

The Tenancy Deposit Schemes (Scotland) Regulations 2011.

Your questions answered

What do these regulations mean for landlords ?

The regulations require that a landlord must pay deposits into an approved scheme and ensure that the money is held by an approved scheme for the duration of the tenancy. Evidence of registration with the relevant local authority must be provided when the deposit is paid over. (Regulations 3 and 44 apply). The tenant must also be provided with specific information about the tenancy, the deposit and the scheme that will be protecting it. (Regulations 42 and 43 apply).

Which landlords will have to comply with the regulations?

The types of tenancy to which these regulations will apply are the same as those covered by the landlord registration provisions in the Antisocial Behaviour etc. (Scotland) Act 2004 apply. Therefore, if a landlord is required to register with a local authority, and takes a deposit from a tenant, they must also comply with tenancy deposit regulations.

Landlords of the following types of property are not required to register and so will not have to comply with tenancy deposit regulations:

- Lets to family members
- Life rents
- Houses for holiday use
- Properties used by religious orders and organisations
- Accommodation with care
- Houses subject to control orders
- Agricultural and crofting tenancies
- Resident landlords
- Transitory ownership (executors, heritable creditors and insolvency practitioners)
- The regulations do not apply to tenancies outside Scotland.

Do the Regulations apply to a landlord who lives outside Scotland?

The Regulations apply to all landlords who receive a deposit in connection with relevant tenancies in Scotland, unless they are exempt.

Why does information about landlord registration status have to be declared?

It is a legal requirement for most landlords to register with the relevant local authority. Approved schemes will collect information about registration and refer it to the relevant local authorities to assist in the identification of unregistered landlords.

How will the schemes verify that a landlord is registered?

It is not the role of tenancy deposit schemes to verify landlord registration status. It will be for the relevant licensing authority to make any checks on the validity of information provided to them by the scheme.

What happens if a landlord uses a letting agent?

As the person who requires a deposit to be taken, the duties in relation to tenancy deposits rest with the landlord. If a landlord uses a letting agent, it will be in their interests to check that the agent acts in accordance with the regulations. Any sanctions imposed by a sheriff for non-compliance with the regulations, will apply to the landlord.

TENANCY DEPOSIT SCHEMES

When will a tenancy deposit scheme come into effect?

Tenancy deposits schemes will start operating on Monday 2 July 2012. The three schemes that have been approved by the Scottish Ministers are:

- The Letting Protection Service Scotland
- SafeDeposits Scotland
- My|deposits Scotland

Will there be a choice of schemes?

Three schemes have been approved to start from 2 July 2012. Landlords may participate in more than one scheme at a time, although individual deposits can only be submitted to one scheme at a time.

Who will be able to use the schemes?

All schemes must be available to all landlords who are required to comply with tenancy deposit regulations, and any agents acting on their behalf.

How will the schemes be paid for?

Income accrued on the deposits held by approved schemes will be used to pay the running costs of those schemes. In a climate of low interest rates it is likely to be some time before schemes will generate enough income to cover their running costs. Therefore all schemes must have sufficient funds available to them to operate the scheme until the income generated by the deposits covers the running costs.

How will schemes be monitored?

Every approved scheme will be monitored by the Scottish Government on a quarterly and annual basis. This includes a requirement to report on the delivery of scheme services, the financial position of the scheme, including a set of independently audited accounts and statements on the income and expenditure of the scheme. Scottish Ministers are also required to review every approved tenancy deposit scheme from time to time, and if necessary, take steps to secure the revision of the reviewed scheme.

How much will it cost to join the schemes?

There will be no charges for landlords or letting agents to participate in a scheme.

Do landlords have to take a deposit?

No. Deposits are taken at the landlord's discretion

DATE FOR COMPLYING WITH THE REGULATIONS

When will landlords need to comply with the regulations?

This will vary, depending on when the deposit was received:

1. Deposit received prior to 7 March 2011:

Where the tenancy is renewed by express agreement or tacit relocation on or after 2 October 2012 and before 2 April 2013 (Regulation 47(a))

Within 30 working days of renewal

In any other case (Regulation 47(b))

By 15 May 2013

2. Deposit received on or after 7 March 2011 and before 2 July 2012 (Regulation 48)

By 13 November 2012

3. Deposit received on or after 2 July 2012 and before 2 October 2012 (Regulation 4)

By 13 November 2012

4. Deposit received on or after 2 October 2012 (Regulation 3)

Within 30 working days of the beginning of the tenancy

DUTY TO PROVIDE INFORMATION

What information must a landlord give to a tenant?

Under Regulation 42 of the 2011 Act you must provide your tenant with information about the following:

- your landlord registration status
- confirmation of receipt of the deposit
- confirmation of the date it was paid to an approved scheme
- the name and contact details for the scheme holding the deposit
- the address to which the deposit relates
- the reasons why part or all of the deposit might be withheld at the end of the tenancy, with reference to the tenancy agreement

The information must be provided within the timescales indicated under Section 3

PROTECTION OF DEPOSITS

Who is responsible for submitting deposits to a scheme?

The regulations place the duty on landlords to ensure that tenancy deposits are submitted to an approved scheme; to provide information to the tenant, and ensure that deposits are held by an approved scheme throughout the tenancy. If a landlord uses a letting agent to manage the tenancy, it will be in their interests to ensure that the agent acts in accordance with the Regulations.

Will approved schemes accept deposits from landlord who wants to protect deposits on a voluntary basis?

Some landlords will be exempt from tenancy deposit regulations. It will be for individual scheme providers to decide if they will accept deposits from landlords who are not legally obliged to submit them to a scheme.

How will the scheme protect deposits?

On receipt of a deposit, the scheme administrator will transfer the money to a regulated banking institution pass the money for holding in designated customer accounts until it is due to be repaid after the end of the tenancy.

Will the deposits be safe if the landlord or letting agent goes out of business?

Yes – as long as the deposit has been paid to an approved tenancy deposit scheme.

How will deposits be protected if the scheme fails?

All deposits will held in ring fenced bank accounts to ensure that the money will be protected against any claim form the scheme or any of its creditors should the scheme fail. Deposit funds must be invested in such a way that they will always be adequately protected and be available for repayment or transfer to another scheme, if required.

What happens if the banks holding the deposits fail?

Deposits will be invested in banking institutions that are regulated by the Financial Services Authority. In the event of bank failure, claims on deposit funds can be considered under the Financial Services Compensation Scheme, subject to the qualifying conditions and limits in place at that time.

Will schemes accept deposits that are paid to landlords by instalments?

Yes.

Can deposits be transferred from one scheme to another?

Yes. A landlord may apply for the deposit to be transferred to another scheme.

What happens to the deposit if a landlord sells a property part way through the tenancy with the tenant still resident?

If the deposit has already have been submitted to an approved scheme the scheme administrator will continue to hold the deposit until it is due to be repaid. Any new landlord should ensure that the deposit has been, or is submitted to an approved scheme in the required timescale.

What happens if the property is let to several tenants on one tenancy agreement?

Individual scheme providers may require joint tenants to nominate a lead tenant to be the main contact for dealing with the submission and repayment of deposits, as well as any dispute that might arise at the end of the tenancy. However, all schemes must make provision for individual tenants to be able to access the scheme and it services if they wish to.

RETURN OF DEPOSITS

How will deposits be returned at the end of a tenancy?

The landlord should apply to the scheme for repayment of the deposit after the end of the tenancy, giving details about how much should be repaid to the tenant. The scheme administrator will write to the tenant asking them to confirm whether they agree with the application, or whether they wish to dispute the amount. If the tenant agrees, the scheme administrator will repay the deposit accordingly.

How long will it take to return the deposit?

Where the tenant agrees with the landlord's application, the deposit will be repaid within 5 working days. The return of deposits may take longer where the amount is disputed, or the landlord or tenant cannot be contacted, or do not cooperate.

What if the landlord applies for the return of the deposit and the tenant is not contactable?

On receipt of the application for repayment, the scheme administrator will write to the tenant to confirm whether they agree, or whether they wish to dispute the amount. If no confirmation is received from the tenant within 30 working days, the scheme administrator will repay any amount claimed by the landlord within 5 working days of the end of the 30 working day period. Any amount due to the tenant will be held by the scheme in case the tenant contacts the scheme to apply for it at a later date.

What if the landlord doesn't apply for the deposit?

The tenant can also apply to the scheme for repayment of the deposit. Where a tenant does apply for the deposit, the scheme administrator will write to the landlord to notify them of the application and amount applied for. If the landlord agrees to the amount applied for by the tenant the scheme administrator will repay the deposit within 5 working days. If the landlord does not agree with the tenant's application, or make an alternative application within 30 working days, the full deposit is repaid to the tenant within 5 working days of the end of the 30 day period.

What happens if a landlord/agent wants to claim on the deposit for damages that occur midway through the tenancy?

The Regulations do not make provision for deposits to be returned other than after the end of a tenancy or for the purposes of transferring it to another scheme.

Will interest be returned with the deposit?

No. Interest accrued on deposits paid in to an approved scheme, will be used first and foremost for paying the running costs of that scheme.

DISPUTES

What happens if the tenant disagrees with the landlord's application for the return of the deposit?

Every tenancy deposit scheme must provide access to a dispute resolution service. This means that where a tenant does not agree with the amount of deposit applied for by the landlord, the tenant can ask for the case to be referred to an independent adjudicator. The adjudicator will make a decision about how the deposit should be repaid, based on evidence provided by both parties. The scheme administrator must be satisfied that the tenant has tried to resolve the dispute with the landlord, and that this has failed, before referring a case to dispute resolution.

Does the tenant have to use dispute resolution?

No. The tenant can still opt to go to court, or use another form of redress to recover their deposit. However, the landlord will be required to cooperate with the dispute resolution service if the tenant raises a dispute with the scheme.

How is a dispute raised?

If the tenant does not agree with the application for the return of the deposit, they must notify the scheme administrator of the amount which they think should be repaid, and request a referral to the adjudicator. The disputed amount will be held in a designated account until the issue is resolved – *any undisputed deposit will be returned to the tenant or landlord as soon as possible*. The scheme administrator will refer the case to dispute resolution.

Can a dispute be raised after the tenant has left the property?

Yes, although the timescales within which a request for a referral to dispute resolution can be made will be determined by the rules of individual scheme providers.

What happens to the deposit if the tenant chooses to go to court?

The tenant has 30 working days to notify the scheme administrator if they want to use dispute resolution service. If the tenant tells the scheme that they want to go to court, the deposit will be released as per the landlord's application within 5 working days after the expiry of the 30 working day period.

How much will dispute resolution cost?

There will be no charge to use the dispute resolution service.

Will evidence be needed to support a dispute?

Yes. Both the landlord and tenant will be asked to provide evidence to support their claims on the deposit. The types of evidence that will be accepted will be specified by individual scheme providers.

Is there any guidance available on dispute resolution?

All approved schemes will produce guidance on how their dispute resolution service will operate, including advice about evidence to support a claim on a deposit and fair wear and tear. This will be made available on the scheme web sites.

Do the regulations require the landlord to provide an inventory?

No. However, it is recognised as good practice to complete an inventory at the outset of the tenancy, and again when the tenancy ends. If the tenant has agreed the inventory at each stage, this reduces the potential for a dispute to arise. Landlords may wish to consider whether existing inventories or tenancy agreements need to be updated in preparation for the introduction of tenancy deposit schemes. Landlord organisations and the individual scheme providers can offer advice on this issue.

Does an inventory have to be provided by an independent organisation?

No. A landlord may choose to produce the inventory themselves, or use an agent or organisation to do so on their behalf if they wish. Many local authorities and landlord organisations have templates and guidance available for use in producing an inventory.

Will the adjudicator consider a dispute without an inventory?

The adjudicator will base their decision on the evidence that is made available to them by both parties. Failure to provide suitable evidence in support of a claim may affect the outcome of the dispute. An inventory will be helpful in supporting a claim on a deposit.

Will the adjudicator deal with disputes for recovery of an amount in excess of the deposit?

No. Tenancy deposit schemes will only deal with the deposit that has been paid by the tenant. Additional sums must be recovered by other means e.g. through the courts.

How long does the dispute resolution process take?

The adjudicator must decide any dispute within 20 working days of receiving the referral. Within 5 working days of reaching a decision, the adjudicator must write to the scheme administrator, the tenant and landlord, setting out the detail of the decision. It is for individual scheme providers to decide how long to allow parties to provide evidence in support of a dispute.

What if the landlord needs the deposit to pay for repairs?

Any disputed amount of the deposit cannot be returned until the dispute is resolved or the tenant and landlord otherwise reach agreement, or agree to abandon the adjudication process. *Any part of the deposit that isn't disputed will be returned as soon as possible.*

What happens to the deposit if the tenant fails to pay the last months rent or the final utility bill and disagrees with the landlord's claim on the deposit?

This will depend on whether the tenancy agreement says that part or all of the deposit may be retained by the landlord in these circumstances. If the tenant disagrees with the application for repayment of the deposit, and requests a referral to dispute resolution, the adjudicator will take account of what is in the tenancy agreement.

Can the adjudicator's decision be challenged?

Both parties will have 10 working days from the date the decision is notified, to request a review of that decision. A review can only be accepted if the adjudicator has erred in law, and or fact, for example if the adjudicator has ignored evidence that was provided to support the claim. A review will not be accepted on the basis that either party does not like the outcome. A decision of the adjudicator following a review is final.

How long does it take to receive the deposit once the adjudication has been made?

The deposit must be returned within 5 working days of the end of the 10 working days allowed for a request for review. Where a review is undertaken, the deposit must be returned by the scheme administrator within 5 working days of notification of the review decision.

FAILURE TO COMPLY WITH TENANCY DEPOSIT REGULATIONS

What happens if the deposit is not submitted to an approved scheme and/or information not provided to the tenant?

A tenant may apply to a sheriff court for sanctions against the landlord for non compliance with the regulations. If the sheriff is satisfied that the landlord has failed to comply, they must order the landlord to pay the tenant up to three times the amount of the deposit and may order that the deposit is submitted to an approved scheme or information provided. The sheriff will have discretion to take the individual circumstances of each application into account when deciding the amount of financial penalty that should apply.