

Prescribed Information and suggested clauses for tenancy agreements and terms of business

For Letting Agents

Effective from 1st April 2018

TDS office address updated 1 September 2019

Tel: **0300 037 1000**

Email: deposits@tenancydepositscheme.com

www.tenancydepositscheme.com

West Wing, First Floor, Maylands Building, Hemel Hempstead, HP2 7TG

Contents

What has changed?

Guidance on issuing Prescribed Information for ASTs

Section A – Prescribed Information for Assured Shorthold Tenancies

Section B – Suggested clauses for inclusion in Assured Shorthold Tenancy Agreements

Section C – Suggested clauses for inclusion in Letting Agent's terms of business

Introduction

This guidance contains:

- A template for the Prescribed Information (Section A) which TDS members must by law give to their tenants (and any relevant person).
- Suggested Clauses (Section B) which members can *optionally* include in their tenancy agreements.
- Suggested Clauses (Section C) which members can *optionally* include in their terms of business.

The Prescribed Information Form and Suggested Clauses in this guidance must not be used for a tenancy where the deposit is to be covered by any authorised tenancy deposit protection scheme other than TDS.

What has changed?

- **Section A** is now more closely aligned with the relevant statutory instrument and **also reflects the changes in the Deregulation Act 2015 which permits the agent's name and contact details to be used instead of the landlord's.**
- Members may continue to use their existing PI templates and can choose whether or not to include the landlord's details or their own. Alternatively both could be provided.

IMPORTANT NOTE

The deposit protection legislation states that the Prescribed Information (which includes the scheme leaflet) must be served upon the tenant within 30 days of the tenancy deposit or part of the tenancy deposit being received.

Since the time limit runs from when part or all of the deposit is deemed to have been received, serving Prescribed Information before this may not be sufficient to comply with the legislation.

Good practice is to maintain a record to show when the documents were served to comply with the legislation and that they were clearly provided within the time line designated.

Guidance on issuing Prescribed Information for ASTs

Prescribed Information must be served on the tenant and on any relevant person within the period of 30 days from and including the date the landlord (or someone acting on the landlord's behalf) receives a deposit in relation to an assured shorthold tenancy, irrespective of whether or not the funds have cleared.

A “relevant person” is a person, company or organisation who, in accordance with arrangements made with the tenant, paid the deposit on behalf of the tenant e.g. a local authority, employer, parent or guarantor. Members are advised to establish, when a tenant applies for a tenancy, whether a deposit has been (or will be) paid by someone other than the tenant, because the member will have to serve Prescribed Information on such a person.

The Deregulation Act 2015 has led to some important changes in respect of Prescribed Information and has led to this becoming a less onerous obligation on landlords.

- Prescribed Information should be served each time there is a new AST within 30 days of a new AST being created;
- If the tenancy rolls over into a new fixed term AST or a statutory periodic tenancy there is no need to re-issue the Prescribed Information as long as:
 - The deposit was properly protected and Prescribed Information served at the start of the original tenancy;
 - The property let remains the same;
 - The tenant(s) remain the same;
 - The landlord(s) remain the same;
 - The deposit protection scheme used remains the same.
- In the event that any of the above conditions do not apply the deposit needs to be protected and the Prescribed Information served within 30 days of the tenancy change.

Failure to serve the Prescribed Information within the correct timescale will be a breach of the Housing Act 2004 that could expose the landlord and/or deposit holder to legal action for compensation by the tenant and/or the relevant person.

The Prescribed Information may be attached to the tenancy agreement, or served as a stand-alone document. Where the member receives the deposit at the same time as the tenancy agreement is signed, the member is recommended to attach the Prescribed Information to the tenancy agreement. The Prescribed Information includes the scheme leaflet *What is the Tenancy Deposit Scheme?* This can be downloaded from our website www.tenancydepositscheme.com, and it must be given to the tenant and any relevant person as part of the Prescribed Information. The Prescribed Information is incomplete without this leaflet.

Both landlord and tenant must sign the last page of the Prescribed Information.

Members are recommended to replicate the Prescribed Information (Section A) precisely but they may provide it in their own format if they wish – as long as it is substantially to the same effect. It is the member's responsibility to comply with the requirements of The Housing Act 2004 and The Housing (Tenancy Deposits) (Prescribed Information) Order 2007 as amended. TDS accepts no liability to members, landlords, tenants or relevant persons if the member or landlord fails to meet these statutory requirements.

Section A. Prescribed Information for Assured Shorthold Tenancies

Under the Housing Act 2004, the landlord is required to give the following information to the tenant and anyone who paid the deposit on the tenant's behalf (a Relevant Person) within 30 days of receiving the deposit. This is to ensure that tenants are made aware of their rights during and at the end of the tenancy regarding the deposit.

(a) The scheme administrator of the Tenancy Deposit Scheme is:

The Dispute Service Limited

West Wing, First Floor
Maylands Building
200 Maylands Avenue
Hemel Hempstead
Herts HP2 7TG

Phone 0300 037 1000
Email deposits@tenancydepositscheme.com
Web www.tenancydepositscheme.com

(b) A leaflet entitled *What is the Tenancy Deposit Scheme?*, which explains the operation of the provisions contained in sections 212 to 215 of, and Schedule 10 to, Housing Act 2004, must accompany this document when given to the tenant and any relevant person.

(c) The procedures that apply under the scheme by which an amount in respect of a deposit may be paid or repaid to the tenant at the end of the tenancy are set out in the scheme leaflet: *What is the Tenancy Deposit Scheme?*, which accompanies this document.

(d) The procedures that apply under the scheme where either the landlord or the tenant is not contactable at the end of the tenancy are set out in the Scheme Leaflet: *What is the Tenancy Deposit Scheme?*

(e) The procedures that apply where the landlord and the tenant dispute the amount of the deposit to be paid or repaid are summarised in the Scheme Leaflet *What is the Tenancy Deposit Scheme?* More detailed information is available on: www.tenancydepositscheme.com.

(f) The facilities available under the scheme for enabling a dispute relating to the deposit to be resolved without recourse to litigation are set out in the Scheme Leaflet: *What is the Tenancy Deposit Scheme?* More detailed information is available on: www.tenancydepositscheme.com.

(i) THE DEPOSIT

The amount of the deposit paid is £

(ii) ADDRESS OF THE PROPERTY TO WHICH THE TENANCY RELATES

(iii) DETAILS OF THE LANDLORD(S)¹

Name(s)

Address

E mail address

Telephone number

Fax number

(iv) DETAILS OF THE TENANT(S)

Name

Address

E mail address

Mobile number

Fax number

Contact details for the tenant(s) to be used at the end of the tenancy

Name

Address

E mail address

Mobile number

Fax number

Please provide the details requested in **(iv) for each tenant** (there is a continuation sheet for this purpose).

¹ The agent may insert their details here instead of the landlord's

(v) RELEVANT PERSON'S CONTACT DETAILS

If there is a relevant person (i.e. anyone who has arranged to pay the deposit on the tenant's behalf) the details requested in (iv) must be provided for them, as part of the Prescribed Information. Use the continuation sheet for this purpose.

(vi) CIRCUMSTANCES WHEN THE DEPOSIT MAY BE RETAINED BY THE LANDLORD

The circumstances when all or part of the deposit may be retained by the landlords by reference to the terms of the tenancy are set out in clause(s) of the tenancy agreement. No deduction can be paid from the deposit until the parties to the tenancy agreement have agreed the deduction, or an award has been made by TDS or by the court.

(vii) CONFIRMATION

The landlord certifies and confirms that:

- a) the information provided is accurate to the best of my/our knowledge and belief and
- b) I/we have given the tenant the opportunity to sign this document by way of confirmation that the information is accurate to the best of the tenant's knowledge and belief.

Signed by or on behalf of the landlord

The tenant confirms that:

- I/we have been given the opportunity to read the information provided and
- I/we sign this document to confirm that the information is accurate to the best of my/our knowledge and belief.

Signed by the tenant(s)

Responsibility for serving complete and correct Prescribed Information on each tenant and relevant person is the responsibility of the member and the landlord. The Dispute Service Limited does not accept any liability for a member's or landlord's failure to comply with The Housing Act 2004 and/or The Housing (Tenancy Deposits) (Prescribed Information) Order 2007.

**Prescribed Information for Assured Shorthold Tenancies
(Continuation Sheet)**

Tick one of the following:

- The information below relates to a Tenant
- The information below relates to a Relevant Person

First line of address of the property to which the tenancy relates

(iv) CONTACT DETAILS

Name

Address

E mail address

Mobile number

Fax number

Details of the Tenant(s) contact details to be used at the end of the tenancy

*(This section only needs to be completed for a tenant, **not** a relevant person)*

Name

Address

E mail address

Tick if the same as shown above

Mobile number

Tick if the same as shown above

Fax number

Tick if the same as shown above

Please provide the details requested for each tenant and each relevant person (i.e. anyone who has arranged to pay the deposit on the tenant's behalf). Attach this sheet securely to the remainder of the Prescribed Information.

Section B: Guidance for using suggested clauses in ASTs

In previous editions, it was compulsory for TDS members to insert the clauses in the section into the tenancy agreement. From 1 April 2013, these clauses were **optional** - so members have the choice about whether they wish to include them or not.

If members choose not to include the suggested clauses below, they should ensure that they adequately cover the points to which the Prescribed Information refers in relation to:

- what the deposit can be used for

The service concession agreement awarded by the Department for Communities and Local Government requires that, where there is a joint tenancy, all joint tenants consent to adjudication, unless the joint tenant raising or responding to the dispute confirms that they have made reasonable efforts to contact the other tenants but have been unable to do so. To facilitate this, you have the choice as to whether you:

- Put a clause in your tenancy agreements obtaining consent to adjudication by all joint tenants for new tenancies; or
- Issue an addendum to current tenancies; or
- Allow TDS to capture this at the point of dispute via the Dispute Application Form or Dispute Response Form;

It is entirely up to members how they choose to deal with this, but where the choice is to update your tenancy agreements, a suggested clause is provided.

Where previous versions of the clauses are removed from tenancy agreement templates, members should ensure that their tenancy agreements still continue to detail who is entitled to receive the interest on the deposit.

The timescales referred to in previous editions of the Clauses (Section B) are no longer part of the scheme rules. Instead, Members should deal with the apportionment of the tenant's deposit and convey deductions to the tenant as soon as is practicable. By law, a tenant can apply to TDS for adjudication of a dispute if the tenant has not received their deposit within 10 calendar days of asking for it to be paid to them.

Section B: Suggested clauses for inclusion in ASTs

□ Purpose of the Deposit

The Deposit has been taken for the following purposes:

- Any damage, or compensation for damage, to the premises its fixtures and fittings or for missing items for which the tenant may be liable, subject to an apportionment or allowance for fair wear and tear, the age and condition of each and any such item at the commencement of the tenancy, insured risks and repairs that are the responsibility of the landlord.
- The reasonable costs incurred in compensating the landlord for, or for rectifying or remedying any major breach by the tenant of the tenant's obligations under the tenancy agreement, including those relating to the cleaning of the premises, its fixtures and fittings.
- Any unpaid accounts for utilities or water charges or environmental services or other similar services or Council Tax incurred at the property for which the tenant is liable.
- Any rent or other money due or payable by the tenant under the tenancy agreement of which the tenant has been made aware and which remains unpaid after the end of the tenancy.

[Note – adjudicators will consider claims against the deposit in the order set out in the tenancy agreement. Therefore, members should consider the order in which they set these items out.]

□ Joint tenant consent to adjudication

There being multiple tenants, each of them agrees with the other(s) that any one of them may consent on behalf of all the others to use alternative dispute resolution through a tenancy deposit protection scheme to deal with any dispute about the deposit at the end of the tenancy.

Section C: Guidance on using clauses in agents' terms of business

1 Introduction

- 1.1 This section is only for use by members of the Tenancy Deposit Scheme for Lettings Agents and Corporate Landlords.
- 1.2 Agents who arrange ASTs need to ensure that their landlord clients are aware of their responsibilities relating to deposit protection, and obtain the landlord client's authority to fulfil them. This document sets out clauses that agents may include in their standard terms of business, if they wish, to achieve those ends.
- 1.3 Where a word is used in this section with an initial capital letter, the capital letter indicates that the word has a special meaning. The Membership Rules of the Tenancy Deposit Scheme for Lettings Agents and Corporate Landlords set out what the special meanings are.

2 Suggested Clauses for Agents' Terms of Business

- 2.1 The clauses which Agent Members may wish to include in their terms of business with landlord clients are set out below.
- 2.2 Alternative clauses are given for use where the landlord client does not want the Agent to protect the deposit (e.g. Let Only arrangements).
- 2.3 The definitions provided should also be included in the terms of business if using the suggested clauses. Members may use their discretion whether to print the definitions near the rest of the suggested clauses, or integrate them into any general definitions section of their terms of business.
- 2.4 Members may need to make alterations to the suggested clauses to achieve consistency with the rest of their terms of business. It is the Member's responsibility to ensure that the suggested clauses are compatible with the remainder of the terms of business. TDS does not accept liability for any loss arising or cost incurred as a result of the suggested clauses being inconsistent with the remainder of the Agent's terms of business.
- 2.5 Members may choose to use all, some or none of the suggested clauses. It is the Member's responsibility to ensure that their terms of business are fit for purpose. TDS accepts no liability for any consequences of the Member using, failing to use or amending any of the suggested clauses.

Section C: **Suggested clauses for inclusion in an agent's terms of business**

Calendar Day or **day** means any day of the year, including Saturdays, Sundays and bank holidays.

"Relevant Person" means person who paid the deposit or any part of it on behalf of a tenant.

"Stakeholder" means a person or body who holds the deposit at any time from the moment it has been paid by the tenant until its allocation has been agreed by the parties to the tenancy agreement, determined by the ADR process, or ordered by the court.

"Scheme" means an authorised tenancy deposit protection scheme (set up in accordance with the Housing Act 2004 and operated under a service concession agreement with the government) administered by The Dispute Service Limited.

"Statutory Time Limit" means the time limit set out in the Housing Act 2004 (as amended) in which the initial requirements of the Scheme must be met, and prescribed information must be provided to the Tenant and any Relevant Person.

"Working Day" means a day that is not a Saturday or Sunday, nor any day that is a bank holiday under the Banking and Financial Dealings Act 1971 or any customary or public holiday in England and Wales.

1. Assured Shorthold Tenancy Deposits

- 1.1 If a tenant pays a deposit in connection with an assured shorthold tenancy ("AST") the deposit must, from the moment it is received, be dealt with in accordance with a government-authorised tenancy deposit protection scheme.
- 1.2 The landlord must give the tenant and any Relevant Person 'prescribed information' about the deposit and comply with the initial requirements of an authorised scheme within the Statutory Time Limit.
- 1.3 We are a member of the Tenancy Deposit Scheme, which is a government-authorised tenancy deposit protection scheme, administered by:

The Dispute Service Limited
West Wing, First Floor
Maylands Building
200 Maylands Avenue
Hemel Hempstead
Herts
HP2 7TG

Phone: 0300 037 1000
Web: www.tenancydepositscheme.com
Email: deposits@tenancydepositscheme.com

- 1.4 If we receive an AST deposit on your behalf, we will serve the prescribed information and comply with the initial requirements of the Tenancy Deposit Scheme on your behalf, unless you give us prior written instructions to the contrary before we receive the deposit.
- 1.5 If you do not want us to protect the deposit on your behalf, it will be your responsibility to protect it as required by law. A valid notice seeking possession under s21 of the

Housing Act 1988 cannot be served on a tenant whose deposit is not protected. **A tenant or any Relevant Person may apply through the courts for compensation of at least the amount of the deposit, and up to three times the deposit**, if the landlord (or someone acting on the landlord's behalf):

- a) fails to give prescribed information within the Statutory Time Limit; or
- b) fails to comply with the initial requirements of an authorised scheme within the Statutory Time limit; or
- c) notifies the tenant or Relevant Person that the deposit has been protected in a scheme, but the tenant or Relevant Person cannot obtain the scheme's confirmation that the deposit is protected.

1.6 If you do not give us written instructions that you want to make your own arrangements for deposit protection, we will hold deposits relating to your properties under the terms of the Tenancy Deposit Scheme. We must comply with the rules of the Scheme, and this means that we will not be able to act on your instructions with regard to the deposit if those instructions conflict with the Scheme rules.

1.7 The Scheme rules are available to view and download from www.tenancydepositscheme.com. A very important point for you to bear in mind is that we must hold the deposit as "stakeholder". This means that we can only pay money from the deposit if:

- a) both landlord and tenant (and any Relevant Person) agree; or
- b) the court orders us to do so; or
- c) the Tenancy Deposit Scheme directs us to do so.

2 During the tenancy

2.1 We will hold the deposit as stakeholder in our client account (separate from the money we use to run our business).

2.2 Interest earned on the deposit will belong to the person entitled to it under the tenancy agreement.

2.3 If the Tenancy Deposit Scheme directs us to send the deposit to them, we must do that within 10 days of receiving their direction. The Scheme will not normally direct us to send them the deposit unless there is a dispute about how it is to be paid at the end of the tenancy.

Where there is NO dispute about the deposit at the end of the tenancy

2.4 At the end of an AST we will liaise with you to ascertain what (if any) deductions you propose to make from the deposit or have already agreed with the tenant. [We will help you to try and resolve any areas of dispute within a reasonable time obtaining quotations, estimates or arranging contractors on your behalf in accordance your instructions].

2.5 Once you and the tenant have agreed how the deposit should be allocated, we will ask you both to confirm your agreement in writing. We will then pay the deposit according to what you have agreed, within 10 days of receiving confirmation of agreement from you and the tenant(s). We cannot pay until we have the tenant's agreement. If you have joint tenants, all of them must agree.

3 Where there IS a dispute about the deposit at the end of the tenancy

- 3.1 You must use reasonable efforts to reach a sensible resolution to the dispute as soon as practicable after the tenancy ends.
- 3.2 A tenant can ask us to repay the deposit at any time after the tenancy has ended. You must agree to us releasing promptly any part of the deposit that does not need to be held back to cover breaches of the tenancy agreement. We will take your instructions at the time regarding the amount to be withheld.
- 3.3 If the tenant asks us to repay some or all of the deposit, and we do not do so within 10 days from and including the date of the tenant's request, the tenant can notify the Tenancy Deposit Scheme. The Scheme will then direct us to pay the disputed amount to the Scheme. We have 10 days, from and including the date we receive the Scheme's direction, to send in the money.
- 3.4 If we protect a deposit with the Scheme on your behalf, **you hereby authorise us to pay to the Scheme as much of the deposit as the Scheme requires us to send.** We will contact you to keep you informed, but we will not need to seek your further authority to send the money to the Scheme.
- 3.5 The Tenancy Deposit Scheme will review the tenant's claim and decide whether it is suitable for independent alternative dispute resolution. Usually, this will take the form of adjudication, but it may involve assisted negotiation or mediation. "Alternative" in this context means an alternative to court proceedings. It is intended to be a faster and more cost-effective way of resolving disputes. The Scheme does not make a charge to landlords or tenants for using the alternative dispute resolution service if it relates to an AST.
- 3.6 If the tenant's claim is referred for alternative dispute resolution, we and you will be invited to accept or contest the claim. You must notify the Scheme whether you agree to submit the dispute for alternative dispute resolution within 10 Working Days from (but not including) the date of the Scheme's communication to you. **If you do not respond to the Scheme by the deadline, you will be treated as having given your consent to alternative dispute resolution.**
- 3.7 Agents and landlords are permitted to refer a dispute about a deposit to the Tenancy Deposit Scheme. If you or we refer a deposit dispute to the Scheme, the Scheme will contact the tenant to confirm whether the tenant will agree to alternative dispute resolution. If there are joint tenants, all the joint tenants must agree. A tenant who does not reply to the Scheme is NOT deemed to consent to alternative dispute resolution. **If the tenant (or all joint tenants) do not agree to alternative dispute resolution, and do not agree to the deposit deduction(s) you claim, you will need to begin court proceedings if you wish to pursue your claim.**
- 3.8 If the parties agree to adjudication, the adjudicator's decision is final and there is no right of appeal. Further information about adjudication is available free to download from www.tenancydepositscheme.com.
- 3.9 The Tenancy Deposit Scheme will pay the disputed amount to the person(s) entitled within 10 days beginning on the date the Scheme receives notice of (a) the adjudicator's decision or (b) an order from the court that has become final or (c) an agreement being reached between you and the tenant(s).
- 3.10 If you order any work to be done at the property before a dispute has been resolved, you do so at your own risk. There is no guarantee, if you incur expense, that a dispute will ultimately be resolved in your favour.

4 Consent to use personal information

- 4.1 When you agree to use our services, you agree that we may use information you give us, including information about yourself, for the purposes of performing our obligations to you.
- 4.2 You agree that we may supply such information as is reasonably required to the Scheme. You agree that the Scheme, or the government department responsible for the Scheme, may contact you from time to time to ask you to participate in surveys. If at any time you do not wish the Scheme to contact you for that purpose, you should write to the Scheme as explained in the Scheme Leaflet (see www.tenancydepositscheme.com).

5 Our duty to provide correct and complete information

- 5.1 When you agree to use our services, you guarantee that all the information you provide to us is complete and correct to the best of your knowledge and belief. You agree to inform us immediately if it comes to your attention that any information was incorrect.
- 5.2 If we suffer any loss or incur any cost because information you have given us is or was incomplete and/or incorrect, you agree to pay us the amount necessary to put us in the position we would have been in if the information had been complete and correct. This clause does not relieve us of our own obligation to use reasonable skill and care in providing our services to you, or to take reasonable steps to keep our losses and costs to a minimum once we realise that there is a problem.

6 Where the tenancy is not an AST

- 6.1 The deposit does not have to be protected by law. However, the Tenancy Deposit Scheme will make its independent alternative dispute resolution service available to you as our client, because we are a member of the Scheme.
- 6.2 If a dispute arises you, we or the tenant will contact the Scheme. Then:
- a) the Scheme will propose what they consider to be the most effective way of resolving the dispute (assisted negotiation, mediation, adjudication or arbitration);
 - b) you, we and the tenants must consent in writing to the proposed method if we all want to proceed (if we don't, the options are to negotiate or litigate);
 - c) the parties will have to pay a fee of £500 + VAT (or such other minimum fee as the Scheme may set from time to time) or 10% of the deposit plus VAT, whichever is the larger amount.
- 6.3 The Scheme will not start the dispute resolution process until all parties have agreed in writing to use the Scheme and paid the applicable fee and the disputed deposit to the Scheme.

7 Where you instruct us that you do not want us to protect an AST deposit

- 7.1 If the deposit relates to an AST and you decide to hold the deposit yourself, you must tell us before the tenancy agreement is signed. We will notify you of the date we receive the deposit and aim to transfer the deposit to you within 5 days of receiving it. By law you must then register the deposit with an authorised tenancy deposit protection scheme within 30 days of the date we received it. You must also give the tenant(s) and any Relevant Person 'prescribed information' about the deposit. If you do not do both these things within 30 days of us receiving the deposit, the tenant or any Relevant Person can take legal action against you. The court can make an order stating that you must pay the deposit back to the tenant, or lodge it with the custodial scheme run by the Deposit Protection Service. The court will then also order you to pay compensation to the tenant of between one and three times the amount of the deposit.
- 7.2 By law, you may not serve a notice seeking possession under section 21 of the Housing Act 1988 notice until you have served the prescribed information. If you have not complied with the initial requirements of an authorised tenancy deposit protection scheme, you cannot serve a s21 notice until you have returned the deposit (or the agreed balance of it) to the tenant or court proceedings relating to the return of the deposit have been disposed of.
- 7.3 If you instruct us that you do not want us to protect an AST deposit, we shall not be liable to you for any loss suffered or cost incurred if you fail to comply with your obligations to protect the deposit and give prescribed information. You must pay us for any loss or inconvenience suffered or cost incurred by us if you fail to comply with those obligations. This clause will not apply if the reason for your failure is because we failed to send you the deposit within 20 days of receiving it.

8 Joint Landlords

- 8.1 If there is more than one landlord, any of you will be able to participate in alternative dispute resolution. TDS does not accept liability to any one or more joint landlords for acting on the instructions of any other joint landlord. TDS does not accept directions from joint landlords to deal only with instructions agreed unanimously by joint landlords. If you want all decisions to be made jointly, this is something that should be agreed between the landlords. It will then be a matter for the landlords to resolve among themselves if one or more of them have not complied with that agreement.