

Your TDS guide to:



A Guide to the Northern Ireland Tenancy Deposit Legislation

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TDS Northern Ireland

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 **TDS**
Northern Ireland



Martin Partington
Chair of TDS Northern Ireland Ltd

Foreword

Tenancy deposit protection legislation was introduced into Northern Ireland in April 2013.

Tenancy deposit protection was first introduced in England and Wales under the Housing Act 2004. The legislation was considered necessary to deal with alleged abuses of deposits by landlords and lettings agents. The statutory scheme went live in April 2007. In Scotland tenancy deposit protection was introduced in 2011 and the first deposit protection schemes became operational in July 2012.

This guide has been produced by TDS Northern Ireland Ltd, a not for profit company which has been approved by the Department for Communities to operate a tenancy deposit scheme in Northern Ireland. TDS Northern Ireland is a wholly owned subsidiary of The Dispute Service Ltd, which operates the Tenancy Deposit Scheme in England and Wales and is a key partner providing services to SafeDeposits Scotland, which operates the largest tenancy deposit protection scheme in Scotland. TDS Northern Ireland is by far the largest tenancy deposit scheme in Northern Ireland.

The book provides a clear overview of the legislation and gives specific guidance as to the way in which the Tenancy Deposit Scheme Northern Ireland operates. The book is aimed at landlords, tenants and lettings agents as well as their professional advisors. It will be updated periodically and is available to download from the TDS Northern Ireland website at www.tdsnorthernireland.com.

About the author

Steve Harriott is the Chief Executive of The Dispute Service Ltd and Chief Executive of TDS Northern Ireland Ltd. He has a background in social housing and education and has been Chief Executive of The Dispute Service since 2010.

He has written extensively about tenancy deposit protection matters across the UK.



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CHAPTER 1

A guide to tenancy deposit protection in Northern Ireland

Introduction

This guide has been produced for lettings agents, landlords, tenants and advisers to better understand how tenancy deposit protection works in Northern Ireland.

To make the guide easier to read, we refer mainly to landlords in the text. However, where an agent is appointed by the landlord then the agent will need to meet the Regulations. It is important that landlords in this situation satisfy themselves that their agents are fully complying with the Regulations.

The fundamental point, which needs to be stressed right from the outset is that while a tenant may have paid a deposit, the tenant remains entitled to receive the money back unless there is evidence that the tenant has in some respect broken the terms of their tenancy.

Where did tenancy deposit protection come from?

The introduction of tenancy deposit protection in Northern Ireland follows a well-trodden path in England, Wales and Scotland. This followed many years of campaigning by housing rights organisations who claimed that a number of landlords and agents were making unreasonable deductions from deposits when tenancies came to an end. The Housing Act 2004 first introduced tenancy deposit protection in England and Wales and the first deposit protection schemes became operational in April 2007.

In 1998 the National Association of Citizens Advice Bureaux (NACAB) published a report into tenancy deposits called “Unsafe Deposits”¹. In this report NACAB said that up to 50% of clients attending the Citizens Advice Bureaux had money taken from their tenancy deposit unreasonably and that of those people, 64% lost more than three quarters of their deposit. Following the publication of this report there was a joint campaign between NACAB and Shelter for some form of tenancy deposit protection scheme to be introduced. The Westminster Government announced in late 1998 that it would sponsor a pilot voluntary tenancy deposit protection scheme in several test areas.

The pilot scheme was set up under the auspices of the Independent Housing Ombudsman in the spring of 2000, with Government providing the financing for two years. This financing was extended for a further two years to allow for various studies to be completed, and to explore whether the scheme could become self-financing. Following the pilot scheme the Government agreed to introduce tenancy deposit protection in England and Wales in the Housing Act 2004. This Act allowed for two types of deposit protection:

- a custodial model where the deposit monies are held directly by the scheme in its own accounts, and
- an insured model where the monies are held by the landlord or agent, backed by an insurance scheme for which a small fee is charged for every registered deposit.

In 2007 the Government approved two insurance backed schemes and a custodial scheme, all of which operated under a service concession agreement. In 2013 the UK Government approved one more insurance scheme for England and Wales, which became operational on 1 April 2013. In 2016 the two main insurance schemes were offered custodial schemes so that in 2020 three schemes now provide both custodial and insurance backed protection in England and Wales.

In Scotland there was also pressure to introduce tenancy deposit protection. The Scottish Government introduced Regulations in 2011 to establish tenancy deposit protection, but decided only to allow custodial schemes to operate under a government licence. As such, three schemes were licensed in July 2012. These licences were renewed in 2019.

In Northern Ireland, the Assembly has built on the success of the schemes in England, Wales and Scotland and introduced Regulations to establish a number of custodial and insurance backed tenancy deposit protection schemes. In January 2013 the then Department for Social Development [now Department for Communities] announced that four schemes would be approved to operate both insurance and custodial protection. One scheme dropped out very quickly and three schemes now exist.

When does Tenancy Deposit Protection apply?

The detailed Regulations in Northern Ireland are found in the **Tenancy Deposit Schemes Regulations (Northern Ireland) 2012** which came into operation on the 1 November 2012.

These Regulations were made as a result of provisions in the **Housing (Amendment) Act (Northern Ireland) 2011**, which allowed for Regulations to be introduced. The 2011 Act amended the **Private**

¹ National Association of Citizen's Advice Bureaux, 1998, Unsafe Deposits.

Tenancies (Northern Ireland) Order 2006 by introducing new Articles 5A(1), 5A(3), 5B(5), 5B(6) and 73(1).

Under the Regulations, the new requirements came into force when the Department gave approval to the schemes which became operational on 1 April 2013.

Which tenancies are covered?

Tenancy Deposit Protection only applies to private tenancies in Northern Ireland where a deposit is taken.

Article 3 of the Private Tenancies (Northern Ireland) Order 2006 defines a private tenancy as a tenancy of a dwelling house except for:

- a fee farm grant;
- a tenancy for a term certain exceeding 99 years, unless that tenancy is, or may become, terminable before the end of that term by notice given to the tenant;
- a tenancy under which the estate of the landlord belongs to:
 - the Crown (whether in right of Her Majesty's Government in the United Kingdom or in Northern Ireland);
 - a Government department;
 - the Executive;
 - a registered housing association; or
 - is held in trust for Her Majesty for the purposes of a Government department; and
 - a tenancy the purpose of which is to confer on the tenant the right to occupy a dwelling-house for a holiday.

It should be noted that the definitions also include, except where the context otherwise requires, a protected tenancy and a statutory tenancy.

Transitional arrangements

The Regulations only apply to new deposits taken after 1 April 2013. Where a pre-existing tenancy is renewed on or after 1 April 2013 and a deposit had been taken before that date, advice from the Department is that this deposit does not need to be protected as it was taken before the 1 April 2013. Therefore:

- if a landlord takes a deposit from a private tenant on 31st March 2013 it does not need to be protected in a tenancy deposit scheme as the official date for mandatory protection is 1st April 2013;



The Regulations apply to all new deposits taken on private tenancies on or after 1 April 2013.

- if that same tenancy is renewed in 6 months' time and the original deposit is still being retained by the landlord, it will NOT have to be protected as the original deposit was handed over prior to the 1 April 2013;
- only where a new deposit is handed over after the 1 April 2013 does it need to be protected. This could apply to renewal tenancies but only if the landlord takes a new deposit.

What is a deposit?

A tenancy deposit in relation to a private tenancy is defined by the 2011 Act as "any money intended to be held (by the landlord or otherwise) as security for the performance of any obligations of the tenant arising under or in connection with the tenancy, or the discharge of any liability of the tenant so arising"². In other words, it is a sum of money paid by the tenant to the landlord which is held by the landlord as a safeguard for the tenant failing to meet any of the obligations as set out in the tenancy agreement.

The Regulations require that any tenancy deposit paid in relation to a private tenancy must, as from the time when it is received, be dealt with in accordance with an approved scheme. In other words, a tenancy deposit must be paid into an approved tenancy deposit scheme or protected by an approved tenancy deposit scheme.

Does a holding deposit need to be protected?

A number of landlords and agents may take a holding deposit from a tenant to reserve a property and to take it off the market. This is essentially a reservation fee and as such is not a deposit for the purposes of the Regulations. A deposit is only required to be placed in a scheme if it is money held which is paid as security for the performance of any obligations of the tenant or the discharge of any liability of his, arising under or in connection with the tenancy. So if the tenancy agreement has not yet been entered into, or there are no contractual obligations resting on the tenant when they pay the holding deposit, the deposit paid is not a deposit for the purposes of the Act.

Of course, once the tenancy is entered into, landlords will often convert the holding deposit into a tenancy deposit. This will need to be protected within 14 calendar days of the tenancy being signed and the holding deposit being converted into a tenancy deposit.

TDS Northern Ireland's advice is to rename holding deposits as tenancy reservation fees, to avoid any possible confusion as to whether or not they need to be protected.



A deposit is money taken by a landlord as security in relation to the tenancy obligations.



A holding deposit or a "reservation fee" is not a deposit and does not need to be protected.

² Housing (Amendment) Act (Northern Ireland) Act 2011, Article 5A (5)

What is an approved scheme?

Under the Regulations, the Department for Communities is authorised to approve one or more tenancy deposit schemes to operate in Northern Ireland. The Department is able to approve more than one scheme and more than one type of scheme.

Two types of tenancy deposit scheme are allowed by the Regulations.

A custodial scheme³ where the landlord pays the deposit to the scheme which holds it during the tenancy in a designated account and repays it to the tenant and/or landlord at the end of the tenancy in accordance with the processes laid down in the Regulations. In an approved custodial scheme there is no fee charged by the scheme to landlords for using it. The scheme funds its work through retaining the interest generated on the deposits held in the designated account.

An insurance backed scheme⁴ where the landlord retains the deposit during the tenancy but pays a fee to the scheme which enables the scheme to provide insurance cover for the deposits protected by it. This insurance cover enables the scheme to pay to a tenant whose deposit is so protected any money owing to them at the end of a tenancy which a landlord fails to repay to them. Of course the scheme will seek to recover any monies which it has to pay out to tenants from the landlord but in the event that it fails to do so it can rely upon the insurance to meet its losses.

What schemes have been approved?

The Department has approved three schemes, one of which is;

TDS Northern Ireland: this is a not for profit scheme which is operated by TDS Northern Ireland Ltd, a wholly owned subsidiary of The Dispute Service Ltd. The Dispute Service Ltd is owned by PropertyMark and the Royal Institution of Chartered Surveyors. The Dispute Service is also not for profit and runs the insurance-backed Tenancy Deposit Scheme in England and Wales and provides key services to the Scottish custodial scheme, SafeDeposits Scotland. TDS Northern Ireland runs both an insurance scheme and a custodial scheme.

When did the new Regulations come into effect?

The Regulations came into effect in November 2012 but were not fully operational until schemes had been approved by the Department.



The start date of the new Regulations is 1 April 2013

The Department approved schemes to operate from 1 April 2013 so from that date any new tenancy deposit taken has to be protected in an approved scheme.

Complying with the Regulations?

There are two main requirements with which landlords have to comply. These are:

- to protect the deposit by transferring it to a custodial scheme, or protecting it with an approved insurance backed scheme; and
- to provide the tenant with Prescribed Information relating to the deposit.



Deposits must be protected within 14 calendar days of their receipt.

Protecting the deposit

Within **14 calendar days** of receiving a deposit the landlord must protect it in a scheme and provide the scheme with certain information. The landlord can either protect the deposit in a custodial scheme by transferring the deposit to that scheme, or can protect it by registering the deposit with an insurance backed scheme and paying a fee to protect it.

It should be noted that in the custodial scheme the landlord needs to ensure that the deposit is received by the scheme in cleared funds before the expiry of the 14 day limit. This is because this is the date that will appear on the tenancy deposit protection certificate.

When the landlord protects the deposit they must provide the scheme with the following information:

- the amount of the deposit paid and the full address to which it relates, including the post code;
- the landlord's full name and date of birth;
- the landlord's contact details to include the address, telephone number(s) including mobile telephone number and a contact email address;
- the landlord's correspondence address (must be in Northern Ireland) if different from the contact address;
- the name, address and contact number of any agent acting on the landlord's behalf; and
- confirmation of the tenant's contact details including confirmation of the contact details of any relevant person acting on behalf of the tenant.

Where the deposit is being held by the agent, then the agent may provide this information but they are doing so on the landlord's behalf.

³ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 7

⁴ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 8

Providing Prescribed Information

The Regulations require that the landlord supplies the tenant (and any other relevant person who may have paid the deposit, such as a parent) with Prescribed Information and a scheme leaflet within 28 calendar days of the deposit being received. This is to ensure that the tenant knows that the deposit is protected, who is protecting it and what they need to do at the end of the tenancy to get their deposit back.

Tenancy deposit protection certificate

When the deposit is protected (either by paying over the deposit to the custodial scheme or paying the protection fee in the insurance scheme) TDS Northern Ireland will issue a tenancy deposit protection certificate to the landlord. This certificate will confirm the details of the deposit protection and whether it is held in the custodial scheme, or registered with the insurance backed scheme. TDS Northern Ireland recommends that a copy of the certificate is provided to the tenant and any other relevant person.

Specifically, the certificate will include all of the following information required by the Regulations⁵, confirming:

- the amount of the deposit protected and the full postal address to which it relates, including the postcode;
- details of the tenant including contact details (confirmation of any relevant person details) etc;
- details of the scheme in which the deposit has been protected;
- details of the dispute resolution mechanism associated with that scheme;
- details of how the deposit will be refunded and confirming under what circumstances the landlord may retain some or all of the deposit;
- that the onus is on the landlord to ensure the scheme is notified immediately of any change to the details previously supplied; and
- the procedures that apply under the scheme when the landlord is not contactable at the end of the tenancy.

Scheme leaflet

TDS Northern Ireland has produced a comprehensive scheme leaflet which describes how the scheme works. Under the Regulations⁶ the landlord is required to provide the tenant with a copy of this leaflet. The leaflet is available to download from www.tdsnorthernireland.com and provides all of the following information:



The scheme leaflet **MUST** be supplied to the tenant and any relevant person within 28 calendar days of receiving the deposit.

⁵ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Schedule 1 Article 2

⁶ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 37

- how the scheme operates;
- the terms and conditions relating to participation in the scheme;
- the procedures governing the payment, holding and repayment of tenancy deposits in accordance with the Regulations and the dispute resolution mechanism.

Prescribed Information

In addition to providing a copy of the scheme leaflet to the tenant, the landlord is also required to provide other information to the tenant. This is to ensure that the tenant has all of the information necessary to recover what is owing to them from the deposit at the end of the tenancy or to raise a dispute if needs be.

The Prescribed Information is set out in the Regulations⁷. They require the landlord provide this information in writing to the tenant and any relevant person (i.e. anyone who has paid the deposit on the tenant's behalf) within 28 calendar days from the receipt of the deposit. The information required is:

- the amount of the deposit protected and the full address to which it relates, including the postcode;
- the landlord's full name;
- the name, address and contact number of any agent acting on the landlord's behalf;
- the landlord's contact details to include the address, telephone number(s) including mobile telephone number and a contact email address;
- the landlord's correspondence address (must be in Northern Ireland) if different from that above;
- confirmation of the tenant's contact details including confirmation of the contact details of any relevant person acting on behalf of the tenant.
- details of the scheme in which the deposit will be protected including the details of the dispute resolution mechanism;
- details of how the deposit will be refunded and the circumstances under which the landlord may retain some or all of the deposit; and
- procedures that apply under the scheme when the tenant is not contactable at the end of the tenancy.



Landlords must supply the Prescribed Information to tenants and any relevant person within 28 calendar days of receipt of the deposit.

⁷ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Schedule 1 Article 3

In providing this information the landlord is required to certify that the written information he provides is correct to his knowledge and belief. The landlord must also give his tenant the opportunity to sign the information document to confirm that the information is accurate to the best of the tenant's knowledge and belief.

It is very important that the Prescribed Information is served correctly and covers all of the matters listed above. TDS Northern Ireland provides a template for landlords to use. This complies with the Regulations as long as landlords fill in the missing information, sign it and seek to get the tenant's signature. In an important case in England in November 2012 the Court of Appeal made it clear that the landlord had to ensure that they complied fully with the Prescribed Information requirements. In this case the court imposed a penalty of three times the deposit on the landlord, who had provided very little (and some inaccurate) information to the tenant⁸. In addition, the same Court has made it clear in another case that where landlords do not use the exact wording as set out in the Regulations then they do need to "substantially comply"⁹ with the requirements and whether or not they are deemed to have complied will be matter of "fact and degree". All in all it is much safer for landlords or agents to use the template provided by TDS Northern Ireland.

Summary

In order to comply with the Regulations landlords (or their agents) MUST:

- protect a tenancy deposit in an approved scheme (either a custodial scheme or an insurance scheme) within 14 calendar days of receiving the deposit;
- provide the tenant and any other relevant person with the scheme leaflet and Prescribed Information within 28 calendar days of receipt of the tenancy deposit.

To make it easy for landlords TDS Northern Ireland produces a tenancy deposit protection certificate with the required Prescribed Information which the landlord can download, sign and give to the tenant and any relevant person together with the scheme leaflet.

⁸ Ayannuga v Swindells [2012] EWCA Civ 1789

⁹ Ravenseft Properties Limited v Hall [2001] EWCA Civ 2034

CHAPTER 2

Penalties for non-compliance with the Regulations

As with any Regulations penalties apply to landlords who fail to comply with them. As we have seen, the tenancy deposit protection scheme was set out in the 2011 Act which amended the Private Tenancies Order 2006 by adding new Articles 5A and 5B. The 2006 Order, as amended, gave the Department for Social Development [now Department for Communities] the power to establish tenancy deposit protection schemes in Northern Ireland. The penalties for non-compliance with the tenancy deposit Regulations are set out in the legislation as follows:

Requiring a deposit other than money Article 5B (7)¹⁰

A landlord under Article 5B(7) of the 2006 Private Tenancies Order may only require a deposit in money (so for example the deposit of a savings account book is not allowed). Article 5B(10) of the 2006 Order says that "a person who contravenes paragraph 7 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale". Level 4 on the standard scale is currently £2,500 and the penalty is imposed by the Magistrates Court.

Failing to protect a deposit within 14 calendar days of its receipt or to serve the Prescribed Information within 28 calendar days of the receipt of the deposit

Article 5B(11) of the 2006 Order says that "any person who contravenes any other provision of this Article is guilty of an offence and liable on summary conviction to a fine not exceeding £20,000".

Article 68(3) makes it clear that proceedings for an offence under Article 5B(11) of the 2006 Order may be instituted by the appropriate district council. If a tenant suspects an offence has been committed they will need to contact the district council where the tenancy is situated to request that legal action is commenced against the landlord.



The penalty for failing to protect a deposit within 14 calendar days or serve the Prescribed Information within 28 calendar days of receiving the deposit is a fine of up to £20,000 or a fixed penalty notice.

¹⁰ Private Tenancies (Northern Ireland) Order 2006, Article 5B (7)

Fixed penalties by the District Council

The Housing (Amendment) Act (Northern Ireland) 2011 introduced an important change to the enforcement powers available to district councils by introducing the concept of fixed penalties.

Article 8 of the 2011 Act introduced a new Article 68A into the Private Tenancies (Northern Ireland) Order 2006. Article 68A(1) says that where on any occasion an authorised officer of a district council has reason to believe that a person has committed an offence under Article 5B(10) or (11) then the district council may serve on that person a form offering the opportunity of paying a fixed penalty rather than face prosecution.

Where this happens the district council is not permitted to commence legal proceedings until a period of 14 calendar days since the notice was served¹¹. If the fixed penalty is paid then the district council cannot prosecute the person for a breach of the Regulations. The notice should set out the reasons why the district council consider an offence has been committed.

The fixed penalty in relation to an offence of not protecting the deposit or supplying the Prescribed Information will be an amount equal to three times the amount of that tenancy deposit¹². If the case goes to Court and the landlord is convicted the fine will be up to £20,000¹³.

If the fixed penalty is in relation to a breach of Article 5B (10), which relates to taking a deposit other than in money, then the penalty will be set by the council and will not exceed one-fifth of the maximum fine payable on summary conviction of that offence¹⁴. This means that the maximum fixed penalty will be £500.

Any monies obtained by the district council in respect of fixed penalties will be retained by the council. Offences will be prosecuted by district councils in the Magistrates Courts.



The penalty for failing to protect a deposit within 14 calendar days or serve the Prescribed Information within 28 calendar days of receiving the deposit is a fine of up to £20,000 or a fixed penalty notice.

Offence	Fixed penalty imposed by the district council	Summary conviction in the Magistrates Court
Taking a deposit other than money	Maximum of one fifth of the maximum penalty on summary conviction (£500)	Fine up to Level 4 on the standard scale (£2,500)
Failing to protect a deposit within 14 calendar days	Three times the deposit	Fine up to £20,000
Failing to serve the Prescribed Information with within 28 calendar days of receiving the deposit	Three times the deposit	Fine up to £20,000

¹¹ Private Tenancies (Northern Ireland) Order 2006, Article 88A (4a)

¹² Private Tenancies (Northern Ireland) Order 2006, Article 68A (7)

¹³ Private Tenancies (Northern Ireland) Order 2006, Article 5B (11)

¹⁴ Private Tenancies (Northern Ireland) Order 2006, Article 68A (8)

CHAPTER 3

A detailed overview of the custodial model of tenancy deposit protection

In the custodial scheme the landlord (or agent) transfers the deposit they have received to the scheme. This can be done by sending a cheque or making a payment online through the TDS Northern Ireland website. The scheme holds this in a designated account and will repay the deposit to the parties at the end of the tenancy in accordance with the Regulations.

The custodial scheme is free for landlords and agents to use. The scheme is financed by the interest it makes on the deposits it holds in the designated accounts. The scheme cannot make any charges to landlords or tenants for using the custodial scheme, or for using the dispute resolution mechanism.

However there are indirect costs to landlords in relation to tenancy deposit protection. These costs relate to their own administrative costs in transferring deposits to the scheme, providing tenants with the required information and in liaising with the scheme over the return of every deposit and dealing with any disputes.

Protecting the deposit by paying it over

If a landlord decides to use the custodial scheme they must protect the deposit within 14 calendar days of receipt by paying it into the custodial scheme. A deposit is not protected until this payment has cleared.

Providing the tenant with the Prescribed Information and scheme leaflet

Within 28 calendar days of receiving the deposit the landlord must provide the tenant with the required Prescribed Information and the scheme leaflet.

How can a tenant find out if a deposit is protected?

Tenants should be given a copy of the tenancy deposit protection certificate, the Prescribed Information and the scheme leaflet within 28 calendar days of the deposit being received by the landlord. This will clearly identify that the deposit is being held by the scheme. In addition, tenants are able to log on to the scheme's website to confirm that the deposit is protected using the code supplied on the certificate, and the deposit repayment number which is sent by email or post when the deposit is first registered. The tenant can also call the customer contact centre to confirm protection.

Transferring a deposit to another scheme

A landlord may wish to transfer a deposit to another approved scheme. If they want to do this the scheme will transfer the deposit directly to the required approved scheme or will repay the deposit to the landlord. However, in this latter case the landlord MUST ensure that the deposit remains protected at all times or else they are in breach of the Regulations. If a deposit is transferred to another scheme the landlord will have to issue the tenant with a revised scheme leaflet and Prescribed Information so that the tenant is aware that the deposit has been moved. It may also be necessary to amend the tenancy agreement to make it clear that the deposit is now with a different scheme¹⁵.

Landlords should be aware that the scheme will always write to the tenant giving them details of the date on which the deposit was either transferred to another scheme or repaid to the landlord.

What happens at the end of the tenancy?

The procedures for dealing with the end of tenancy and repayment of the deposit are dealt with in the Regulations. At the end of a tenancy, the landlord and tenant should seek to agree how the deposit should be allocated between the parties. If there is an agreement then the process for repayment of the deposit is very straightforward. If the landlord and tenant do not come to an agreement then the process will be more drawn out. This means it makes sense for the parties to work hard to reach an agreement.

The Regulations assume that in most cases the landlord must apply to TDS Northern Ireland for the repayment of the deposit at the end of the tenancy, giving details about how much of the deposit needs to be repaid to the tenant. TDS Northern Ireland has an easy to use website that enables people to do this. Alternatively, they can call the customer contact centre for assistance.

¹⁵ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 14

Landlord and tenant agree with the proposed allocation of the deposit¹⁶

- 1 Landlord states the date the tenancy ended and how much of the deposit should be repaid to the tenant and repaid to the landlord.
- 2 Scheme will write/email the lead tenant giving details of the landlord's proposal and asking whether or not they agree.
- 3 The lead tenant confirms acceptance of the landlord's proposal within 30 working days.
- 4 If the lead tenant agrees the landlord's proposal then the scheme will make the required payments within 5 working days to the parties.

Landlord and tenant do not agree with the proposed allocation of the deposit

- 1 Landlord states the date the tenancy ended and how much of the deposit should be repaid to the tenant and repaid to the landlord.
- 2 Scheme will write/email the lead tenant giving details of the landlord's proposal and asking whether or not they agree.
- 3 The lead tenant indicates that they do not agree and suggests an alternative proposal. At the same time the tenant is asked whether or not they agree to the dispute being dealt with through the free dispute resolution process.
- 4 If the tenant agrees to use the dispute resolution process the case will be referred to the dispute resolution mechanism.

No contact from tenant

- 1 If the tenant fails to respond to the initial landlord's proposal within 30 working days the scheme will make the payment to the landlord as set out in the initial proposal within 5 working days after the end of the 30 working day period. Any balance will be held in a designated account for the tenant to claim at a later date¹⁷.

Tenant disputes the allocation but fails to consent to the use of dispute resolution

- 1 In a situation where the tenant disputes the allocation but does not agree to use the dispute resolution process the scheme will write to the tenant on the 15th working day after it received the tenant's notification of a disputed amount. The scheme will advise the tenant that if the tenant does not agree to the use of dispute resolution by 30 working days after their initial notification of a disputed amount then the scheme will repay the deposit in accordance with the amounts specified in the landlord's proposal.
- 2 These payments will be made within 5 working days from the end of the 30th working day¹⁸.

Can a tenant propose an allocation of a deposit before a landlord does?

The Regulations assume that in most cases it will be the landlord that initiates the deposit repayment process by making a proposal to the scheme. However there will inevitably be circumstances where this does not happen and the tenant makes a proposal to the scheme for the repayment of the deposit.

¹⁶ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 17

¹⁷ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 18

¹⁸ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 22

Tenant initiates a repayment proposal

- 1 Tenant states the date the tenancy ended and how much of the deposit should be repaid to the tenant and repaid to the landlord.
- 2 If an application for repayment has already been made by the landlord or is made within 30 working days of the tenant's application then the tenant's application will not be progressed any further.
- 3 If no application has been received from the landlord then the scheme will write to the landlord advising the landlord of the tenant's proposal and asking them to either agree to the allocation of the deposit or make an alternative proposal.
- 4 If the landlord agrees the proposal then the scheme will make the repayments in accordance with the agreement within 5 working days of the landlord's agreement being received.
- 5 If the landlord does not agree to the proposal then the scheme will contact the tenant with details of the landlord's proposal as if this were an initial proposal from the landlord.

No contact from the landlord to a tenant's initial proposal

- 1 No confirmation from the landlord that the tenant's proposed allocation is agreed or no alternative proposal made by the landlord within 30 working days of the landlord being advised of the tenant's proposal.
- 2 The scheme will repay the full amount of the deposit to the tenant within 5 working days after the expiry of the 30 working day period.

CHAPTER 4

A detailed overview of the insurance backed model of tenancy deposit protection

Whilst the basic principles of deposit protection are the same in the custodial and insurance models, the key difference is that in the insurance model the landlord (or their agent) holds the deposit during the tenancy. They still have to protect the deposit through paying a deposit protection fee. The scheme meets its costs of running the scheme and buying insurance through the fees it charges for the deposits protected.

Whilst the insurance scheme charges a fee, the scheme itself is simpler to use, especially in relation to repayments at the end of the tenancy. In all cases where the landlord and tenant agree on how the deposit is to be divided, the landlord (or his agent) simply pays out the deposit on the basis of that agreement. This can happen very quickly. The parties only need to engage with the scheme if there is no agreement and the tenant decides to raise a dispute which has to be resolved by the scheme.

Registering the deposit with the insurance scheme

If a landlord decides to use the insurance scheme they must protect the deposit within 14 calendar days of receipt. This involves registering the deposit with the scheme and providing the scheme with information about the deposit, the tenant(s), landlord and agents (if any).

Providing the tenant with the Prescribed Information and scheme leaflet

Within 28 calendar days of receiving the deposit the landlord must provide the tenant with the required Prescribed Information and the scheme leaflet.

Transferring a deposit to another scheme

A landlord may wish to transfer the protection of a deposit to another approved scheme. They must advise the scheme that they have done so and to end the deposit protection with the scheme. The landlord **MUST** ensure that the deposit remains protected at all times or else they are in breach of the Regulations. If a deposit is transferred to

another scheme the landlord will have to issue the tenant the new scheme leaflet and Prescribed Information so that the tenant is aware that the deposit has been moved. It may also be necessary to amend the tenancy agreement to make it clear that the deposit is now with a different scheme¹⁹.

Landlords should be aware that the scheme will always write to the tenant giving them details of the date on which the deposit was unprotected by the landlord.

What happens at the end of the tenancy?

The procedure for dealing with the end of the tenancy and repayment of the deposit are dealt with in Article 24.

At the end of a tenancy the landlord and tenant should seek to agree how the deposit should be allocated between the parties. If there is an agreement then the landlord must repay, to the tenant, the deposit owing to them within 5 working days.

Landlord and tenant agree with the proposed allocation of the deposit²⁰

- 1 Landlord and tenant agree that the tenancy has ended and that they are in agreement as to how the deposit should be allocated.
- 2 The landlord is required to repay the tenant the agreed amount of the deposit within 5 working days of the request being made by the tenant.

However, if the landlord or tenant cannot agree then the onus is on the tenant to seek to involve the scheme in resolving the dispute.

Landlord and tenant do not agree over the proposed allocation of the deposit

- 1 Tenant notifies the scheme that the landlord has not paid to the tenant the amount of the deposit requested by the tenant within 5 working days of the tenant making the request. At the same time, the lead tenant is required to indicate whether or not they agree to use the free dispute resolution mechanism²¹.
- 2 The scheme requires the landlord to pay the disputed amount to it within 5 working days. The scheme will also ask the landlord if they agree with the tenant's proposal or, if they agree with part of it, how they intend to repay the tenant²².
- 3 If the landlord does not agree with the tenant's proposal the dispute will be resolved through the dispute resolution mechanism (subject to the tenant having agreed to use it²³).
- 4 If the landlord fails to respond to the scheme then the scheme will refer the dispute to the dispute resolution mechanism²⁴.

What happens if the landlord and tenant subsequently reach agreement before the case is referred to the adjudicator?

- 1 If the landlord and tenant subsequently reach agreement then the scheme will make a payment from the amount it is holding as a disputed deposit in accordance with the decision reached by the parties²⁵.

¹⁹ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 14

²⁰ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 24 (1)

²¹ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 24 (2), (3)

²² The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 24 (4), Article 25 (2)

²³ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 25 (4)

²⁴ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 25(31)

²⁵ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 24 (5), (6)

How long does a tenant have to raise a dispute with the insurance scheme?

The Regulations are silent on this point but it is important that any disputes are raised as soon as possible after the end of the tenancy. This means that landlords and tenants can be paid any monies owing to them quickly and it also means that evidence relating to any dispute will be fresher in the minds of those involved. Under the Rules of TDS Northern Ireland, the lead tenant has up to three months from the end of the tenancy to raise a dispute. If they fail to do so within that period the only option for the parties, if they still cannot agree, is for one of them to take the matter to the small claims court (as long as the sum in dispute is less than £3,000). Amounts over £3,000 have to be considered in the County Court.



Disputes must be raised within 3 months of the end of the dispute. If not the matter will need to be dealt with in the Courts.

What happens if a landlord fails to pay the disputed deposit to the scheme?

When a tenant advises the scheme that the landlord has not paid them the disputed deposit, the scheme will require the landlord to pay the disputed deposit to the scheme. If the landlord fails to do so, then the scheme will seek to recover the monies from the landlord (or agent), via legal action if necessary. In addition, the landlord may have their membership of the scheme terminated for failing to abide by the rules. If this happens, the landlord will need to re-protect the deposits with another scheme.

Landlords (and their agents) need to be aware that the scheme takes failure to pay over a disputed deposit very seriously. It will pursue the landlord through the Courts to recover the debt.

However, tenants should be reassured that in the event that the landlord does not pay over the disputed deposit they will not lose out. The scheme will continue to adjudicate the dispute and will make any payment due to the tenant from its own resources if necessary, recovering this from the insurance held.

If an agent fails to pay the disputed deposit to the scheme, the landlord needs to be aware that the scheme will not make any payments to the landlord in the event that an adjudication finds that some monies are owing to the landlord. In these circumstances the landlord must seek to recover the monies owing to them from the agent. If the agent is a member of a regulatory body holding Client Money Protection insurance the landlord may be able to use this to claim for any missing money.

What happens if a landlord's membership of the scheme is terminated?

The scheme has powers in its rules to end the landlord's (or agent's) membership of the scheme. This will usually be because they have failed to comply with the scheme rules, have failed to pay over a disputed deposit, failed to pay the deposit protection fees, or have ceased trading. It will also happen when the landlord tells the scheme that they wish their membership to end.

Article 28 of the Regulations sets out a detailed process which needs to be followed but the important point is that the deposit ceases to be protected when membership is terminated²⁶.

The steps which must be taken are set out below:

- where the scheme proposes to terminate the landlord's membership of the insurance scheme, the scheme administrator shall send a written notification to the landlord which has to set out why the scheme proposes to terminate the membership. The notice has to identify all of the deposits held by the landlord with the scheme and set out the date that the deposit will cease to be protected (i.e. when the membership ends);
- the scheme must give the landlord 14 calendar days from the notification being received to make representations to the scheme²⁷.

When this 14 calendar day period has ended the scheme then decides whether or not to terminate the membership. If a decision is taken to terminate the membership, the scheme is required to decide a date when membership is terminated. This date has to be at least 3 months after the date the landlord first received notification of the possibility of termination²⁸.

At the same time, the scheme will write to the landlord and tenant advising them of the termination and that deposits will no longer be protected by the scheme. However, if a tenancy ends before the end of membership then the scheme will continue to accept a dispute for up to three months from the end of the tenancy.

Deposits must be protected by landlords (or their agent) at all times.

In the three month notice period before membership ends, the landlord or agent must re-protect the deposits with another scheme. If they fail to do so by the time the three months period is over they will be breaking the Regulations and will be liable for a fine of up to £20,000 or a fixed penalty of 3 times the deposit.

²⁶ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 28 (1)

²⁷ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 28 (2)

²⁸ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 28 (3)

CHAPTER 5

The dispute resolution mechanism

Both the insurance and the custodial schemes offer a free dispute resolution mechanism in the event that the landlord and tenant cannot agree about the allocation of the deposit. Part 6 of the Regulations deals with this process²⁹.

It is important to recognise that a key principle of tenancy deposit protection is that the deposit belongs to the tenant(s) unless the landlord can establish a valid claim to it, either in whole or in part. The onus is on the landlord to prove, on the balance of probabilities, that some or all of the deposit should be retained by the landlord. In the absence of that proof the deposit must be returned in full to the tenant.

Deposits should only be allocated:

- by agreement between the parties;
- by order of a small claims/County Court; or
- by an adjudication of a tenancy deposit scheme.

What does adjudication entail?

In simple terms it means that a dispute between the landlord and tenant about the allocation of the deposit is decided by an independent and impartial adjudicator on the basis of written evidence submitted to them.

It is important to recognise that the adjudication process is not investigative. Adjudications are based on the evidence presented to the adjudicator by the parties. TDS Northern Ireland will not normally look for additional evidence unless it is considered critical to the adjudication and it has not been supplied. Adjudicators do not hold a hearing, and the adjudicator does not visit the property to which the dispute relates. Adjudicators do not normally telephone any of the parties and do not accept physical evidence, such as damaged carpets or kitchen fittings. The adjudicators consider written evidence submitted to them by the parties and adjudicate solely on the basis of the evidence submitted.

Who does the adjudication in the dispute resolution process?

TDS Northern Ireland employs adjudicators to carry out the detailed adjudications. These adjudicators are independent decision makers and all are either members of the Chartered Institute of Arbitrators, hold a legal qualification or have significant experience in the lettings industry. TDS Northern Ireland adjudicators operate under an agreed Code of Conduct for Adjudicators which requires them to be impartial in their decision making. Members of the senior management team in TDS Northern Ireland Ltd are not permitted to seek to influence adjudication decisions.

Do landlords and tenants have to use the dispute resolution mechanism if they cannot agree?

Under the Regulations tenants have a choice as to whether they wish to use the dispute resolution mechanism, or seek to continue to negotiate with the landlord, or go to the County Court to recover the deposit³⁰. However, landlords (and their agents) MUST use the dispute resolution process if this is what tenants want.

Where a landlord or tenant has already obtained a Court Order in respect of a dispute then the scheme will not be able to adjudicate using the dispute resolution mechanism. It simply makes the payments to the parties in accordance with the Court Order.

But if a dispute is being processed via the dispute resolution mechanism and the landlord indicates that they are going to go to Court, the scheme will continue to adjudicate and will make a decision as long as a final Court Order has not been confirmed by the time the adjudication decision has been made.

It is important to recognise that the dispute resolution process is the same regardless of whether the deposit is protected in the custodial scheme or the insurance scheme.

²⁹ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 31

³⁰ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 31 (3)

What can the dispute resolution mechanism deal with?

Dispute resolution can only deal with disputes over withheld deposits. If the tenant raises issues which are intended to be a counter-claim against their landlord (e.g. withholding of rent because of failure to do repairs), they must pursue it 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.

TDS Northern Ireland can only make awards **up to the amount of the disputed deposit**. If the sum claimed by the landlord is in excess of the deposit, the scheme will treat the claims in the order set out in the tenancy agreement, where this has been specified. The adjudicator will indicate where they believe an award would be appropriate; and if so, how much, up to the extent of the disputed deposit. If the landlord wishes to pursue the tenant(s) for additional sums, they will need to seek further advice on the legal action they might be able to take (for example through the Courts).

Adjudicators are not obliged to accept the costs claimed or incurred by the landlord. Any awards made are based on what the adjudicator considers to be the reasonable cost of making good. In determining the amount, adjudicators have regard to publicly available sources of information such as high street stores, and services and products available on the internet.

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 the loss in value is caused by the tenant during the tenancy. Account will be taken of fair wear and tear during the course of the tenancy. Landlords cannot expect to receive full replacement value or betterment.

Adjudicators will assume that the parties have stopped negotiating about the dispute when it is submitted to the scheme, unless otherwise informed. The scheme will not accept responsibility for allocating the deposit in accordance with an agreement that the parties have reached between themselves, if the scheme has not been made aware of that agreement before the adjudicator started to review the case.

The scheme will not adjudicate on any matters that have been agreed between the parties. It will take into account offers made by either party unless made without prejudice. 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.

How do disputes get raised in the custodial scheme?

The steps below repeat the process outlined earlier. At Step 4 below it is clear that the tenant has advised the scheme that they disagree with the landlord's proposal and that they wish to refer the issue to the dispute resolution process.

Landlord and tenant do not agree over the proposed allocation of the deposit

- 1 Landlord states the date the tenancy ended and how much of the deposit should be repaid to the tenant and repaid to the landlord.
- 2 Scheme will write/email the tenant giving details of the landlord's proposal and asking whether or not they agree.
- 3 Tenant indicates that they do not agree and suggests an alternative proposal. At the same time the tenant will be asked whether or not they agree to the dispute being dealt with through the free dispute resolution mechanism.
- 4 If the tenant agrees to use the dispute resolution process the case will be referred to the dispute resolution mechanism.

How do disputes get raised in the insurance scheme?

As we saw earlier, with the insurance scheme the landlord or agents will be holding the deposit and they will negotiate with the tenant over the allocation of the deposit. However, if the tenant cannot reach an agreement with the landlord they can then seek to raise a dispute with the scheme as set out below. Only the lead tenant can raise a dispute.

Landlord and tenant do not agree with the proposed allocation of the deposit in the insurance scheme

- 1 Landlord and tenant fail to agree over the deposit allocation.
- 2 Tenant may contact the scheme advising that the deposit is in dispute and asking that the scheme deals with the dispute through the dispute resolution mechanism. Within the insurance scheme, the tenant only has three months from the end of a tenancy to raise a dispute. If a dispute is raised outside of that time limit then the scheme will not accept the dispute and the tenant will need to go to the small claims Court, or the County Court, or reach an agreement with the landlord.
- 3 The scheme will ask the landlord to pay to it the amount in dispute and remind the landlord that they should pay the undisputed deposit to the tenant.

Dispute resolution

At this stage in both the insurance and custodial scheme the case moves into the dispute resolution mechanism.

Dealing with disputes through the dispute resolution mechanism

- 1 The scheme will advise the landlord that it is now treating the issue as a dispute and will ask the landlord to provide evidence to justify their proposed allocation of the deposit. This could be tenancy agreements, check-in reports and inventories, check-out reports, photographs, letters and emails as well as invoices. This information will be made available via an online portal for the other parties to view. The landlord will be given 10 working days to submit the dispute resolution form and evidence they wish the adjudicator to consider.
- 2 Once the evidence has been received it will be placed on the online evidence portal and the tenant will be invited to view the evidence and to submit any evidence of their own. Remember the onus is on the landlord to prove that deductions should be made. The tenant has **10 working days** to submit their evidence from the end of the 10 working days allowed for the landlord to submit the dispute resolution form and evidence.
- 3 Once all of the evidence has been received by the scheme the case file with all of the submitted evidence will be passed to an adjudicator to review and come to their initial decision. The adjudicator has **20 working days**³¹ in which to reach a decision.

Coming to a decision

Once the adjudicator reaches a decision the scheme will write to the parties within 5 working days³² advising them of the decision and the facts on which the decision is based.

Adjudication reviews

The parties are then able to request a review of the decision on the basis that the adjudicator has made a mistake in law or in the facts of the case³³.

Each party has 10 working days from receiving the decision to request a review and in making this request the parties will need to set out on what grounds they feel that the adjudicator has erred in fact or law.

If the scheme decides that the request does not meet the criteria for a review it can reject it. The scheme will then make the payments to the parties as set out in the adjudication decision. This will take place within 5 working days after the end of the initial period of 10 working days allowed for a party to raise a request for a review.

However, if it feels that there may be grounds for a review it will write to the other party and ask for their views on the reasons given by the other party³⁴. In these circumstances the other party will be given 10 working days in which to make a response.

The scheme may then decide either to reject the review request or accept it. If the scheme accepts the request for a review it will refer the case to a different adjudicator who will be asked to review the case and consider the representations made by the parties in respect of the review request³⁵.

The new adjudicator will then review the case and either confirm the original decision or come to a revised one. This will be done within 10 working days and the decision notified along with the agreed payments within 5 working days of the final decision being reached. No further review requests are possible³⁶.

The Adjudication Review process

- 1** The adjudicator reviews the case and arrives at a decision. Within 5 working days all parties are notified of the decision and the reasons for it.
- 2** Parties have 10 working days in which to request a review on the grounds that an adjudicator has erred in fact or law.
- 3** If the scheme concludes that the request for a review does not comply with the Regulations it can reject the request and there is no further review allowed. Payments will be made to the parties in accordance with the adjudication decision once the 10 working day period for a review request has passed.
- 4** If it appears to the scheme that the review request may be permissible it will write to the other party giving 10 working days for them to make representations on the review request.
- 3** A different adjudicator reviews the case and issues a final review within 10 working days. Payments are made to the parties within 5 working days.

³² The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 33 (2)

³³ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 34 (1)

³⁴ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 34 (2)

³⁵ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 35 (1)

³⁶ The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012, Article 35 (3)

CHAPTER 6

Detailed guidance on dealing with disputes

Introduction

This chapter deals in more detail with how adjudicators deal with disputes. It is based largely on a joint publication produced by three tenancy deposit schemes in England and Wales in 2012³⁷ and updated in 2017.

Remember: the deposit is the tenant's money and any deduction from the deposit needs either to be agreed with the tenant or evidence provided to an adjudicator to justify the deduction if the matter is referred to the dispute resolution mechanism.

What are disputes about?

The Tenancy Deposit Scheme has dealt with over 125,000 tenancy disputes in England and Wales since 2007. The table below shows the main reasons for disputes.

Dispute	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
Cleaning	56%	53%	58%	57%	56%	54%	53%
Damage	43%	46%	51%	51%	51%	49%	49%
Redecoration	30%	29%	31%	32%	28%	31%	30%
Gardening	13%	14%	17%	16%	16%	16%	15%
Rent Arrears	17%	16%	19%	19%	20%	20%	18%

Source: TDS disputes data 2012-19

*Percentage of cases where claims arise 2018-19

As can be seen, cleaning and damage appears in almost half of all disputes. Redecoration, rent arrears and gardening are the other main reasons for disputes.

Understand the Regulations

It is important that you fully understand the Regulations and the various timescales involved.

The tenancy agreement

The tenancy agreement should set out clearly the contractual obligations of the parties and in particular should make it clear what deductions can be made from the deposit. For example, if the tenancy agreement does not allow a deduction to be made from a deposit for rent arrears, then an adjudicator will not be able to award such a deduction if the matter is referred to the dispute resolution process.

Inventories and schedule of condition at check-in and check-out

In order to prove that a deduction can be made from a deposit for changes in a property's condition it is very helpful for there to be a detailed inventory and schedule of condition at the start of the tenancy. This will document the condition of the property at the start of the tenancy and should be agreed with the tenant.

At the end of the tenancy there should also be a check-out report (similarly agreed with the tenant) which will set out the condition at the end of the tenancy. Without these key documents it is very difficult for a landlord to be able to show if the property has deteriorated during the course of the tenancy and if the deterioration is the tenant's responsibility.

Ideally, relevant photographs will accompany the check-in and check-out report and these should preferably be dated and signed by the tenants – or better still, embedded within the reports.

Our experience is that over 50% of disputes relate to cleaning and this is where a good inventory, check-in and check-out report will be helpful in justifying a deduction from the deposit.

TDS Northern Ireland does not require inventories or check-in/out reports to be produced by an independent third party. They can be done by the landlord or agent but it is important that they can be easily understood by an adjudicator if the matter enters the dispute resolution process. Any decision will only be as good as the inventory/check-in/check-out reports' content.

³⁷ A guide to deposits, disputes and damages (2017), TDS, MyDeposits, DPS

Photographic/video evidence

Many landlords feel that they need to send in photos and videos to support their claim for a deduction. In many cases these can be useful but ideally “before and after” photos should be sent to demonstrate any deterioration in the property’s condition. It is important that the date on which a photo/video has been taken is provided. It is also essential that the photograph is accompanied by text which shows the adjudicator what they are meant to be looking at; this is really important with videos and DVDs.

Invoices and estimates

A landlord will need to submit invoices or estimates to justify deductions being proposed from deposits. Ideally these should be cross referenced to the check-out report so that the adjudicator can see a clear link between the estimate/invoice and the check-out report at the end of the tenancy.

Types of evidence that it is useful to submit to adjudicators

The table below sets out the type of evidence it is useful to submit to adjudicators but it is not an exhaustive list.

Type of dispute	Evidence required
Cleaning	<ul style="list-style-type: none"> • Tenancy agreement permitting deductions from the deposit for cleaning. • Inventory/check-in which describes cleanliness at the start of the tenancy. • Check-out report which describes cleanliness at the tenancy end. • Letters/emails to and from tenants about the state of the property. • Invoices/estimates linked back to the check-out. • Before and after photographs and videos.

Type of dispute	Evidence required
Damage	<ul style="list-style-type: none"> • Tenancy agreement permitting deductions from the deposit for damage. • Inventory/check-in which describes condition of fixtures, fittings, deterioration etc at the start of the tenancy. • Check-out report which describes cleanliness at the tenancy end. • Letters to tenants about the state of the property. • Invoices/estimates linked back to the check-out. • Before and after photographs and videos.
Rent Arrears	<ul style="list-style-type: none"> • Tenancy agreement setting out the amount of rent due and frequency of payments and that the deductions from the deposit can be made for rent arrears. • Rent statement or schedule of payments received. • Bank statements showing rent paid and received.
Decoration	<ul style="list-style-type: none"> • Tenancy agreement permitting deductions from the deposit for damage to decoration. • Inventory/check-in which describes condition of decoration throughout at the start of the tenancy. • Check-out report which describes cleanliness at the tenancy end. • Letters to tenants about the decoration of the property. • Invoices/estimates linked back to the check-out. • Before and after photographs and videos.
Gardening	<ul style="list-style-type: none"> • Tenancy agreement permitting deductions from the deposit for deterioration in the garden. • Inventory/check-in which describes condition of fixtures, fittings, deterioration etc at the start of the tenancy. • Check-out report which describes cleanliness at the tenancy end. • Letters to tenants about the state of the garden. • Invoices/estimates linked back to the check-out. • Before and after photographs and videos (but bear in mind that the passing seasons will have an impact here).

Cleaning charges

Cleaning is a very common cause for a deposit dispute with tenants claiming that the property was not clean at the start of the tenancy or that it was not clear in the tenancy agreement what standard of cleaning they had to apply. It is really important that there is an accurate description and record of how clean the property is at the start of the tenancy. This needs to be sufficiently detailed to enable a proper “before and after” position statement to be drawn up.

Another reason for disputes is where a tenant feels that the proposed deductions for cleaning the property are excessive. Clearly it is usually quicker and cheaper to clean a one bedroom flat than a five bed roomed house. Similarly, cleaning one room that has been left in a dirty condition will be cheaper than having to clean the whole of the property. Any invoices and estimates need to relate to what is actually done and this is why adjudicators tend to consider that “standard cleaning charges” are unreasonable. The only exception to this is where they are set out clearly in a tenancy agreement and specifically agreed to in writing by the tenant.

In addition, if a tenancy has been let for some time there is likely to be an element of fair wear and tear. Landlords cannot claim for betterment and they will need to accept that over time there will be some deterioration that is not reasonable for the tenant to have to pay for.

Burden of proof

Because a tenancy deposit belongs to the tenant, the burden of proof rests on the landlord or agent who wishes to make a deduction. The presumption taken by the adjudicator is that the deposit should be returned to the tenant and it is up to the landlord or agent to provide evidence to justify the deductions. The burden of proof is a civil one in that the adjudicator has to decide on the balance of probabilities that the deduction should be made. Even if the landlord supplies evidence and the tenant makes no submissions at all that does not automatically mean that the money will be passed to the landlord. The landlord’s evidence will also have to convince the adjudicator. However, if the tenant accepts, for example that there was damage, but that the deductions sought by the landlord are unreasonable, the burden of proof may shift to the tenant to prove that they were unreasonable.

Inventories, check-in and check-out reports

The inventory is an accepted industry standard method of measuring the change in condition of a property during a tenancy, and for good reason. A well conducted inventory contains a level of detail that is hard to equal with other methods, including photographs and video, unless they are very well done. In addition, a good paper inventory, particularly if it is carried out by an independent clerk and signed by the parties, is a more certain guarantee of accuracy and veracity than other methods.

Photographs and videos often do not show property damage well because the quality of the photograph and the lighting are not suited to highlighting changes in colour and texture which are easily visible to the naked eye. In addition, it is hard to be sure of precisely when a video or photograph was actually taken even if it has time stamps on it as it is easy to change settings or alter such stamps after the fact. Also, there are inherent limitations with a photograph or piece of film, which cannot show what has been happening immediately before or after it is taken or what is outside the immediate frame. These issues make photographs and videos less reliable as evidence when used alone without the support of an inventory.

It is far easier for an adjudicator to deal with a properly set out inventory which itemises each part of the property and its contents and which shows clearly the change in their condition during the tenancy. Photographs and videos are often not taken of the same things at the start and finish of the tenancy and it is unreasonable to expect adjudicators to spend long periods of time looking through photographs taken from different angles or extended segments of video to spot changes in the condition of the property and its contents.

Therefore, while TDS Northern Ireland will accept photographs and videos as evidence, it usually considers them to be support to a fully detailed inventory rather than a replacement for it. Where a landlord or tenant is seeking to contradict the evidence of an inventory with photographs or videos then adjudicators will tend to prefer the evidence of the inventory (especially where it has been signed or otherwise approved by the party that seeks to undermine it) and will require significant, high-quality evidence to convince them to ignore that document.

CHAPTER 7

Joining TDS Northern Ireland

Landlords and agents can join TDS Northern Ireland by registering their details:

- via the TDS Northern Ireland website www.tdsnorthernireland.com; or
- phoning our dedicated Call Centre on 0300 037 3700.

Custodial scheme

Any landlord or letting agent who has to protect a deposit in Northern Ireland can register and protect a deposit in the custodial scheme (where the deposit is paid over to TDS Northern Ireland).

Insurance backed scheme

In the insurance backed scheme there are some restrictions as to who can join the scheme as the landlord/letting agent holds the deposit and TDS Northern Ireland has to insure this in the event that for whatever reason monies owing to the tenant are not paid when they are due.

As a result there are some restrictions imposed by the insurers.

Landlords can join if:

- they own the property (either personally or through their limited company);
- they are holding the deposit; and
- they have less than £100,000 in deposits registered with the scheme (if they want to protect more, any amounts over £100,000 will be subject to individual risk assessment by our issuers).

Letting agents can join if:

- they are regulated/bonded by RICS, Propertymark ARLA, Propertymark NAEA, Safeagent, or the Law Society;
- they hold the deposits in a ring fenced client account;
- they have Client Money Protection insurance via their regulated body;
- they offer customers access to an independent Ombudsman service.

CHAPTER 8

Dealing with sharers and joint tenants

TDS Northern Ireland recognises that there can be issues with sharers (such as students) in terms of deposit administration and dispute management. This Chapter sets out how TDS Northern Ireland approaches these issues.

Holding deposits or reservation fees

Often students (and other prospective tenants) are asked to pay a reservation fee or holding deposit. This enables the landlord or agent to take a property off the market. If the tenancy is entered into, the fee is often used as part of the tenancy deposit. If the prospective tenant withdraws, the fee is often non-returnable.

Holding deposits are not tenancy deposits for the purposes of the schemes discussed here and therefore do not need to be protected. If they are used to provide a deposit when the tenancy agreement is signed then they do need to be protected but only from the date the tenancy is signed and the deposit is formally handed over.

Deposits paid in instalments

Sometimes landlords will allow the tenant(s) to pay the deposit by instalments. In these cases it is important that a record is kept of what has been paid. Where tenancy deposits are paid in instalments, the protection must start as soon as the first payment is received by the landlord/agent.

In the **TDS Northern Ireland custodial scheme** the landlord can transfer the deposit paid to the scheme whenever each part has been received. The deposit showing in the custodial scheme account will be the total deposit paid and a revised certificate will be available to download from the website to pass to the tenant.

In the **TDS Northern Ireland insurance scheme** the issue is dealt with differently as the landlord holds the deposit. In these cases the tenancy agreement will record the total deposit to be paid and this is the amount which should be protected in the scheme. However, the tenancy agreement should record that the deposit will be paid in instalments and a clear audit trail should be kept showing payments made towards the deposit.

At the end of the tenancy if there is a dispute the scheme will ask the landlord to pay over the full deposit in dispute. If this is less than what has been collected then the landlord will need to demonstrate through his records what actually has been collected and this will need to be verified by the tenant.

Registration of joint landlords to use TDS Northern Ireland

When a landlord registers as a member of the TDS Northern Ireland insurance scheme, they must be the legal owner of the properties which they register. Where the property is owned jointly with another landlord, it is not necessary to register each of the other joint landlords' names.

TDS Northern Ireland will treat all landlords of a tenancy as being jointly and severally liable for the landlord's obligations and will treat the authority of any one joint landlord as binding on the others. This is irrespective of whether the deposit is registered with the custodial or insurance scheme.

TDS Northern Ireland will regard the landlord who completes the registration as the scheme user who has the authority to act on behalf of any other joint landlords. It is only therefore necessary for one landlord to register in order to protect a deposit with TDS Northern Ireland.

Deposit repayment process involving joint landlords

The registered member landlord will act on behalf of any joint landlords in authorising repayment of the deposit.

Dispute resolution involving joint landlords

The registered member landlord will act on behalf of any joint landlords during the dispute resolution process.

Lead tenants

Where a member registers a tenancy deposit with TDS Northern Ireland, either in the **custodial scheme** or **insurance scheme**, and it involves more than one tenant, the member will be asked to nominate one of the tenants as the lead tenant. The lead tenant will be authorised by all the joint tenants to act on behalf of them all when dealing with the protection of the deposit, the claim for its repayment at the end of the tenancy, and any dispute about it. This must be clearly set out in the tenancy agreement.

When protecting the deposit with TDS Northern Ireland, the landlord

will be asked to confirm that:

- all tenants have agreed to the appointment of the lead tenant;
- the lead tenant is aware of how TDS Northern Ireland will deal with joint tenants.

When the deposit has been registered, confirmation of deposit protection will be sent to all joint tenants. The member must send a tenancy deposit protection certificate to the tenants, which will show the names of all joint tenants and will highlight who the lead tenant is.

All joint tenants will receive a Deposit Repayment Number and may contact TDS Northern Ireland regarding their Deposit at any time during the period the Deposit is held by TDS Northern Ireland.

Any deposit for a tenancy involving joint tenants can only be registered with TDS Northern Ireland once. It is not possible to register the deposit in 'shares' individually for each joint tenant. Where the tenants pay different 'shares' of the deposit, it would be prudent for the landlord or agent to detail this in the tenancy agreement.

CUSTODIAL SCHEME

Responding to a Deposit Repayment Proposal from a Landlord

When TDS Northern Ireland receives a Deposit Repayment Proposal from a landlord, a copy of the proposal will be sent to all joint tenants.

TDS Northern Ireland will explain to all joint tenants that a response to the landlord's proposal must be received within 30 working days. If no response is received, payment will be made in accordance with the landlord's proposal.

The lead tenant will be asked to respond to the proposal on behalf of all the joint tenants within 30 working days.

If TDS Northern Ireland has not received a response to a landlord's proposal within 15 working days, the scheme will contact the other joint tenants and give them the opportunity to appoint a replacement lead tenant to continue the process and provide a response to the landlord's proposal within the 30 working days.

Proposal for Deposit Repayment from tenant(s)

All joint tenants will receive a Deposit Repayment Number (DRN) from TDS Northern Ireland. This will allow any tenant to log in to the website to check that their deposit is protected. Only the lead tenant will be able to apply for repayment of the deposit.

TDS Northern Ireland will normally expect to receive a Proposal for Deposit Repayment from the lead tenant. Any proposal received from the lead tenant will be sent to the other joint tenants.

If any of the other joint tenants wish to submit a Proposal for Deposit Repayment, they must first contact TDS Northern Ireland and apply to become replacement lead tenant. This can only be done after 15 working days.

Where a Proposal for Deposit Repayment has been submitted by a lead tenant or replacement lead tenant, TDS Northern Ireland will not be able to accept the proposal if a Proposal for Deposit Repayment has already been received from the landlord.

If TDS Northern Ireland has not received a proposal from the landlord, and the landlord disagrees with the lead tenant's proposal, the landlord may submit his own proposal, which will replace the lead tenant's proposal.

Change in lead tenant by the landlord

If the landlord wishes to nominate one of the other joint tenants to replace the lead tenant during the tenancy, he can do so online via the TDS Northern Ireland website, or by contacting TDS Northern Ireland. The landlord will only be able to nominate one of the other joint tenants registered with TDS Northern Ireland in relation to the tenancy. The landlord will be asked to confirm that:

- all tenants have agreed to the appointment of the replacement lead tenant;
- the replacement lead tenant is aware of how TDS Northern Ireland will deal with joint tenants;
- the landlord will indemnify TDS Northern Ireland against any claims from the joint tenants.

Once the landlord has completed the process, TDS Northern Ireland will contact all the parties confirming the change in lead tenant and issue a new tenancy deposit protection certificate showing the replacement lead tenants and other joint tenants.

Change in lead tenant by tenant(s)

Any changes to the lead tenant during the tenancy should be processed by the landlord. The tenants should discuss with the landlord any changes they wish to make in relation to the lead tenant.

At the end of the tenancy, any of the joint tenants can apply to TDS Northern Ireland to become a replacement lead tenant if:

- they disagree with a Proposal for Deposit Repayment submitted by the lead tenant and wish to submit their own proposal; or
- they are told by TDS Northern Ireland that no response to a landlord's Proposal for Deposit Repayment has been received and they wish to become lead tenant in order to respond on behalf of the tenants.

This application must be received by TDS Northern Ireland within 5 working days of the lead tenant's proposal being sent to all the joint tenants.

The appointment of a replacement lead tenant will take effect from the date TDS Northern Ireland receives their application as long as it has been properly completed.

Any tenant applying to become a replacement lead tenant must:

- confirm in writing that all tenants have agreed to their appointment as lead tenant;
- confirm in writing that he has made the other joint tenants aware of how joint tenants will be dealt with;
- indemnify TDS Northern Ireland against any claims from other joint tenants.

If a response to the landlord's Proposal for Deposit Repayment is received from the original lead tenant before the appointment of the replacement lead tenant has been confirmed, TDS Northern Ireland will regard the response from the original lead tenant as having been submitted on behalf of all the joint tenants.

TDS Northern Ireland will contact all the parties confirming the change in lead tenant.

Repayments

How does TDS Northern Ireland repay the deposit to joint landlords and joint tenants?

Irrespective of whether the deposit is protected through the custodial or insurance scheme, TDS Northern Ireland will pay any deposit due to the parties as set out in the tenancy agreement.

The only exception to this will be if a different allocation of the deposit repayment is authorised in writing and signed by all the tenant(s), or where otherwise required by operation of law (for example where the tenants separate). For payments due to landlords or agents, we will pay to the registered member. It will be for the member landlord to share any award with other joint landlords.

If there is no agreement (either by separate written agreement or underlying tenancy agreement), then TDS Northern Ireland will assume the deposit has been paid jointly and severally by the tenants and distribute the deposit in equal shares to the tenants. Where a payment is due to the landlord, and there is more than one named on the tenancy agreement, any payment will be made to the registered member landlord.

TDS Northern Ireland may also, at its sole discretion, consider evidence produced by tenants to support a different allocation of deposit repayment, for example, where such evidence shows that originally the deposit was not paid equally by tenants and should therefore not be repaid in equal shares. The landlord and agent acting on their behalf will be notified of the payment made.

CHAPTER 9

Getting it right

This section sets out best practice in tenancy deposit protection to ensure that landlords do not breach the legislation.

Setting up the tenancy

It is vital that, at the start of any tenancy, the tenancy is correctly set up, and the right things are done to comply with the tenancy deposit protection Regulations. If mistakes are made at this stage the deposit may not be protected, the landlord may be liable for a fixed penalty notice and access to the dispute resolution process may not be available.

- **Tenancy agreement clauses:** make sure that the tenancy agreement sets out details of the deposit, who is protecting it and what the deposit can be used for. A failure to specify permitted deductions will mean that deductions not permitted by the tenancy agreement will be disallowed by the adjudicator in the event of a dispute.
- **Protect the deposit within 14 calendar days of its receipt:** by lodging it with the custodial scheme or registering it with the insurance scheme. A failure here will make the landlord liable for a fixed penalty of 3 times the deposit or a fine of £20,000.
- **Give Prescribed Information to the tenant(s) within 28 calendar days of receipt of the deposit:** the tenancy deposit protection Regulations requires that the tenant is given certain Prescribed Information by the landlord within 28 calendar days of the receipt of the deposit together with the scheme leaflet. A failure here will make the landlord liable for a fixed penalty of 3 times the deposit or a fine of £20,000.
- **Give the tenancy deposit protection certificate to the tenant:** TDS Northern Ireland provides a certificate for download when a tenant's deposit is registered on the TDS Northern Ireland database. TDS Northern Ireland regards this certificate as a very important document as it provides certainty to the tenant that the deposit really has been lodged with TDS Northern Ireland. The certificate also provides the tenant with the deposit registration number used by TDS to identify the deposit. TDS Northern Ireland therefore expects that the tenancy deposit protection certificate will be given to the tenant.

- **Lettings Agents protecting the deposit in the insurance scheme:** tenancy deposits which are to be insured with the scheme must, at the minimum, be held in a ring-fenced deposit account. This means that the money must be held in an account that is designated with the holding bank as a client account. The bank should be informed of this status in writing and asked to acknowledge that notification. It is normal for the bank to specifically name the account as a 'client account' to denote its status. Once the bank has been notified of the client account status it will make sure that monies are not mixed between the main and client accounts and will generally not apply charges to the client account.
- **Stakeholder status:** TDS Northern Ireland requires that where a deposit is being held by a member who is acting as an agent on the behalf of the landlord, that member holds the deposit as a "stakeholder". This means that the agent is not free to take the landlord's instructions as regards the apportionment of the deposit without reference to the tenant.
- **Inventory:** without a comprehensive inventory, it can be very hard to persuade an adjudicator that the deductions from the deposit sought by the landlord are justified. Indeed, without a properly prepared inventory, check-in and check-out report, it is much more difficult to prove the property's condition at the start and end of the tenancy and the extent to which the property may have deteriorated.
- **Membership:** before accepting deposits into the TDS Northern Ireland insurance scheme it is necessary for the agent/landlord to be accepted as a member of the scheme.
- **Prepare a written tenancy agreement:** It is practically impossible to comply with the requirements of the law and the secondary legislation without providing the tenant with a tenancy agreement, or at the very least, a statement of tenancy terms (which the law requires), including the Prescribed Information.

During the tenancy

- **Obey the tenancy agreement:** the landlord and tenant should obey the terms of the tenancy agreement. This relatively simple statement is in many ways the hardest part of the process and goes to the heart of the reason for the introduction of tenancy deposit protection Regulations. It is a failure to obey the conditions of the tenancy agreement that leads to most disputes between landlords and tenants. For example, the tenant damaging the property or its contents, or failing to pay the rent, or the landlord not keeping the property in a proper state of repair.

- **Continue to hold the deposit in accordance with the rules of TDS Northern Ireland:** this means that the member must continue to hold the deposit separately from other monies, and as a stakeholder if they are acting as an agent, not allocate that money to any items during the tenancy. The deposit money must be held untouched until the tenancy has ended and not used to make up missing or deficient rent payments.
- **Keep good records:** keeping thorough records of correspondence and emails will be very useful in the event of a dispute.

End of the tenancy

- **Tell the tenant about any proposed deductions:** at the end of the tenancy the member's primary obligation is to tell the tenant about the deductions that they intend to make from the deposit. This will normally require a checkout inspection and probably some consultation with the landlord to ascertain their views on proposed deductions.
- **Do not make deductions without the tenant's consent:** landlords and agents cannot make any deductions from the deposit without the tenant's consent and cannot ignore areas of dispute over deductions on the basis that the tenancy agreement gives an explicit right to make these deductions. The legislation and the rules of TDS Northern Ireland are clear on both issues. No deductions can be made from a tenancy deposit without the explicit consent of the tenant, or an adjudication from TDS Northern Ireland, or a decision from the Courts - irrespective of the wording in the tenancy agreement. So, for example, some agents have deducted check-out fees prior to remitting a deposit to TDS Northern Ireland for adjudication (even though the tenant has made clear that they are disputing all deductions), on the basis that there is an explicit clause in the tenancy agreement which states that the tenant will pay for the check-out. The tenant can still challenge such a deduction.
- **Return the undisputed deposit promptly to the tenant:** if there are to be no deductions from the deposit or any proposed deductions have been agreed, the money must be returned to the tenant within 5 working days of agreement being reached.
- **Provide evidence to TDS Northern Ireland in the event of a dispute:** if there is a dispute, provide TDS Northern Ireland with evidence to support or challenge any proposed deductions.

REGULATIONS

This document sets out the detailed Regulations relating to Tenancy Deposit Protection in Northern Ireland together with a commentary.

Part 1	COMMENTARY
<p>Citation and commencement</p> <p>1. These Regulations may be cited as the Tenancy Deposit Schemes Regulations (Northern Ireland) 2012 and shall come into operation on 1 November 2012.</p>	<p><i>The Regulations came into force on 1 November 2012 but did not effectively commence until 1st April 2013 when the three approved tenancy deposit schemes opened.</i></p>
<p>Interpretation</p> <p>2. In these Regulations -</p> <p>“approved tenancy deposit scheme” means a scheme which has been approved by the Department for the purposes of safeguarding deposits paid in connection with private tenancies; “designated account” means an account which cannot contain any sums other than:</p> <p>(a) the whole or any part of tenancy deposits paid into it;</p> <p>(b) such sums of money belonging to the scheme administrator as may be necessary for the purpose of opening the account;</p> <p>(c) such sums of money as may be necessary to replace any sum which by error has been withdrawn from the account; and</p> <p>(d) interest;</p> <p>“dispute regulation mechanism” means the mechanism for resolving disputes specified in regulation 30;</p> <p>“the Order” means the Private Tenancies (Northern Ireland) Order 2006 (N.I. 10);</p> <p>“working day” means a day that is not a Saturday, Sunday or a public holiday.</p>	<p><i>These are the general definitions of terms in the Regulations.</i></p> <p><i>Throughout the Regulations time limits are defined as working days.</i></p>

Part 2	COMMENTARY
<p>Appointment of Scheme Administrator</p> <p>3. (1) The Department may appoint a person who has applied to the Department to establish and maintain a tenancy deposit scheme of a description prescribed in Part 3 where the Department has approved that application under the Regulations.</p> <p>(2) The Department must not approve an application where the applicant: –</p> <p>(a) has been convicted of any offence involving fraud or dishonesty;</p> <p>(b) is a bankrupt; or</p> <p>(c) is disqualified from being a director of a company.</p>	<p><i>The Department for Social Development has appointed Tenancy Deposit Scheme Northern Ireland Ltd (trading as TDS Northern Ireland) as one of three approved schemes. TDS Northern Ireland is a wholly owned subsidiary of the Dispute Service Ltd, whose objects are to offer a tenancy deposit scheme in Northern Ireland and with a free alternative dispute resolution service. Section 3(2) says that no scheme can be approved if the applicant has committed these offences or is otherwise disqualified.</i></p>
<p>Coming into force of a scheme and amendments</p> <p>4. Upon application by a person approved under regulation 3 neither a tenancy deposit scheme nor any amendment to that scheme shall come into force unless approved by the Department.</p>	<p><i>This requires the Department to both approve schemes and agree to any amendment to schemes.</i></p>
<p>Approval of a tenancy deposit scheme</p> <p>5. The Department shall not approve a tenancy deposit scheme where: –</p> <p>(a) the scheme is not of a description prescribed in Part 3 (description of schemes);</p> <p>(b) the scheme administrator and the scheme do not satisfy the requirements of Part 4 (financing and accountability requirements);</p> <p>(c) the scheme administrator does not satisfy the requirements of Part 6 (dispute resolution);</p>	<p><i>This section sets out the approval criteria for an approved tenancy deposit scheme. Schemes need to meet the requirements relating to the scheme description, the financing obligations, the dispute resolution process, customer services and complaints.</i></p>

Part 2	COMMENTARY
<p>(d) the scheme does not include a customer service facility which is available to users of tenancy deposit schemes for the purposes of, in particular:—</p> <p>(i) handling enquiries in relation to the tenancy deposit scheme whether made by telephone, letter, or electronic means; and</p> <p>(ii) dealing with complaints about the tenancy deposit scheme, including complaints about the service provided by the scheme administrator.</p> <p>(e) the tenancy deposit scheme is not available to all landlords, including those living outside of the Northern Ireland jurisdiction but operating in Northern Ireland, and their tenants.</p>	<p><i>In addition, the schemes need to be available to all landlords who operate in Northern Ireland regardless of where they live.</i></p>

Part 3: Description of Schemes	COMMENTARY
<p>Types of schemes</p> <p>6. A tenancy deposit scheme shall be either -</p> <p>(a) a custodial scheme, as specified in regulation 7; or</p> <p>(b) an insurance scheme, as specified in regulation 8.</p>	<p><i>There are two types of scheme: a custodial scheme and an insurance backed scheme. TDS Northern Ireland operates both types of scheme.</i></p>
<p>Custodial scheme</p> <p>7. A custodial scheme is a scheme under which -</p> <p>(a) no fee is payable by the landlord to the scheme administrator in respect of participation in, or otherwise in connection with, the scheme;</p> <p>(b) the tenancy deposit is paid by the landlord to the scheme administrator;</p> <p>(c) the scheme administrator pays the tenancy deposit into an account, known as a designated account, which is maintained for the purpose of holding accounts; and</p> <p>(d) the tenancy deposit is held in a designated account until it falls to be repaid in accordance with these Regulations.</p>	<p><i>With the custodial scheme the deposit is paid over by the landlord or agent to the scheme free of charge.</i></p> <p><i>The scheme keeps these deposits in a ring-fenced designated account where it remains until the scheme repays it in accordance with the Regulations.</i></p>

Part 3: Description of Schemes	COMMENTARY
<p>Insurance scheme</p> <p>8. An insurance scheme is a scheme under which -</p> <p>(a) the tenancy deposit is retained by the landlord and a fee and any contribution towards insurance is payable by the landlord to the scheme administrator in respect of participation in the scheme on the basis that, at the end of the tenancy:</p> <p>(i) such amount in respect of the deposit as may be agreed between the tenant and the landlord shall be repaid by the landlord to the tenant; and</p> <p>(ii) any disputed amount which is not so repaid shall, in accordance with directions given by the scheme administrator, be paid by the landlord into a designated account held by the scheme administrator;</p> <p>(b) amounts paid into a designated account under regulation 8(a)(ii) are kept by the Scheme administrator in the account until such time as, in accordance with the scheme, it falls to be paid (wholly or in part) to the landlord or tenant;</p> <p>(c) the landlord undertakes to reimburse the scheme administrator, in accordance with directions given to the landlord by the scheme administrator, such amounts of the deposit paid to the tenant by the scheme administrator, other than amounts paid to the tenant as mentioned in paragraph 8(a)(ii); and</p> <p>(d) insurance is maintained by the scheme administrator in respect of failure by a landlord to comply with directions under regulation 8(a)(ii).</p>	<p><i>TDS Northern Ireland's insurance scheme operates in accordance with Regulation 8.</i></p> <p><i>(a) The deposit is held by the landlord and a fee is paid to TDS Northern Ireland to protect the deposit. Participation in the scheme is on the basis that the landlord will pay to the tenant the amount of the deposit that is agreed between them at the end of the tenancy. Any disputed amount must then be paid by the landlord to TDS Northern Ireland;</i></p> <p><i>(b) Disputed deposits paid to TDS Northern Ireland are retained by it in a designated account until it is repaid by the scheme;</i></p> <p><i>(c) The landlord will be required to reimburse to the scheme any amounts which it pays to the tenant;</i></p> <p><i>(d) TDS Northern Ireland has insurance in place to reimburse the scheme in the event of a failure by the landlord to comply with the directions under regulation 8(a)(ii).</i></p>

Part 4: Financing and Accountability Requirements

COMMENTARY

Operational arrangements

9. (1) A scheme administrator of a custodial tenancy deposit scheme must -

- (a) ensure that the scheme is capable of covering the cost of its operations using only its own finances, including interest;
- (b) have access to sufficient working capital to fund the establishment and operation of the tenancy deposit scheme from the date of approval until the date on which the tenancy deposit scheme becomes self-financing;
- (c) have appropriate strategies in place in relation to the investment of tenancy deposits and accrued interest to support the sustainability of the tenancy deposit scheme;
- (d) have contingency measures and procedures in place to safeguard, and ensure the repayment in accordance with these Regulations of, tenancy deposits held in designated accounts in the event that the tenancy deposit scheme fails or otherwise ceases to be operational; and
- (e) have appropriate procedures in place to identify if the scheme is likely to fail or otherwise cease to be operational, and will give notice to:
 - (i) all landlords and tenants whose deposits are held by the scheme; and
 - (ii) the Department.

These are the requirements under which a custodial scheme must operate.

9(1) (a) says that the scheme has to be self-financing using the interest received on deposits.

(b) requires the scheme to have access to working capital to fund the scheme until it becomes self-financing.

(c) requires the scheme to have clear investment strategies in place to deliver sufficient funding for the scheme.

(d) requires schemes to have in place detailed contingency plans in the event of a scheme failure.

(e) requires schemes to have procedures in place to identify failure and to be able to properly advise all landlords and tenants as well as the Department if necessary.

Operational arrangements

9. (2) A scheme administrator of an insurance based tenancy deposit scheme must -

- (a) make provision as to the requirements that are to be complied with by the Landlord where:
 - (i) a landlord wishes to retain a tenancy deposit under the scheme; or
 - (ii) 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 the scheme;

These are Regulations which relate to the operation of an insurance based scheme.

(a) requires schemes to set out clear rules which the landlord needs to comply with if they wish to retain a deposit with the scheme. The rules also need to cover what needs to happen if a landlord wishes to switch the deposit to another scheme.

Part 4: Financing and Accountability Requirements

COMMENTARY

(b) provide that any landlord by whom a tenancy deposit is retained under the scheme shall give the scheme administrator an undertaking that, if the scheme administrator directs the landlord to pay to the scheme administrator any amount in respect of the deposit in accordance with regulation 24(4) to (8), the landlord will comply with such a direction;

(c) maintain in force adequate insurance in respect of failures by a landlord by whom a tenancy deposit is retained under the scheme to comply with such directions;

(d) make provision enabling the scheme administrator to determine that, by virtue of a landlord's failure to comply with a relevant obligation, a tenancy deposit which has previously been retained by the landlord under the scheme (and which relates to a tenancy which has not ended) is to cease to be retained under the scheme in accordance with regulation 28;

(e) before making a determination, give a notice to the landlord stating that the scheme administrator proposes to make such a determination and the reasons for the proposal;

(f) ensure that, where the scheme provides for landlords participating in the scheme to be members of the scheme, the scheme may provide for a landlord's membership to be terminated by the scheme administrator in the event of any such failure on the part of the landlord to comply with a relevant obligation;

(g) before determining that the landlord's membership be terminated, give a notice to the landlord in accordance with regulation 28, stating that the scheme administrator proposes to make such a determination and the reasons for the proposal;

(h) on the termination of a landlord's membership, ensure that:

- (i) any tenancy deposit previously protected by the landlord under the scheme in relation to tenancies which had not ended before the termination, cease to be protected under the scheme; but

(b) if there is a dispute about the return of the deposit the scheme has rules which require the landlord to pay the scheme any disputed deposit that the scheme requires.

(c) in the event that the landlord fails to pay over the disputed deposit the scheme has to have insurance in place to cover any payments it makes in these circumstances to the tenants.

(d) requires the schemes to have in place a process where it can stop protecting a deposit if a landlord fails to comply with a relevant obligation.

However before doing this (e) requires the scheme to provide a notice to the landlord setting out what it proposes to do and why.

(f) requires schemes to enable the landlord's membership of the scheme to be ended if the landlord fails to comply with an obligation.

(g) says that if membership is to be ended the scheme must issue a notice to the landlord setting out why it intends to do so.

(h) says that if a membership is terminated then any deposit on a tenancy which is not ended will no longer be protected (although the scheme will continue to cover those tenancies which ended before membership ended).

Part 4: Financing and Accountability Requirements

COMMENTARY

(ii) 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 of the landlord's membership;

(i) ensure that the landlord on termination of membership of a scheme pays to the scheme administrator any balance still owing in respect of:

(i) fees charged by the scheme; and

(ii) contributions in respect of the cost of the insurance referred to in sub-paragraph (c).

(i) on termination the landlord still has to pay any fees owed to the scheme or any outstanding deposit insurance costs.

Designated accounts

10. (1) A scheme administrator shall hold one or more designated accounts for the purposes of regulation 9.

(2) A scheme administrator must ensure that:

(a) tenancy deposits received by the scheme administrator are paid without delay into the relevant designated account;

(b) the sum at the credit of the designated account, or where there are more such accounts than one, the total of the sums at the credit of those accounts, is not at any time less than the total of the amounts of tenancy deposits held by the tenancy deposit scheme; and

(c) each tenancy deposit held in a designated account is at all times attributable to the landlord on whose behalf it was paid into the account, as well as to the tenant to whom it relates.

(3) A scheme administrator may only withdraw sums from a designated account for the following purposes:

(a) repayment of tenancy deposits in accordance with these Regulations; or

(b) meeting the costs of the scheme, where this is a custodial scheme, from interest accrued.

TDS Northern Ireland operates two designated accounts for:

- *Custodial scheme which will contain all deposits paid to it;*

- *Insurance scheme which will contain all disputed deposits transferred to it.*

These accounts are ring-fenced and TDS Northern Ireland will only withdraw monies to repay tenancy deposits and to transfer interest accrued from the custodial accounts.

The accounts are reconciled daily to ensure that the sums held in the designated accounts match the total number of deposits held and disputes monies held.

(3) requires that the scheme may only access these accounts to pay out deposits or to withdraw the interest on deposits.

Part 5: Procedures for safeguarding and repaying tenancy deposits

COMMENTARY

Requirement on landlord to supply information

11. A scheme administrator must accept any tenancy deposit offered to him under a scheme by a landlord who has received the deposit in connection with a tenancy.

This Regulation requires schemes to accept a tenancy deposit (either in terms of the actual deposit or through insuring the deposit). The Scheme Rules will make it clear that the deposit must be transferred or registered with the scheme within 14 days of receipt of the tenancy deposit.

12. Where a landlord safeguards a tenancy deposit in a scheme, he must:

(a) within 14 days of receipt of the deposit furnish the information specified in paragraph 1 of Schedule 1, to the scheme administrator; and

(b) within 28 days of receipt of the deposit furnish the information specified in paragraph 3 of Schedule 1 to the tenant.

In transferring the deposit or insuring it with the scheme, the Scheme Rules will require the landlord to supply the scheme with the detail as set out in Schedule 1 paragraph 1.

This will include:

(a) *the amount of the deposit paid and the full address to which it relates, including the post code;*

(b) *the landlord's full name and date of birth;*

(c) *the landlord's contact details to include the address, telephone number(s) including mobile telephone number and a contact email address;*

(d) *the landlord's correspondence address (must be in Northern Ireland) if different from (c);*

(e) *the name, address and contact number of any agent acting on the landlord's behalf; and*

(f) *confirmation of the tenant's contact details including confirmation of the contact details of any relevant person acting on behalf of the tenant.*

The scheme will transfer some of this information onto a Tenancy Deposit Protection Certificate which will confirm to the tenant that the deposit had been registered. Regulation 12(b) requires the landlord to supply Prescribed Information to the tenant within 28 days of the receipt of the deposit.

Part 5: Procedures for safeguarding and repaying tenancy deposits

COMMENTARY

Protection of deposits in a scheme

13. On acceptance of a tenancy deposit under regulation 11 and receipt of the information furnished under regulation 12, the scheme administrator must:

- (a) safeguard the tenancy deposit into a tenancy deposit scheme;
- (b) issue written confirmation to the landlord confirming the amount of the deposit received and that it has been safeguarded with a scheme; and
- (c) provide to the landlord the information specified in paragraph 2 of Schedule 1 and the information leaflet specified in regulation 37.

Once a deposit has been registered in a scheme the landlord will be notified that the deposit has been safeguarded with the scheme.

In addition the landlord will be given the required information and the scheme Leaflet to enable the landlord to supply the tenant with the Prescribed Information.

Protection of deposits in a scheme

14. (1) A landlord may apply for repayment of a tenancy deposit from a scheme for the purpose of transferring it to another scheme.

- (2) On receipt of such an application, the scheme administrator must:
- (a) if so requested, pay the tenancy deposit to the other scheme on the landlord's behalf; or

(b) in any other case, repay the tenancy deposit to the landlord.

(3) The scheme administrator must notify the tenant in writing of the date on which the deposit was paid to the other scheme or repaid to the landlord.

Regulation 14 is addressed in the Scheme Rules.

Under the Scheme Rules landlords in the custodial scheme can apply to transfer the deposit direct into another scheme or back to the landlord. The landlord has the obligation to re-protect the deposit immediately. In any such case the tenant will be notified of the date the action was taken by the scheme so that they are aware as to what has happened to the deposit.

Part 5: Procedures for safeguarding and repaying tenancy deposits

COMMENTARY

Application for repayment of a deposit – custodial schemes

15. (1) A landlord must apply to the scheme administrator for repayment of any tenancy deposit paid to a scheme on, or as soon as is reasonably practicable after the end of the tenancy.

(2) The landlord's application must specify the date on which the tenancy ended and the amount of the tenancy deposit which in the view of the landlord, should be:

- (a) repaid to the tenant; and
- (b) repaid to the landlord.

(3) The tenant may apply for repayment of a tenancy deposit to the scheme administrator and must specify the date on which the tenancy ended and the amount of the tenancy deposit which in the view of the tenant, shall be:

- (a) repaid to the tenant; and
- (b) repaid to the landlord.

(4) If an application for repayment has been made by the landlord in accordance with paragraph (1), or is made within 30 working days of the tenant's application, the scheme administrator must not progress the tenant's application.

The scheme Rules set out in detail how repayment of a deposit will work in the custodial scheme.

The scheme will require the landlord to advise the scheme via the website or by post of the date the tenancy ended and the proposed allocation of the deposit.

Similarly the tenant may make a similar application for repayment.

If the landlord has made an application for repayment or one is received within 30 days of the tenant application the tenant's application will not be pursued.

Part 5: Procedures for safeguarding and repaying tenancy deposits

COMMENTARY

16. (1) On receipt of an application from a landlord under regulation 15(1), the scheme administrator must write to the tenant to:

- (a) notify the tenant of that application, including details of the amounts specified under regulation 15(2);
- (b) require the tenant to contact the scheme administrator to confirm either that the tenant agrees to repayment as applied for by the landlord or that the tenant disputes the amounts specified;
- (c) require that the tenant notify the scheme administrator of the amount of the tenancy deposit which the tenant considers should be repaid to the tenant (the "disputed amount"), if different from the amount specified;
- (d) explain the effect of regulation 18; and
- (e) inform the tenant of the availability of the dispute resolution mechanism and of the procedures for requesting a referral as described in Part 6.

(2) Where an application is accepted from a tenant under regulation 15(3), the scheme administrator must write to the landlord to:

- (a) notify the landlord of that application, including details of the amounts specified under regulation 15(3);
- (b) require the landlord to contact the scheme administrator to confirm either that the landlord agrees to repayment as applied for by the tenant or to submit an alternative application in accordance with regulation 15(2); and
- (c) explain the effect of regulation 19.

Repayment by the scheme administrator where there is no disputed amount

17. (1) Paragraph (2) applies where the scheme administrator receives confirmation as mentioned in regulation 16(1)(b) or 16(2)(b) that repayment of the tenancy deposit as applied for is agreed.

If the landlord applies for repayment the scheme will write to the tenant (by post/email) advising of the landlord's proposal. The tenant will be asked to agree the allocation or advise on how they feel it should be allocated.

They will also be advised as to what happens if they fail to respond and that there is a free dispute resolution mechanism available to deal with the dispute and how the matter can be escalated to this dispute resolution mechanism.

If the tenant applies for repayment the scheme will write to the landlord (by post/email) advising of the tenant's proposal. The landlord will be asked to agree the allocation or advise on how they feel it should be allocated.

They will also be advised as to what happens if they fail to respond and that there is a free dispute resolution mechanism available to deal with the dispute and how the matter can be escalated to this dispute resolution mechanism.

Where the scheme is advised by the tenant or the landlord that there is no disputed amount, the scheme will make the payment in accordance with the agreed allocation within 5 working days of receiving confirmation.

Part 5: Procedures for safeguarding and repaying tenancy deposits

COMMENTARY

(2) The scheme administrator must, within 5 working days of receipt of confirmation that repayment of the tenancy deposit as applied for is agreed, repay the tenancy deposit in accordance with the amounts specified in the application.

18. (1) Paragraph (2) applies where the scheme administrator does not receive confirmation that repayment of the tenancy deposit as applied for is agreed, and notification from the tenant as required by regulation 16(1)(b) and (c) within 30 working days of writing to the tenant in accordance with regulation 16(1) is not received.

(2) The scheme administrator must:

- (a) if the amount specified under regulation 15(2)(a) is more than zero, hold that amount in a designated account (in case it is applied for by the tenant at a later date); and
- (b) repay to the landlord the amount specified under regulation 15(2)(b) within 5 working days of the expiry of the 30-working day period.

19. (1) Paragraph (2) applies where the scheme administrator does not receive confirmation that repayment of the tenancy deposit as applied for is agreed, and application from the landlord as required by regulation 16(2)(b) within 30 working days of writing to the landlord in accordance with regulation 16(2) is not received.

(2) The scheme administrator must repay the full amount of the tenancy deposit to the tenant within 5 working days of the expiry of the 30 working day period.

If the tenant fails to respond to the landlord's suggested allocation as advised by the scheme within 30 working days, the scheme will pay the landlord the amount allocated to the landlord and will retain the tenant's share in the designated account. This will be done within 5 working days.

If the landlord fails to respond to the tenant's suggested allocation as advised by the scheme within 30 working days, the scheme will pay the tenant the full amount of the tenancy deposit. This will be done within 5 working days.

Part 5: Procedures for safeguarding and repaying tenancy deposits

COMMENTARY

Repayment by the scheme administrator where there is a disputed amount

20. (1) Where the scheme administrator receives notification from the tenant of a disputed amount as mentioned in regulation 16(1)(c), the scheme administrator shall hold that amount in a designated account until the dispute is resolved.
- (2) If any proportion of the tenancy deposit is undisputed, the scheme administrator must repay that amount as soon as is reasonably practicable.
- (3) The scheme administrator shall manage the disputed amount of tenancy deposit in accordance with regulations 21 to 23.

If the scheme is advised by the tenant that they dispute the proposed allocation then the scheme shall retain the disputed amount pending the resolution of the dispute, and repay any undisputed amount of the deposit as soon as is reasonably practicable.

21. If the scheme administrator receives notification that the dispute has been resolved by agreement between the landlord and tenant, the scheme administrator must repay the tenancy deposit in accordance with that agreement within 5 working days.

If the scheme is advised by both parties that the dispute has been resolved, it will pay the deposit out in accordance with the agreement within 5 working days of such notification.

22. (1) Paragraphs (2) and (3) apply where, following receipt of the notification referred to in regulation 20(1), the administrator does not receive from the tenant a request for, or consent to, use of the dispute resolution mechanism made available by the scheme administrator and the tenant does not otherwise agree with the landlord the amounts to be repaid.
- (2) On the 15th working day after receipt of the notification referred to in regulation 20(1), the scheme administrator must write to the tenant to explain the effect of paragraph (3).

If the tenant does not agree the allocation but does not request or give consent to dispute resolution, the scheme will write to the tenant after 15 working days to advise them that within 30 days of their original notification they will pay out the dispute in accordance with the landlord's application unless they agree to dispute resolution.

Part 5: Procedures for safeguarding and repaying tenancy deposits

COMMENTARY

- (3) On the 30th working day after receipt of the notification referred to in regulation 20(1), the scheme administrator must:

(a) advise the tenant that the tenancy deposit is to be repaid in accordance with the amounts specified in the landlord's application; and

(b) within the next 5 working days, repay the tenancy deposit in accordance with that application.

23. (1) Paragraphs (2) and (3) apply where the landlord and tenant agree to use the dispute resolution mechanism made available by the scheme administrator.

Where the dispute resolution process is to be used but the scheme is advised that the dispute has been abandoned, then the scheme will pay out in accordance with the agreement or in any other case in accordance with the landlord's original application within 5 working days.

- (2) If the scheme administrator is notified that the dispute has been abandoned before a decision has been made by the adjudicator, the scheme administrator must, within 5 working days of that notification, repay the tenancy deposit:

(a) where the parties have reached an agreement, in accordance with that agreement; or

(b) in any other case, in accordance with the amounts specified in the landlord's application.

- (3) On receipt of an adjudicator's decision under Part 6, the scheme administrator must allow 10 working days for receipt of any request for review of that decision and, unless such request is received in that period, shall then repay the tenancy deposit in accordance with that decision within the following 5 working days.

If a case proceeds to adjudication, payment will not be made before 10 working days after the decision is notified to the parties in order to allow requests for review of the decision to be made. If no request is made, payment will be made within the following 5 working days.

Part 5: Procedures for safeguarding and repaying tenancy deposits

COMMENTARY

24. (1) An insurance scheme must provide that, where:

- (a) a tenancy deposit has been protected by the landlord under the scheme, and
- (b) the tenancy has ended, and
- (c) there is no dispute, the landlord must repay to the tenant the full amount of the deposit as requested by the tenant within 5 working days beginning with the date on which the request was made.

(2) Paragraphs (4) to (9) apply where the tenant notifies the scheme administrator that:

- (a) the tenant has requested the landlord to repay the whole or any part of the deposit; and
- (b) the amount in question ("the outstanding amount") has not been repaid to the tenant within the period of 5 working days beginning with the date on which the request was made.

(3) Where a tenant gives notice under paragraph (2) the tenant must also indicate whether he consents to a dispute as to the amount to be repaid being resolved through the use of the dispute resolution mechanism.

(4) On receiving a notification in accordance with paragraph (2), the scheme administrator must direct the landlord:

- (a) to pay an amount equal to the outstanding amount into a designated account held by the scheme administrator; and
- (b) to do so within the period of 5 working days beginning with the date on which the direction is received by the landlord.

(5) The following paragraphs apply where the tenant or the landlord subsequently notifies the scheme administrator:

- (a) that the tenant and landlord have agreed that such an amount is to be paid either wholly to one of them or partly to the one and partly to the other; or

The Scheme Rules will require members to pay out the deposit where there is an agreement between the landlord and tenants, then the landlord should pay out the deposit in accordance with the agreement within 5 working days of the tenant making the request.

If a tenant advises the scheme that they have requested a repayment and that this has not been made within 5 working days, then the scheme will require the landlord to pay to the scheme the amount which the tenant says is outstanding to the tenant. This should be paid to the scheme within 5 days of the request. When the tenant notifies the scheme that the outstanding amount has not been paid they are also required to advise if they consent to the matter being referred to the dispute resolution mechanism.

Part 5: Procedures for safeguarding and repaying tenancy deposits

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(b) that a person acting as an adjudicator under Part 6 has made a decision that the outstanding amount is payable either wholly to one of them or partly to one and partly to the other.

(6) If the scheme administrator is satisfied as to the matters mentioned in paragraph (5) (a) or (b) as the case may be, the scheme administrator must:

- (a) pay to the tenant any amount due to him in accordance with the adjudicator's decision or an agreement between the tenant and the landlord and, to the extent possible, pay that amount out of any amount held by the scheme administrator by virtue of paragraph (4); and
- (b) comply with paragraph (7) or (8), as the case may be.

(7) Where any amount held by the scheme administrator by virtue of paragraph (4) is more than any amount due to the tenant in accordance with the adjudicator's decision or agreement, the scheme administrator must pay the balance to the landlord.

(8) Where any amount so held by the scheme administrator is less than any amount so due to the tenant, the scheme administrator shall direct the landlord to pay him the difference within the period of 5 working days beginning with the date on which the direction given by the scheme administrator is received by the landlord.

(9) The scheme administrator must pay any amounts required to be paid to the tenant or the landlord as mentioned in paragraph (6)(a) or (7) within 5 working days beginning with the date on which the notification is received by the scheme administrator.

(10) The landlord must comply with any direction given in accordance with paragraphs (4) or (8).

If subsequently the landlord or tenant advise that agreement has been reached, the scheme, once confirmed, will pay the disputed outstanding amount to the parties in accordance with the agreement within 5 working days.

Similarly, once an adjudicator reaches a final decision a payment will be made within 5 working days.

In the event that once payments have been made to the tenant there is money remaining from the outstanding amount, this will be paid to the landlord.

However, if the outstanding amount held in the designated account is less than that due to the tenant the scheme will require the landlord to pay this balance to the scheme within 5 working days.

The landlord must submit payments to the scheme as requested.

Part 5: Procedures for safeguarding and repaying tenancy deposits

COMMENTARY

25. (1) This paragraph applies where the scheme administrator gives a direction under regulation 24(4) to a landlord.
- (2) The scheme administrator must also send to the landlord a notice:
- (a) asking the landlord to indicate:
- (i) whether the landlord accepts that the tenant should be repaid the whole or part of the outstanding amount; or
- (ii) if the landlord accepts that part of it should be repaid, the amount the landlord accepts should be repaid and his proposals to do so;
- (b) warning that if the landlord does not accept that the tenant should be repaid the whole or part of the outstanding amount and fails to respond within the relevant period to the question mentioned in paragraph 2(a), the dispute will be resolved through the use of the dispute resolution mechanism.
- (3) If the scheme administrator does not, within 5 working days receive a response from the landlord indicating whether the landlord accepts that the whole or part of the outstanding amount should be repaid to the tenant the scheme administrator must:
- (a) 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) determine forthwith whether the notice was received by the landlord;
- (c) if satisfied that the notice was received by the landlord, that the dispute will be resolved through the use of the dispute resolution mechanism;
- (d) inform the tenant and the landlord that the dispute will be resolved in this way; and
- (e) inform the tenant and the landlord the date on which all papers referring to the dispute have been forwarded to the dispute resolution mechanism.

The Scheme Rules will deal with the situation where the scheme has requested that the landlord send it the disputed deposit (the outstanding amount). With this request, the landlord will be asked to set out what part of the outstanding amount should, if any, be paid to the tenant and his reasons for so doing. In addition, the notice will advise the landlord that a failure to repay the tenant will lead to the matter being referred to the dispute resolution process.

A failure of the landlord to respond within 5 working days will mean the scheme will treat this lack of response as an indication that the landlord does not agree. The scheme will confirm that the notice was received and will then resolve the matter through the dispute resolution process.

Part 5: Procedures for safeguarding and repaying tenancy deposits

COMMENTARY

- (4) If within the relevant period the scheme administrator receives a response to the notice under paragraph (2) to the effect that the landlord does not accept that the tenant should be repaid the whole or part of the outstanding amount, the dispute will be resolved through the dispute resolution mechanism:
- (a) the scheme administrator must inform the tenant and the landlord that the dispute will be resolved in this way; and
- (b) the date on which all papers referring to the dispute have been forwarded for dispute resolution.
- (5) In this paragraph:
- the “outstanding amount” has the same meaning as in regulation 24(2)(b); the “relevant period” means the period of 10 working days beginning with the day after that on which the notice referred to in paragraph (2) is sent.

If the landlord does not accept the tenant's proposal then the dispute will be resolved through the dispute resolution mechanism.

Both parties will be advised and told that they need to submit evidence regarding the dispute to the scheme within 15 working days.

26. (1) The scheme administrator shall ensure that the designated account must not contain anything other than amounts paid into it as mentioned in regulation 10 and 24(4) and any interest accruing on such amounts.
- (2) Subject to paragraph (3), the scheme administrator shall retain any interest accruing on such amounts in respect of the period during which the relevant amount remains in the designated account.
- (3) With the exception of any interest retained in accordance with paragraph (2), nothing contained in the designated account may be used to fund the administration of the scheme.

The scheme will ensure that the designated accounts will only contain the custodial deposits (Regulation 10) or disputed deposits (Regulation 24 (4)) and any interest thereon.

Only the interest on the deposits in these accounts can be retained by the scheme.

Part 5: Procedures for safeguarding and repaying tenancy deposits

COMMENTARY

27. (1) The scheme must make provision for preventing double recovery by a tenant in respect of the whole or part of the deposit, and must in that connection make provision:

- (a) for excluding or modifying any requirement imposed by the scheme in accordance with regulation 24; and
- (b) for requiring the repayment of amounts paid to the tenant by the scheme administrator.

(2) In this regulation “double recovery”, in relation to an amount of a tenancy deposit, means recovering that amount both from the scheme administrator and from the landlord.

The scheme makes it clear that a tenant should not benefit from a double recovery of monies from the landlord and the scheme. As part of the claim to the insurers, the landlord will be contacted to confirm that they have not paid the deposit to the tenant. In the event that this happens, payments to tenants will be conditional upon the tenant being required to repay the scheme in the event that they are paid twice. This will be a condition of using the insurance scheme and the dispute resolution process.

Requirements when the deposit ceases to be protected under an insurance scheme

28. (1) A deposit must cease to be protected under an insurance scheme as and from the date that the landlord’s membership of the insurance scheme is terminated by the scheme administrator.

(2) Where the scheme administrator proposes to terminate the landlord’s membership of an insurance scheme, the scheme administrator shall send a written notification to the landlord which must:

- (a) state that the scheme administrator proposes to terminate the landlord’s membership and the reason why;
- (b) identify the tenancy deposit or in the event of multiple tenancies, all of the tenancy deposits in question;
- (c) state the date when the deposit may cease to be protected under the scheme and give a general explanation of the effect of the proposed termination on any tenancy deposit protected by the landlord under the scheme and that any such deposit held by the landlord will no longer be protected by the scheme; and

This section deals with the termination of a landlord’s membership of the insurance scheme. Under the Rules, when a landlord’s membership is terminated, then the deposit will cease to be protected.

The scheme will advise a member that it intends to terminate membership and will set out the reasons why. It will specify the deposits affected and the date when the deposit will no longer be protected as explaining what the effect of this will be. The notice will give the member 14 days to respond before a final decision is taken (see Regulation 28-2).

Part 5: Procedures for safeguarding and repaying tenancy deposits

COMMENTARY

(d) inform the landlord if the scheme administrator does not receive a response to the notification within 14 days beginning with the day on which the notification is received by the landlord, the scheme administrator must make a decision on the question of membership based on the facts at hand.

(3) Where the scheme administrator does not receive a response within the 14 days as mentioned in paragraph (2)(d), he shall:

- (a) decide whether the landlord should remain a member of the scheme and if the membership is to continue he must notify the landlord in writing of that decision;
- (b) decide whether to terminate the landlord’s membership and, if so, the date on which the membership is to terminate;

(c) if the decision is that the membership should be terminated, send a notification to the landlord and to the tenant where the deposit retained in respect of a tenancy is affected by the decision, informing the recipients of the date on which the membership ceases; and

(d) advise both the landlord and the tenant of the effect the termination of the landlord’s membership will have on any tenancy deposits protected by the landlord under the scheme and that any such deposits will no longer be protected by the scheme from the date of termination.

(4) The actual date to be used as the date of termination of the landlord’s membership must not be within the 3 month period beginning with the day on which the original notification as mentioned in paragraph (2) was received by the landlord.

The landlord will be advised that if they do not respond to the notification within 14 days with their comments, the scheme will decide on their membership based on the facts to hand at that time.

If a response is not received, the scheme will decide whether the landlord should remain a scheme member.

If the membership is to be terminated, the scheme will write to the landlord and tenant advising when the membership is terminated.

This notice will also advise both parties of the effect that termination has on the deposit protection, and that unless the deposits are protected elsewhere, they will be unprotected.

The date of termination cannot be less than 3 months from the date of the original notice to the landlord advising of the possibility that membership might be terminated.

Notification to tenants – all scheme models

29. (1) Every custodial or insurance scheme must provide for the scheme administrator to respond as soon as is reasonably practicable from receipt of a request under paragraph (2).

A tenant will be able to log onto the website to seek confirmation that the deposit is protected or do so via the Customer Contact Centre.

Part 5: Procedures for safeguarding and repaying tenancy deposits

COMMENTARY

- (2) A request is within this regulation if it is a request by the tenant to receive confirmation that a deposit paid in connection with the tenancy is being held in accordance with the scheme.

Part 6: Dispute Resolution

COMMENTARY

Dispute resolution mechanism

30. (1) A scheme administrator must make available a mechanism for the resolution by an adjudicator of a dispute between a landlord and a tenant about the amount of the tenancy deposit to be repaid to the tenant at the end of the tenancy (“the dispute resolution mechanism”).
- (2) The dispute resolution mechanism made available by the scheme administrator must specify:
- (a) the proposed provider of the dispute resolution mechanism and the number of adjudicators that will be available;
 - (b) the circumstances in which and the procedures by which, disputes may be notified to the scheme administrator;
 - (c) the procedures by which the scheme administrator will refer disputes to the dispute resolution mechanism;
 - (d) the type of supporting material which the landlord and the tenant will be required to submit to the scheme administrator for the purposes of that referral;
 - (e) the estimated costs of running the dispute resolution mechanism and how those costs will be met by the scheme;

TDS Northern Ireland has a free dispute resolution service available to resolve disputes about tenancy deposits. The details of how the dispute resolution process works is set out in the Scheme Rules and the Guide to Adjudication.

In relation to the specific Regulations, TDS Northern Ireland can confirm that:

- (a) the service will be provided by The Dispute Service Adjudication Unit, which has a team of up
- (b) the detailed procedures will follow the Regulations and are set out in the Scheme Rules;
- (c) the detailed procedures will follow the Regulations and are set out in the Scheme Rules;
- (d) the supporting material required to be submitted will be set out in the Scheme Rules and will include:
 - tenancy agreements;
 - inventory;
 - check in and check out reports;
 - photographs;
 - invoices and estimates;
 - reasons for the dispute;
 - details of efforts made to resolve the dispute.
- (e) The business case sets out the estimated costs of each dispute and these costs will be met by interest payments from the Scheme (custodial) and from the membership fee charged for the insurance scheme

Part 6: Dispute Resolution

COMMENTARY

- (f) the basis on which decisions will be made by an adjudicator;
- (g) the procedure by which an adjudicator will decide disputes including the procedures by which the adjudicator may seek further supporting material or submissions;
- (h) the extent to which that procedure will be proportionate to the value of the disputed amount; and
- (i) the circumstances in which and the procedures by which the decision of the adjudicator may be reviewed.

(f) the adjudication guidance sets out the approach taken. Landlords will need to evidence any deductions sought from a tenant's deposit.

31. (1) The dispute resolution mechanism must be provided free of charge to the landlord and to the tenant.
- (2) The scheme administrator must comply with any reasonable request by the landlord or the tenant to refer a dispute to the dispute resolution mechanism.
- (3) Use of the dispute resolution mechanism must not be compulsory for the tenant, but the tenancy deposit scheme must require a landlord who has safeguarded a deposit with the scheme to use the dispute resolution mechanism in any case where the tenant requests a referral.

The scheme's dispute resolution mechanism will be provided free of charge. The Scheme Rules will make it clear that landlords are required to use the dispute resolution mechanism but that a tenant can decide not to use it.

32. (1) The scheme administrator must refer all disputes to the dispute resolution mechanism, regardless of the value of the disputed amount, where:
- (a) either the landlord or tenant requests the referral (although if the request is made by the landlord the referral shall be made only if the tenant consents to use of the dispute resolution mechanism); and
 - (b) the scheme administrator is satisfied that attempts to resolve the dispute without recourse to the dispute resolution mechanism have been made and have not been successful.

The Scheme Rules will set out the detailed procedures through which disputes are referred to adjudication. There will be no limit to the value of a dispute that can be referred to the dispute resolution mechanism (although the adjudicator can only make a decision on the total value of the deposit). In deciding whether or not to refer a dispute, the scheme will require written evidence from the parties to show that efforts have been made to resolve the dispute and that these have not been successful.

(2) The procedures referred to in paragraph (1) must:

- (a) specify the timescale within which a referral to the dispute resolution mechanism may be requested by the landlord or tenant; and
- (b) provide that where a dispute has been referred to the dispute resolution mechanism it may only be suspended or abandoned with the consent of both parties

In relation to 32(2) the draft Scheme Rules say that a dispute may only be referred to the dispute resolution mechanism within 3 months of the end of the tenancy.

Any suspension or abandonment of the dispute resolution process will require the consent of both parties in writing once a dispute is underway.

The decision of the adjudicator

33. (1) The adjudicator must decide any dispute within 20 working days of receipt by the adjudicator of the referral.

(2) Within 5 working days of reaching a decision on a dispute, the adjudicator must give notice of a decision in writing to the scheme administrator, the landlord and the tenant and must set out:

- (a) the facts on which the decision is based;
- (b) the reasons for the decision; and
- (c) the amounts of tenancy deposit to be repaid by the scheme administrator to the tenant and to the landlord.

Within 20 working days, the appointed adjudicator will review the evidence, decide on how the deposit should be allocated and then pass the case back to the scheme. Within 5 working days, the scheme will advise the tenant and landlord of the decision and the amounts to be awarded. The report will cover the matters as set out in 33-2a, b and c.

Review

34. (1) Either the landlord or the tenant may apply to the scheme administrator, within 10 working days of an adjudicator giving notice of a decision under regulation 33, for review of that decision but only on the grounds that the adjudicator has erred in fact or in law (or both).

(2) On receipt of such an application the scheme administrator must decide whether to accept or reject it, but may not accept it without inviting written representations from the other party to the dispute to enable the scheme administrator to consider whether the adjudicator may have erred in fact or in law (or both).

(3) Where an application for review by a landlord or tenant is rejected by the scheme administrator, no further application by that person for review of the adjudicator's decision must be accepted.

(4) Where an application for review is rejected by the scheme administrator, the scheme administrator must repay the tenancy deposit as soon as is reasonably practicable but not before the expiry of the time within which the other party may apply for review under paragraph (1).

The Regulations allow a tenant or landlord to request a review of an adjudicator's decision. If the scheme decides to reject a review, it will reject the case and make a payment once the 10 working days after the initial decision has passed.

If it considers that a review might be accepted, the scheme will write to the other party asking their views as to whether the adjudicator may have erred in law or fact. At this stage the scheme may decide to accept a review or reject it.

35. (1) If, after consideration of an application under regulation 34(1) and any representations regarding it, the scheme administrator considers that there is a reasonable ground for believing that the adjudicator may have erred in fact or in law (or both), the scheme administrator must accept the application and refer the decision of the adjudicator under regulation 33 for review by an adjudicator who was not involved in deciding the original referral.

(2) The adjudicator carrying out the review under paragraph (1) may:

- (a) affirm the decision made under regulation 33; or
- (b) substitute a different decision for that decision; and in either case shall give notice of the review decision in accordance with regulation 33(2).

If the scheme accepts a case for review it will be reconsidered by a different adjudicator who will determine the case outcome. The reviewed decision will be communicated to the parties and a payment made within 5 working days of that decision. This review decision is then final and payments to the parties will be made by the scheme within 5 working days of that decision.

Part 6: Dispute Resolution	COMMENTARY
<p>(3) A decision of an adjudicator under paragraph (2) on a review is final.</p> <p>(4) The scheme administrator must repay the tenancy deposit in accordance with the adjudicator's decision on the review within 5 working days of receipt of the notice of that decision.</p>	

Part 7: Information and requirements in relation to tenancy deposit schemes	COMMENTARY
<p>Duty to publicise schemes</p> <p>36. The scheme administrator must ensure that the scheme is publicised across Northern Ireland:</p> <p>(a) on, or as soon as is reasonably practicable after, the tenancy deposit scheme being approved; and</p> <p>(b) immediately prior to the tenancy deposit scheme coming into force and for a reasonable period of time thereafter.</p>	<p><i>TDS Northern Ireland has an annual marketing and promotion plan in place to publicise the existence of the scheme to lettings agents, landlords and tenants.</i></p>
<p>Duty to produce an information leaflet</p> <p>37. (1) Before a tenancy deposit scheme comes into force, the scheme administrator must have available an information leaflet detailing:</p> <p>(a) how the scheme operates;</p> <p>(b) the terms and conditions relating to participation in the scheme;</p> <p>(c) the procedures governing the payment, holding and repayment of tenancy deposits in accordance with these Regulations; and</p> <p>(d) the dispute resolution mechanism.</p>	<p><i>TDS Northern Ireland produces a comprehensive information leaflet and, in addition, provides a range of supporting information and guidance leaflets on its website. The information leaflet sets out:</i></p> <ul style="list-style-type: none"> • <i>How the scheme works;</i> • <i>Terms and conditions for participation in the scheme;</i> • <i>Procedures for dealing with deposits payments and repayments;</i> • <i>The dispute resolution mechanism.</i>

Part 7: Information and requirements in relation to tenancy deposit schemes	COMMENTARY
<p>(2) Where a scheme administrator furnishes an information leaflet to a landlord under regulation 13, that landlord shall furnish a copy of the leaflet to the tenant within 28 days of receipt of the deposit as specified in Regulation 12.</p>	<p><i>The landlord is required to provide a copy of the information leaflet to the tenant within 28 days of receipt of the deposit from the tenant.</i></p>
<p>Duty to provide updated information</p> <p>38. Where information required to be provided by the scheme administrator or the landlord becomes inaccurate, the person required to provide that information must ensure that the revised information is provided as soon as is reasonably practicable.</p>	<p><i>This Regulation requires the landlords to update as required any information supplied to the scheme where this is no longer accurate. Similarly, the scheme has to keep its information up to date.</i></p>
<p>Duty to disclose information</p> <p>39. (1) The scheme administrator must disclose all information, provided by landlords under the scheme requirements and held by the scheme administrator, in response to any request from an officer authorised by a council for the purposes of enabling or assisting that council to exercise its functions under any provision of Part 2, 3 or 4 of the Order.</p> <p>(2) Any request for information under (1) must specify:</p> <p>(a) the extent and detail of the information which is to be supplied;</p> <p>(b) the form in which that information is to be supplied; and</p> <p>(c) the date by which that information is to be supplied.</p>	<p><i>This Regulation requires TDS Northern Ireland to disclose information given to it by landlords and agents to an officer authorised by the council who is investigating compliance with the tenancy deposit legislation.</i></p>

Duty to provide annual report to the Department

40. (1) Within 3 calendar months following the end of each financial year, the scheme administrator must send to the Department an annual report of the operation of the scheme and of the performance of the scheme administrator during that financial year.
- (2) The report must include the following information:
- (a) the number of tenancy deposits paid to the scheme;
 - (b) the total value of tenancy deposits held in designated accounts at the end of the financial year in question;
 - (c) the total value of tenancy deposits repaid to tenants;
 - (d) a statement of the financial position of the scheme, including a set of independently audited accounts and a breakdown of income and expenditure during the financial year assessed against the projected income and expenditure for that year;
 - (e) a statement of how accrued interest has been distributed, applied or invested during the financial year;
 - (f) a forecast budget for the following financial year;
 - (g) details of all referrals to the dispute resolution mechanism including:
 - (i) the number of referrals requested by landlords;
 - (ii) the number of referrals requested by tenants;
 - (iii) the basis of the dispute;
 - (iv) the time taken to resolve the dispute;
 - (v) the outcome of the referral; and
 - (vi) the time taken to repay the deposit in accordance with the decision; and
 - (h) details of any complaints received about the scheme including any relating to the dispute resolution mechanism.

TDS Northern Ireland provides the Department with the annual accounts and annual report as specified by this Regulation. This report and accounts will be supplied within 3 months of the end of the financial year (i.e. by 30 June each year).

- (3) Any requirements under paragraph (2) must specify:
- (a) the description of relevant information which is to be supplied;
 - (b) the form in which that information is to be supplied; and
 - (c) the date by which that information is to be supplied.



tenancydeposits



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