

HOUSING ACT 2004

EXPLANATORY NOTES

SCHEDULES

Schedule 10: Provisions relating to tenancy deposit schemes

665. All tenancy deposit schemes must comply with the provisions of Schedule 10.
666. The Schedule specifies the two types of TDS that can be secured, custodial and insurance-based and describes the specific provisions relating to each type.
667. Under custodial schemes, a tenant pays the deposit to a landlord or his agent, who is then required to pay the whole of this amount into a designated scheme account. The scheme administrator will then hold it until it is paid to the tenant or the landlord, in accordance with their agreement or following a court order, after the tenancy has ended.
668. Monies representing deposits must be held in a designated scheme account. The account must not contain any other monies except deposits and interest which has been accrued on those deposit amounts. When the scheme administrator returns a deposit to either the tenant or landlord they may return this amount with interest added, at a rate specified by the appropriate national authority. Any interest retained by the scheme administrator may be used to fund the administration of the scheme.
669. If at the end of a tenancy both the tenant and the landlord notify the scheme administrator that they have agreed that either the whole deposit is to be returned to one party or part of the deposit returned to both parties and the scheme administrator is satisfied that such an agreement has been reached, the scheme must pay out the deposit monies due to each party in accordance with the agreement within 10 days of receiving notification.
670. Where there has been a dispute over a deposit and either the tenant or landlord notify the scheme administrator that a court has reached a final decision on how the deposit is to be returned to the parties, (and the scheme administrator is satisfied that such a decision has been reached) the scheme must pay out the deposit monies due to each party in accordance with the decision within 10 days of receiving notification.
671. Under insurance-based schemes, the landlord retains the deposit and repays it to the tenant following agreement between them. Where there is a dispute the landlord must transfer the disputed amount of the deposit to a designated account held by the scheme administrator.
672. Where a tenant notifies the scheme administrator that they have requested the landlord pay them all or part of the deposit and this has not been paid to him within 10 days of this request being made, the scheme administrator must direct the landlord to pay the outstanding amount into a designated account within 10 days of being so directed.
673. Where either a court decision is made as to how much should be returned to either of the parties or the landlord and tenant has reached a decision (perhaps through alternative dispute resolution), the scheme administrator must pay this amount to the relevant party

These notes refer to the Housing Act 2004 (c.34) which received Royal Assent on Thursday 18 November 2004

or parties. This payment should be made within 10 days of receiving notification that a decision has been made.

674. This payment should be made out of the amount held by the scheme administrator, which has been transferred by the landlord as directed. Where the amount to be paid out is less than the amount held, the scheme administrator must return the balance to the landlord. Where the amount to be paid out is more than the amount held, the scheme administrator must direct the landlord to pay him the difference within 10 days. However, the scheme administrator must still make the payment within 10 days of receiving notification that a decision has been made, to prevent the tenant from being disadvantaged by the landlord's failure to transfer the outstanding amount to the scheme administrator.
675. Schemes must ensure that the scheme administrator establishes and maintains adequate insurance coverage to allow for the scheme to make such payments where a landlord fails to reimburse the scheme. A scheme may require participating landlords to pay contributions towards this or charge any other administrative fees.
676. Where participating landlords are also members of the scheme, the landlord's membership may be terminated by the scheme administrator for a landlord's failure to reimburse the scheme as directed.
677. In line with the arrangements for custodial schemes set out in this Schedule, the designated account must not contain any amounts other than those paid into it by landlords as directed by the scheme administrator and the interest accruing on these amounts.
678. When the scheme administrator returns a deposit to either the tenant or landlord they may return this amount with interest added, at a rate specified by the appropriate national authority. Any interest retained by the scheme administrator may be used to fund the administration of the scheme. Nothing in the designated account apart from the interest generated can be used to fund the scheme.
679. A scheme must ensure that the tenant does not wrongly recover sums in respect of the deposit twice, that is, from the administrator and from the landlord. A scheme can require that it is reimbursed by the tenant where there has been double recovery by the tenant.
680. Where a tenant makes a request to a scheme administrator (whether the scheme is custodial or insurance-based) for confirmation that it is safeguarding their deposit, the scheme administrator must respond to the tenant as soon as possible. A timescale for this response is not specified, however it is likely that any contractual arrangements made between the appropriate national authority and the scheme administrator will set out an appropriate timeframe in more detail.
681. All schemes should offer some form of alternative dispute resolution (ADR) as a cheaper, quicker alternative to the courts. However, the use of such ADR facilities must not be compulsory; both parties have the option of taking the matter to court if they wish.