EXPLANATORY MEMORANDUM TO

THE HOUSING (TENANCY DEPOSITS) (PRESCRIBED INFORMATION) ORDER 2007

2007 No. 797

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government ("the Department") and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument supplements the provisions relating to tenancy deposit schemes that are contained in sections 212 to 215 of, and Schedule 10 to, the Housing Act 2004 ("the Act"). It applies to landlords who have let their property on an assured shorthold tenancy and who have taken a deposit as security for the performance or discharge of any of the tenant's obligations arising under or in connection with the tenancy. The instrument prescribes the information that a landlord must give to such a tenant, and any person who has paid a deposit on the tenant's behalf, within 14 days of receiving the deposit.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Under section 212(1) of the Act the appropriate national authority must make arrangements for securing that one or more tenancy deposit schemes are available for the purpose of safeguarding tenancy deposits paid in connection with shorthold tenancies. By section 212(8) a shorthold tenancy is an assured shorthold tenancy within the meaning of Chapter 2 of Part 1 of the Housing Act 1988. A scheme may be:

- a custodial scheme, whereby the tenancy deposit that is paid to a landlord is then paid by the landlord into a designated account and held by the scheme administrator until it falls to be paid (wholly or in part) to the landlord or tenant under the tenancies (paragraph 1(2) of Schedule 10 to the Act); or
- an insurance scheme, whereby the deposit that is paid to a landlord is retained by him on the basis that, at the end of the tenancy such amount in respect of the deposit as is agreed between the tenant and the landlord will be repaid to the tenant, and any such amount not so repaid will be paid into an account held by the scheme administrator, where it will remain until it falls to be paid (wholly or in part) to the landlord or tenant under the tenancy. The landlord undertakes to reimburse the scheme administrator, in accordance with directions given by him, in respect of any amounts paid to the tenant by the scheme administrator, and insurance is maintained by the scheme administrator in respect of failure by a landlord to comply with such directions. (paragraph 1(3) of Schedule 10 to the Act).

In November 2006, three contracts were awarded to organisations that will run tenancy deposit schemes: one to a custodial scheme supplier, and two to insurance-based scheme suppliers.

4.2 By section 213(1) any tenancy deposit paid to a person in connection with a shorthold tenancy must, as from the time when it is received, be dealt with in accordance with one of the authorised schemes in force in accordance with arrangements under section 212(1).

4.3 By section 213(3) where a landlord receives a tenancy deposit in connection with a shorthold tenancy, he must comply within 14 days beginning with the date on which he receives that deposit, with such requirements imposed by an authorised scheme as fall to be complied with by him.

4.4 By section 213(5), (6) and (10) a landlord who has received such a deposit must, within fourteen days beginning on the date on which the deposit is received by him, give the tenant, and any person who has paid the deposit on behalf of the tenant, certain information that may be prescribed in an order made by the appropriate national authority. This instrument prescribes that information.

4.5 By section 261(1) of the Act, the appropriate national authority is, in relation to England, the Secretary of State and, in relation to Wales, the National Assembly for Wales. This is the first time the power to prescribe such information has been exercised in relation to either England or Wales.

4.6 This Order will come into force simultaneously with other instruments being made under powers in Schedule 10 to the Act which relate to tenancy deposit schemes. The relevant instruments are:

The Housing (Tenancy Deposit Schemes) Order 2007 (SI No. 2007.796) (for which there is separate explanatory memorandum); and

The Housing (Tenancy Deposits) (Specified Interest Rate) Order 2007 (SI No. 2007 798) (for which no explanatory memorandum is produced since, by section 250(5) of the Act, the instrument is not laid. The Order has the effect of requiring that when a deposit is paid to the landlord or tenant at any time after the tenancy has ended, it is paid with interest equivalent to the base rate of the Bank of England less 2.32 percent.)

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The tenancy deposit protection provisions in the Act have two main aims:

- To safeguard tenancy deposits and
- To facilitate the resolution of disputes arising in connection with such deposits.

7.2 Government statistics have consistently indicated that of the tenants who pay a deposit, around 20% consider that in the previous 3 years their landlord has unreasonably withheld all or part of the deposit. However, landlords too are often faced with losses, particularly when the last month's rent is withheld by their tenant in lieu of the deposit, if the tenant has caused damage to the property, or left without paying their bills. A Government consultation in 2002 showed that most people wanted a better system of deposit management and that paved the way for the implementation of tenancy deposit protection in the Housing Act 2004.

7.3 When preparing tenancy deposit protection proposals and throughout the initial implementation process the Office of the Deputy Prime Minister (which was responsible for the policy until May 2006) and the Department (which has been responsible since may 2006) consulted landlords, tenants and their representative bodies, for both England and Wales.

7.4 Inclusion of tenancy deposit protection into the Housing Bill commanded wide cross party support as well as support from tenant and landlord/agent representative organisations including Shelter, Citizens Advice, National Federation of Residential Landlords and the Association of Residential Letting Agents. A scoping study carried out in early 2005 included discussions with a wide range of stakeholders about the implementation of tenancy deposit protection and published a report in August 2005. The Tenancy Deposit Protection Advisory Group (including other government departments, landlord, tenant and letting agent representative bodies and other stakeholders in the private rented sector) was set up in March 2005 to inform the implementation process.

7.5 A consultation paper published in November 2005 sought views on the information requirements that landlords would need to provide tenants with at the beginning and end of a tenancy. It was envisaged that these requirement should be kept to a minimum so as not to place unnecessary burdens on landlords and agents**.** Consultees included all local authorities, landlords' and tenants' representative organisations, citizens' advice bureaux, student representatives and the Law Society. The consultation ended on 1 February 2006 and resulted in 67 responses

7.6 The majority of respondents agreed that the information that is now listed in this instrument should be prescribed, with few opposed. 66% agreed that all the information proposed in the consultation should be prescribed, with 15% agreeing that some of it should be. No respondent considered that no information should be prescribed. However, as a result of significant number of respondents (36%) who indicated that they did not want to see information on rent levels and letting fees collected, this information is not included in the list of prescribed information. Similarly, 60% of respondents considered that there should not be a requirement for a landlord to provide an inventory because of the difficulties of drawing up minimum standards for inventories owing to the large variances in properties. The Department and the National Assembly for Wales agreed with this view and inventories will not be prescribed in legislation.

7.7 The Department and the National Assembly for Wales has taken account of the additional paperwork that tenancy deposit schemes will create, and has limited the prescribed information to what is necessary to ensure the safeguarding of deposits at every stage. They have used the extensive negotiations with potential suppliers to help them to design schemes which will be, as far as is possible, business-friendly. So, for example, the schemes will devise simple forms that landlords will be able use to record the prescribed information and will produce leaflets explaining the operation of

the schemes, which landlords will be able to pass to their tenants. The information passing between landlords and tenants and the schemes will be able to be completed electronically or manually.

7.8 The publicity campaign for tenancy deposit protection is employing multi-media to publicise the schemes to up to 1.7million tenants, 870,000 landlords and 12,000 letting agents. Leaflets will be produced for issue in January/February 2007, one directed at tenants and one directed at landlords and agents. A tenancy deposit protection website is in development. Advertisements will be placed in the print media and on radio, beginning in February 2007 and running until April/May 2007. Posters will also be produced. The National Assembly for Wales will translate into Welsh such material as they deem necessary. Other communication channels include presentations to over 2000 landlords and agents, university housing advisers, consumer bodies and other organisations. Tenancy deposit protection roundtables have been held successfully in Leicester, Brighton and Manchester, with a final one planned for Cardiff.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 There is no impact on public bodies. The total budget for the publicity campaign referred to in paragraph 7.9 (£1.37 million) will rest with central government. The leaflets referred to will be supplied to stakeholders free of charge. From 6 April 2007, the responsibility for the marketing of tenancy deposit protection will pass to the three authorised schemes.

9. Contact

9.1 Phil Alker of the Department for Communities and Local Government, tel: 020 7944 3540 or e-mail: Phil.alker@communities.gsi.gov.uk can answer any queries regarding this instrument.

HOUSING ACT 2004 ("HA 04") - SECTIONS 212-215 AND SCHEDULE 10 - TENANCY DEPOSIT SCHEMES

FULL REGULATORY IMPACT ASSESSMENT

This Regulatory Impact Assessment (RIA) addresses the introduction of a statutory instrument (SI) made for application in England and Wales, which sets out the information that a landlord must give to his tenant if he receives a deposit in relation to the letting of a property under an assured shorthold tenancy. References to "landlord" should be taken to include any other person who takes a deposit on the landlord's behalf e.g. a letting agent. References to "CLG" should also be taken to include references to "ODPM".

Purpose and intended effect of measure

Objective

1. The objective of the SI is to set out the information that landlords will have to provide to their tenant at the beginning of an assured shorthold tenancy.

2. This information gives the tenant important information about the protection of their deposit. It will help tenants to ensure that their landlord complies with the requirements of sections 212 to 215 of the Housing Act 2004 (HA 04), which require landlord to safeguard deposits they receive in a tenancy deposit scheme.

3. The SI will affect landlords who, from 6 April 2007, take deposits for Assured Shorthold Tenancies (ASTs) in England and Wales.

Background

4. It is common practice for landlords to require a deposit (usually equivalent to one month's rent) from tenants at the beginning of a residential letting. In theory, at the end of a letting, if a landlord is content with the condition of the property, and if the tenant owes no rent or other expenses, the landlord will return the tenant's deposit promptly and in full. If there is damage, or expenses are outstanding, the landlord will deduct an appropriate amount from the deposit, or, in some cases, retain it in full.

5. Sections 212-215 of, and Schedule 10 to, HA 04 contain provisions to give protection to tenancy deposits for ASTs. These provisions are aimed at removing the risk of misappropriation of tenants' deposits by landlords and letting agents. The Act places the Government under a duty to make arrangements for securing that one or more tenancy deposit schemes are available for the purpose of safeguarding all deposits paid in connection with ASTs.

6. Findings from the Survey of English Housing 2005-06 (SEH 05/6)[1] reveal that 17% of households which had a private tenancy ending in the previous three years said that part or all of the deposit from their most recent tenancy was unreasonably withheld. With some 1.7m ASTs identified by SEH 05/6, that amounts to 289,000 deposits. This "unreasonableness" on the part of landlords might not hold up to independent adjudication in all cases - but, nevertheless, it creates a widespread perception amongst tenants that unfair deposit withholding is commonplace. Moreover, 10% of those tenants who had part or all of their deposit withheld at the end of their most recent tenancy said that their landlord or agent gave no reason for withholding their deposit.

7. Tenants frequently report that poor practice on the part of their landlord in the course of the tenancy leads them to withhold their final month's rent in the belief that their

[1] All figures quoted from the SEH 2005-06 are provisional and do not indicate published results

deposit would otherwise be unreasonably retained. Some tenants who default on their last month's rent without agreement will also have caused damage, sometimes extensive, which the landlord will then have to cover in full.

8. Expectations that problems are likely to arise over the return of deposits are damaging to the image of the private rented sector and, consequently, to landlords.

Rationale for Government intervention - the Housing Act 2004

9. For some years, the Government has been aware of bad practice on the part of a minority of landlords, regarding tenants' deposits - as the statistics quoted above show. In order to address this, in 2000 the Government introduced a voluntary tenancy deposit scheme, whose members included representatives of the National Federation of Residential Landlords. However, take-up was low, the voluntary approach clearly did not work, and the scheme was wound up. Following a consultation paper in 2002,[2] a Housing Bill was introduced into the House of Commons in January 2004. The Government added to that Bill measures to tackle tenancy deposit protection.

Rationale for Government intervention - information prescribed in secondary legislation

10. It is axiomatic that landlords must provide key information to tenants when they receive their deposit; without that information, a tenant would not know whether his deposit was protected or not. It also requires the landlord to comply with the provisions of HA 04. Whilst the majority of good landlords would no doubt give the tenant all the relevant information, landlords seeking to avoid the legislation would not, leaving tenants in no better position than currently exists.

11. SEH 05/6 shows that 78%[3] of the 2.6 million private rented sector tenants had paid a deposit, with the average deposit being around £526 (and likely to be rising in line with rents)[4]. This indicates that, across England, around £1,067 million is currently being held in deposits.

12. If we restrict the calculation to ASTs only, 85% of the 1.7m private renters with ASTs had paid a deposit, which means the average deposit applying to ASTs in 2005/6 is £695 - a large amount of money by any standards and one which, provided the tenant has kept the property in good condition, he is entitled to get back. Thus, across England, around £848m is currently held in deposit in connection with ASTs.

13. SEH 05/6 provides figures on the number of tenancies ending each year where there is disagreement about the amount held. Of the 727,000 tenancies with deposits held by the landlord ending each year[5], approximately 170,000 (23%) of the landlords and tenants are in disagreement[6].

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[2] Tenancy Money: Probity and Protection: Consultation Paper, ODPM

[3] Wherever possible the most up to date figures (2005/06) have been used. But where this was not possible 2004/05 figures have been used.

[4] The deposits paid are captured by the SEH directly – they are not based on any assumption about the deposit being equal to one month's rent.

[5] This was calculated as follows:
[293,000 (No. of *Households* who left private rented sector to Owner-occupation (222,000) and Social Rented (71,000) Sectors (SEH 2004/05 Table S216)) uprated by 10.1% (to reflect the difference between *Households* (553,000) that moved within private rented sector and *tenancy reference persons* (609,000) that moved within private rented sector)] = 322,671.
322,671 (No. Tenancies that left private rented sector + 609,000 (No. of Tenancies that moved within private rented sector) = 931,671 x 78% (proportion of tenancies where a deposit is paid) = 726,703

[6] This is calculated as follows:
931,671 x 78% to indicate the proportion that paid a deposit = 726,703
726,703 x 19% to indicate those deposits withheld in part = 138,074
726,703 x 11% to indicate those deposits withheld in full = 79,937
Where deposits had been withheld, 22% of tenants thought the deposit was justifiably withheld, 26% thought less should have been withheld, and 52% thought none should have been withheld. This

14. Given this amount of disagreement, we can estimate the **maximum** amount of money that could be unjustifiably withheld (in the tenants' view) each year.

£526 (Average Deposit) x 170,000 = £89.4 million

15. Of course, in many cases, disputes would be in relation to just a proportion of the deposit, not the full deposit.

Consultation

Within Government

16. In deciding what information should be prescribed in this SI, CLG has consulted the Government departments that are members of the Tenancy Deposit Protection (TDP) Advisory Group (see below), as well as the Small Business Service.

Public consultation

17. Landlord representatives were closely involved in the development of TDP - from a full public consultation in November 2002[7] through to a full and final Regulatory Impact Assessment published to accompany the Royal Assent, in November 2004, of the HA 04.

18. The development of secondary legislation formed part of a scoping study carried out by independent consultants and published in August 2005.[8] During this study, face-to-face meetings were held with the following representatives of landlords:

i) Association of Letting and Managing Agents (ALMA)
ii) Association of Residential Letting Agents (ARLA)
iii) British Property Federation (BPF)
iv) Dorset Residential Landlord Association
v) National Association of Estate Agents (NAEA)
vi) National Approved Letting Scheme (NALS)
vii) National Federation of Residential Landlords (NFRL)
viii) National Landlords Association (NLA)
ix) Residential Landlords Association (RLA)
x) Royal Institute of Chartered Surveyors (RICS)
xi) UK Association of Letting Agents (UKALA)
xii) Universities UK
xiii) Unipol

19. In April 2005, the first meeting was held of the TDP Advisory Group, which comprised representatives of the Association of Residential Letting Agents, the National Landlords Association (previously the Small Landlords Association), the Council of Mortgage Lenders, the British Property Federation, Unipol, The Office Fair Trading, her Majesty's Courts Service, the Information Commissioner's Office, Citizens Advice,

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gives rise to the table:

	Deposit part withheld	**Deposit fully withheld**
Tenant's view: less should have been withheld	26% of 138,074 35,899	26% of 79,937 20,784
Tenant's view: none should have been withheld	52% of 138,074 71,798	52% of 79,937 41,567

This table sums to 170,049.

[7] Tenancy Money: Probity & Protection: Consultation Paper, ODPM
[8] Tenancy Deposits Implementation, Scoping Study Report, August 2005, ODPM

the National Union of Students, and the Cardiff Bond Board. The meeting discussed an interim report of the scoping study, which it broadly endorsed.

20. The Advisory Group was reconstituted in November 2005, without the ARLA and NLA representatives, because they were involved in bids for an insurance-based scheme. The National Federation of Residential Landlords, The Law Society, Grainger Residential Management (a large landlord), Shelter, Guildford BC and Hammersmith & Fulham Council accepted invitations to join the Group, which has met every two months or so since then. The Group has acted as, and continues to act as a sounding board for business and the consumer.

21. Also in November 2005, CLG published a consultation document on whether, and to what extent, the information requirements placed on tenants and landlords at the beginning and end of a tenancy, and inventories, should be enshrined in secondary legislation. The document was developed in consultation with the TDP Advisory Group.

22. The consultation period ended on 1 February 2006. 67 responses were received. The results of the consultation indicated that the majority of respondents agreed with CLG's prescribed information requirements. Of the 67 responses, 39% of respondents were letting agents, landlords and their representative organisations, 27% were local authorities, 9% were tenant representative organisations, 25% were 'others' which included other individuals, law organisations and housing organisations. A full analysis of the responses and CLG's response can be found on the CLG website at:
http://www.communities.gov.uk/index.asp?id=1165540

23. CLG has also taken account of the additional paperwork that tenancy deposit schemes will create, and is limiting this to what is necessary to ensure the safeguarding of deposits at every stage. CLG will introduce a simple and efficient system to ensure deposits are safeguarded in an effective way but at the same time keeping the burden on business to a minimum. To that end, CLG have used the extensive negotiations with potential suppliers to help them to design schemes which, whilst complying with the legislation, will be, as far as is possible, business-friendly. So, for example, the schemes will make available a form to record the prescribed information, which will be kept as simple as possible, and will be able to be completed electronically or manually.

24. With regard to statutory inventories, the views of respondents were that these should not be placed on a statutory footing, because of the difficulties of drawing up minimum standards for inventories owing to the large variances in properties. CLG agreed with this view and inventories will not be prescribed in legislation.

25. CLG has also attended numerous landlord forums to explain how TDP will work and to get feedback on what is proposed. When we have been able to, we have acted on that feedback - for example, not prescribing inventories in legislation (which has been welcomed by landlords).

26. It is clear that the requirement for landlords to give tenants basic information will impact on landlords. But it is a necessary burden arising from HA 04 and, as described above, we have sought to mitigate its impact. But it is also the case that a continuing dialogue with landlords and others has led to CLG not taking forward measures, which would be equally, if not more burdensome to landlords. So, as well as there being no requirement to make an inventory, we will also not require information on rent levels and letting fees to be given, because we accept the landlords' views that there is no need for such information to be collected.

Options

27. The HA 04 sets out the framework for the operation of tenancy deposit schemes. The purpose of this RIA is to consider the impact of proposed secondary legislation on the prescribed information that landlords must provide to tenants.

28. Sections 213(5) and 213(6) of the HA 04 place a requirement on a landlord (or letting agent where he is the person receiving the deposit) to provide such information to his tenant within 14 days of receiving the deposit relating to:

    i) The authorised scheme applying to the deposit,
    ii) Compliance by the landlord with the initial requirements of the scheme in relation to the deposit, and
    iii) The operation of provisions of the Housing Act in relation to the deposit

    as may be prescribed by an order made by the appropriate national authority (i.e. the Secretary of State in England, and the National Assembly for Wales, in Wales. The following options have been identified with regard to the information that may be prescribed.

Option 1 - Prescribe no information ('do nothing')

29. If the landlord is required to provide information to his tenant about how his deposit is protected, then the tenant in turn is able to check that his deposit is indeed being protected. If it is not being protected the tenant may then take the steps available to him under sections 214 and 215 of the HA 04 to seek the assistance of a court to secure that the deposit is either returned to him or placed in one of the deposit schemes. If there is no statutory duty on a landlord to give any information about the way the deposit is safeguarded then the tenant may find it difficult or impossible to find out that information by other means, or to seek the assistance of the court.

Option 2 - Prescribe information requirements

30. The advantage of prescribing, in legislation, the information that tenants should receive from their landlord when they hand over their deposit is that it ensures that all tenants are placed in exactly the same position at the start of their tenancy.

31. The following tables set out the proposed information for tenants to be provided with. Table 1 sets out the information to be produced by the tenancy deposit scheme administrator and Table 2 sets out the tenancy-specific information, which would be produced by the landlord with the agreement of the tenant:

32. These tables have been revised to reflect landlords' consultation responses, the views of the TDP Advisory Group and soundings taken in landlord forums around the country. The 'purpose of the deposit' will vary between tenancies should therefore be a tenancy-specific requirement i.e. information provided by the landlord. Also, there will be cases where a tenant may not be able to provide an alternative contact address, so this piece of information has to be optional.

Table 1 - Information to be provided by the Scheme Administrator

- The name, address and contact details of the scheme that is protecting the deposit
- Information on the procedures applying for the release of the deposit and in the event of dispute
- Information on single claims - when and how to make a single claim including the prescribed form on which to make a single claim.
- Information explaining the Housing Act 2004 provisions and how they affect tenants
- The name, address and contact details of the ADR service offered by the scheme

Table 2- Information to be produced by the Landlord

- Name, address and contact details of the person who receives the deposit
- Name and address of the tenant (and the person paying the deposit if different)
- An alternative contact address for the tenant
- Information explaining the purpose of the deposit
- The value of the deposit
- Signature of the landlord

Each of these pieces of information is considered below:

The name, address and contact details of the scheme that is protecting the deposit

33. There is a clear case for requiring a landlord to provide his tenant with the details of the scheme that is safeguarding the tenant's deposit. Without this information the tenant has no assurance that his deposit is being protected by an authorised tenancy deposit scheme and potentially has no way of knowing who to contact to find out.

Information on the procedures applying for the release of the deposit and in the event of dispute

34. There is a clear case for requiring a landlord to provide his tenant with details of what happens at the end of the tenancy so he is clear what steps need to be taken by both himself and his landlord to ensure the return of the deposit. It is also important to inform the tenant what happens when he and his landlord cannot agree on how to split the deposit and what options are available for resolving a dispute.

35. It is important to provide this information at the point at which the deposit is received, in case the tenant is unable to contact his landlord at the end of the tenancy and is unaware of what he needs to do to get his deposit back.

Information on single claims (for custodial scheme only)

36. Schedule 10 of the Housing Act 2004 is to be amended by an order so that a landlord **or** tenant will be able, in certain circumstances, to seek the release of a deposit held in the custodial scheme. The HA 04 currently requires agreement from both the landlord and the tenant before the deposit can be released by the scheme. Where one party cannot contact the other to obtain agreement as to how to divide up the deposit, and where in that situation there is damage and/or rent arrears and or where one party is not co-operating with regard to release of the deposit the only recourse the Act currently permits is for that party to go to court to release the deposit. This would complicate and protract the deposit release process. The information on the procedure for applying for the release of the deposit is essential so that both landlord and tenant know how to make a claim on the deposit in the event of the above scenarios.

Information explaining the Housing Act 2004 provisions and how they affect tenants

37. It is essential, particularly when the tenancy deposit provisions first come into force that tenants are made aware of their legal rights in connection with their deposit. If tenants are aware of their rights, they can seek enforcement of them if the landlord does not comply with the provisions of the Housing Act 2004.

The name, address and contact details of the ADR service offered by the scheme

38. Parties will be asked at the end of the tenancy to signify on the deposit release form whether there is a dispute between the two parties and if so, whether they wish to use the scheme's alternative dispute resolution (ADR) service. By providing the details of the ADR service to the tenant at the beginning of the tenancy, if a dispute arises the tenant is able to make an informed choice as to whether to use the ADR service.

39. All of the above information will be generic to all deposit transactions and will therefore be produced by the scheme administrator and given to the landlord or letting agent either before or at the time the landlord safeguards a deposit in a scheme. This will negate any burdens that the requirement to provide this information may have placed on the landlord as he will merely have to pass on to the tenant the relevant leaflets etc that he will have received from the scheme.

Name, address and contact details of the person who receives the deposit

40. The person who receives the deposit will need to be the person who is registered with the authorised tenancy deposit scheme. Thus, in instances where the deposit is taken by a letting agent, the landlord's details will not need to be included in this information.

41. These details will assist the tenant in getting confirmation from the scheme that his deposit is safeguarded. When it comes to releasing the deposit, the information will enable the scheme administrator to check that the person agreeing to the release on behalf of the landlord has the authority to do so.

Name and address of the tenant (and the person paying the deposit if different)

42. These details will confirm that the tenant has paid a deposit to the landlord or letting agent. It also records the address of the rented property to which the deposit applies. Where the deposit has been paid by a third party, their details should be recorded along with the tenants.

43. These details will ensure that when it comes to releasing the deposit, the scheme will know who may agree the release of the deposit on behalf of the tenant.

An alternative contact address for the tenant

44. The majority of decisions over the release of the deposit take place once the tenant has moved out of his rented property. This can make it difficult for the landlord to get in touch if the tenant has not provided a forwarding address. The provision of an alternative contact address, such as work, parents, other relatives etc allows for the landlord to still be able to get in touch with the tenant after the tenancy has ended.

45. This should help to ensure that the process at the end of the tenancy goes smoothly and lead to fewer cases of landlords being unable to find the tenant to agree to the release of the deposit.

Information explaining the purpose of the deposit

46. There currently exists a lot of confusion about what a deposit is for and what type of deductions can be made from a deposit. A landlord should set out in clear terms the basic purpose of the deposit. This should help to clear up misunderstandings and lead to fewer disputes as both parties will have the same understanding of what the deposit is for.

The value of the deposit

47. This is essential so that both parties are aware of exactly how much money has been paid as a deposit and therefore how much is being safeguarded by the scheme.

Signature of the landlord

48. It can only be made a requirement for the landlord to provide his signature. However, it would also make sense for the landlord to be required to ask the tenant to sign the information, to verify those aspects they have provided (such as an alternative address). This would help to ensure that this document is a true and accurate record of the deposit-taking process.

49. Information referred to in paragraphs 40 to 48 is all tenancy-specific and will not be able to be provided by the scheme administrators. CLG has endeavoured to ensure that the prescribed information requirements do not place any undue burdens on landlords or letting agents.

50. It is basic information that landlords and agents should have at their disposal as a matter of course when entering in a lettings arrangement with a tenant, therefore should not be onerous to obtain.

51. The landlord will have the option of providing the prescribed information within the written tenancy agreement, rather than on a prescribed/separate form if he so wished. This will have the added benefit for both tenants and landlords of reducing duplication and the amount of paperwork that needs to be completed at the beginning of the tenancy.

Option 3 - Prescribe information requirements including an inventory

52. As Option 2, but included in the prescribed information is an inventory, listing the contents and condition of the property at the point at which the tenant moves into the property.

53. Using an inventory to provide an accurate record of the content and condition of the rented property at the beginning of a tenancy is beneficial to both tenant and landlord and can help to resolve disputes or prevent them from occurring. The Survey of English Housing 2003-04 revealed that in the majority of cases where a tenant had their deposit withheld, the reason given was that it was to cover the cost of either cleaning or damages. An inventory highlighting any existing damage to a property at the time the tenancy is entered into can help to either prove a tenant did not cause that damage or prove that he did, if new damage has appeared that is not on the inventory.

54. The use of inventories is already common practice amongst many landlords and letting agents and, as landlords gear up for the introduction of TDP, and have free access to alternative dispute resolution (rather than, as now, recourse to the courts only), inventories and schedules of condition, will be seen as indispensable tools. As the National Federation of Residential Landlords have said, "We all want to encourage best practice renting."

55. Nevertheless, it is not the job of Government to force a measure on business, especially when (as here), business said that they did not want inventories to be made mandatory. Reasons given included the difficulties of drawing up minimum standards for inventories due to the large variances in properties, and the cost and administrative burden on landlords. Therefore, we have left the use of inventories in the hands of business, to use as they see fit.

Alternative options considered

Voluntary information

56. Rather than prescribing the information to be provided, Government could make the provision of information voluntary, setting out the information that is should be provided in best practice guidance documents.

57. Again this would still leave the same uncertainties as Option 1, with good landlords likely to give tenants the relevant information and bad landlords likely to not bother. Tenants would be unaware whether their deposit was safeguarded by an authorised scheme or not.

Chosen Option

Option 2 - Prescribe information requirements

58. Prescribing the information that tenants should receive from their landlord when they hand over their deposit ensures that all tenants are placed in exactly the same position at the start of their tenancy.

59. The information will provide tenants with confidence that his deposit is safeguarded under the provisions of the HA 04, as well as the procedures that are available to him at the end of a tenancy. In addition, the landlord must provide the tenant with information about the purpose of the deposit. This clarity at the outset of a tenancy should reduce the likelihood of disputes over deposits at the end of a tenancy.

60. Each piece of information will provide the tenant with only necessary information. Consultation responses indicated that the proposal to ask for information on rent levels and letting fees is not necessary and therefore CLG will not prescribe that this information should be provided. In addition, CLG will not prescribe an inventory. Although it is good practice to use an inventory for any tenancy, prescribing a standard inventory was deemed impractical by consultees.

61. Consultation responses favoured an approach that would avoid duplication of information. This option gives the landlord the choice of providing the tenancy-specific information within the written tenancy agreement, rather than on a prescribed/separate form. This will have the added benefit for both tenants and landlords of reducing duplication and the amount of paperwork that needs to be completed at the beginning of the tenancy.

62. The table below summarises the generic and tenancy-specific information that will need to be provided by a landlord to the tenant.

Generic Information (which scheme must supply to landlord)	**Tenancy-specific Information (to be completed by landlord and tenant)**
Name, address and contact details of the scheme administrator that is safeguarding the deposit.	The value of the deposit and the address to which it relates
Name, address and contact details of the ADR service offered by the scheme.	Landlord's contact details
Information on the procedures applying for the release of the deposit (including in the event of a dispute).	Tenant(s) names (or the name(s) of the person(s) paying the deposit if they are not the same person(s));
Information on single claims - when and how to make a single claim including the prescribed form on which to make a single claim.	Alternative contact address(es) for the tenant(s) (if there is one)
Standard information leaflet	Information explaining the purpose

explaining how the deposit is protected by the Housing Act 2004 provisions. This leaflet must be provided to landlords by scheme administrators.	of the deposit
	Signature of landlord
	Signature of tenant(s) (where possible)

Costs and Benefits

Sectors and Groups Affected

Race Equality Assessment

63. There is a high degree of geographical concentration of the ethnic minority groups within parts of urban England, with an apparent tendency for the growing minority ethnic population to be increasingly concentrated in groups, by race.

64. 50% of ethnic minority households live in London, which also has the highest proportion of privately rented homes. 17% of accommodation in London is in the private rented sector and 23% of England's entire private rented stock is in London. Across the whole of England, 24% of ethnic minority households live in the private rented sector compared to 11% of white households. In London, 22% of ethnic minority households live in the private rented sector compared to 18% of white households.

65. The data suggests that tenancy deposit legislation will affect a high proportion of ethnic minorities for a number of reasons, the principal being economic and linguistic; ethnic minorities tend to be in lower income groups and not so able to communicate in English.

66. Different racial groups will have different needs and the inability of a landlord or tenant to speak and/or read and understand English should not affect their rights and responsibilities under the new proposals. For example, a tenant may not be able to understand the prescribed information that the landlord provides to him. Schemes will be required to ensure that information is available in other languages on request.

67. Although the legislation will have a high impact on ethnic minorities, its overall impact will be positive with the current problems concerning the return of deposits being addressed.

68. In conclusion, it is considered that tenancy deposit schemes are unlikely to hinder equality of opportunity and will not damage race relations.

Environmental Impact assessment

69. There will be no environmental impacts from the safeguarding of tenancy deposits.

Health Impact assessment

70. There will be no health impacts from the safeguarding of tenancy deposits.

Rural Impact assessment

71. There will be no rural impacts from the safeguarding of tenancy deposits.

Social Impact assessment

72. There are positive social impacts to be achieved through the safeguarding of tenancy deposits. The timely return of deposits to tenants prevents them from being short of funds for a significant period of time. Increased labour mobility is in line with government policy, which aims to achieve sustainability and flexibility in the housing market.

73. Breakdown of costs and benefits

Option 1 - do nothing

Economic		Environmental		Social	
Benefit	**Cost**	**Benefit**	**Cost**	**Benefit**	**Cost**
Saving of cost of prescribing basic information to tenants (see option 2 under "cost")	No costs to landlords	N/A	N/A		Tenants face uncertainty as to whether their deposit is protected. A considerable social cost to tenants, who would not know whether their landlord had protected their deposits, with all the uncertainty for tenants, including the vulnerable, students, non-English speaking and other members of society.

Option 2 - prescribe information requirements in secondary legislation

Economic		Environmental		Social	
Benefit	**Cost**	**Benefit**	**Cost**	**Benefit**	**Cost**
	Estimated cost of providing information for TDP of £15m per year. Estimated by adopting the Standard Cost Model used by PricewaterhouseCoopers (PWC) in a cross Government exercise to measure the cost of administrative burdens that department's regulations place on business. Based on an estimate of 500,000 occurrences per year, and a comparison with the Small Firms Rate Relief Scheme.	N/A	N/A	Benefit to tenants, who will know at the outset whether or not the landlord has protected a deposit in the scheme. Increased certainty leading to greater social mobility - having established that a deposit is protected will help tenants plan for their next move. Also a benefit to the lettings industry as a whole, with TDP (and by extension, the prescribed information) helping drive up standards in the private rented sector.	Potential social cost to tenants if landlords were to leave the private rented sector to avoid TDP. But CLG have seen no evidence of this. Rather, some landlords have said they may consider using rent guarantees, or not taking deposits - both of which, whilst not requiring landlords to join a scheme, will keep their property in the private rented sector

Option 3 - prescribe information requirements, include a statutory inventory

Economic		Environmental		Social	
Benefit	**Cost**	**Benefit**	**Cost**	**Benefit**	**Cost**

	Using the same approach as the PWC survey, the cost could have been as much as £65m. (This is assuming the administration costs are three times the cost of the £15m identified for prescribed information (because an inventory can be as many as 10 pages). Plus £20million assuming that 100,000 landlords use inventory clerks at an estimated £200 per property.)	N/A	N/A	An inventory will provide a record of the condition of a property at the start of a tenancy, which will be beneficial to both the landlord and the tenant in the event of dispute.	N/A

Alternative option - make the provision of information voluntary

Economic		Environmental		Social	
Benefit	**Cost**	**Benefit**	**Cost**	**Benefit**	**Cost**
	An estimated £3m. (Assuming one fifth of the 500,000 occurrences estimated applied (ie 100000 landlords decided to offer the information to tenants voluntarily)).	N/A	N/A	None	Potential social costs as detailed for options 1 and 2.

Small Firms Impact Test

74. The majority of landlords and agents affected by these proposals would be regarded as small businesses. According to CLG's Private Landlords Survey 2003 (part of the English House Condition Survey) 33% of private landlords own only one property and 22% own more than 25 properties. The median is a landlord owning 4 properties. Some 67% of privately rented dwellings are owned by private individuals and only 17% of private individual landlords are full-time landlords. Most private individual landlords (67%) have other paid work and only 37% derive more than a quarter of their income from rent. Dwellings let by companies and other organisations account for only 33% of privately rented dwellings. Many company and organisational landlords only have small portfolios of properties (26% of companies and 38% of other organisations have less than 10) and only 38% of companies and 20% of other organisations derive more than half their income from rent.

75. TDP schemes will comprise a service, with no statutory regulatory function of landlords, who will continue to be unregulated. That said, The Government accepts that TDP will have a regulatory effect, in that it adds a new administrative and cost burden to business, which does not apply now. But the Government has nevertheless sought to ensure that the schemes' impact on business - in accordance with the Hampton principles of better regulation - are kept to the minimum consistent with effective 'regulation'.

76. As paragraphs 16-26 show, we have consulted extensively with business (and others) and, where we could, have done what business wanted. Consequently, it is CLG's view that stage 2 of the test has been fully satisfied. The SBS, to whom we referred this RIA in draft, agree with that assessment.

Competition Assessment

77. The Department has completed the Office of Fair Trading's Competition filter. This requires that policy makers consider the market that will be affected, i.e. the firms that compete against one another to sell the same or similar products or services.

78. The main markets affected are landlords and residential letting agents, none of whom have more than 10% of the market share. The costs of the proposed regulations should not affect some firms substantially more than others, with the proviso that a small increase in administrative costs would be more easily subsumed by bigger firms. The proposed regulations would not result in higher set-up or running costs for new firms that existing firms do not have to meet and the market is not characterised by rapid technological change.

79. There is an outside chance that the proposed regulations might affect the number of operators in the market, as smaller (part time) landlords in particular might decide the imposition outweighs the advantages. It is also possible that firms operating in areas of low demand for private rented property would be unable to increase rents - if they felt they needed to - to compensate for the increased administrative costs of the SI.

80. There is therefore unlikely to be a negative competitive impact from the SI and no detailed assessment is required.

Enforcement, Sanctions and Monitoring

<u>Enforcement</u>

81. The Housing Act 2004 does not make it a requirement that all landlords take a deposit, only that, where they do, they protect those deposits in accordance with the legislation. Enforcement will be tenant-led, in that tenants will be able to ask their landlord at the beginning of the tenancy how the landlord intends to protect their deposit, and ensuring after they have paid their deposit that it has been safeguarded by a tenancy deposit scheme.

82. The prescribed information requirements will assist in this enforcement. The information will act as an indication from the landlord that he will deal with deposits correctly and will provide the tenant with the means of double-checking what has

happened to his deposit after he has paid it to the landlord. Tenants will also be able to check with the scheme administrator whether their deposit has been safeguarded.

Sanctions

83. There are no criminal penalties associated with tenancy deposit protection, but there are a number of civil sanctions against landlords set out in HA 04. Where a landlord takes a deposit and fails to either safeguard it with an authorised tenancy deposit scheme or provide the tenant with the prescribed information, he will be unable to use the notice only procedure for possession under section 21 of the Housing Act 1988, until he has rectified the situation.

84. Where a tenant becomes aware that his deposit has not been safeguarded with an authorised scheme, or where the landlord has not provided the tenant with the prescribed information, the tenant can seek a court order requiring the landlord to comply with HA 04. If a landlord has not complied with the Act by the time of a court hearing, the court must order him to pay to the tenant an amount equivalent to three times the deposit.

Implementation and Delivery Plan

85. There are two issues here, which are inextricably linked: the implementation and delivery of the single custodial scheme and one or more insurance-based schemes; and the implementation of the SI prescribing the information a landlord must give to a tenant. For the latter, the plan is for the SI to be in force on 6 April 2007

86. For the schemes as a whole, implementation plans, drawn up by bidders, will be set out in schedules to the contracts applying to the custodial and insurance-based schemes. They will include the form by which the prescribed information will be supplied to the tenant by the landlord.

Monitoring and Post Implementation Review

87. The contracts will be entered into with Service Providers on the basis of 3+2 years (i.e. 3 years in the first instance, with an additional two years provided the service providers fulfil minimum performance requirements specified in the contract. Contract governance manuals, for both types of scheme, are being developed. These will specify what should be monitoring against the contracts and when - for example, key performance indicators.

Summary and Recommendation

88. By prescribing the information that tenants should receive from their landlord when they hand over their deposit we can ensure that all tenants are placed in exactly the same position at the start of their tenancy. Because the landlord must provide the tenant with information about the purpose of the deposit, clarity at the outset of a tenancy should reduce the likelihood of disputes over deposits at the end of a tenancy, which has been a major area of concern for tenants.

Option	**Total cost per annum, economic, environmental, social**	**Total benefit per annum, economic, environmental, social**
1	Unquantifiable social cost to tenants. None to business	Benefit to business of no cost. But very much a social **dis**benefit.
2 (chosen option)	£15m (business)	Considerable - both to tenants and landlords in helping further professionalise lettings
3	£65m (business)	Clear benefit to landlords and tenants of good inventories - but to be done voluntarily, at request of business
Voluntary	£2m (business)	Heavy social cost

Declaration and Publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed…*Kay Andrews*……..

Date: 13th March 2007

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