



# TDS Northern Ireland Scheme Rules

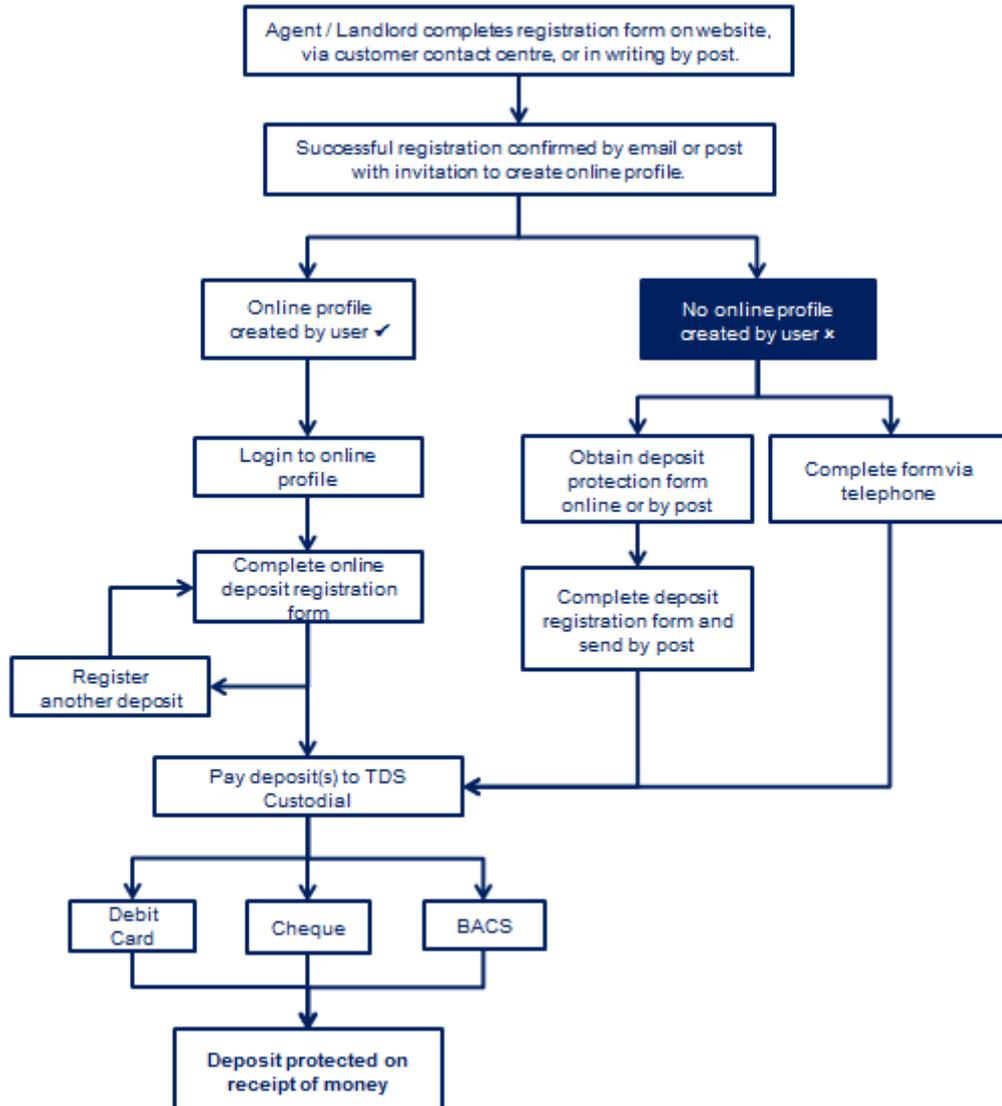
## Introduction

### 1 What is TDS Northern Ireland?

- 1.1 TDS Northern Ireland Limited (“TDS Northern Ireland”) is an independent tenancy deposit protection scheme (“scheme”) approved by the Department of Social Development.
- 1.2 TDS Northern Ireland is designed to ensure that tenancy deposits are securely held and protected throughout the tenancy, and that any disputes about their return are resolved quickly, cheaply and fairly.
- 1.3 TDS Northern Ireland is approved to operate two types of tenancy deposit protection schemes:
  - **Custodial** - where the landlord or agent pays the deposit to TDS Northern Ireland to hold until one of the parties requests repayment at the end of the tenancy. Specific rules relating to the custodial scheme are detailed in [section 2](#) of this document.
  - **Insurance backed** - where the TDS Northern Ireland member landlord or letting agent holds the deposit. Specific rules relating to the insurance backed scheme are detailed in [section 3](#) of this document.
- 1.4 Further information about the scheme is given in the scheme leaflet “**What is the Tenancy Deposit Scheme Northern Ireland?**”

2 The TDS Northern Ireland custodial scheme

A summary of how a deposit is protected in the TDS Northern Ireland custodial scheme



- 2.1 Each of the authorised tenancy deposit protection schemes has rules which landlords, agents and tenants must follow. This section (section 2) contains the TDS Northern Ireland scheme rules relating to the custodial scheme. The rules in this document do not apply to any other schemes which have been authorised to protect tenancy deposits.
- 2.2 The custodial scheme operated by TDS Northern Ireland, requires landlords or agents to register with the scheme and pay the deposits they receive from tenants to TDS Northern Ireland. TDS Northern Ireland gives tenants access to an online account so that they can see information about the deposit and update their contact details.
- 2.3 If there is more than one tenant, the landlord must nominate a **lead tenant** to deal with the deposit on behalf of the other joint tenants. When the tenancy ends, the lead tenant will be responsible for dealing with any claim for repayment and participating in any dispute about the deposit. The scheme rules explain what happens if a lead tenant needs to be replaced.
- 2.4 When TDS Northern Ireland receives payment of a deposit that has been successfully registered with the custodial scheme, it will:
- pay it into a designated account maintained for the sole purpose of holding tenancy deposits;
  - write to the tenant and registered user to confirm that this has happened; and
  - make a deposit protection certificate available for the landlord or agent to download and give to the tenant.
- 2.5 The TDS Northern Ireland custodial scheme holds the deposit during the tenancy in order to keep it safe and to make sure it is available to be returned to the tenant if they have met the terms of the tenancy agreement. The scheme is funded using interest earned on the deposits.
- 2.6 Where there is no dispute at the end of the tenancy, the landlord (or any agent acting on their behalf) and/or the tenant tells TDS Northern Ireland how the deposit is to be paid out. TDS Northern Ireland will check the other party agrees before making any payment.
- 2.7 Where there is a dispute about the deposit and it cannot be resolved after negotiation, TDS Northern Ireland offers an independent service to settle the dispute, as an alternative to going to court. The landlord (or any agent acting on their behalf) and tenant are invited to submit appropriate documentation to TDS Northern Ireland, who will deal with the dispute fairly, quickly and impartially. TDS Northern Ireland will apportion the disputed amount of the deposit and pay it to the parties in accordance with the decision of an independent adjudicator. Use of the dispute resolution mechanism must be used where the tenant requests it. It is free of charge for landlords, agents and tenants. The adjudicator's decision is final and binding. There is no right of appeal to TDS Northern Ireland.
- 2.8 TDS Northern Ireland will make forms available to landlords and agents to help them provide tenants with prescribed information. Providing this information in the correct form and within the 28 day time limit remains the landlord's responsibility. TDS Northern Ireland does not serve the prescribed information on the landlord's behalf. The tenancy deposit protection certificate issued by TDS Northern Ireland is not prescribed information.
- 2.9 TDS Northern Ireland can be contacted through its customer contact centre, online or by post. The online service will be available at all times, except for planned maintenance. The customer contact centre will be available from 8am to 6pm on Monday to Friday (excluding public holidays). The customer contact centre can supply information and forms. If landlords, agents or tenants are unable to contact TDS Northern Ireland online or by telephone they can write and send forms by post.

- 2.10 TDS Northern Ireland must collect and retain data about deposits, and disputes about deposits, on behalf of the government. The TDS Northern Ireland scheme rules explain what data will be collected and how it may be used.
- 2.11 TDS Northern Ireland will only accept deposits which relate to private tenancies in Northern Ireland.
- 2.12 Only the amount that is paid into the scheme will be protected. If a landlord or agent does not pay the full deposit into the scheme, penalties may be imposed by the local authority or a court upon referral by the tenant.
- 2.13 TDS Northern Ireland may accept a deposit that the landlord or agent did not protect within the statutory 14 day time limit. If TDS Northern Ireland does accept a deposit out of time the landlord or agent and the tenant will be entitled to use the TDS Northern Ireland dispute resolution mechanism at the end of the tenancy.
- 2.14 The TDS Northern Ireland custodial is open to all landlords, agents acting on their behalf, and their tenants.
- 2.15 TDS Northern Ireland is designed for easy access online. Landlords, agents acting on their behalf, and tenants wishing to use TDS Northern Ireland online will be asked to provide TDS Northern Ireland with a valid email address. Customers without an email address can communicate with TDS Northern Ireland via our Customer Contact Centre or in writing by post.

### User registration

- 2.16 Landlords, or agents acting on their behalf, wishing to use TDS Northern Ireland must register as users of the scheme. TDS Northern Ireland encourages users to register through the TDS Northern Ireland website, but will accept registrations made by post or telephone using the contact details at the end of these rules. User registration can be completed in advance of, or at the same time as, registering a deposit with TDS Northern Ireland.
- 2.17 In order to register, landlords and agents must provide TDS Northern Ireland with all required information, including their name, address, contact telephone number, an e-mail address (if available) and confirmation of whether they are acting as an agent or as a landlord on their own account.
- 2.18 If TDS Northern Ireland is unable to complete a landlord's or agent's user registration for any reason, it will try to contact the applicant. If TDS Northern Ireland is still unable to complete registration 5 working days after the application was received, TDS Northern Ireland will reject the application. The landlord or agent will have to re-apply for user registration if they want to use TDS Northern Ireland.
- 2.19 It is the landlord's responsibility to complete applications for user registration fully, correctly and in good time before the 14 day deposit protection deadline expires (or to ensure that their agent does so). TDS Northern Ireland accepts no liability if an application for user registration is not made properly. If an applicant experiences difficulty registering online, they should contact TDS Northern Ireland by other means, using the contact details at the end of these rules.
- 2.20 Applications made correctly online are completed at that point. Our system will generate a secure link to allow the user to set up an online account. Welcome information will be available to the user when first accessing their account.
- 2.21 When an application is correctly made through the TDS Northern Ireland Customer Contact Centre the user will be sent welcome information within 2 working days of the call. If the applicant provides an email address, the Contact Centre will also send the link needed to enable the user to set up an

online account.

- 2.22 When an application is correctly made by post, TDS Northern Ireland will send the user welcome information within 5 working days of receipt. If the application included an email address, TDS Northern Ireland will also send the link needed to enable the user to set up an online account.
- 2.23 The applicant should contact TDS Northern Ireland immediately if the welcome information or link to set up a user account is not received when expected. Failure to receive welcome information or details of how to set up an account could be an indication that user registration has not been completed. It is the user's responsibility to contact TDS Northern Ireland if any information or response is not received when expected.
- 2.24 If any of the details given at registration change, the landlord or agent must provide up-to-date details as soon as they can after becoming aware of the change. The welcome information explains how to do this.
- 2.25 TDS Northern Ireland will presume that any agent purporting to act on behalf of a landlord does so with that landlord's authority and TDS Northern Ireland accepts no liability for the consequences if the agent does not actually have that authority.
- 2.26 TDS Northern Ireland accepts no liability for the consequences of a landlord or agent mis-using or failing to protect their online account.
- 2.27 Tenants register as users of the scheme after their deposit has been protected. Once their deposit has been protected in TDS Northern Ireland, tenants will be invited to register as users of the scheme. It is in tenants' interests to register promptly because this will give them access to information about their deposit and TDS Northern Ireland and enable tenants to update their contact details when necessary.

#### Protecting a deposit

- 2.28 To protect a deposit with TDS Northern Ireland, the landlord or agent must:
- register the deposit with TDS Northern Ireland; and
  - pay the money into TDS Northern Ireland (by cheque, BACS, internet banking or debit card).
- 2.29 Registering the deposit and paying the money into TDS Northern Ireland are the scheme's 'initial requirements.'
- 2.30 If for any reason TDS Northern Ireland is unable to process a deposit protection application (for example, if it is incomplete or illegible) TDS Northern Ireland will promptly try to contact the landlord or agent who is attempting to register the deposit. If TDS Northern Ireland has still not been able to process the deposit protection application within 5 working days from the date of receipt, the application will be rejected and any payment received will be returned to the sender.
- 2.31 After completing the processing of a deposit protection application, TDS Northern Ireland will give the landlord, and any agent acting on their behalf, a unique Deposit Account Number ("DAN").
- 2.32 If a landlord or an agent has not received a DAN when expected, they should contact TDS Northern Ireland immediately (using the contact information at the end of these rules).
- 2.33 The DAN will be needed to pay the deposit into TDS Northern Ireland. The DAN must be used as the payment reference for automated and card banking, and written on the reverse of any cheques.

- 2.34 If TDS Northern Ireland cannot match a payment to a deposit protection application, the money will be held in a suspense account while TDS Northern Ireland contacts the payer. If TDS Northern Ireland is still unable to match the payment 5 working days after receiving it, the money will be returned to the payer.
- 2.35 If a cheque has been drawn incorrectly (e.g. different amount from that shown on the deposit protection application, cheque not signed, cheque not honoured) and as a result TDS Northern Ireland is unable to process the payment, the cheque will be returned to the sender within 5 working days of receipt.
- 2.36 If an incorrect payment is made, the payer must contact TDS Northern Ireland as soon as practicable after the discrepancy is identified and give all reasonable assistance to rectify the error. Contact details are given at the end of these rules.
- 2.37 It is the responsibility of landlords and agents to ensure that deposit protection applications are completed and submitted correctly, and that payment is made as required by these rules, quoting the correct DAN. TDS Northern Ireland does not accept any liability to landlords, agents, tenants or others if a deposit is not protected within the 14 day time limit because a deposit protection application was defective, or if a payment was not made in accordance with these rules.
- 2.38 If a deposit has not been protected by the 14 day deadline, TDS Northern Ireland has discretion to accept a deposit out of time. If TDS Northern Ireland does accept a deposit out of time the landlord and the tenant will be entitled to use TDS Northern Ireland dispute resolution mechanism at the end of the tenancy.
- 2.39 If TDS Northern Ireland is unable to complete an application or accept a payment, the deposit will not be protected.
- 2.40 Only one deposit per tenancy may be registered with TDS Northern Ireland. If the tenant pays the deposit in instalments, each instalment cannot be registered as a separate deposit. If a deposit is paid in instalments, all instalments must all be registered under the same DAN. TDS Northern Ireland recommends that landlords or agents protect the money they have received and then 'top up' the deposit within 14 days of receiving each subsequent instalment.
- 2.41 Each time an instalment is added, landlords and agents must update the deposit registration details to reflect the change in the amount, and must pay the appropriate sum to TDS Northern Ireland within 14 days of receipt. In such cases, TDS Northern Ireland will make an updated deposit protection certificate available to all the parties named on the tenancy agreement and (if any) the agent to show the increased deposit.

### Confirmation of deposit protection

- 2.42 When TDS Northern Ireland receives payment of a registered custodial deposit in cleared funds it will make a deposit protection certificate available promptly to the registered user for them to issue to the tenant(s).
- 2.43 The deposit protection certificate is not a substitute for serving prescribed information. Giving the tenant prescribed information (including the TDS Northern Ireland leaflet: *What is the Tenancy Deposit Scheme Northern Ireland?*) within the 28 day time limit remains the responsibility of landlords and agents. TDS Northern Ireland does not serve prescribed information.
- 2.44 If TDS Northern Ireland receives a deposit payment before the user or the deposit has been registered, or before a DAN has been issued, the deposit will be held in a suspense account initially, but returned to payer if it cannot be matched to a deposit registration. If payment was returned before the deposit was registered, TDS Northern Ireland will not generate a deposit protection

certificate until the landlord or agent successfully re-submits payment.

### Transferring the deposit to another authorised scheme

- 2.45 Once a deposit has been protected in the TDS Northern Ireland scheme, it will normally remain protected in the TDS Northern Ireland scheme until it is repaid according to these rules. However landlords and agents registered with TDS Northern Ireland may move the deposit to another authorised tenancy deposit protection scheme during a tenancy.
- 2.46 Applications to transfer the deposit to another authorised scheme may not be made until 30 days after a deposit has been correctly registered with TDS Northern Ireland.
- 2.47 A landlord or agent wishing to transfer a deposit to another scheme must complete and submit a deposit transfer request. The deposit transfer request should be completed online. Alternative methods of requesting a transfer can be arranged with TDS Northern Ireland on application.
- 2.48 *Transfers to another custodial scheme:* On successful completion of the application, TDS Northern Ireland will transfer the deposit to the nominated scheme. The transferee scheme will account to the parties and make its dispute resolution procedure available to the parties at the end of the tenancy, according to the rules of the transferee scheme.
- 2.49 *Transfers to TDS Northern Ireland from another custodial scheme:* The landlord or agent should request the transferring scheme to transfer the deposit and accumulated interest (where appropriate) to TDS Northern Ireland. The transfer request should be made according to the transferring scheme's rules and procedures. On successful completion of an application, the transferring scheme will pay the deposit and any accumulated interest to TDS Northern Ireland. The landlord or agent must register with TDS Northern Ireland as a scheme user if they have not already done so, and must register the deposit. When registration has been correctly completed and TDS has received the deposit, TDS will make a deposit protection certificate available for the landlord or agent to download and give to the tenant.
- 2.50 *Transfers to an insurance-based scheme:* The landlord or agent requesting the transfer must
- confirm that the deposit will be protected in an authorised tenancy deposit protection scheme; and
  - provide TDS Northern Ireland with such evidence of membership as TDS Northern Ireland reasonably requires, including the name of the scheme and the date of joining.

Within 5 working days of receiving the required evidence, TDS Northern Ireland will pay the deposit to the person who registered the deposit with TDS Northern Ireland. The landlord or agent must not represent to any third party that the deposit is protected by TDS Northern Ireland once the deposit has ceased to be protected in this scheme.

- 2.51 *Transfers to TDS Northern Ireland from an insurance-based scheme:* The landlord should notify the insurance-based scheme, in accordance with that scheme's rules, that the deposit is to stop being protected in that scheme. The landlord will then need to register as a TDS Northern Ireland scheme user if they have not already done so, and must register the deposit. When registration has been correctly completed and TDS has received the deposit, TDS will make a deposit protection certificate available for the landlord or agent to download and give to the tenant.
- 2.52 If a deposit transfer request has not been completed correctly and as a result TDS Northern Ireland is unable to process it, TDS Northern Ireland will try to contact the landlord or agent requesting the transfer for clarification. If TDS Northern Ireland is still unable to process the deposit transfer request after 5 working days it will reject the request and the transfer will not proceed. The landlord or agent will need to complete and submit a further request if they still wish to transfer the deposit to another

scheme. Meanwhile, the deposit will remain protected with TDS Northern Ireland.

- 2.53 Within 5 working days of receiving a correctly completed and submitted request to transfer a deposit out of this scheme TDS Northern Ireland will:
- pay the deposit; and
  - write to the registered user and the tenant(s) named on the deposit protection certificate, to confirm the date on which the deposit ceased to be protected by TDS Northern Ireland. The amount of deposit and interest will be included.
- 2.54 It will be the landlord's or the agent's responsibility to comply with initial requirements of the new scheme and serve up-to-date prescribed information on the tenant and any relevant person within 28 days of transferring the deposit in or out of TDS Northern Ireland scheme.
- 2.55 The landlord or agent must not represent to any third party that the deposit is protected by TDS Northern Ireland once the deposit has ceased to be protected in this scheme.
- 2.56 TDS Northern Ireland will not allow a landlord or agent to transfer a deposit out of TDS Northern Ireland after the tenancy has ended.
- 2.57 If a landlord disposes of the property or changes managing agent, the deposit will remain protected in TDS Northern Ireland until transferred or repaid.

#### Applying for repayment of a custodial deposit at the end of a tenancy

- 2.58 TDS Northern Ireland will not release the deposit until after the landlord, their agent, or the tenant has applied for its repayment. TDS Northern Ireland will not initiate contact with the parties to the tenancy agreement, or with the agent, at the end of the tenancy for this purpose. The landlord, their agent, or the tenant may apply to TDS Northern Ireland for the deposit to be repaid at any time after the tenancy has ended.
- 2.59 If both the landlord, or agent acting on their behalf, and the tenant submit a repayment request within 30 working days of each other, the landlord's or agent's repayment request will be used as the basis for dealing with the deposit. This rule is to avoid the risk of duplication and for ease of administration.
- 2.60 A repayment request made on behalf of joint tenants must be completed and submitted by the lead tenant.
- 2.61 The landlord, or agent acting on their behalf, and the tenant should use all reasonable endeavours to try to agree on the allocation of the deposit at the end of the tenancy. As a minimum, landlords (or their agents) must inform their tenants, in writing, promptly after the end of the tenancy what (if any) deductions they propose to make from the deposit and explain why they believe they are entitled to make them. Tenants should be given a reasonable opportunity to respond.
- 2.62 The repayment request completed and submitted to TDS Northern Ireland must indicate whether the deposit should be paid—
- (a) wholly to the landlord, or agent acting on their behalf, or the tenant, or
  - (b) partly to one and partly to the other; and
  - (c) if there is a dispute about any of the deposit, whether the landlord, agent or tenant agrees to use TDS Northern Ireland dispute resolution mechanism.
- 2.63 TDS Northern Ireland encourages scheme users to submit their repayment request online, but will accept repayment requests made through the contact centre or by post using the contact details at

the end of these rules.

- 2.64 If for any reason TDS Northern Ireland is unable to process a repayment request it will contact the party who submitted it, to seek clarification. If TDS Northern Ireland is still unable to process the repayment request within 5 working days from the date it receives the request, it will reject and return the repayment request.
- 2.65 When a correctly completed repayment request is submitted, TDS Northern Ireland will promptly contact the other party or parties to the tenancy agreement and ask them to confirm within 30 working days whether they agree the proposed allocation of the deposit; partly agree but partly disagree; or disagree completely. The other party or parties will be asked, if they do not agree to the repayment request, whether they consent to use the TDS Northern Ireland dispute resolution mechanism.
- 2.66 If no response has been received after 15 working days, TDS Northern Ireland will issue a reminder to all parties and a change of Lead Tenant (if requested) can be actioned by the scheme.
- 2.67 Parties requesting international payments will have to contact the TDS Northern Ireland customer contact centre by phone or e-mail. A charge will be made for an overseas payment (fixed by TDS Northern Ireland from time to time), which will be deducted from the share of the deposit being paid. The charge will include VAT and the amount of the charge will be confirmed in advance. A VAT invoice showing clearly the amount of the charge and VAT will be sent with the notification that the payment has been sent.
- 2.68 If a cheque has to be cancelled and reissued a charge will also be made (fixed by TDS Northern Ireland from time to time), which will be deducted from the share of the deposit being paid. The charge will include VAT and the amount of the charge will be confirmed in advance. A VAT invoice showing clearly the amount of the charge and VAT will be sent with the notification that the payment has been sent.

Repayment if landlord and tenant agree on how some or all of the deposit should be repaid

- 2.69 If TDS Northern Ireland receives confirmation of agreement to the allocation of the deposit, TDS Northern Ireland will arrange for the relevant amount(s) to be paid, in accordance with the agreement, within 5 working days.

Repayment if landlord and tenant have not agreed in full how the deposit should be allocated

- 2.70 If TDS Northern Ireland receives confirmation of partial agreement to the allocation of the deposit, TDS Northern Ireland will, as soon as is practicable, pay the undisputed amount.
- 2.71 If TDS Northern Ireland receives confirmation that any part of the allocation of the deposit is not agreed, the landlord, agent or tenant responding to the repayment request will be asked to state whether they agree to use the TDS Northern Ireland dispute resolution mechanism to allocate the amount in dispute.
- 2.72 Where agreement to use the dispute resolution mechanism is given, the disputed amount will be dealt with in accordance with the dispute resolution rules. The parties do not attend any hearing and the adjudicator will not visit the property. TDS Northern Ireland will pay the disputed amount according to the adjudicator's direction within 5 working days of the adjudicator's decision.
- 2.73 TDS Northern Ireland will not resolve disputes about deposits unless they are protected by TDS Northern Ireland.
- 2.74 TDS Northern Ireland will not resolve disputes between landlords and tenants unless the dispute is

about the deposit.

- 2.75 TDS Northern Ireland will not resolve disputes that are already the subject of court proceedings.
- 2.76 TDS Northern Ireland does not charge landlords, agents or tenants for using the dispute resolution mechanism.
- 2.77 If some or all of the repayment request is in dispute, and agreement to use the dispute resolution mechanism is not given, TDS Northern Ireland will release the disputed sum to the landlord and play no further role in the resolution of the dispute.

#### Applying for payment through the courts

- 2.78 Dispute resolution through TDS Northern Ireland is compulsory where the tenant requests it is used.
- 2.79 The tenant can opt to go to court to resolve a dispute about the deposit if they wish. Where this happens, TDS Northern Ireland will release the disputed deposit to the landlord and play no further part in the resolution of the dispute.

#### Repayment if one of the parties fails to respond or cannot be contacted

- 2.80 When a request for repayment is made, the other party to the dispute has 30 working days to respond to the request.
- 2.81 Where the landlord makes the application and the tenant does not reply within 30 working days of the request being made, the deposit will be repaid in accordance with the landlord's application.
- 2.82 Where the tenant makes an application for repayment, and the landlord does not reply within 30 working days of the request being made, the deposit will be repaid in full to the tenant(s).

### 3 The TDS Northern Ireland Insurance backed scheme

#### A summary of how a deposit is protected in the TDS Northern Ireland insurance backed scheme

- 3.1 In the insurance backed scheme, the landlord (or agent) retains the deposit but registers it with TDS Northern Ireland, for a fee.
- 3.2 Where there is no dispute at the end of the tenancy, the landlord (or any agent acting on their behalf) returns the agreed portion of the deposit to the tenant.
- 3.3 Where there is a dispute about the deposit and it cannot be resolved after negotiation, the landlord (and any agent acting on their behalf) and tenant are able to submit a dispute to TDS Northern Ireland, who will deal with the dispute fairly, quickly and impartially. TDS Northern Ireland will require the landlord (or agent) to pay the disputed amount of the deposit to it pending adjudication and will then pay it to the parties in accordance with the decision of the adjudicator.

#### Applying to join the TDS Northern Ireland insurance backed scheme

- 3.4 Landlords (or agents) wishing to join the insurance scheme are required to submit further information to TDS Northern Ireland to determine whether or not they can be accepted into membership of the insurance scheme.
- 3.5 Membership of the TDS Northern Ireland insurance scheme is subject to application and is open to:
- Lettings agents who are regulated members of an Approved Body with client money protection insurance and who hold deposits as stakeholders for landlords in a ring fenced client account;
  - Landlords who own the property subject to the tenancy (either as an individual, or company) and who hold deposits to a value of less than £100,000 (Initially, a limit of £25,000 will apply which can be increased on application);
  - Landlords who hold deposits in excess of £100,000 may be eligible to join subject to a risk assessment by TDS Northern Ireland and its insurers.
- 3.6 All prospective members must:
- be accepted by the insurer for cover under the TDS Northern Ireland insurance scheme;
  - pay the required deposit protection charge; and
  - agree to abide by the Rules of this Scheme.
- 3.7 TDS Northern Ireland may at its own discretion seek information from the Member or from third parties (such as an Approved Body) on other relevant matters in order to process an application for Membership of this Scheme.
- 3.8 The insurer's estimate of risk will affect the insurance fee to be paid by the prospective member as well as determining whether or not their application is successful. The insurer's decision on such matters is final and the information affecting the estimate of risk could be subject to change.
- 3.9 TDS Northern Ireland may, at its discretion, reject applications to join this scheme and the decision of TDS Northern Ireland on such matters is final.

Approved Bodies for regulated letting agents

- 3.10 Certain membership organisations are deemed by TDS Northern Ireland to be Approved Bodies and members of such Approved Bodies are entitled to a streamlined membership application process.
- 3.11 Approved Bodies may change from time to time but currently include:
- ARLA
  - NAEA
  - RICS
  - Law Society of Northern Ireland
  - NALS
  - UKALA
- 3.12 Members of any of the Approved Bodies will automatically be granted membership of the insurance scheme subject to:
- satisfactory completion of the membership application form;
  - written agreement to comply with the Rules of the Scheme;
  - satisfactory confirmation that they are a current member of the Approved Body (with client money protection insurance) in good standing and are not subject to recent or on-going disciplinary procedures.
- 3.13 In order to apply for membership of the TDS Northern Ireland insurance backed scheme, landlords and agents must provide TDS Northern Ireland with all required information, including their name, address, contact telephone number, an e-mail address (if available) and confirmation of whether they are acting as an agent or as a landlord on their own account.
- 3.14 If TDS Northern Ireland is unable to complete a landlord's or agent's user registration for any reason, it will try to contact the applicant. If TDS Northern Ireland is still unable to complete registration 5 working days after the application was received, TDS Northern Ireland will reject the application. The landlord or agent will have to re-apply for membership if they want to use TDS Northern Ireland.
- 3.15 It is the landlord's responsibility to complete applications for user registration fully, correctly and in good time before the 14 day deposit protection deadline expires (or to ensure that their agent does so). TDS Northern Ireland accepts no liability if an application for user registration is not made properly. If an applicant experiences difficulty registering online, they should contact TDS Northern Ireland by other means, using the contact details at the end of these rules.
- 3.16 Applications made correctly online or via telephone with the Customer Contact Centre are completed at that point. When approved for Membership of the TDS Northern Ireland insurance backed scheme, our system will generate a secure link to allow the user to set up an online account. Welcome information will be available to the user when first accessing their account.
- 3.17 When an application is made correctly by post, TDS Northern Ireland will send the user welcome information within 5 working days of approval being granted. If the application included an email address, TDS Northern Ireland will also send the link needed to enable the user to set up an online account.
- 3.18 The applicant should contact TDS Northern Ireland immediately if the welcome information or link to set up a user account is not received when expected. Failure to receive welcome information or details of how to set up an account could be an indication that user registration has not been completed. It is the user's responsibility to contact TDS Northern Ireland if any information or response is not received when expected.

- 3.19 If any of the details given at registration change, the landlord or agent must provide up-to-date details as soon as they can after becoming aware of the change. The welcome information explains how to do this.
- 3.20 TDS Northern Ireland will presume that any agent purporting to act on behalf of a landlord does so with that landlord's authority and TDS Northern Ireland accepts no liability for the consequences if the agent does not actually have that authority.
- 3.21 TDS Northern Ireland accepts no liability for the consequences of a landlord or agent mis-using or failing to protect their online account.
- 3.22 Tenants associated with a registered tenancy deposit and with a valid email address, will be invited to activate their online account. It is in tenants' interests to register promptly because this will give them access to information about their deposit and TDS Northern Ireland and enable tenants to update their contact details when necessary.

#### Protecting deposits in the TDS Northern Ireland insurance backed scheme

- 3.23 Following membership approval, the first stage is to register the deposit with TDS Northern Ireland and the second is the payment of the Deposit Protection Charge to TDS Northern Ireland. A deposit cannot be protected unless payment is confirmed (or invoiced in the case of a regulated letting agent).
- 3.24 Landlords (and their agents) using the TDS Northern Ireland insurance backed scheme will need to register and protect the deposit within 14 days of its receipt. Landlords (and their agents) can protect deposits for new and existing tenancies online, by telephone or by post.
- 3.25 To protect a deposit with TDS Northern Ireland, the landlord or agent must:
- register the deposit with TDS Northern Ireland; and
  - pay the deposit protection fee to TDS Northern Ireland (by cheque, BACS, or debit card).
- 3.26 Registering the deposit with TDS Northern Ireland is an 'initial requirement' of the insurance backed scheme
- 3.27 If for any reason TDS Northern Ireland is unable to process a deposit protection application (for example, if it is incomplete or illegible) TDS Northern Ireland will promptly try to contact the landlord or agent who is attempting to register the deposit. If TDS Northern Ireland has still not been able to process the deposit protection application within 5 working days from the date of receipt, the application will be rejected and any payment received will be returned to the sender.
- 3.28 After completing the processing of a deposit protection application, TDS Northern Ireland will give the landlord, and any agent acting on their behalf, a unique Deposit Account Number ("DAN").
- 3.29 If a landlord or an agent has not received a DAN when expected, they should contact TDS Northern Ireland immediately (using the contact information at the end of these rules).
- 3.30 Where the deposit holder is a landlord, in addition to the details requested at registration, landlords must certify that:
- the property is owned by them (either freehold or long leasehold), either alone or jointly, either as an individual or as a company;
  - where the property is owned jointly, the landlord represents and warrants to TDS Northern Ireland that he has the authority of all other owners to register the Deposit with the Scheme and

will indemnify TDS against all costs and losses arising from claims made against TDS by co-owners;

- where the property is owned jointly, TDS will treat the co-owners as jointly responsible for any payment due to TDS and may regard any one co-owner as having authority to bind the other owner(s) in any matter relating to the Deposit; and
- confirmation that the landlord is named as the landlord on the relevant tenancy agreement.

3.31 Failing to comply with these requirements is a ground for membership termination.

### Paying for a Tenancy Deposit Protection Charge

3.32 A Tenancy Deposit Protection Charge is payable for every deposit which is registered with the TDS Northern Ireland insurance backed scheme. A Deposit cannot be protected until the required information about the deposit has been entered in full to the TDS Northern Ireland tenancy database and the fee has been paid in cleared funds (or invoiced in the case of regulated letting agents).

3.33 The deposit protection charge protects the tenancy deposit until the expiry of the fixed term tenancy. Once the fixed term tenancy ends, protection of the deposit will end automatically. Landlords and agents need to take action before the last day of the fixed term in order for the protection to continue.

3.34 If a new or renewed fixed term tenancy is created or an extension of a fixed term tenancy is granted in any way other than by a Periodic Tenancy without any material change of the terms (e.g. amended amount of rent or Deposit) the tenancy database must be updated before the final day of the initial fixed term tenancy and a new deposit protection charge must be paid.

3.35 If TDS Northern Ireland discovers that the member did not pay a new deposit protection charge when it was due, then in the event of a dispute, TDS Northern Ireland may award the tenant the disputed amount without referral to the dispute resolution mechanism.

3.36 A summary of the different options available to the member for the continuing protection of an insured deposit is set out in Appendix 1.

### Repaying an insurance deposit at the end of the tenancy where there is an agreement between the landlord and tenant

3.37 At the end of the tenancy the landlord and tenant should agree between themselves how the deposit should be allocated. If there is agreement, the landlord should apportion the deposit in the manner agreed with the tenant. The landlord should then record this on the TDS Northern Ireland tenancy database and indicate that the deposit has been repaid to the parties and the sums agreed between them.

### Repaying an insurance deposit where the landlord and tenant do not agree

3.38 If the landlord and tenant cannot agree about the way the deposit should be allocated, the tenant should raise a dispute on the TDS Northern Ireland website. The tenant will also be asked to confirm that they consent to adjudication. A dispute can only be raised by the tenant and must be done no later than 3 months from the date the tenancy ended.

**Table 1: Protection payment options**

Scenario	Member Action	Fee Payable?	Comment
Fixed term tenancy ends and tenant vacates.	Deposit protection ends automatically on the last day of the fixed term and tenants notified of end of protection.  No action required.	No.	The lead tenant has three months from the last day of the tenancy to raise a dispute in the event of disagreement.
Tenancy continues on a periodic basis, on the same terms.	The member needs to update the tenancy database before the last day of the fixed term.	No fee is due.	This can only be done before the last day of the fixed term tenancy.
Fixed term tenancy ends and continues on a rolling periodic tenancy  Landlord takes no action.	TDS Northern Ireland will assume that the original tenancy agreement has ended and the protection of the deposit will end automatically.  The tenants will be notified.	No.	It is the member's responsibility to tell TDS Northern Ireland before the end of the fixed term if the tenancy is continuing, otherwise the deposit will be unprotected.
A new fixed term tenancy is created with the same tenants.  Landlord takes no action.	Member must renew the protection of the deposit on the TDS Northern Ireland Tenancy Database and pay the associated fee to avoid protection ending.	A new deposit protection charge is payable.	The deposit protection for the initial tenancy will end on the last day of the fixed term.  The deposit for the new tenancy will be unprotected.
A new fixed term tenancy is created with different tenants.  Landlord takes no action.	Member must renew the protection of the deposit on the TDS Northern Ireland Tenancy Database and pay the associated fee to avoid protection ending.	A new deposit protection charge is payable.	The deposit protection for the initial tenancy will end on the last day of the fixed term.  The deposit for the new tenancy will be unprotected.

Scenario	Member Action	Fee Payable?	Comment
<p>A new fixed term tenancy is created with at least one of the existing tenants, but including some new ones.</p> <p>Landlord takes no action.</p>	<p>Member must renew the protection of the deposit on the TDS Northern Ireland Tenancy Database and pay the associated fee to avoid protection ending.</p>	<p>A new deposit protection charge is payable.</p>	<p>The deposit protection for the initial tenancy will end on the last day of the fixed term.</p> <p>The deposit for the new tenancy will be unprotected.</p>
<p>Fixed Term Tenancy ends and becomes a rolling Periodic Tenancy but there is a material change in its terms. For example, the deposit amount changes.</p> <p>Landlord takes no action.</p>	<p>Member must renew the protection of the deposit on the TDS Northern Ireland Tenancy Database and pay the associated fee to avoid protection ending.</p>	<p>A new deposit protection charge is payable.</p>	<p>The deposit protection for the initial tenancy will end on the last day of the fixed term.</p> <p>The deposit for the new tenancy will be unprotected.</p>

Resigning from the TDS Northern Ireland insurance scheme

- 3.39 The resigning Member must give TDS Northern Ireland 28 days prior Notice of their intention to resign. The resigning Member must not offer Protection of Deposits under the Scheme after the date of giving Notice. Any Deposit Protection Charges paid or due to TDS Northern Ireland will not be refunded.
- 3.40 The resigning Member must also give a written undertaking, in a form set out by the Scheme, that the Member will:
- comply with TDS Northern Ireland's decisions in respect of any outstanding or on-going Disputes at the time of the Member's Notice, whether or not the Dispute Resolution process for those Disputes has been started by the date of the Member's Notice;
  - pay any outstanding sums which TDS Northern Ireland may certify as due, whether or not such a certificate is given before Membership ceases;
  - after Membership has ended, not state or imply that they remain a Member of the TDS Northern Ireland insurance scheme.
- 3.41 Within 14 Days of receiving the later of a Member's Notice of intention to resign and a Member's undertaking, TDS Northern Ireland will consider the Member's Notice and determine the date on which the Deposit is to cease being Protected.
- 3.42 After making its decision TDS Northern Ireland shall promptly give Notice to the Landlord and to the Tenant:
- identifying the deposit in question;
  - informing the Landlord and the Tenant of the date when the deposit will cease being Protected; and
  - reminding the Landlord and the Tenant that the Member has an obligation to protect the deposit with another Approved Scheme and supply the tenant with the required information as soon as the deposit stops being protected by TDS Northern Ireland.
- 3.43 This Notice will be given at least two months before the date on which (a) the Deposit ceases to be Protected, or (b) the Landlord's Membership terminates (as the case may be).
- 3.44 The Landlord's Membership will terminate on the date referred to in the Notice. The Deposit will cease to be Protected on the date referred to in the Notice or, if earlier, on the date when the Member provides TDS with written confirmation (satisfactory to TDS Northern Ireland) of registration of the Deposit under another authorised tenancy deposit protection scheme.
- 3.45 The Scheme will continue to apply to a Protected Deposit relating to a tenancy which ended before termination of the Landlord's Membership as if the Landlord were still a Member and access to Adjudication will remain available in such cases for three months after the last day of the tenancy.
- 3.46 A Member who serves on TDS a Notice of intention to resign may (in Writing) withdraw the Notice at any time before TDS issues a Notice confirming the date of termination of Membership but not afterwards. TDS may charge the Member an administration fee where a Notice of intention to resign is withdrawn, to cover its costs of dealing with the Notice.

What happens if TDS Northern Ireland wants to end a landlord's or agent's membership?

3.47 TDS Northern Ireland may terminate a membership if, in its reasonable opinion, the member has not complied with a Relevant obligation. These include a failure:

- to comply with the Rules of TDS Northern Ireland Scheme and with every undertaking given to TDS Northern Ireland;
- to act professionally and with integrity at all times and in accordance with good industry practice;
- to co-operate with TDS Northern Ireland the manner reasonably to be expected of a member;
- to supply the information prescribed from time to time by relevant legislation or these Rules, or as reasonably required by TDS Northern Ireland;
- to pay TDS Northern Ireland all money due on the due date for payment;
- to maintain the status on which Membership was granted;
- to maintain any Lettings Agent Client Account in accordance with good accounting practice, the scheme Rules, and the rules of the Member's Approved Body, Professional Body, Trade Association, Accreditation Scheme, or other relevant body or organisation;
- to ensure that the Member is at all times able to pay its debts as they fall due (whether owed to TDS Northern Ireland or otherwise) and for the avoidance of doubt the occurrence of an Insolvency Event will be a breach of this obligation;
- to register Deposits within the time limit as set out in the Regulations and to supply the tenant with the required information within the time limit as set out in the Regulations;
- not, in TDS Northern Ireland's opinion, to generate a disproportionately high number of Disputes – whether found in the Member's favour or not (this includes ensuring tenancy agreements and other documents used in connection with a private tenancy are clear and appropriate to the tenancy, as well as dealing fairly and professionally with tenants when proposing deductions from deposits and making proper and reasonable attempts to settle disputes.
- to comply with the Insurer's requirements as notified to the Member from time to time;
- to meet the Insurer's eligibility criteria throughout their Membership as notified to the Member from time to time;
- to charge Tenants fairly if recovering from them the costs of using the scheme.

3.48 Before terminating a Membership for failure to comply with a Relevant obligation TDS Northern Ireland will:

- give Notice to the Member that TDS Northern Ireland proposes to end the Membership together with a statement of its reasons for the proposed termination. The Notice period will begin on the date of receipt of the Notice by the Member which will be deemed to be two Working Days from the date TDS Northern Ireland posted or transmitted the Notice;
- allow the Member to make representations as to why Membership should not be terminated within such period as TDS Northern Ireland may stipulate in the Notice of proposed termination, which shall not be less than 14 days from the deemed date of receipt of the Notice;
- consider any representations made by the Member before reaching a decision on whether to terminate the Membership;
- decide whether or not to terminate the Membership and give the Member Notice of its decision.

3.49 During the period between TDS Northern Ireland serving the Notice of proposed termination and TDS Northern Ireland making its final decision on termination of a Membership, the Member will be treated as suspended and will not be able to protect any new deposits with TDS Northern Ireland (or in the case of the insurance scheme) to renew the protection of any deposits already registered with TDS. Deposits that were protected before the Member was suspended will continue to be protected.

- 3.50 During the period of suspension the Member will be in breach of the Regulations if they continue to take deposits and do not protect them in another authorised tenancy deposit protection scheme.
- 3.51 If TDS Northern Ireland confirms its decision to terminate the Membership, it must serve a Membership termination notice on the Member and on each tenant whose deposit was protected in the insurance Scheme by the Member:
- identifying the deposit in question;
  - informing the Member and the Tenant of the decision made and stating the date when the deposit will cease to be protected; and
  - reminding the Member of their obligation to comply with the initial requirements of the authorised scheme to which the Deposit will be transferred, and provide Prescribed Information in relation to that scheme, before the Deposit ceases to be Protected with TDS Northern Ireland.
- 3.52 The Membership will terminate on the termination date specified in the Membership termination notice, and this must be at least two months after the date TDS Northern Ireland serves (or is deemed to have served, if later) the Membership termination notice.
- 3.53 The Scheme will continue to apply to an **insured** Protected Deposit relating to a tenancy which ended before termination of the Membership as if they were still a Member and access to Adjudication will remain available in such cases for three months after the last day of the tenancy.
- 3.54 Without any liability to the landlord, TDS Northern Ireland may publish by which means, and in which media, TDS considers most appropriate the fact and circumstance of a Member's removal from the Scheme and/or publish details relevant to the Membership termination. TDS may also notify the member's Approved Body or any other relevant body or organisation of the fact and circumstances of the end of the Membership, again without TDS Northern Ireland having any liability to the Landlord. This clause does not purport to exclude liability for malicious falsehood.
- 3.55 If TDS Northern Ireland excludes a Member:
- the Member must notify its Professional Body, Trade Association, Accreditation Scheme, or other relevant body or organisation of the exclusion within 14 days of receiving the Membership termination notice;
  - the Member must not represent to Tenants that new deposits taken by the Member will be protected by the Scheme, or that deposits which have fallen due for re-protection will be Protected by the Scheme, or state or imply that they remain a Member of the Scheme;
  - TDS will not refund any pre-paid fees to the Member and notwithstanding termination of Membership the Member will remain liable for any unpaid fees and any other sums due to TDS Northern Ireland, including any Disputed Amount;
  - as regards Deposits that were protected at the time of the Membership termination notice, and Deposits relating to tenancies that have or will come to an end before termination of the Membership, the Member will comply with TDS Northern Ireland instructions until the distribution of the Deposit has been made either as agreed by the Tenant, or as awarded through the dispute resolution mechanism, or as ordered by the court and until all sums owed by the Member to TDS Northern Ireland have been paid, whichever is the later.
  - the Member will abide by TDS Northern Ireland Adjudications relating to Disputes that are eligible for the dispute resolution process.
- 3.56 During the period between serving the Membership termination notice and the date for the end of

Membership specified in the Membership termination notice the Member must:

- not represent to Tenants that new deposits taken by the Member will be Protected by TDS Northern Ireland, or state or imply that Deposits will continue to be Protected by TDS Northern Ireland if the tenancy to which a Deposit relates is renewed; or that a Deposit will be Protected by TDS Northern Ireland for longer than the timescales set out in this Rule;
- comply with TDS Northern Ireland's instructions relating to Deposits and the Member's Membership;
- comply with the Rules of TDS Northern Ireland.

3.57 TDS Northern Ireland may also terminate the Membership of a Member in the event that the Insurer refuses to provide insurance cover for Deposits held by the Member.

3.58 TDS Northern Ireland may also terminate Membership following a change in the Rules of Scheme.

## **4 General rules applicable to all deposits**

### Joint landlords

- 4.1 Any one of joint landlords can register as a user of TDS Northern Ireland. They will be presumed to have the authority of all co-landlords and their actions and decisions when using TDS Northern Ireland will be binding on their co-landlords.
- 4.2 TDS Northern Ireland will normally pay to the landlord or agent who is registered with the scheme any deposit that is due to joint landlords. It is the responsibility of the registered user to account to the joint landlords.

### Joint tenants

- 4.3 Where there are joint tenants, one of them must be appointed as lead tenant for the purposes of dealing with the deposit and TDS Northern Ireland on behalf of the other joint tenant(s).
- 4.4 The landlord or agent must explain to joint tenants the role of the lead tenant when joint tenants take a tenancy. When registering a deposit relating to a joint tenancy, the landlord or agent will be required to confirm to TDS Northern Ireland that they have given that explanation. The landlord or agent must confirm to TDS Northern Ireland that the joint tenants have agreed who is to be the lead tenant. The landlord or agent must agree to indemnify TDS Northern Ireland for the consequences of any failure to explain the lead tenant's role and for any nomination of a lead tenant without the joint tenants' agreement.
- 4.5 If tenants wish to change their lead tenant during the tenancy, they can ask their landlord or agent to make the change online or by contacting TDS Northern Ireland using the contact details at the end of these rules.
- 4.6 Each joint tenant will be able to set up their own user account with TDS Northern Ireland, from which they can see information about the deposit and update their individual contact details. TDS Northern Ireland will send its communications to all joint tenants.
- 4.7 Where joint tenants wish to apply for deposit repayment or raise a dispute, this can only be submitted by the lead tenant.
- 4.8 Where a landlord or agent submits a repayment request, TDS Northern Ireland will send a copy to all the joint tenants, but only the lead tenant will be able to submit a response
- 4.9 If the lead tenant does not respond to a custodial deposit repayment request, TDS Northern Ireland will, after 15 working days, invite the remaining joint tenant(s) to become (or nominate) the replacement lead tenant.
- 4.10 If joint tenants contribute to a deposit in unequal shares the person who submits a deposit repayment request and the person who submits a response will each have the opportunity to say how any deposit re-payable to the tenants is to be apportioned at the end of the tenancy. If there is a difference between the landlord's apportionment and the lead tenant's apportionment, the lead tenant's request will prevail. If co-tenants object to the lead tenant's apportionment, they can advise TDS Northern Ireland. However if all the joint tenants cannot agree on how to apportion the deposit among themselves, TDS Northern Ireland will pay the tenants in equal shares.
- 4.11 If a joint tenant wishes to leave the property, the landlord or agent should notify TDS Northern Ireland through their online account (or by contacting TDS Northern Ireland using the details given at the end of these rules). TDS Northern Ireland will contact the prospective leaver and ask them to

respond within 15 working days confirming whether or not they agree they are leaving the tenancy. If they object, or do not respond, there will be no change to the deposit protection arrangements. If the prospective leaver confirms their departure, TDS Northern Ireland will pay the leaver their share of the deposit. It will be the landlord's or agent's responsibility to protect any contribution to the deposit received from a replacement joint tenant, within the 14 day statutory deadline of receiving it. As only one deposit can be registered per tenancy, deposit instalments from assignee tenants must be added to any deposit already registered for that tenancy.

## **5. The Dispute Resolution Mechanism**

- 5.1 This section sets out how TDS Northern Ireland will adjudicate disputes about the return of a deposit. The same process will apply for deposits held in the custodial scheme and the insurance scheme, unless stated.
- 5.2 Disputes over the return of a deposit cannot be considered until after the tenancy has ended. In the insurance scheme a dispute can only be raised within 3 months after the end of a tenancy.
- 5.3 In accepting adjudication by TDS Northern Ireland, the landlord, any agent acting on their behalf and the tenant agree that this decision is final, subject to the process for the review of the Adjudication Decision.
- 5.4 At the end of the tenancy, the landlord, any agent acting on their behalf and the tenant must make every reasonable effort to resolve the dispute between themselves. The landlord, any agent acting on their behalf, and the tenant must be able to show that they have tried to negotiate a resolution to any dispute before referring it to adjudication. Failure to do so may result in the dispute being returned to the parties to attempt resolution.
- 5.5 The landlord, any agent acting on their behalf, and the tenant must ensure that they meet the deadlines set out in these Rules.
- 5.6 The dispute resolution mechanism is required to be provided free of charge to landlords, agents and tenants and TDS Northern Ireland will not meet any costs incurred by any party to a dispute.
- 5.7 TDS Northern Ireland may allow an 'interested party' to act on behalf of a landlord or tenant. That party will need to submit written authority from the landlord or tenant consenting to them acting on their behalf.
- 5.8 If at any time after the submission of a dispute to TDS Northern Ireland, a party proceeds to make a claim in relation to any element of a dispute via the courts, they must inform TDS Northern Ireland. If the party fails to do so, and as a result an Adjudication Decision is made and an award paid out contrary to the decision of the court, TDS Northern Ireland will not be liable for any repayment of such an award.
- 5.9 The party who failed to notify TDS Northern Ireland of such court action must indemnify TDS Northern Ireland for any losses, claims or actions in respect of such payment. TDS Northern Ireland will not accept any complaint from any party in respect of such a failure.
- 5.10 TDS Northern Ireland will accept disputes about the deposit for adjudication regardless of the value of the dispute. However, disputes may not be accepted:
- where the tenant has advised that they intend to take legal action to resolve the dispute;
  - that the matter has already been the subject of a Court action.
- 5.11 TDS Northern Ireland will advise the landlord (and any agent acting on their behalf) and tenant to tell TDS Northern Ireland that the dispute resolution procedure has been abandoned. They must do this before a decision has been made by the adjudicator. The tenant must agree to the dispute resolution mechanism being abandoned. Where TDS Northern Ireland is so notified, it will repay the tenancy deposit within 5 working days:
- where the landlord and tenant have reached an agreement, in accordance with that agreement; or
  - in any other case, in accordance with the amounts specified in the Proposal for Repayment of

the Deposit completed by the landlord or agent acting on their behalf.

Key adjudication principles

5.12 The deposit that is in dispute cannot be returned until:

- the dispute is resolved by an adjudication decision being made; or
- the tenant wishes the dispute to be resolved by a court; or
- the tenant and landlord otherwise reach agreement; or
- the tenant and landlord agree to abandon the adjudication procedure.

5.13 The adjudication procedure is not investigative. Adjudications are based on the evidence presented by the parties and TDS Northern Ireland will not normally search for evidence unless it considers it is critical to the adjudication *and* it has been withheld. Where TDS Northern Ireland does make further enquiries, it will tell the parties and allow parties to give comments on the findings. It is for the party bringing the dispute to support their allegations with documentary evidence, and the respondent to refute them.

5.14 TDS Northern Ireland can only make an award in respect of sums claimed by a landlord or any agent acting on their behalf against a deposit paid by a tenant. If the tenant raises issues which are intended to be a counter-claim against their landlord, they must pursue them with the landlord directly and seek independent legal advice should this be necessary. TDS Northern Ireland is unable to take account of any issues raised in a possible counter-claim when deciding how the disputed deposit should be allocated.

5.15 TDS Northern Ireland will not deal with disputes which seek to justify a set-off e.g. where the tenant claims rent was withheld because repairs were not carried out.

5.16 TDS Northern Ireland is not able to make awards above the amount of the disputed deposit. If the sum claimed is in excess of the deposit it will treat the claims in the order set out in the tenancy agreement, where this has been specified. TDS Northern Ireland will indicate where it believes an award would be appropriate; and if so, how much, up to the extent of the disputed deposit.

5.17 TDS Northern Ireland is not obliged to accept the costs claimed or incurred by a landlord. Any awards TDS Northern Ireland makes are based on what it considers to be the reasonable cost of making good. In determining the amount, TDS Northern Ireland has regard to publicly available sources of information such as high street stores, and services and products available on the internet.

5.18 Any awards made will take account of the age and quality of the item concerned and the length of the tenancy. An award, if appropriate, is made to compensate a landlord for the loss in value of an item where that loss in value is caused by the tenant during the tenancy. Landlords cannot expect to receive full replacement value or betterment. Account will be taken of fair wear and tear during the course of the tenancy.

5.19 TDS Northern Ireland will assume that the parties have stopped negotiating about the dispute when it is submitted to us for adjudication, unless informed that the parties wish to abandon the process or that they have reached agreement.

5.20 TDS Northern Ireland will not adjudicate on any matters that have been agreed between the parties. TDS Northern Ireland will take into account offers made by either party, where no agreement has

been made, unless they were made on a Without Prejudice basis. Once an award has been made, it cannot be challenged by one of the parties purely on the grounds that the other party was previously prepared to make a higher offer than the amount that was awarded.

#### Submitting evidence to TDS Northern Ireland

5.21 The Dispute Resolution mechanism requires evidence to be submitted by the parties to the dispute setting out the issues they wish the adjudicator to consider. Evidence can be submitted online via a dedicated dispute portal or by post to TDS Northern Ireland.

#### Scheme confirmation that the dispute should go to dispute resolution

5.22 The route to Dispute Resolution differs depending on whether the scheme being used is insurance based or custodial.

#### Points relevant to the custodial scheme only

5.23 The parties will come to Dispute Resolution automatically when they fail to agree during the repayment process. When this happens, there will be a ten working day grace period to encourage negotiations to take place between the landlord and the tenant.

5.24 At the expiry of the grace period, assuming there is no resolution, the landlord will be invited to submit a dispute resolution form and their evidence within ten working days.

5.25 After ten working days, irrespective of whether the landlord has submitted their dispute resolution form, the tenant will be invited to complete their dispute resolution form and submit evidence. The tenant has ten working days to respond.

5.26 Any undisputed sums will be paid out to the parties as soon as practicable, prior to adjudication, where possible.

5.27 At the expiry of the time allowed for the tenant to submit evidence, the case will be passed to the adjudicator.

#### Points relevant to the insurance based scheme only

5.28 In the event that the landlord and tenant are unable to agree on the distribution of the tenant's deposit, the tenant will have to initiate a dispute by completing a dispute resolution form either online via their account or by completing a form and posting it to us.

5.29 The landlord will be notified and asked to indicate if a dispute has arisen. The landlord will be invited to submit a dispute resolution form and their evidence, within ten working days. The tenant will then be asked to respond to the landlord's claim and submit their evidence to the Scheme within ten working days.

5.30 At the expiry of the ten working days, the case will be passed to the adjudicator.

#### Dispute Resolution forms

5.31 The Dispute Resolution Form will invite the parties to provide a range of detailed information in support of their claim, including a copy of the tenancy agreement. In addition, the Form will ask for information on what attempts have been made to resolve the dispute and confirmation that these have not been successful.

5.32 Information on the Dispute Resolution forms received from the parties in relation to the dispute will be made available on a secure portal for the parties to view before the case is passed to adjudication.

### No evidence submitted

5.33 If any party fails to return the Dispute Resolution Form and any accompanying evidence by the time limit then the case will proceed to adjudication.

### How to submit evidence

5.34 TDS Northern Ireland will accept evidence submitted by post or via the on line portal.

5.35 Where TDS Northern Ireland has an email address for any of the parties to a dispute, TDS Northern Ireland will send them an email to explain:

- that the Dispute Resolution Form(s) and any evidence so far submitted is available for them to view online at [www.tdsnorthernireland.com](http://www.tdsnorthernireland.com);
- that they will be able to complete a Dispute Resolution Form online;
- the deadline for them to complete and submit their evidence.

5.36 Where TDS Northern Ireland does not have an email address for any of the parties to a dispute, TDS Northern Ireland will send them by post:

- a copy of the Dispute Resolution Form(s) and any evidence so far submitted;
- a Dispute Resolution Form for them to complete and return by post;
- details of how to complete their Dispute Resolution Form and submit evidence online should they prefer to do so;
- the explanation of the deadline for them to complete and submit their evidence.

5.37 All evidence submitted in respect of a dispute will be destroyed three months after the date of adjudication unless further action is still in progress e.g. consideration of a complaint. No evidence will be returned so parties must submit copies.

5.38 If a party to a dispute for any reason finds it difficult to return the Dispute Resolution Form or any of the accompanying evidence within the required timescales they should contact TDS Northern Ireland explaining the reasons. TDS Northern Ireland will determine if any extension of time should be given.

### The adjudicator's decision

5.39 When TDS Northern Ireland has the forms and evidence relating to the dispute and the relevant deadlines have passed, the adjudicator will review all of the documentation, including all evidence, supplied by the parties concerning the dispute and come to a decision about it.

5.40 The adjudicator will decide any dispute within 20 working days of receiving the evidence.

5.41 Within 5 working days of a decision having been made on a dispute, the adjudicator will send the Adjudication Decision to the landlord, any agent acting on their behalf, and tenant, explaining:

- the facts on which the Adjudication Decision is based;
- the reasons for the Adjudication Decision; and
- the amounts of the disputed deposit to be repaid by TDS Northern Ireland to the landlord and tenant.

5.42 The adjudicator will also explain to the landlord, any agent acting on their behalf, and tenant, that the Adjudication Decision is final, subject to the process for its Review.

#### Review requests

5.43 Within 10 working days of the adjudicator giving notice of the Adjudication Decision, the landlord, any agent acting on their behalf, and tenant may apply to TDS Northern Ireland for that Adjudication Decision to be reviewed on the grounds that the adjudicator has erred in fact and/or law.

5.44 TDS Northern Ireland can only accept a request for the Review of an Adjudication Decision if:

- the request for the Review of an Adjudication Decision is received by TDS Northern Ireland within the 10 working days of the notice of the Adjudication Decision; and if
- the adjudicator has erred in law and/or fact, for example if the adjudicator has ignored evidence that was provided to support the claim. A request for Review will not be accepted simply on the basis that the landlord, agent, or tenant does not like the outcome.

5.45 Having received a request for the Review of an Adjudication Decision within the 10 working days TDS Northern Ireland will write to the applicant to acknowledge their request. On receipt of an application for review, TDS Northern Ireland will decide whether to accept or reject it.

5.46 In the event that TDS Northern Ireland choose to accept it, it will not do so without :

- inviting the other party to submit their written representations on the request for the Review of an Adjudication Decision;
- advising them that, to be considered, their representations must be received by TDS Northern Ireland within 5 working days from the date TDS Northern Ireland received the request for the Review of the Adjudication Decision.

5.47 If, after consideration of the request for Review and any representations received in the specified time, TDS Northern Ireland accepts that there are reasonable grounds for believing that the adjudicator may have erred in fact and/or law, it will refer the Adjudication Decision to an adjudicator who was not involved in the original Adjudication Decision.

5.48 Where TDS Northern Ireland rejects a request for a request for the Review of an Adjudication Decision it will confirm to the relevant parties that it has been rejected and on what basis. It will advise the applicant that they may not make a further request for Review of the Adjudication Decision and that payment of the awards will be made once the time limit for both parties to request a Review of the Adjudication Decision has expired.

5.49 The reviewing adjudicator will make a final Adjudication Decision within 10 working days of the case being referred to them for Review. The new adjudicator will review the original Adjudication Decision, the evidence and representations submitted by the parties, and either:

- affirm the original Adjudication Decision; or
- make a different Adjudication Decision.

5.50 Within 5 working days of reaching a final Adjudication Decision, the adjudicator will send confirmation of this Adjudication Decision to the landlord, any agent acting on their behalf, and tenant. This will explain:

- the facts on which the final Adjudication Decision is based;
- the reasons for the final Adjudication Decision; and
- the amounts of the disputed deposit to be repaid by TDS Northern Ireland to the landlord or

tenant.

- 5.51 The decision of the adjudicator following a Review is final. This means that the decision cannot be appealed further through the dispute resolution mechanism.

## **6 Providing information about Deposit Protection**

- 6.1 Further information about TDS Northern Ireland and the scheme, including these rules, the dispute resolution rules and the scheme leaflet, is available from the website [web address] or by contacting TDS Northern Ireland (address and other details are given at the end of these Rules).
- 6.2 It is the responsibility of landlords and agents acting on their behalf to comply with the relevant legislation concerning deposit protection and provision of prescribed information.
- 6.3 TDS Northern Ireland will make a deposit protection certificate available to all parties named on the tenancy agreement and the agent (if any) to confirm that the deposit has been protected when a deposit is registered on the TDS Northern Ireland tenancy database. TDS Northern Ireland is not responsible for providing a certificate or the prescribed information to tenants or relevant persons. It remains the responsibility of landlords and agents acting on their behalf to provide the Prescribed Information to the tenant and any relevant person, give the parties the opportunity to sign to say it is correct, and (if they wish) obtain and provide proof of service. Landlords and agents acting on their behalf should serve Prescribed Information within the statutory time limit when there is a change in the tenant, landlord, tenancy property, or deposit protection scheme, or they could risk the tenant (and any relevant person) bringing legal proceedings under the Housing Act 2004. Landlords and agents acting on their behalf should consider serving Prescribed Information if and when any of the information originally provided changes.
- 6.4 TDS Northern Ireland will provide scheme leaflets in hard copy on request or electronically for landlords and agents acting on their behalf to pass on to tenants and relevant persons. Landlords and agents acting on their behalf must give tenants and relevant persons a copy of the scheme leaflet as part of their Prescribed Information obligations.
- 6.5 TDS Northern Ireland has an obligation to collect and maintain appropriate data on each deposit that it protects. Landlords and agents acting on their behalf are required to submit data, on each deposit that they apply to protect, within the statutory time limit of when the deposit was first received or deemed to have been received.
- 6.6 If the landlord or agent acting on their behalf is not able to enter the data online, they may record it on the TDS Northern Ireland form 'Registration of a Tenancy' and submit the form to TDS Northern Ireland within 7 days of receiving the deposit. (This deadline is in the landlord's and agent's own interest to ensure that statutory timescales will be met).
- 6.7 Any of the following changes during the tenancy must be recorded and entered directly on the TDS Northern Ireland tenancy database by the landlord or agent acting on their behalf within 14 days of their taking place:
- (a) names or contact details of tenant;
  - (b) sale (or other ownership transfer) of the property;
  - (c) change in managing agent;
  - (d) issue of new tenancy agreement;
  - (e) change in the amount of the deposit.
- 6.8 If the landlord or agent acting on their behalf is not able to enter the data online, they may record changes to a tenancy by telephoning the TDS Northern Ireland customer contact centre.
- 6.9 Where a dispute arises, TDS Northern Ireland must collect and maintain the following data for each dispute:
- (a) name and contact details of each tenant;
  - (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 disputed amount;
- (f) nature of the dispute;
- (g) outcome of the dispute.

- 6.10 Landlords and agents acting on their behalf must co-operate with TDS Northern Ireland in collecting the data required. It is the responsibility of landlords and agents acting on their behalf to make sure that they have all necessary licences and consents to enable them to do so lawfully.
- 6.11 TDS Northern Ireland may request from landlords and agents acting on their behalf such other information as may be necessary for the purposes of operating the scheme or the dispute resolution mechanism or providing statistical information to the Department for Social Development.

## **7 Data protection responsibilities**

- 7.1 TDS Northern Ireland is registered with the Information Commissioner under the Data Protection Act 1998. It is aware of its obligations relating to the obtaining, recording, holding or disclosing of personal data. It has suitable systems and controls to comply with the eight data protection principles, namely 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 safeguards.
- 7.2 Landlords and agents acting on their behalf must provide TDS Northern Ireland with such information as it reasonably requires, both routinely and on request, on the appropriate form, online, by computer disc or by e-mail. It is the responsibility of landlords and agents acting on their behalf to ensure that they have complied with the Data Protection Act 1998 (as amended) in relation to any personal data which they transfer to TDS Northern Ireland.
- 7.3 Landlords and agents acting on their behalf must, without charge, provide copies of or, at TDS Northern Ireland request, allow TDS Northern Ireland to examine, any records and/or documents that TDS Northern Ireland considers may be relevant to a deposit.
- 7.4 Landlords and agents acting on their behalf must provide such reasonable assistance as TDS Northern Ireland may request from time to time, such information as TDS Northern Ireland may reasonably require to reduce the possibility of money laundering and/or fraud, and such information as TDS Northern Ireland may be required to collate by the Department for Social Development.
- 7.5 By registering to use the scheme, landlords and agents acting on their behalf are deemed to give TDS Northern Ireland their consent to store, copy or otherwise process such information as they may supply concerning their use of the scheme and any dispute in which they are involved and:
- (a) disclose it to other parties and organisations which TDS Northern Ireland considers to be appropriate to the resolution of a dispute;
  - (b) use it for confidential survey and research purposes;
  - (c) disclose it to relevant bodies who have an interest in and/or a duty to maintain and sustain good practice and the integrity of the scheme or their profession.
- 7.6 By registering to use the scheme, landlords and agents acting on their behalf represent and warrant to TDS Northern Ireland that:
- (a) they are appropriately registered with the Information Commissioner (unless they are exempted from doing so) and will provide written proof of registration upon request from TDS Northern Ireland within 14 days of any such request being made;
  - (b) they are and will remain the data controller of all their tenants' and (if an agent) landlords' personal data and any relevant person's data and will comply with the Data Protection Act 1998 (as amended) in all respects for as long as they are a user of the scheme or subject to an undischarged undertaking given to TDS Northern Ireland;
  - (c) they will inform tenants and any relevant persons and (if an agent) landlords of the purposes for which TDS Northern Ireland may use their personal data, including the fact that TDS Northern Ireland or the Department for Social Development may invite tenants and landlords to participate in surveys from time to time.
- 7.7 The Department for Social Development has appointed TDS Northern Ireland as administrator of the scheme to act on their behalf to gather and process information obtained from landlords and agents and other sources, for the purpose of safeguarding deposits and facilitating the resolution of disputes. The Department for Social Development may ask TDS Northern Ireland to provide information about tenancies generally for the purpose of fulfilling its statutory functions.

## **8 Complaints**

- 8.1 TDS Northern Ireland is committed to providing an excellent deposit protection and dispute resolution service to agents, landlords and tenants.
- 8.2 TDS Northern Ireland and landlords and agents acting on their behalf agree that each of them will deal with complaints in a constructive, helpful and courteous way.
- 8.3 The procedure for receiving and dealing with complaints about service is available on the website [www.tdsnorthernireland.com](http://www.tdsnorthernireland.com). TDS Northern Ireland will also provide paper copies of the complaints procedure on request.

## 9 Jurisdiction and service of documents

- 9.1 These rules shall be governed by Northern Ireland law.
- 9.2 Any legal proceedings to be served in respect of the rules which are to be served outside the said jurisdiction shall be deemed to be sufficiently served if they are sent by first-class surface or airmail post (provided they are properly addressed and the correct postage has been paid).
- 9.3 All legal proceedings served by or on behalf of TDS Northern Ireland may be in English without the necessity for translation into any other language.
- 9.4 In this rule, “address” shall include electronic addresses and fax numbers where the context requires. the “last-known address” of a landlord, agent or tenant shall be the address current on the TDS Northern Ireland tenancy database at the time a notice or document was sent.
- 9.5 Except where the relevant legislation provides otherwise, the provisions for the delivery and service of notices and other documents relating to or required by these rules (other than legal proceedings) are as follows:
- (a) service by text message or other standard messaging or similar service shall not be proper service.
  - (b) notices and other documents sent (including courier service) to the last known address of the intended recipient shall be treated as having been received and served:
    - i. By hand or courier service:
      - on the day after delivery if delivered before 17.00 hours; or
      - on the second day after delivery if delivered after 17.00 hours.
    - ii. By special or recorded delivery:
      - at the time proof of delivery was obtained from the actual recipient.
    - iii. By ordinary first-class post:
      - on the second day after the day of posting.
    - iv. By ordinary second-class post:
      - on the fourth day after the day of posting.
    - v. By electronic means:
      - at the time of transmission if sent before 16:00 hours; or
      - the day after transmission if sent after 16:00 hours.
- 9.6 Where there is a dispute about service of a notice or other document, the burden of proof shall be on the sender.
- 9.7 Service on TDS Northern Ireland of any document relating to actual or intended legal proceedings must be by post and marked for the attention of the company secretary. TDS Northern Ireland does not accept service of documents relating to actual or intended legal proceedings by fax or e-mail. Until further notice, TDS Northern Ireland address for service will be: TDS Northern Ireland, Arthur House, 41 Arthur Street, Belfast BT1 4GB.

**10 Exclusions and limitations of liability**

- 10.1 If at any time after the submission of a dispute to TDS Northern Ireland, a party proceeds to make a claim in relation to any element of a dispute via the courts, they must inform TDS Northern Ireland. If the party/ies fail to do so, and as a result an adjudication decision is made and an award paid, TDS Northern Ireland will not be liable to retrieve or reimburse any such payment, even if the court ultimately makes a different decision from the adjudicator. The party/ies who failed to notify TDS Northern Ireland of such court action must indemnify TDS Northern Ireland for any losses, claims or actions in respect of such payment. TDS Northern Ireland will not accept any complaint from any party/ies in respect of such a failure.
- 10.2 TDS Northern Ireland does not accept liability for the actions or omissions of any third party who is neither an employee of TDS Northern Ireland nor an adjudicator acting in the course of their duties.
- 10.3 TDS Northern Ireland does not accept liability for losses occurring or costs incurred as a result of any event which is outside TDS Northern Ireland reasonable control (such as, without limitation, computer failure, industrial or terrorist action, fire, epidemic, flood, serious adverse weather conditions and any other event generally considered to be a force majeure or an Act of God).
- 10.4 TDS Northern Ireland does not accept liability to any one or more joint landlords for acting on the instructions of any other joint landlord. TDS Northern Ireland does not accept directions from joint landlords to deal only with instructions agreed unanimously by joint landlords. Agents should explain this to their clients in their terms and conditions of business.
- 10.5 If a joint landlord dies, it will be their personal representatives' responsibility to notify TDS Northern Ireland and to indicate whether the joint landlord owned the property as beneficial joint tenant or tenants in common. The personal representatives should take legal advice if they are uncertain of the meaning of these terms, or do not know which applies. A probate solicitor will usually be able to help.
- 10.6 TDS Northern Ireland may delay or suspend registration to use the scheme or delay or suspend an application to protect a deposit in order to enable further consideration of the application (for example, where there is a reasonable suspicion that someone is attempting to commit fraud). TDS Northern Ireland will notify a landlord or agent acting on their behalf where there is a delay in processing their registration, but shall not be liable for any cost to the landlord or agent acting on their behalf of, or for any consequential or economic loss arising from, a delay in processing, or rejection of, a registration to use the scheme or protect a deposit.
- 10.7 TDS Northern Ireland does not accept liability for cheques missing in transit or any money sent to TDS Northern Ireland electronically which does not reach TDS Northern Ireland account. If a landlord or agent acting on their behalf expects to receive a payment from TDS Northern Ireland and it has not arrived, they must notify TDS Northern Ireland promptly and co-operate with TDS Northern Ireland in resolving the problem.

## **11 Amendments**

- 11.1 These rules and the dispute resolution rules may be amended by TDS Northern Ireland from time to time and all such amendments shall be deemed incorporated and shall take effect on the next working day after TDS Northern Ireland notifies such changes to landlords and agents acting on their behalf, or such later date as the notification may specify.
- 11.2 Landlords and agents acting on their behalf agree to abide by the rules and the dispute resolution rules as amended and in force from time to time, even if an amendment to the rules, or a later edition of the rules, is implemented after a deposit has been protected in the scheme.
- 11.3 If any court in Northern Ireland should decide that any scheme rule is unreasonable or for some other reason unenforceable, only so much of the Rule as is unenforceable shall not apply. Similarly, if a court should decide that any amendment to a scheme rule is unenforceable, the rule as it was immediately before amendment shall continue to apply (to the extent that is possible without altering the general intent and purpose of such of the amended rules as are enforceable or any landlord's or agent's undertaking which has not been discharged).

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## **Contact details**

**Address:** TDS Northern Ireland, PO Box 2105, Belfast BT1 9RD  
**Tel:** 08450 940740  
**Email:** [info@tdsnorthernireland.com](mailto:info@tdsnorthernireland.com)  
**Web:** [www.tdsnorthernireland.com](http://www.tdsnorthernireland.com)

The TDS Northern Ireland customer contact centre will be available from 8am to 6pm on Monday to Friday (excluding public holidays).