

Penalties for failing to comply with Tenancy Deposit Protection Regulations

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Introduction

This document sets out the detailed penalties which are available for non-compliance with the tenancy deposit regulations.

The law relating to Tenancy Deposit Protection Regulations can be found in:

- The Private Tenancies (Northern Ireland) Order 2006 (as amended)
- The Housing (Amendment) Act (Northern Ireland) 2011 which amended the Private Tenancies (Northern Ireland Order)
- The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012

Penalties

The tenancy deposit protection scheme was set out in the 2011 Act which amended the 2006 Private Tenancies Order 2006 in sections 5A and 5B. The 2006 Order, as amended, gave the Department for Social Development the power to introduce regulations for the Northern Ireland Assembly 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)

A landlord under Article 5B (7) of the 2006 Private Tenancies Order may only require a deposit in money.

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.

Article 68 (3) makes it clear that proceedings for an offence under Article 5B (7) 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 take legal action against the landlord.

Failing to protect a deposit within 14 days of its receipt or to serve the Prescribed Information within 28 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 take legal action against the landlord.

Fixed penalties by the District Council

The 2011 Act introduced an important amendment 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. 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 for a period of 14 days has passed since the notice was served.

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 considers 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 deposit. If the case goes to Court and the landlord is convicted the fine will be up to £20,000.

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 offence. This means that the maximum fixed penalty will be £500.

Any monies obtained by the district council will be retained by the council. Offences will be prosecuted in the Magistrates Courts

Summary of penalties for non-compliance

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 (i.e. £500)	Fine up to Level 4 on the standard scale (£2,500)
Failing to protect a deposit within 14 days	Three times the deposit	Fine up to £20,000
Failing to serve the prescribed Information with within 28 days of receiving the deposit	Three times the deposit	Fine up to £20,000