**10B.**—(1) The provision made by a tenancy deposit scheme under paragraph 10A may include provision for any direction, notice or other document mentioned in this Schedule which is to be given or sent to a landlord by the scheme administrator to be treated as having been received on the second day after the day on which it is sent by first class post to the landlord at the address last provided by him to the scheme administrator as the postal address to which correspondence may be sent.

(2) Sub-paragraph (1) does not apply to the notice mentioned in paragraph 6A(2).

(3) Provision made under sub-paragraph (1) may require the scheme administrator—

- (a) to send a document to an address other than that mentioned in that sub-paragraph;  
or
- (b) to use or attempt to use any other available means of communication,

before sending a document which is to be treated as having been received as mentioned in that sub-paragraph.

*Service of documents by scheme administrator on tenants*

**10C.**—(1) The provision made by a tenancy deposit scheme under paragraph 10A may include provision for any notice or other document mentioned in this Schedule which is to be given or sent to a tenant by the scheme administrator to be treated as having been received on the second day after the day on which it is sent by first class post to the tenant at the proper address.

(2) In the case of a notice mentioned in paragraph 4C(2), the proper address is—

- (a) the address (if any) last provided to the scheme administrator as the address to which correspondence may be sent; or

- (b) if no such address has been provided, the address given in the landlord's statutory declaration as the tenant's last known address or, if the scheme administrator has a more recent address for the tenant, that address.
- (3) In the case of a notice of the kind mentioned in paragraph 5A(4) or (6), the proper address is the address of the premises subject to the tenancy in question.
- (4) Provision made under sub-paragraph (1) may require the scheme administrator—
  - (a) to send a document to an address other than the proper address, or
  - (b) to use or attempt to use any other available means of communication,before sending a document which is to be treated as having been received as mentioned in that sub-paragraph”

### **Consequential amendments**

**10.** In paragraph 2—

- (a) in sub-paragraph (1), for “and 4” substitute “to 4C” and for “and 10” substitute “to 10C”; and
- (b) in sub-paragraph (2), for “and 10” substitute “to 10C”.

**11.** In paragraph 3, in sub-paragraph (5), after “paragraph 4” insert “or 4C”.

**12.** Before paragraph 7 insert—

*“Insurance schemes – supplementary provisions”*

Signed by authority of the Secretary of State  
for Communities and Local Government

13th March 2007

*Kay Andrews*  
Parliamentary Under Secretary Of State  
Department for Communities and Local Government

Signed on behalf of the National Assembly for Wales

6th March 2007

*Dafydd. Ellis-Thomas*  
The Presiding Officer of the National Assembly

## EXPLANATORY NOTE

*(This note is not part of the Order)*

Under section 212 of the Housing Act 2004 (“the Act”) the appropriate national authority (being, in England, the Secretary of State, and in Wales, the National Assembly for Wales) must make arrangements for securing that one or more tenancy deposit schemes are available for the purpose of safeguarding tenancy deposits paid in connection with shorthold tenancies. Such a scheme must comply with the requirements of Schedule 10.

This Order, which extends to England and Wales, inserts new provisions into Schedule 10 to the Act in the following respects.

The Order inserts new paragraphs 4A, 4B and 4C which set out the procedures that apply after a tenancy is terminated but the parties are not able to agree to whom a deposit held in a custodial scheme should be paid, either because one of the parties has no current address for, or other means of contacting the other party, or because one party has failed to respond to the communications of the other within the period specified (*article 3*).

The Order inserts new sub-paragraphs into paragraph 5 and inserts new paragraph 5A. These paragraphs require insurance schemes to make provision as to the requirements that fall to be complied with by a landlord or scheme administrator where a landlord retaining a deposit under an insurance scheme gives notice to the scheme administrator that he no longer wishes to retain the deposit under the scheme. These paragraphs also require insurance schemes to make provision enabling the scheme administrator, by virtue of the landlord’s failure to comply with a relevant obligation, to determine that a tenancy deposit retained by a landlord under its scheme is to cease to be so retained. It requires provision to be made in the schemes to require the scheme administrator to give certain notices and information to the landlord and tenant. These paragraphs also require insurance schemes to make provisions to require scheme administrators, before terminating a landlord’s membership of a scheme after a landlord’s failure to comply with a relevant obligation, to give certain notices and information to a landlord and any of his tenants who will be affected by the termination. A “relevant obligation” is a duty to comply with a direction given by the scheme administrator to the landlord under paragraph 6(3) or (7) or any obligation under the scheme which is specified in the scheme as a relevant obligation for the purposes of paragraph 5A (*articles 4 and 5*).

The Order inserts a new sub-paragraph (2A) into paragraph 6. This requires a tenant, when notifying the scheme administrator of an insurance scheme under paragraph 6(2) that his landlord has not paid him the whole or part of the deposit he has requested, to indicate whether he consents to the use of the scheme’s dispute resolution service to resolve any dispute as to the amount of deposit to be paid to him by his landlord (*article 6*).

The Order inserts new paragraph 6A which makes provision for the scheme administrator of an insurance scheme, when giving a direction to a landlord to pay an amount into the designated account held by the scheme administrator, to send a notice to the landlord requesting certain information from him. In particular the scheme administrator must ask the landlord to indicate whether he agrees to any dispute being resolved through the use of the scheme’s dispute resolution service. If the scheme administrator determines that he is satisfied that the landlord has received the notice requesting this information, but the landlord fails to indicate whether or not he so consents within the period specified in the paragraph, he will be treated as having agreed to the use of the scheme’s dispute resolution service (*article 7*).

The Order inserts new sub-paragraphs into paragraph 10. New paragraph 10(3) provides that the provision of a dispute resolution service may confer a power on the person acting as an adjudicator in relation that service to decline to proceed with a dispute (or to continue to proceed with it). (*article 8*).

The Order inserts new paragraphs 10A, 10B and 10C, which make provision for the service of documents (*article 9*).

Finally, the Order makes some minor consequential amendments to paragraphs 2, 3 and 7 (*articles 10 to 12*).

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E0448 3/2007 170448T 19585

# Appendix 4

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## STATUTORY INSTRUMENTS

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2007 No. 797

### HOUSING, ENGLAND & WALES

#### The Housing (Tenancy Deposits) (Prescribed Information) Order 2007

<i>Made</i>	- - - -	<i>13th March 2007</i>
<i>Laid before Parliament</i>		<i>15th March 2007</i>
<i>Coming into force</i>	- -	<i>6th April 2007</i>

The Secretary of State, as respects England, and the National Assembly for Wales, as respects Wales, in exercise of the powers conferred by sections 213(5) and (10) and 250(2)(b) of the Housing Act 2004(a), make the following Order:

#### Citation and commencement

1. This Order may be cited as the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 and shall come into force on 6<sup>th</sup> April 2007.

#### Prescribed information relating to tenancy deposits

2.—(1) The following is prescribed information for the purposes of section 213(5) of the Housing Act 2004 (“the Act”)—

- (a) the name, address, telephone number, e-mail address and any fax number of the scheme administrator(b) of the authorised tenancy deposit scheme(c) applying to the deposit;
- (b) any information contained in a leaflet supplied by the scheme administrator to the landlord which explains the operation of the provisions contained in sections 212 to 215 of, and Schedule 10 to, the Act(d);
- (c) the procedures that apply under the scheme by which an amount in respect of a deposit may be paid or repaid to the tenant at the end of the shorthold tenancy(e) (“the tenancy”);
- (d) the procedures that apply under the scheme where either the landlord or the tenant is not contactable at the end of the tenancy;
- (e) the procedures that apply under the scheme where the landlord and the tenant dispute the amount to be paid or repaid to the tenant in respect of the deposit;
- (f) the facilities available under the scheme for enabling a dispute relating to the deposit to be resolved without recourse to litigation; and

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(a) 2004 c.34. The powers conferred by section 213(5) and (10) and 250(2)(b) are exercisable, as respects England, by the Secretary of State and, as respects Wales, by the National Assembly for Wales. See the definition of the “appropriate national authority” in section 261(1) of the Act.

(b) For the meaning of “the scheme administrator” see section 212(3) of the Act.

(c) For the meaning of “tenancy deposit scheme” see section 212(2) of the Act.

(d) For amendments to Schedule 10 to the Act, see the Housing (Tenancy Deposit Schemes) Order 2007 (S.I. No. 2007/796).

(e) By section 212(8) of the Act “shorthold tenancy” means an assured shorthold tenancy within the meaning of Chapter 2 of Part 1 of the Housing Act 1988 (c. 50).

- (g) the following information in connection with the tenancy in respect of which the deposit has been paid—
- (i) the amount of the deposit paid;
  - (ii) the address of the property to which the tenancy relates;
  - (iii) the name, address, telephone number, and any e-mail address or fax number of the landlord;
  - (iv) the name, address, telephone number, and any e-mail address or fax number of the tenant, including such details that should be used by the landlord or scheme administrator for the purpose of contacting the tenant at the end of the tenancy;
  - (v) the name, address, telephone number and any e-mail address or fax number of any relevant person;
  - (vi) the circumstances when all or part of the deposit may be retained by the landlord, by reference to the terms of the tenancy; and
  - (vii) confirmation (in the form of a certificate signed by the landlord) that—
    - (aa) the information he provides under this sub-paragraph is accurate to the best of his knowledge and belief; and
    - (bb) he has given the tenant the opportunity to sign any document containing the information provided by the landlord under this article by way of confirmation that the information is accurate to the best of his knowledge and belief.

(2) For the purposes of paragraph (1)(d), the reference to a landlord or a tenant who is not contactable includes a landlord or tenant whose whereabouts are known, but who is failing to respond to communications in respect of the deposit.

Signed by authority of the Secretary of State  
for Communities and Local Government

13th March 2007

*Kay Andrews*  
Parliamentary Under Secretary Of State  
Department of Communities and Local Government

Signed on behalf of the National Assembly for Wales

6th February 2007

*Dafydd Ellis-Thomas*  
The Presiding Officer of the National Assembly

## EXPLANATORY NOTE

*(This note is not part of the Order)*

Under section 212 of the Housing Act 2004 (“the Act”) the appropriate national authority (being, in England, the Secretary of State, and in Wales, the National Assembly for Wales) must make arrangements for securing that one or more tenancy deposit schemes are available for the purpose of safeguarding tenancy deposits paid in connection with shorthold tenancies.

Section 213 of the Act sets out requirements relating to tenancy deposits. Where a landlord receives a deposit in connection with a shorthold tenancy, he must, within 14 days of the date on which the deposit is received, comply with any initial requirements imposed by the scheme and give prescribed information to the tenant and any person who paid the deposit on behalf of the tenant.

This Order, which applies to England and Wales, prescribes the information that the landlord is required to give. The information relates to the authorised tenancy deposit scheme applying to the deposit, to compliance by the landlord of any initial requirements imposed on him by the scheme and to the operation of the provisions contained in sections 212 to 215 and Schedule 10 of the Act.

A full regulatory impact assessment of the effect that this Order will have on the costs of business is available from the Private Renting and Leasehold Division of the Department for Communities and Local Government, 2/110 Eland House, Bressenden Place, London, SW1E 5DU (telephone 0207 944 3624, e-mail [tenancy.deposits@communities.gsi.gov.uk](mailto:tenancy.deposits@communities.gsi.gov.uk)).

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E0446 3/2007 170446T 19585

# Appendix 5

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## STATUTORY INSTRUMENTS

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**2010 No. 908**

### **HOUSING, ENGLAND**

#### **The Assured Tenancies (Amendment)(England) Order 2010**

<i>Made</i>	- - - -	<i>22nd March 2010</i>
<i>Laid before Parliament</i>		<i>25th March 2010</i>
<i>Coming into force</i>	- -	<i>1st October 2010</i>

The Secretary of State, in exercise of the powers conferred by section 1(2A) of the Housing Act 1988(a), makes the following Order:

#### **Citation, commencement and extent**

1. This Order may be cited as the Assured Tenancies (Amendment) (England) Order 2010 and shall come into force on 1st October 2010.
2. This Order extends to England only.

#### **Increase in rental threshold**

3.—(1) Schedule 1 to the Housing Act 1988 (tenancies which cannot be assured tenancies) is amended in accordance with paragraph (2).

(2) In sub-paragraph (1)(b) of paragraph 2 of Schedule 1(b) (tenancies of dwelling-houses with high rateable values) for “£25,000” substitute “£100,000”.

- 
- (a) 1988 c. 50. Subsection 2A was inserted by paragraph 27 of the References to Rating (Housing) Regulations 1990 (1990/434). The powers conferred by section 1(2A) of the Housing Act 1988 are exercisable as respects England, by the Secretary of State. The functions of the Secretary of State under section 1(2A) were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672). By virtue of paragraph 3(2)(i) of Schedule 11 to the Government of Wales Act 2006 (c. 32) the functions formerly exercisable by the National Assembly for Wales are now exercisable by the Welsh Ministers.
- (b) Paragraph 2 was substituted by SI 1990/434, and amended by SI 1993/651.

Signed by authority of the Secretary of State for Communities and Local Government

22nd March 2010

*John Healey*  
Minister of State  
Department for Communities and Local  
Government

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## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order, which applies in relation to England only, amends the amount of annual rent above which a tenancy cannot be an assured tenancy under paragraph 2 of Schedule 1 to the Housing Act 1988. The amount is increased from £25,000 to £100,000 with effect from the date the Order comes into force.

An impact assessment has been prepared in respect of this Order. It has been deposited in the Library of each House of Parliament and is available from the Department for Communities and Local Government, Eland House, Bressenden Place, London SW1E 5DR or email [Julia.gristwood@communities.gsi.gov.uk](mailto:Julia.gristwood@communities.gsi.gov.uk).

# Appendix 6

## Documents and forms available from The Dispute Service

### Documents

- TDS A** *Rules of Membership*
- TDS B** *Management and administration of the Tenancy Deposit Scheme*
- TDS C** *Criteria for approved bodies*
- TDS D** *Operational procedures and advice for Members*
- TDS D** *10 key things to help you get it right*
- 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 for inclusion in tenancy agreements and terms of business*
- TDS H** *Certificate of tenancy registration*
- TDS J** *Procedure for complaining about the way The Dispute Service Ltd handled your membership application or deposit*
- TDS K** *Schedule of fees*

### Forms

*Guidance notes for TDS 2 and TDS 6*

- 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 members of TDSRA*

They may also be downloaded from the **TDS website** or requested by contacting TDS at:

TDS Ltd  
PO Box 1255  
Hemel Hempstead  
Herts  
HP1 9GN

*Tel:* 0845 226 7837  
*Fax:* 01442 253 193  
*email:* [deposits@tds.gb.com](mailto:deposits@tds.gb.com)  
*website:* [www.thedisputeservice.co.uk](http://www.thedisputeservice.co.uk)

# Appendix 7

## CLG Detailed Fair Processing Notice

### Scope

This notice applies to Communities and Local Government ("CLG") for personal information about landlords, agents and tenants in connection with tenancy deposit schemes under the Housing Act 2004. The scheme will be operated for CLG by its scheme administrator **The Dispute Service Ltd** (the **Scheme Administrator**).

### Personal information collected

CLG (via the Scheme Administrator) collects the information you are asked to provide during your registration or which you supply during the period that any deposit is protected for you.

CLG's websites and emails use common internet tools such as cookies and beacons.

CLG (via the Scheme Administrator) sometimes collects information about you from other sources, such as tenants, land registry data, postal services data or other sources necessary to confirm your identity or the instructions you provide to CLG.

For more information on the scheme's information collection practices (including how to delete or refuse cookies) please **click here** or contact the Scheme Administrator

### Uses and sharing

Your personal information will be used solely for the purposes of the tenancy deposit scheme, which includes providing alternative dispute resolution services, although CLG may disclose details of your scheme activities to regulators, industry bodies and other organisations for the purposes of fraud prevention and money laundering prevention and where there are concerns over your activities.

The Scheme Administrator will process the information on behalf of CLG.

In the event of a dispute, information may also be processed on behalf of CLG by any alternative dispute resolution service provider nominated by the Scheme Administrator.

These other organisations are required to protect this information on behalf of CLG and cannot use your personal information for purposes unconnected with the scheme.

Your personal information may be transferred outside the European Economic Area for the purpose of providing you access to the information if you access the information from a website outside the European Economic Area.

The Scheme Administrator will process the personal data that it holds on behalf of CLG about you in accordance with the Data Protection Act 1998.

### **Your rights**

Under the Data Protection Act 1998 you have the right to access any information that CLG holds about you. You can ask CLG to correct any errors in the information. For more information on your rights please click here <http://www.communities.gov.uk/index.asp?id=1141765> or contact the Scheme Administrator.

### **Contact details**

It would be helpful if you contacted the TDS Scheme Administrator in the first instance as they process personal data on behalf of CLG.

*Contact the TDS Scheme Administrator at:*

TDS Ltd  
PO Box 1255  
Hemel Hempstead  
Herts  
HP1 9GN

*Tel:* 0845 226 7837

*Fax:* 01442 253 193

*email:* [deposits@tds.gb.com](mailto:deposits@tds.gb.com)

*website:* [www.thedisputeservice.co.uk](http://www.thedisputeservice.co.uk)

*Contact the CLG at:*

Tenancy Deposit Protection Team  
2/J10 Eland House  
Bressenden Place  
London  
SW1E 5DU

*Tel:* 020 7944 8300

*email:* [Tenancy.deposits@communities.gsi.gov.uk](mailto:Tenancy.deposits@communities.gsi.gov.uk)

*website:* [www.communities.gsi.gov.uk](http://www.communities.gsi.gov.uk)





THE DISPUTE SERVICE

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