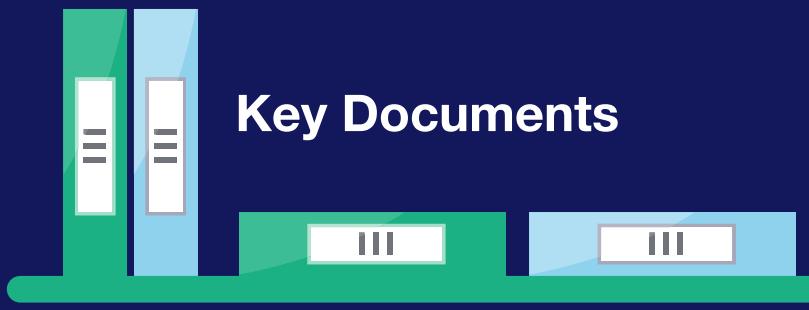

Key Documents

Who should read this?

Tenants Agents Landlords

Insured / Custodial

Localism Act 2011 FAQ

TDS
Tenancy Deposit Scheme
Insured / Custodial

Here are some answers to questions we have been asked about the effect of the Localism Act changes. We hope that you will find them informative and helpful.

- This document is for guidance only and we are unable to predict how a Court may interpret the legislation. This guidance will be updated as further information comes to light from decisions made by the Courts and from the Department for Communities and Local Government.
- We also recommend that users of the TDS scheme seek their own independent legal advice in so far as the Localism Act changes may apply to specific circumstances faced by them. We are unable to accept any liability for losses incurred through a failure to do so.

What are the changes?

The effects of the changes are, in summary, that:

- The deposit must be protected and the Prescribed Information provided within 30 days (increased from 14 days). For TDS members this will mean that the tenant must have received the Prescribed Information (including the explanatory leaflet What is the Tenancy Deposit Scheme?) and the TDS deposit protection certificate, and the deposit must have been registered on the TDS tenancy database within the new 30 day limit.
- This is an absolute time limit and a tenant will be able to make a claim from 31 days after deposit payment if the requirements relating to protection and prescribed information have not been met. The claim will be for the return of the full sum of the deposit along with a penalty of between one and three times the sum of the deposit, to be awarded at the discretion of the Court.
- The claim can still be made even if the deposit has been protected, or the Prescribed Information provided, after 30 days, although the courts will then take the fact that protection has occurred into account when deciding what level of penalty to impose.
- If a landlord fails to meet the initial requirement to protect the deposit, no Section 21 Notice can be served until either the landlord returns the deposit to the tenant in full or with such deductions as the tenant agrees; or if the tenant has taken proceedings against the landlord for non-protection and those proceedings have been concluded, withdrawn or settled (for example, by the court awarding damages being the return of the deposit or a fine not more than three times the value of the deposit).
- If a landlord fails to serve Prescribed Information, (s)he cannot serve a Section 21 Notice until the Prescribed Information has been served - but this can be more than 30 days after receiving the deposit. This will not prevent a tenant from issuing proceedings for late provision of the prescribed information and seeking a penalty award.
- Tenants can make an application to a county court for a penalty award even where the tenancy has ended – so the penalty does apply to former tenants.

Are the changes retrospective?

We are advised by the Department for Communities and Local Government that the legislation is NOT retrospective. Their view is that the changes in section 184 of the Localism Act will not apply to any deposits taken in connection with tenancies that have come to an end before 6th April 2012. So the suggestion that any landlord who had failed to comply in the past would be liable under the Localism Act changes is, in the Department's view, incorrect.

The changes to the Localism Act are stated not to apply in respect of a tenancy deposit received by a landlord in connection with a shorthold tenancy where:

- the tenancy was in effect on or after 6th April 2012, and
- the landlord has, before the end of the period of 30 days beginning with that date—
  - complied with the initial requirements of an authorised scheme in relation to the deposit, AND
  - given to the tenant and any relevant person the information prescribed for the purposes of section 213(5) of the Housing Act 2004.

In effect this gives deposit holders a period of 30 days grace to comply with the deposit protection requirements, where they haven't already done this for a deposit received before 6th April 2012, and where the tenancy is running on or after that date. So if you haven't already complied with the requirements, you should ensure that you do so within 30 days.

What happens if I miss the 30 day deadline?

Deposit holders must protect the deposit and give the Prescribed Information within the 30 day deadline. If you miss that deadline, the tenant can go to Court for the penalty and there is no way to escape it. If an existing tenant applies to the court for the penalty the court will order the deposit holder to repay the deposit or protect it, and to pay the tenant between one and three times the amount of the deposit.

If a tenant was no longer living at the property when the Court hears their case, the Court may order the deposit holder to repay the deposit. This suggests that deductions from the deposit may still be claimed. It also seems likely that the Court won't make an order if the deposit has already been repaid to the tenant. However the penalty of between one and three times the deposit still applies. Strictly speaking, the tenant could apply to the Court for this penalty for up six years.

Do the changes apply to renewals?

The requirements to protect the deposit and provide the Prescribed Information apply as from the time the deposit is received. Therefore DCLG also advise us that in their view, unless the landlord returns the original deposit and receives a new one, a landlord will not incur a penalty for failing to provide the Prescribed Information whenever the tenancy is renewed (provided no terms change except the end date on the renewed tenancy.

Where other terms, the rent or the tenants change on a renewal then the position will of course be different). In any event avoiding the penalty is simple as no penalty applies where the landlord has already complied with the requirements of an authorised TDP scheme and provided the Prescribed Information to the tenant and any relevant person.

I've been told that the changes apply to tenancies still running that started prior to the tenancy deposit legislation coming into force in April 2007. Is that right?

No. The Localism Act changes the time limits and penalties, but it does not extend the 2004 Housing Act legislation to cover Assured Shorthold tenancies that were in existence before April 2007. Only deposits taken for all Assured Shorthold Tenancies starting or renewed after that date have to be covered by a tenancy deposit protection scheme. Members who wish to take a onservative approach may wish to protect all deposits held in respect of ASTs by 6th May, even if they were taken before April 2007.

Do the Localism Act changes apply when the tenancy has ended?

Yes. A tenant can now apply to the Court for the statutory penalty even after the tenancy has ended, and it doesn't matter if the deposit has been repaid to them.

My tenant never gave me an address to contact them at the end of the tenancy? Does that mean I fall foul of the prescribed Information requirement?

Our Prescribed Information template asks for a contact address for the tenant after the tenancy ends. Of course a tenant may not know where they will be when they move out of the property. However we would suggest that in most cases it must be possible for a tenant to give an address for a friend or family member where they can be contacted. If the tenant really cannot provide a contact address, then it would seem sensible to record in the Prescribed Information that this information has not been provided by the tenant – and get the tenant to sign it. We also recommend that you include email addresses and telephone numbers in the PI for contact purposes.

It has been suggested to me that a 'relevant person' (i.e. a guarantor or some other person paying the deposit) can also apply for the statutory penalty if I didn't give them details of the protection of the deposit and the Prescribed Information, even if I did not know they had paid the deposit for the tenant. Is that right?

We don't think it is. A deposit holder can only act on the information given to them, and it seems unreasonable that a Court would deal with a claim from a relevant person if the deposit holder was not aware that they had paid the deposit in the first place.

The recommended clauses that TDS produces for inclusion in assured shorthold tenancies ask that the parties to the agreement confirm whether the deposit was paid by the tenant themselves, or paid by someone on their behalf – in which case their details need to be given. We would recommend that particular care is taken to ensure that the tenant gives the correct information and, again, signs it.

Similarly, our Prescribed Information template also asks for the details of the relevant person to be given, and the tenant should therefore be asked to sign this also. Naturally, if you were reasonably aware that a 'relevant person' had paid the deposit on behalf of the tenant then you would be liable and so you should make sure that your procedures deal with this possibility and you should brief staff to consider where deposit payments are coming from.

Need more information?

For more information about the Localism Act changes on tenancy deposit protection, please refer to:

'Changes to the Tenancy Deposit Protection legislation - Frequently asked questions issued by the Department for Communities and Local Government' which you can find at:
www.communities.gov.uk/housing/privaterentedhousing/tenancydepositprotection/tenancydepositprotectionfaq/

0300 037 1000

www.tenancydepositscheme.com

Tenancy Deposit Scheme
1 The Progression Centre,
42 Mark Road, Hemel Hempstead,
Herts, HP2 7DW