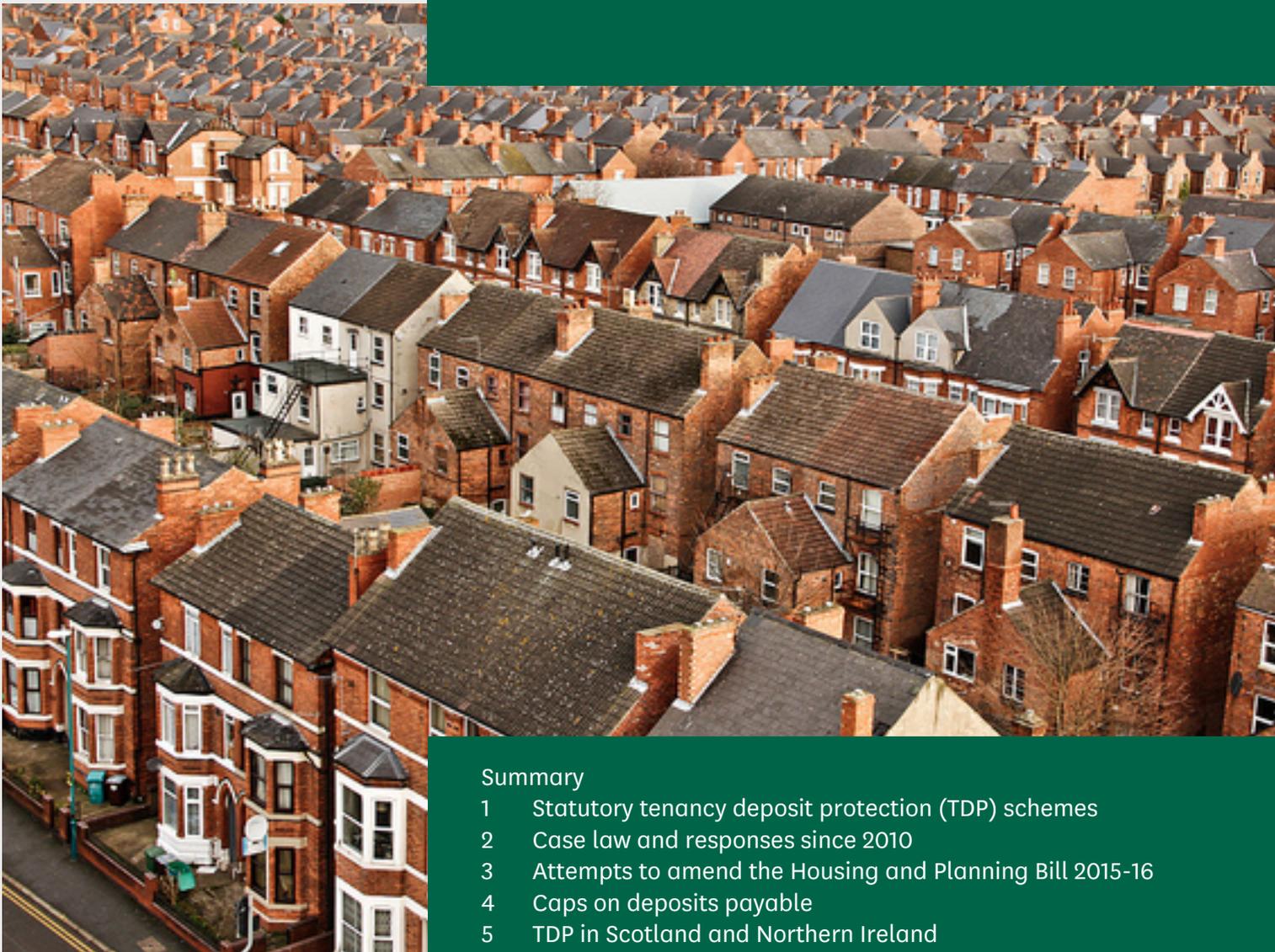


By Wendy Wilson,  
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22 July 2022

# Tenancy deposit schemes



## Summary

- 1 Statutory tenancy deposit protection (TDP) schemes
- 2 Case law and responses since 2010
- 3 Attempts to amend the Housing and Planning Bill 2015-16
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- 6 Ongoing issues with TDP
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## Summary

### Why were tenancy deposit protection (TDP) schemes introduced?

In June 1998 the National Association of Citizens Advice Bureaux (NACAB) published a report based on CAB clients' experience of the payment of deposits. In light of evidence highlighting difficulties faced by tenants trying to reclaim their deposits from private landlords, NACAB concluded the case for reform was "overwhelming" and the failure to regulate deposits damaged the image and reputation of the private rented sector.

### What does the legislation require?

Provisions were added to the Housing Act 2004 to place a duty on 'the appropriate national authority' to establish at least one statutory tenancy deposit protection (TDP) scheme. TDP schemes became operational from 6 April 2007 in respect of assured shorthold tenancies (ASTs) created in England and Wales after that date.

In England and Wales landlords/agents must place a tenant's deposit into a government-approved TDP scheme and give the tenant prescribed [information](#) about how the deposit is protected within 30 days of receipt. There are two types of TDP scheme - a custodial scheme and an insurance-based scheme - and three Government-approved TDP scheme providers:

- [Deposit Protection Service](#)
- [Tenancy Deposit Scheme](#)
- [mydeposits](#)

Failure to protect a tenancy deposit can result in the imposition of a financial penalty. It also restricts a landlord's ability to serve a section 21 notice seeking possession of a property let on an AST.

At the end of a tenancy, if the landlord and tenant disagree on how much of the deposit should be returned, they have the option of using the alternative dispute resolution (ADR) service provided by the relevant TDP scheme provider. There is no obligation on either party to use ADR, but it will normally be faster and cheaper than trying to resolve a dispute through the courts.

The Tenant Fees Act 2019 placed a cap on the amount that tenants in England can be required to pay in the form of a tenancy deposit.

There were around 4.2 million deposits protected in England and Wales at the end of March 2021, with a total value of around £4.35 billion, according to [statistics published by the Tenancy Deposit Scheme \(PDF\)](#).

Scotland and Northern Ireland have also legislated to make protecting deposits mandatory. The result is similar in all constituent parts of the UK.

## Ongoing issues with TDP

Critics of the TDP system point to the number of non-compliant landlords; the length of time it can take to resolve disputes; as well as loopholes and abuses of insurance-based schemes. There are also concerns around the affordability of tenancy deposits and TDP schemes acting as a barrier to those who rely on the return of the money to pay a deposit on a new tenancy.

In 2018, the Government established a Tenancy Deposit Protection Working Group, formed of representatives of tenants, landlords and agents, the TDP schemes and Nationwide Building Society, to consider potential reforms.

## Consultation on TDP reform

The [Conservative Party Manifesto 2019](#) promised a “better deal for renters” including a new ‘lifetime’ tenancy deposit to assist tenants moving from one tenancy to the next.

In June 2019, the Government launched a [call for evidence on tenancy deposit reform](#), building on the work of the Tenancy Deposit Protection Working Group. The consultation sought views on potential improvements to the TDP system and alternative innovative approaches to deposit protection. Submissions were accepted up to 5 September 2019.

The Government’s white paper, [A fairer private rented sector](#), was published on 16 June 2022. Alongside the white paper the Government published its [response to the call for evidence on tenancy deposit reform](#). The response set out the Government’s plan to monitor the development of innovative market-led solutions to passport tenancy deposits between properties and keep the current TDP system under review.

Generation Rent, which campaigns on behalf of tenants, expressed disappointment that the Government had retreated from its manifesto commitment to introduce a lifetime deposit.

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# 1 Statutory tenancy deposit protection (TDP) schemes

## 1.1 Background (England and Wales)

The draft Housing Bill 2002-03, which was subject to pre-legislative scrutiny by the Office of the Deputy Prime Minister (ODPM) Housing, Planning, Local Government and the Regions Select Committee,<sup>1</sup> did not contain provisions to introduce a mandatory Tenancy Deposit Protection (TDP) scheme but the Committee concluded there was a case for such a scheme.<sup>2</sup>

The Government's response was published on 10 November 2003.<sup>3</sup> The Government, at that time, did not agree that a statutory tenancy deposit scheme should be included in the forthcoming Housing Bill as more time was needed to work up proposals.<sup>4</sup>

The Housing Bill 2003-04 was presented on 8 December 2003. The original Bill did not contain measures to introduce a statutory TDP scheme. During the Commons Committee Stage an amendment was moved to place a duty on the 'appropriate national authority' to introduce a mandatory tenancy deposit scheme within 12 months of the Act coming into force. The then Minister for Housing, Keith Hill, reiterated the Government's commitment to consider the case for legislation alongside the Law Commission's proposals.<sup>5</sup>

However, on 19 May 2004 the then Minister announced amendments would be added to the Bill in respect of tenancy deposits.<sup>6</sup> Provisions to enable the establishment of mandatory tenancy deposit schemes were added to the Housing Bill: these provisions can be found in Chapter 4 and Schedule 10 to the Housing Act 2004.

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<sup>1</sup> Draft Housing Bill, Cm 5793, 31 March 2003

<sup>2</sup> ODPM: Housing, Planning, Local Government and the Regions Committee, [The Draft Housing Bill](#), (PDF) 22 July 2003, HC 751-1 2002-03, pp64-65, para 196

<sup>3</sup> Cm 6000, 10 November 2003

<sup>4</sup> As above, para 64

<sup>5</sup> SC(E) 24 February 2004 c705

<sup>6</sup> HC Deb 19 May 2004 cc51-2WS

## 1.2

# The statutory TDP scheme: April 2007 onwards

Since 6 April 2007 tenancy deposit protection has applied to all newly created assured shorthold tenancies in England and Wales where a deposit is taken.<sup>7</sup> There are two main aims:

- To ensure good practise in deposit handling, so that when a tenant pays a deposit, and is entitled to get it back, they can be assured that this will happen.
- To assist with the resolution of disputes by having an alternative dispute resolution (ADR) service. It should also encourage tenants and landlords to have in place, from the outset, clear agreement on the condition of the property through appropriate use of inventories.

Landlords are required to join a statutory TDP scheme if they take deposits from assured shorthold tenants. Failure to comply can result in a penalty charge.<sup>8</sup> Tenants can get all or part of their deposit back if they have kept the property in good condition and meet the requirements for the return of the deposit. The scheme offers alternative ways of resolving disputes which aim to be faster and cheaper than taking court action.

Landlords can choose between two types of scheme:

- A **custodial scheme**, in which the deposit is held by the scheme. This is free to join and is funded by the interest generated by deposits.
- An **insurance-based scheme**, in which the landlord keeps the deposit and pays a fee to the scheme.

In each scheme the deposit must be returned within 10 days of the end of the tenancy, provided the landlord and tenant have agreed the amount to be returned.

The three operators of the TDP schemes published a guide to dealing with disputes over deposits: [Guide to deposits, disputes and damages \(PDF\)](#).<sup>9</sup>

### The custodial scheme

- The tenant pays the deposit to the landlord.

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<sup>7</sup> Assured shorthold tenancies are currently the standard type of private sector tenancy in England and Wales. These tenancies are governed by Part 1 of the Housing Act 1988.

<sup>8</sup> See section 4.1 of this note concerning a Court of Appeal ruling on the penalty payable and amendments introduced by the Localism Act 2011 from 6 April 2012.

<sup>9</sup> Revised in June 2017.

- The landlord pays the deposit into the scheme, unlike the insurance-based schemes. This scheme is free for landlords. The interest accrued by deposits is used to pay for the scheme, as permitted in the [Housing Act 2004, Schedule 10, Section 3\(4\)](#). Providers are entitled to keep all the interest accrued on deposits they hold. Providers can, however, choose to deduct their fees and return the remainder to a tenant or landlord as per the contract.
- Within 30 days<sup>10</sup> of receiving a deposit the landlord must give the tenant information about the scheme in which their deposit is protected.<sup>11</sup>
- At the end of the tenancy, if the landlord and tenant agree how the deposit should be divided, they tell the scheme and the deposit is returned on the basis agreed by both parties. In England and Wales, this should happen within 10 working days; in Scotland and Northern Ireland it is 5 working days.<sup>12</sup>
- If there is a dispute, the scheme holds the amount until the dispute resolution service or courts decide what is fair.

## Interest rates in custodial schemes

In 2007, [The Housing \(Tenancy Deposits\) \(Specified Interest Rate\) Order 2007](#) (SI 2007/798) specified that where interest is payable on money deposited in a TDP in accordance with paragraph 3(5) of Schedule 10 to the 2004 Act, the rate of interest applied will be equivalent to the Bank of England base rate less 2.32 per cent.

This was subsequently revoked in England by [The Housing \(Tenancy Deposits\) \(Specified Interest Rate\) \(Revocation\) \(England\) Order 2015](#). As Bank of England rates had remained below 2.32 per cent for several years, there was no impact at the time.<sup>13</sup>

[Mydeposits](#), the [Tenancy Deposit Scheme](#) and the [Deposit Protection Service](#) run a custodial deposit scheme.

<sup>10</sup> Originally 14 days but this was extended with effect from 6 April 2012 - see section 2.1 of this note.

<sup>11</sup> [The Housing \(Tenancy Deposits\) \(Prescribed Information\) Order 2007](#) (PDF)(SI 2007/797) sets out the information that a landlord must give to a tenant who has paid a deposit.

<sup>12</sup> See section 5 of this paper for information on deposits in Scotland and Northern Ireland.

<sup>13</sup> Nearly Legal: Housing Law Blog, [English Tenancy Deposits Are Less Interest-ing](#), 13 January 2015

## The insurance-based scheme

- The tenant pays the deposit to the landlord.
- The landlord retains the deposit and pays a premium to the insurer.
- Within 30 days<sup>14</sup> of receiving a deposit, the landlord must give the tenant information about the scheme being used.<sup>15</sup>
- At the end of the tenancy, if the landlord and tenant agree how the deposit should be divided, the landlord returns all or some of the deposit. In England and Wales, this should happen within 10 working days; in Scotland and Northern Ireland it is 5 working days.<sup>16</sup>
- If there is a dispute, the landlord must hand over the disputed amount to the scheme administrator for safekeeping until the dispute is resolved.
- If for any reason the landlord fails to comply, the insurance arrangements ensure the return of the deposit to the tenant if they are entitled to it.

Example: This means if the full deposit is £1000, and the tenant agrees to the landlord's claim of £300 for redecoration, but not their claim of £200 for cleaning, the landlord would keep £300, repay £500 to the tenant and pay £200 to TDS, but only if and when requested. TDS would hold the disputed sum while either awaiting an agreement, a Court decision or a published report of adjudication by TDS. After gathering evidence from both parties, the adjudicator may either make an award to the landlord and/or return any balance held to the tenants.<sup>17</sup>

Insurance-based providers include [mydeposits](#), the [Tenancy Deposit Scheme](#) and the [Deposit Protection Service](#). Fees vary between providers.

## 1.3

## Alternative dispute resolution (ADR) vs the courts

All the schemes offer alternative dispute resolution which is funded by the scheme providers as part of their overall running costs,<sup>18</sup> but landlords/tenants may opt to use the courts to resolve disputes. The Tenancy Deposit Scheme (TDS) provides the following advice in its leaflet, [The dispute process](#):

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<sup>14</sup> Originally 14 days but this was extended with effect from 6 April 2012 - see section 2.1 of this note.

<sup>15</sup> [The Housing \(Tenancy Deposits\) \(Prescribed Information\) Order 2007](#) (PDF) (SI 2007/797) sets out the information that a landlord must give to a tenant who has paid a deposit.

<sup>16</sup> See section 5 of this paper for information on deposits in Scotland and Northern Ireland.

<sup>17</sup> Tenancy Deposit Scheme, [AskTDS: "Can I hold my tenant's deposit?"](#) (accessed on 28 June 2022)

<sup>18</sup> HC Deb 16 December 2010 c 938W

Either party may go to court if they prefer. We can only deal with their dispute if both tenant and landlord agree they want us to. However, if the landlord refuses to make a decision, we will deal with the dispute anyway. Most people prefer to come to us because they feel it will be quicker, cheaper and less stressful. Like the courts, we are independent and authoritative. We can deal with proposed deductions from a deposit, but we cannot award compensation.<sup>19</sup>

#### Decisions under ADR are binding:

Because participation in this ADR process requires consent by both parties, the final decision of the adjudicator is binding on both the landlord and tenant. It cannot be challenged except through a Court of Law – although the parties should seek their own independent legal advice first. The Schemes are NOT permitted to re-open cases unless it can be shown that the Scheme did not follow the processes laid down in its own rules, or did not take into account all the evidence submitted by the parties.

In extreme circumstances adjudicators may ask for further evidence or clarification on a particular matter from either party. In some cases, the adjudicator may decide that the case would be better dealt with through a formal court process. However, in the majority of cases the adjudicator will make a decision based on the evidence he has in front of him.<sup>20</sup>

In principle, tenants should be able get all or part of their deposit back if they have kept the property in good condition and meet the requirements for the return of the deposit. Charges for ‘wear and tear’ should not be deducted from the deposit, although the meaning of this phrase is debateable. The website of the relevant TDP scheme should provide further information: for example, the jointly produced publication, [A Guide to deposits, disputes and damages \(PDF\)](#) outlines what evidence is collected and provides a definition of damage and ‘wear and tear’.

## 1.4 Implications of failing to protect a deposit

If a landlord does not protect a deposit the tenant can pursue the matter through the local county court. Failure to protect a deposit can result in a penalty charge of up to three times the value of the deposit, payable to the tenant. Courts have discretion over how much the penalty charge will be according to the circumstances of the case (section 214(4) of the Housing Act 2004).

A landlord in this situation will also find that they lose certain rights, including the right to serve a section 21 Notice of Possession on an assured shorthold tenant. This is how a landlord can end an assured shorthold

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<sup>19</sup> TDS, [The dispute process](#), revised September 2020

<sup>20</sup> TDS, [A Guide to deposits, disputes and damages \(PDF\)](#), June 2017

tenancy on or after the expiry of the initial fixed term without having to establish fault on the part of the tenant.<sup>21</sup>

## 1.5

# Accountability & financial stability of TDP scheme operators

Landlords and tenants who are unhappy with the outcome of a dispute dealt with by the alternative dispute resolution service offered under the TDP schemes have questioned whether the operators of the schemes are accountable to Government. The providers operate under a Service Concession Agreement with the Government:

**Nicholas Brown:** To ask the Secretary of State for Communities and Local Government, what recent assessment he has made of the effectiveness of the Deposit Protection Service; and what plans he has to strengthen protections for tenants' damage deposits.

**Brandon Lewis:** The Department has a governance role in ensuring that all Tenancy Deposit Protection schemes perform to high standards.

The Deposit Protection Service is required to submit monthly key performance indicators and provide annual updates of their management and financial plans to the Department, in accordance with the Service Concession Agreement we have with them. In addition, the Department holds quarterly monitoring meetings with the scheme operators at which any performance issues can be discussed. Since the schemes began in 2007, the Deposit Protection Service's performance against the benchmarks set by our key performance indicators has been consistently high.<sup>22</sup>

The scheme providers each have a complaints procedure that landlords/tenants can use if they feel that their cases have been badly handled – details can be found on the providers' websites.

Questions have also been asked about the financial stability and integrity of TDP scheme providers:

**Nigel Adams:** To ask the Secretary of State for Communities and Local Government pursuant to the answer to the hon. Member for Dudley North of 14 December 2009, Official Report, column 919W, on tenancy deposit schemes,

(1) what (a) guarantees, (b) underwriting, (c) liabilities and (d) obligations were agreed in relation to support for the three tenancy deposit protection schemes under the previous Administration;

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<sup>21</sup> Nb, the Government plans to abolish section 21 and reform the private rented sector tenancy regime in England. However, it is proposed that landlords will still need to demonstrate that a tenancy deposit has been protected in order to proceed with possession proceedings. For further information see the Commons Library briefing paper on [The end of 'no fault' section 21 evictions](#).

<sup>22</sup> [PQ 10482 \[Tenancy Deposit Schemes\], 15 October 2015](#)

(2) what assessment he has made of the financial stability and integrity of each of the three tenancy deposit protection schemes, including the effect of low interest rates on their integrity, since May 2010;

(3) what steps he has taken since May 2010 to ensure that tenancy deposit schemes can meet their financial liabilities.

**Grant Shapps:** The three tenancy deposit protection schemes are operated by private companies under service concession agreements with my Department. All three schemes are designed to be self-financing.

The service concession agreement that was agreed by the previous Administration with the custodial tenancy deposit protection scheme contained a guarantee that the Government would meet any shortfall arising if approved fees were not covered by the interest on deposits held. That guarantee was removed as part of a revised agreement negotiated in August 2010 which also incorporated a four year extension of the original agreement.

Neither of the two insurance based tenancy deposit protection schemes' agreements have ever included any similar government guarantees, underwriting, liabilities or obligations.<sup>23</sup>

The current concession agreements in place with the Deposit Protection Service, mydeposits and the Tenancy Deposit Scheme for the provision of TDP schemes expire on 31 March 2026.<sup>24</sup>

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<sup>23</sup> HC Deb 5 April 2011 cc855-6W

<sup>24</sup> [PQ 154273 \[Tenancy Deposit Schemes\], 14 April 2022](#)

## 2

## Case law and responses since 2010

The legislation governing tenancy deposits has been amended following several court cases.

### 2.1

### Court of Appeal ruling November 2010

#### Late compliance with deposit protection and prescribed information

The Court of Appeal handed down its judgment in the two conjoined cases of *Universal Estates v Tiensia* and *Honeysuckle Properties v Fletcher* in November 2010.<sup>25</sup> These cases concerned situations where landlords had not complied with the requirement in section 213(1) of the Housing Act 2004 to arrange for the protection of a deposit paid on an assured shorthold tenancy in an authorised scheme.

At the time the cases were taken, landlords had 14 days to comply with any initial requirements imposed by the terms of the TDP scheme chosen after taking payment of a deposit.<sup>26</sup> In addition, sub-sections 213(5)-(6) require landlords to provide tenants with certain prescribed information regarding the TDP scheme used. Failure to comply with these requirements gave the tenant the right to apply to the county court (section 214) for an order that the deposit be repaid or put in a custodial scheme. If the court made either order prior to 6 April 2012, it also had to order the landlord to pay the tenant a sum equal to three times the amount of the deposit (s.214(4)).<sup>27</sup> However, the Act did not specify whether the court was to assess the question of compliance at the date of the hearing, the date when proceedings were issued, or at some other date.

In *Draycott v Hannells Lettings Ltd*<sup>28</sup> the High Court held that, so long as the deposit was protected and the prescribed information provided prior to the tenant issuing proceedings, the court could not grant the tenant any remedy under section 214 of the 2004 Act.

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<sup>25</sup> [2010] EWCA Civ 1224

<sup>26</sup> The following section explains the extension of the period from 14 to 30 days by the Localism Act 2011.

<sup>27</sup> The following section provides information on amendments to the penalty payable by landlords by the Localism Act 2011.

<sup>28</sup> [2010] EWHC 217 (QB); [2010] HLR 27

In *Tiensia*, the respondent landlord issued proceedings for possession and a money judgment for rent arrears against the tenant. The tenant counterclaimed for, inter alia, an order under section 214 of the 2004 Act and applied for summary judgment on the counterclaim. It was common ground that, when the claim was issued, the landlord had not complied with the initial requirements of an authorised TDP nor provided the prescribed information. These defects were remedied prior to the hearing of the summary judgment application. The District Judge granted summary judgment and held the failure of the landlord to comply with the initial requirements of the scheme or provide the prescribed information within 14 days of receiving the deposit, was not capable of remedy. An appeal to the Circuit Judge was allowed and Ms Tiensia applied to the Court of Appeal.

In *Honeysuckle Properties*, the appellant landlord issued proceedings for a money judgment in respect of unpaid rent. The tenants counterclaimed for an order under section 214 of the 2004 Act. As in *Tiensia*, it was common ground that the initial requirements of a scheme had not been complied with, nor had the prescribed information been provided when the proceedings were issued, although both obligations were complied with by the time of the trial. The District Judge allowed the counterclaim. Permission to appeal was granted by the Circuit Judge who transferred the appeal to the Court of Appeal.

By a majority, the Court of Appeal dismissed the appeal in *Tiensia* and allowed the appeal in *Honeysuckle Properties*. It was held that the court was only empowered to make an order under section 214 if – at the date of the hearing – there had been a failure by the landlord to comply with the initial requirements or provide the prescribed information. If the landlord was late in complying with these obligations, but did so before the hearing, they had a complete defence to the claim.

There was a widely held view that the decision of the Court of Appeal in these cases undermined protection offered by the mandatory tenancy deposit schemes. Subsequent amendments to the 2004 Act are explained below.

## The Localism Act 2011

During the Commons Committee Stages of the Localism Bill Stephen Gilbert sought to improve the existing mandatory tenancy deposit scheme to “clarify the circumstances in which landlords must protect deposits and give judges greater discretion over the size of the penalty for landlords’ non-compliance to ensure that it is appropriate.”<sup>29</sup>

Then-Minister, Andrew Stunell, said he was sympathetic to the main thrust of the proposed new clause but argued it would make changes that did not flow from the Court of Appeal decision and would miss one of the key issues that arose in the Court of Appeal.<sup>30</sup> He set out the Government’s position in some

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<sup>29</sup> PBC 10 March 2011 cc948-53

<sup>30</sup> PBC 10 March 2011 c951

detail<sup>31</sup> and said he would “reflect further on how the matter might best be addressed.”<sup>32</sup>

On 20 July 2011, a new Government clause was added to the Localism Bill to amend the tenancy deposit sections of the Housing Act 2004.<sup>33</sup>

The changes, which came into effect on 6 April 2012, gave landlords 30 days, rather than the original 14, to protect the deposit. Once that period has expired the tenant can immediately raise a claim against the landlord. The landlord cannot protect the deposit late without penalty. However, the penalty for late protection can vary, ranging from one, to three times, the sum of the deposit. So if the landlord has, in fact, protected the deposit before the hearing the court can take this into account and reduce the penalty payable accordingly.

The amendments also cleared up some small loopholes so the landlord cannot pay back the deposit and claim the tenant is not entitled to a penalty. The restriction on serving a section 21 notice where the deposit has not been protected was tidied up so the landlord can simply return the deposit or resolve court proceedings with the tenant and then serve the notice.

The [Localism Act 2011 \(Commencement No. 4 and Transitional, Transitory and Saving Provisions\) Order 2012](#) brought the new TDP provisions into force on 6 April 2012.

## 2.2

### Superstrike Ltd v Rodrigues 2013<sup>34</sup>

#### Tenancies beginning before 6 April 2007 and renewals after this date

The Court of Appeal handed down judgment in respect of this case on 14 June 2013.

Mr Rodrigues was the assured shorthold tenant of Superstrike Ltd. His tenancy began in January 2007 (ie, before the mandatory deposit scheme came into force for newly created assured shorthold tenancies on or after 6 April 2007) and was for a fixed period of one year less one day. He paid a deposit of £606.66. At the expiry of the fixed-term in January 2008, he became a statutory periodic tenant. Where a fixed-term assured tenancy comes to an end by effluxion of time (and no new agreement is reached) a statutory periodic tenancy arises (section 5, Housing Act 1988).

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<sup>31</sup> PBC 10 March 2011 c952

<sup>32</sup> As above, c953

<sup>33</sup> HL Deb 20 July 2011 c1489-90

<sup>34</sup> [\[2013\] EWCA Civ 699](#)

In June 2011, *Superstrike* gave notice under section 21 of the Housing Act 1988 requiring possession. Mr Rodrigues defended the claim contending, inter alia, that the statutory periodic tenancy was a new tenancy and the previously paid deposit should be treated as having been paid in respect of that new tenancy. In addition, he argued as the deposit had not been protected within an authorised scheme, the section 21 notice should have no effect. Effectively, he argued the trigger for the requirement to protect the deposit occurred in January 2008 on the creation of the statutory periodic tenancy. A Deputy District Judge found for Mr Rodrigues, but the Circuit Judge allowed an appeal.

The Court of Appeal held the statutory periodic tenancy was a new tenancy: the deposit was held to guarantee obligations under it and was therefore to be treated as having been paid under it. It therefore followed the provisions of the 2004 Act applied and the section 21 notice was deemed to be invalid.

Then-Housing Minister, Mark Prisk, indicated in a letter to the Residential Landlords Association that a legislative response to the *Superstrike* case would be forthcoming.

## Legislative response to *Superstrike*

Section 32 of the [Deregulation Act 2015](#) inserted three new sections into Chapter 4 of Part 6 of the Housing Act 2004.

Section 215A confirmed the decision in *Superstrike* that a deposit previously held for an AST before 6th April 2007 must be put into a tenancy deposit scheme after this date if the AST becomes a statutory periodic tenancy. Failure to do this means a landlord cannot serve a section 21 notice of intention to seek possession unless the deposit has already been returned to the tenant in full or with agreed deductions.

The Act provided an amnesty period of 90 days (23 June 2015) to allow for compliance with these provisions.<sup>35</sup>

These provisions are ‘treated as having had effect since 6th April 2007’.<sup>36</sup>

Section 215B dealt with another potential issue arising from *Superstrike*; namely, whether deposit protection must be re-issued when an AST contract is renewed or rolls into a statutory periodic tenancy.

The Deregulation Act 2015 clarified that renewal is not necessary:

New section 215B is intended to deal with the issue mentioned at paragraph 168 above. It covers cases where a landlord “receives” a deposit on or after 6 April 2007 (which could be at the start of a brand new tenancy or at the start of a renewed tenancy – see subsection (3)) and subsequently protects that deposit and sends the required information to the tenant. **If the tenancy is**

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<sup>35</sup> [Explanatory notes to the Deregulation Act 2015](#), (PDF) para 172

<sup>36</sup> [Deregulation Act 2015 Section 32](#) (215C) and accompanying [Explanatory note](#)

subsequently renewed or rolls over into a statutory periodic tenancy, then so long as the deposit remains protected in accordance with the same authorised tenancy deposit scheme from one tenancy to the next, subsection (2) makes clear that there is no requirement for the landlord to re-send the same information to the tenant each time the tenancy is renewed or rolls over: the landlord will be treated as having complied with the tenancy deposit protection requirements afresh at the start of each new tenancy. Subsection (1)(d) and (e) make clear that subsection (2) applies not just to the first “renewal” of the tenancy but also to cases where there are multiple tenancy renewals, which could include a mixture of fixed term tenancies and periodic tenancies.<sup>37</sup>

## 2.3

### Charalambous & Anor v Maureen Rosairie Ng & Anor [2014]

#### Tenancies and renewals beginning before 6 April 2007

*Charalambous & Anor v Maureen Rosairie Ng & Anor [2014]* was another case which tested the impact of tenancy deposit legislation on section 21 of the Housing Act 1988.

This case parallels the case of *Superstrike Ltd v Rodrigues 2013* (see section 2.2). In *Superstrike*, the AST in question had started before the deposit scheme legislation came into force on 6 April 2007 but had rolled over into a statutory periodic tenancy after this date. In *Charalambous*, both the original tenancy and the statutory periodic tenancy began before 6 April 2007.

In the case of *Charalambous*, the landlord was not obliged to protect the deposit because both the AST and statutory periodic tenancy had begun before 6 April 2007. However, in October 2012, the landlord served a section 21 notice. The tenants appealed, arguing a section 21 notice could not be served because their deposit was not held in a TDP scheme. The case hinged on the interpretation of [section 215 of the Housing Act 2004](#):

#### 215 Sanctions for non-compliance

(1) Subject to subsection (2A), if a tenancy deposit has been paid in connection with a shorthold tenancy, no section 21 notice may be given in relation to the tenancy at a time when—

(a) the deposit is not being held in accordance with an authorised scheme, or  
(b) section 213 (3) has not been complied with in relation to the deposit.

(2) Subject to subsection (2A), if section 213 (6) is not complied with in relation to a deposit given in connection with a shorthold tenancy, no section 21 notice may be given in relation to the tenancy until such time as section 213 (6) (a) is complied with.

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<sup>37</sup> [Deregulation Act 2015 Section 32 Explanatory notes](#)

(2A) Subsections (1) and (2) do not apply in a case where—

- (a) the deposit has been returned to the tenant in full or with such deductions as are agreed between the landlord and tenant, or
- (b) an application to the county court has been made under section 214 (1) and has been determined by the court, withdrawn or settled by agreement between the parties.

The Court held the section 21 notice was unlawful, but the landlord was not liable for the financial penalties provided in the 2004 Act. This was because the deposit had not been received by the landlord at a time when the legislation applied. However, the Court felt that since “the deposit is not being held in accordance with an authorised scheme” (as per section 215(1)(a)), the landlord could not proceed with a section 21 notice unless the deposit was protected in a scheme or returned to the tenant as per section 215(2A)(a).<sup>38</sup>

## Legislative response to *Charalambous*

[Section 31 of the Deregulation Act 2015](#) amended Chapter 4 of Part 6 of the Housing Act 2004 to support the Court’s judgment that a section 21 notice could not be served in cases such as *Charalambous*. The amendments also made it clear that in such scenarios, a landlord could not be subject to a financial penalty under section 214. The explanatory notes to the Act provide more detail.<sup>39</sup>

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<sup>38</sup> Nearly Legal Housing Law blog, [Of Penalties and Possession](#), 17 December 2014

<sup>39</sup> [Deregulation Act 2015 Section 31 Explanatory notes](#)

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## 3 Attempts to amend the Housing and Planning Bill 2015-16

Proposed [amendments 24 to 31](#) (PDF) to the Housing and Planning Bill 2015-16 attempted to change some of the provisions governing tenancy deposits. Debate on these amendments took place mainly on 1 March 2016 during the Bill's Committee Stage in the House of Lords (day two).

### 3.1 Notification of 'relevant persons'

Amendment 24 attempted to remove the landlord's obligation to notify a 'relevant person' that a deposit was being held in a TDP. A relevant person is someone who has paid the deposit on behalf of the tenant. The Minister, Baroness Williams of Trafford, outlined what this usually entails and the reasons why the Government rejected the amendment:

[The 'relevant person'] can be a family member but in most cases it is a charity such as Crisis or Shelter, which offers deposit loan schemes to vulnerable people with a history of homelessness, or a local authority, which pays the deposit through housing benefit in cases where tenants are out of work or on a low income.

I welcome proposals which reduce burdens for business and I understand the spirit in which this amendment has been tabled. However, the proposals set out in Amendment 24 have the potential to adversely affect the willingness of a charity or a local authority to pay a deposit on behalf of a tenant. This could lead to vulnerable people or those on low incomes being unable to access the private rented sector, which is something we would want to avoid.<sup>40</sup>

Amendment 24 was withdrawn.

### 3.2 Electronic communication of prescribed information

Amendment 25 sought to clarify that tenancy deposit information could be supplied via email, rather than in hard copy. The Minister said there was no need for this amendment:

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<sup>40</sup> [HL Deb 1 March 2016, cc702-711](#)

The aim of this amendment can be achieved through secondary legislation, using powers in the Electronic Communications Act 2000. I will be happy to look further into the proposals outside this Chamber and consider introducing secondary legislation at a later date.<sup>41</sup>

Amendment 25 was not moved.

### 3.3

## Absent tenants/landlords

More information about the process for claiming all or part of a deposit in the absence of a tenant or landlord (a ‘single claim process’) can be provided by a tenancy deposit scheme provider. For instance, both [TDS](#) and [DPS](#) provide guides.

The [Housing \(Tenancy Deposit Schemes\) Order 2007](#) added articles 4A, 4B and 4C to Schedule 10 of the Housing Act 2004. These articles established a procedure for custodial deposit schemes where either a tenant or landlord cannot be contacted. If, after 14 days, no agreement has been reached over the deposit and no ADR or court action taken due to an absent party, the other party can claim what they believe they are due from the deposit. A landlord must justify their claim. Either party, if they proceed with the claim, must make a statutory declaration, ie, a declaration usually in the presence of a solicitor.

Amendments 26 and 31 aimed to remove the need for a statutory declaration.<sup>42</sup> Baroness Williams explained why the Government disagreed with the proposed amendment:

I accept that there is a minor cost to a landlord or tenant in arranging for a solicitor or magistrate to witness a statutory declaration, but this process is necessary for the landlord or tenant to prove beyond any doubt that they have attempted to contact the other party and that they have not been able to reach an agreement on the amount claimed from the deposit before it is repaid. The example that the noble Lord, Lord Beecham, gave just before he sat down underlines this. Removing the requirement could leave the process open to abuse, with no independent verification that the other party had been contacted to give their consent.<sup>43</sup>

These amendments were not moved.

### 3.4

## Government review of TDP

Amendment 28 sought to secure a government review of tenancy deposit protection schemes. This was chiefly due to a concern that those who are not happy with ADR, and who would like to pursue their claims via the courts, may find this option financially unviable:

**Lord Beecham:** Very often, one reads that allegations are made that the tenant has damaged the property and so forth. Given that usually not large

<sup>41</sup> [HL Deb 1 March 2016, c708](#)

<sup>42</sup> [HL Deb, 1 March 2016, c704](#)

<sup>43</sup> [HL Deb, 1 March 2016, c708](#)

sums are at stake, it seems to be the case that some tenants give up the ghost rather than pursue the matter. There is a scheme for dispute resolution, which is operated by the relevant agency without charge. However, it is not binding on both parties to accept the scheme's involvement, so if a landlord, or it could arguably be a tenant, is at the wrong end of a claim, the other party would have to seek redress through the courts. We have already had a reference to the small claims limit this afternoon, and it is probable that most deposits would be within the range of up to £5,000. No legal aid is available and no costs are recoverable on a successful claim. This is going to make it less likely than ever that tenants will exercise their right to recover a deposit which is being wrongfully withheld.<sup>44</sup>

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For more information about the Service Concession Agreement, see section 1 of this paper.

In response, Baroness Williams argued the Department for Communities and Local Government already performed a “governance role” through the Service Concession Agreement<sup>45</sup> and highlighted:

From the overall feedback received, we are satisfied that the alternative dispute resolution system generally works well. Of the 11.5 million deposits which have been protected since the launch of the scheme, less than 2% have gone to adjudication. On average, following adjudication, 27% are awarded to tenants, 17% to landlords or agents, and just over half are split between the two sides.<sup>46</sup>

Lord Beecham reiterated that ADR might not work for all, and some may simply accept its adjudication because a small claims case would be too expensive. He contended the figures cited “do not necessarily reflect the situation in the marketplace.” Lord Beecham said he wanted the review to consider the role of deposits in the industry, beyond the smaller governance role played by the Government.<sup>47</sup>

The amendment was not moved in Committee, however the issue arose again as amendment 35 on the [first day of Report](#). The House divided on the amendment. Amendment 35 was disagreed to by 157 votes to 50.

## 3.5 Access to tenancy deposit information for local authorities (England)

The Housing and Planning Act 2016 amended the Housing Act 2004 to enable the sharing of certain data held by the three TDP schemes in England. Since 6 April 2017 authorities have been able to request and obtain certain information held by the TDP schemes. The aim is to help them identify private

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<sup>44</sup> [HL Deb, 1 March 2016, c706](#)

<sup>45</sup> [HL Deb, 1 March 2016, c708](#)

<sup>46</sup> As above.

<sup>47</sup> [HL Deb, 1 March 2016, c710](#)

rented housing and landlords in their areas with a view to cracking down on rogue landlords through targeted enforcement and prevention work.<sup>48</sup>

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<sup>48</sup> DCLG, [Obtaining and using tenancy deposit information: explanatory booklet for local housing authorities](#), April 2017

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## 4 Caps on deposits payable

### 4.1 England

In addition to preventing residential letting agents and private landlords from charging most upfront fees to prospective tenants in England, the Tenant Fees Act 2019 placed a cap on the amount of security deposit a tenant can be required to pay.<sup>49</sup>

A maximum deposit of no more than five weeks' rent (refundable) is payable where the annual rent is less than £50,000, or six-weeks' rent where the annual rent exceeds £50,000.

The Government has published separate guidance for [landlords/agents](#) and [tenants](#) on the Tenant Fees Act 2019. Pages 10-11 of [the guidance for tenants](#) provide advice on the steps to take if a prohibited payment has been charged.<sup>50</sup>

### 4.2 Scotland

Section 90 of the Rent (Scotland) Act 1984 provides a deposit cannot exceed 2 months' rent payable. Charging any more than 2 months' rent for a deposit constitutes an illegal premium under the 1984 Act, which is a criminal offence.

### 4.3 Wales

The Renting Homes (Fees etc.) (Wales) Act 2019 contains a power to cap deposits through regulations.<sup>51</sup> The Explanatory Memorandum on the Bill referred to unclear evidence on the need to cap deposits in Wales:

Evidence for capping security deposits in Wales is unclear and did not feature in responses to the consultation. However there is a risk that such deposits could rise and therefore become unaffordable. Powers for the Welsh Ministers

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<sup>49</sup> The Commons Library constituency casework page on [Tenancy related fees](#) (last updated 13 December 2019) provides further information on the 2019 Act.

<sup>50</sup> MHCLG, [Tenant Fees Act 2019: Guidance](#), last updated 30 September 2020

<sup>51</sup> Paragraph 2(4) of schedule 1 to the Act. Senedd Research Paper: [Renting Homes \(Fees etc.\) \(Wales\) Bill: Bill Summary \(PDF\)](#), November 2018, p16

to set a lower cap have therefore been included within the Bill as a necessary safeguard.<sup>52</sup>

## 4.4 Northern Ireland

There is no limit on the amount of deposit a landlord/agent can ask for in Northern Ireland.

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<sup>52</sup> [Explanatory Memorandum, Renting Homes \(Fees etc.\) \(Wales\) Bill](#), (PDF) June 2018, para 3.28

## 5 TDP in Scotland and Northern Ireland

Housing is a devolved matter in Scotland, Northern Ireland and Wales. The relevant provisions of the Housing Act 2004 apply in Wales as they do in England. Both Scotland and Northern Ireland have made tenancy deposit protection obligatory in respect of private sector tenancies.

### 5.1 Scotland

The [Housing \(Scotland\) Act 2006 Part 4 section 121](#) allows the Scottish Government to define and prescribe Tenancy Deposit Schemes for a rental contract involving a deposit. [The Tenancy Deposit Schemes \(Scotland\) Regulations 2011](#) brought this legislation into force on 7 March 2011, although deposit schemes did not become available until July 2012.<sup>53</sup> [Article 1\(3\)](#) requires landlords to put deposits into an approved scheme within 30 days of receipt and provide the tenant with details of the chosen scheme.

Scottish Tenancy Deposit Schemes must provide an Alternative Dispute Resolution service ([Article 6](#)). The Regulations provide the deposit must be “paid by the landlord to the scheme administrator”: it therefore only provides for custodial schemes, not insurance-based schemes ([Article 3, Section 11](#)).

There are three Scottish Tenancy Deposit Scheme providers: [Letting Protection Service Scotland](#), [SafeDeposits Scotland](#), and [mydeposits Scotland](#).

More information can be found on [MyGov.Scot](#).<sup>54</sup>

The Scottish Government published a [Review of Tenancy Deposit Schemes in Scotland](#) on 21 December 2018. The review concluded the Regulations provide a robust regulatory framework for the protection of tenants' deposits and the conditions for the operation of the schemes.<sup>55</sup> Some minor issues identified through the review were addressed through amending Regulations.<sup>56</sup>

In line with its [Housing to 2040](#) strategy (March 2021), on 20 December 2021 the Scottish Government launched a [consultation on a new rented sector strategy](#) seeking views on proposals to deliver a 'new deal' for tenants.

<sup>53</sup> The Scottish Government, [Review of Tenancy Deposit Schemes in Scotland](#), 21 December 2018

<sup>54</sup> mygov.scot, [Tenancy deposits \(landlords\)](#), last updated 4 February 2020

<sup>55</sup> [SP WA 21 August 2019, S5W-24607](#)

<sup>56</sup> [The Tenancy Deposit Schemes \(Scotland\) Amendment Regulations 2019](#) (SSI 2019/331) made minor improvements to the operation of tenancy deposit schemes to address new legislation, payment by instalments and best practice.

Amongst other measures, the consultation sought views on using unclaimed tenancy deposits to improve and benefit the private rented sector.<sup>57</sup>

## 5.2 Northern Ireland

Articles 5A and 5B of the [Private Tenancies \(Northern Ireland\) Order 2006](#) were inserted by the [Housing \(Amendment\) Act \(Northern Ireland\) 2011](#). Article 5B stipulates all deposits for a private tenancy must be protected by a deposit scheme. Once received, a deposit must be protected within 14 days and the landlord must give the tenant details of the chosen TDP scheme within 28 days.

Article 5A allows the Northern Ireland Government to define approved deposit schemes: the [Tenancy Deposit Schemes Regulations \(Northern Ireland\) 2012](#) brought this legislation into effect. It allows for both insurance and custodial schemes ([Part 3](#)) and outlines the ADR they must provide ([Part 6](#)). These approved schemes became operational on 1 April 2013. Since that date, a TDP has been a legal requirement for all private tenancy deposits.<sup>58</sup>

There are three TDP scheme providers: [Tenancy Deposit Scheme Northern Ireland \(TDS\)](#), [mydeposits Northern Ireland](#), and [Letting Protection Service NI \(LPSNI\)](#).

[NI Direct](#) has more information on TDP schemes in Northern Ireland.<sup>59</sup>

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<sup>57</sup> Scottish Government, [A New Deal for Tenants - Draft Strategy Consultation Paper](#), 20 December 2021, para 2.6

<sup>58</sup> For more information, see: TDS Northern Ireland, [A Guide to the Tenancy Deposit Scheme Regulations](#), April 2019

<sup>59</sup> nidirect, [Tenancy Deposit Scheme - information for tenants](#) (undated)

## 6 Ongoing issues with TDP

Tenancy deposit protection (TDP) has been praised by letting agents as an “effective barrier” to exploitation.<sup>60</sup> The Chief Executive of [IDS](#), writing for the Residential Landlords Association (RLA) in 2017,<sup>61</sup> argued that not only do the schemes avoid costly and time-consuming court appearances, but they have also led to increasingly professional contracts and inventory check-ins.<sup>62</sup>

[Generation Rent](#), a private rented sector campaign group, published a consultation in May 2014 in which they said TDP had “vastly improved the ability of renters to retrieve their deposit at the end of a contract”.<sup>63</sup>

However, several perceived problems have been identified with the schemes and support for TDP within the sector is not comprehensive. The RLA commissioned Michael Ball, Professor of Urban and Property Economics at the University of Reading’s Henley Business School, to conduct research into the private rented sector. His report, [The impact of regulation on the private rented sector](#), was published in 2014 and concluded:

Tenancy deposit schemes are poor value for money - costing the sector more than £275m a year in fees and administration, when only £7m is returned to tenants annually in deposits judged to have been unreasonably withheld.<sup>64</sup>

### 6.1 Non-compliance and lack of enforcement

Despite the mandatory nature of TDP schemes for all ASTs, there is some evidence to suggest a significant minority of landlords refuse to cooperate.

According to a 2016 survey carried out by the Centre for Economics Business Research commissioned by Money.co.uk, as many as one-in-six landlords had not protected deposits at that time.<sup>65</sup> The results of the survey, which were widely reported, suggested a lack of enforcement and reliance on tenants

<sup>60</sup> The Negotiator, [Investigation: How are the tenancy deposit schemes performing?](#), 27 January 2017

<sup>61</sup> The RLA has now merged with the National Landlords Association to form the National Residential Landlords Association (NRLA).

<sup>62</sup> Residential Landlords Association, [Tenancy deposit schemes 10 years on](#), 21 May 2017 (now archived)

<sup>63</sup> Generation Rent, [The Renters’ Manifesto: a consultation document](#), 19 May 2014

<sup>64</sup> RLA Press Release, 29 April 2014 (now archived)

<sup>65</sup> “284,000 landlords risk being fined over tenancy deposits”, Hillyer McKeown, 2016 (now archived)

taking their landlords to court for failing to use TDP, allowed some landlords to ignore the law with impunity.<sup>66</sup>

A 2020 report from Safer Renting at Cambridge House and the University of York, [Journeys in the shadow private rented sector](#), highlighted how some landlords and letting agents deliberately flout housing law, including with regards to tenancy deposits, and set out recommendations for policymakers to tackle criminality in the sector.<sup>67</sup>

Hillarys, an interiors company, surveyed 2,588 people who had left a rented home in 2016-17 and found “widespread scepticism” about TDP. 81% of those responding said landlords/agents had “searched” for a reason not to return the deposit.<sup>68</sup> 68% thought the landlord had not provided a good reason for withholding the deposit.<sup>69</sup>

Heather Wheeler, then Minister at the Ministry for Housing, Communities and Local Government (MHCLG), responded to a PQ on delays in returning tenancy deposits on 30 October 2018:

**Heather Wheeler:** Under the Housing Act 2004, all deposits taken with assured shorthold tenancies since 6 April 2007 must be protected in a Government-approved tenancy deposit scheme within 30 days. In the vast majority of cases the deposit can be returned promptly as the landlord and tenant are able to agree deductions from the deposit. Deposits should be returned within 10 days of the tenant requesting it if held in the insured scheme, and within 10 days of the landlord and tenant agreeing deductions in the custodial scheme. It can take longer if they cannot agree and need to use the free dispute resolutions services provided by the deposit schemes. Only 1.5 per cent of cases go to formal dispute. The YouGov survey referenced in the news release asked about the worst experience tenants had ever had and so is not representative of the normal experience for tenants.

The current system works well but we are reviewing whether improvements can be made to the deposit protection model through the Tenancy Deposit Protection Working Group. Nationwide is a member of the Working Group which will look at the process at the end of tenancy and dispute resolution, as well as exploring whether deposit passporting can improve affordability by helping tenants who have to pay a deposit to their new landlord before they receive their current deposit back.<sup>70</sup>

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<sup>66</sup> “Landlords hold £½bn deposits illegally”, The Times, 28 January 2016 (subscription required)

<sup>67</sup> Spencer, R et al, [Safer Renting: Journeys in the shadow private rented sector](#), Cambridge House and University of York, August 2020

<sup>68</sup> “[Research reveals exactly why tenants lose all or part of their deposits](#)”, Letting Agent Today, 5 June 2017

<sup>69</sup> As above.

<sup>70</sup> [PQ 183961 \[on Tenancy Deposit Schemes\]. 30 October 2018](#)

## 6.2 Insurance-based TDP: loopholes and abuses

Press reports have highlighted a problem that can arise where a landlord/letting agency is expelled from an insurance-based TDP. For example, in 2014 Guardian Money reported on a case involving the London based agency, Unida Place.<sup>71</sup> The agency reportedly registered its tenants' deposits with mydeposits. Unida Place was, allegedly, expelled by mydeposits for failing to provide certain information, including proof that tenants' deposits were kept in a separate client account. Once expelled, the tenants of Unida Place could not use the scheme to recover their deposits – the expulsion meant that their deposits were no longer protected.

A landlord/agency in this situation is required to re-protect the deposits paid but if they fail to do so the only avenue open to affected tenants is legal action. For this reason, Generation Rent has suggested that insurance-based schemes should be banned or reformed to ensure that deposits are protected for the life of the tenancy rather than the landlord's membership of the scheme.<sup>72</sup>

There have also been reports of landlords refusing to pay back insurance-protected deposits. A BBC investigation in February 2017 found over £1 million in deposits had been taken illegally by letting agents. 14 agents were convicted for this reason in 2016.<sup>73</sup>

## 6.3 Affordability and transferability of deposits

There are concerns about the difficulties prospective tenants face in raising a deposit and that money can be held for a considerable period without attracting interest.

The cap on deposits which was introduced in England from 1 June 2019 is aimed at tackling the affordability of security deposits. There are also several existing affordability initiatives which seek to address the challenge of tenants providing a cash deposit when they start a tenancy or move to a new one, including:

- **local authority rent deposit, bond or guarantee schemes** – provide either cash to help with a deposit or a written guarantee to the landlord that the scheme will cover unpaid rent or damage up to a certain amount.

<sup>71</sup> [“Rogue landlords exploit deposit protection loophole”](#), Guardian Money, 19 June 2014

<sup>72</sup> Generation Rent, [The Renters' Manifesto: a consultation document](#), 19 May 2014

<sup>73</sup> [“£1m raided from tenants' deposits by letting agents”](#), BBC News, 13 February 2017

- Some landlords and agents offer tenants the option of using a deposit replacement product as an alternative to a traditional tenancy deposit. There are a range of product models, with some structured as insurance products.<sup>74</sup>
- Employer-backed loans - some employers offer their employees the option of an interest-free rental deposit loan. Repayments are deducted from the employee's salary.

Availability of these schemes varies across the country.

TDP schemes can act as a barrier to those who rely on the return of the money to pay a deposit on a new tenancy. Generation Rent argues the Alternative Dispute Service can be slow and that renters are not receiving their deposits in time to use for their next property.

As a result, some tenants may opt not use Alternative Dispute Resolution to avoid repayment delays.<sup>75</sup> This issue was raised by Lord Kennedy during the Lords Report Stage of the Housing and Planning Bill 2015-16. Lord Kennedy sought to amend the Housing Act 2004 to force the Government to review the role of deposits in the market.<sup>76</sup>

The Government's [Tenancy deposit reform: a call for evidence](#) (2019) highlighted the potential consequences of tenants being unable to afford a second deposit:

We are concerned that some of the most vulnerable tenants might be using high cost credit to fund a second deposit, risking them falling into debt. We also want to know whether being unable to afford a deposit on a new tenancy could be a barrier to people moving to find better homes, or to be closer to family (for example to help with child care). Barriers to moving could also be having an impact on labour mobility. Further, it may be that tenants who are unable to move put up with poorer conditions in their property.

Ultimately, if deposit affordability means tenants who move out of a property are unable to secure a new tenancy then it could increase the risk of someone becoming homeless.

... We want to better understand the issues that tenants are facing so that we can target solutions to address this.<sup>77</sup>

The Residential Landlords Association<sup>78</sup> suggested deposits should be held in trusts which can be easily transferred from one tenancy to another. This

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<sup>74</sup> Nb, A landlord or agent cannot require a tenant uses a deposit replacement product but may allow it as an option without contravening the Tenant Fees Act 2019. A Citizens Advice article: [Deposit Replacement Schemes - landlord's loophole or relief for renters?](#) (11 February 2020) highlights some of the drawbacks of these schemes for tenants.

<sup>75</sup> Generation rent, [It's not their money: Reforming tenancy deposit protection \(PDF\)](#), 21 July 2014

<sup>76</sup> [HL Deb 11 April 2016 c105](#)

<sup>77</sup> MHCLG, [Tenancy deposit reform: a call for evidence](#), 27 June 2019, paras 2.4 to 2.6

<sup>78</sup> The RLA has now merged with the National Landlords Association to form the National Residential Landlords Association (NRLA).

would be similar to a custodial scheme, but such a trust would also behave like a bank account that can be topped up. This would enable tenants to save up larger deposits for a more expensive tenancy or a mortgage deposit.<sup>79</sup>

In March 2018, Generation Rent published [Rethinking Tenancy Deposits \(PDF\)](#) which proposed a new approach to making better use of tenants' assets tied up in deposits:

This paper proposes a different future for deposits: a modified version of the existing custodial deposit system where funds are held on the tenants' behalf, and actively managed by an accredited third party, with any net returns from those funds paid back to tenants at the conclusion of the tenancy, on top of the security deposit. This system would treat tenants' deposits as tenants' assets and give them a return, while reducing the administrative burden on letting agents and landlords that comes with holding and managing these funds. At the end of the tenancy the landlord would maintain the opportunity to make a claim for damage or unpaid rent and the tenant would have the chance to challenge such a claim.

A crucial element of the modified system would be to allow a portion of the deposit to be released by the landlord upon payment of the final month's rent, to allow the tenant to transfer it to a new tenancy.<sup>80</sup>

Other commentators have proposed alternatives to the current TDP schemes. These include:

- Abandoning monetary deposits altogether. One major landlord announced in May 2017 that it would return all its deposits, subject to tenant referencing checks or guarantors.<sup>81</sup>
- Deposit passporting – whereby some of a tenant's deposit is transferred (either notionally or physically) from the first to the second landlord without first being returned to the tenant. This could enable tenants to move without having to provide an additional deposit to their new landlord.

ARLA PropertyMark (Association of Residential Letting Agents), in response to the Government's 2017 consultation on banning letting agent fees, also suggested alternative financing for deposits, including:

- Local authorities being given a statutory duty to provide interest free loans to those unable to afford a deposit.
- Mandatory duties placed on employers and public bodies to provide loans.

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<sup>79</sup> RLA, The RLA's Manifesto: Cutting up front costs, 7 June 2017 (now archived)

<sup>80</sup> Wilson Crow, D and Seiferling, M, [Rethinking Tenancy Deposits \(PDF\)](#), Generation Rent, March 2018

<sup>81</sup> "[Major UK landlord scraps rental deposits](#)", Delancey Press Release, 24 May 2017

- The Government acting as a universal guarantor for all tenancies. ARLA Propertymark argues this would be cost-neutral for the Government “as the costs of recovery against such tenants could be included in any Money Order secured”.<sup>82</sup>

The Housing, Communities and Local Government Select Committee, during its pre-legislative scrutiny of the Tenant Fees Bill 2017-19, recommended the Government should encourage innovation in the deposit free renting sector by assessing the merits of alternatives to traditional security deposits and reporting their findings to the Committee.<sup>83</sup>

In response, the Government said it would “explore the merits of deposit alternatives and reply to the Committee within six months.”<sup>84</sup> In a [follow-up letter \(PDF\)](#) to the Committee Chair, the Minister for Housing and Homelessness, then-Heather Wheeler, said the Government had established a Tenancy Deposit Protection Working Group, formed of representatives of tenants, landlords and agents, the TDP schemes and Nationwide Building Society.<sup>85</sup> The Group’s remit was to identify potential improvements to the current TDP system, as well as the merits of alternative innovative approaches to deposit protection.<sup>86</sup>

## 6.4 Landlord concerns

If a tenant cannot be contacted at the end of a tenancy, or abandons the property, there are procedures for claiming all or part of a deposit held in a scheme.

Even if a landlord successfully makes a claim in this way, a tenant may still return to dispute the claim. There are two reasons for this: first, either party can always go to court to claim all or part of a deposit, rather than use an ADR. Second, scheme providers do not provide ADR indefinitely, the Tenancy Deposit Scheme promises to hold deposits for three months after the end of the tenancy, with the possibility of extension in some circumstances.<sup>87</sup> The Tenancy Deposit Scheme points out that a tenant could return years later to claim a deposit through the courts. A time limit of six years normally applies to a tenant’s ability to reclaim a deposit.<sup>88</sup>

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<sup>82</sup> ARLA Propertymark, [Response to the Department for Communities and Local Government \(DCLG\) Consultation on the Banning of Letting Agent Fees paid by Tenants](#), May 2017

<sup>83</sup> House of Commons Housing, Communities and Local Government Committee, [Pre-legislative scrutiny of the draft Tenant Fees Bill \(PDF\)](#), 29 March 2018, HC 583, 2017-19

<sup>84</sup> [Cm 9610 \(PDF\)](#), May 2018, para 39

<sup>85</sup> [Letter to the Chair of the HCLG Committee from Heather Wheeler, Minister for Housing and Homelessness on Innovation in tenancy deposit protection \(PDF\)](#), 5 November 2018

<sup>86</sup> MHCLG, [Tenancy deposit reform: a call for evidence](#), 27 June 2019, p8

<sup>87</sup> TDS, [What should the deposit holder do if they can't contact one of the parties at the end of the tenancy? \(PDF\)](#), March 2013

<sup>88</sup> As above.

Some landlords have expressed frustration at the timescales involved in this process.<sup>89</sup> This led to attempts to amend the law for custodial schemes during the Housing and Planning Bill's progress through Parliament (see section 3).

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<sup>89</sup> For instance, see: "[Tenancy Deposits: What to do if Your Tenant Abandons Your Property](#)", Landlord News, 1 August 2016.

## 7

## Consultation on TDP reform (2019)

The [Conservative Party Manifesto 2019](#) promised a “better deal for renters” which included “only requiring one ‘lifetime’ deposit which moves with the tenant.”<sup>90</sup>

In June 2019, the Government launched a [call for evidence on tenancy deposit reform](#), building on the work of the Tenancy Deposit Protection Working Group:

This call for evidence seeks to understand the barriers tenants face providing a second deposit when moving from one tenancy to the next. It looks at what can be done to speed up the return of deposits to tenants at the end of the tenancy.

It considers whether existing initiatives to address deposit affordability are meeting tenants’ needs and whether the market can offer improved products. It also explores innovative approaches that could be taken to help tenants move more easily, including allowing tenants to passport their deposit between tenancies.<sup>91</sup>

Submissions were accepted up to 5 September 2019.

In the [Queen’s Speech December 2019](#), the Government announced a new lifetime deposit, to assist tenants when moving from one tenancy to the next, would be taken forward through a Renters Reform Bill.<sup>92</sup> The Bill was not introduced in the 2019-21 parliamentary session.

In the [Queen’s Speech 2021](#), the Government committed to outline its proposals for a new lifetime tenancy deposit model and publish a white paper setting out a package of reforms to the private rented sector.<sup>93</sup>

The white paper, [A fairer private rented sector](#), was published on 16 June 2022. It set out a 12-point action plan to deliver “a fairer, more secure, higher quality private rented sector.” Many of the reforms will require legislation. The [Queens Speech 2022](#) confirmed a Renters Reform Bill will be introduced in the 2022-23 parliamentary session.<sup>94</sup>

Alongside the white paper the Government published its [response to the call for evidence on tenancy deposit reform](#). The consultation had a relatively low response rate (447 responses). The Government’s response confirmed its plan

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<sup>90</sup> [Conservative Party Manifesto 2019](#), p29

<sup>91</sup> MHCLG, [Tenancy Deposit Reform: Call for Evidence](#), 27 June 2019

<sup>92</sup> Prime Minister’s Office, [Queen’s Speech 2019: background briefing notes](#), 19 December 2019, p46

<sup>93</sup> Prime Minister’s Office, [Queen’s Speech 2021: background briefing notes](#), 11 May 2021, p113

<sup>94</sup> Prime Minister’s Office, [Queen’s Speech 2022: background briefing notes](#), 10 May 2022, p67

to monitor the development of innovative market-led solutions to passport tenancy deposits between properties, and keep the current TDP system under review:

Since the call for evidence, the Department has considered several models that look to reduce the financial burden of tenancy deposit requirements on tenants while making sure landlords continue to have security of a deposit. The market has evolved since the call for evidence and has begun to develop innovative solutions to affordability issues (for example, loan and insurance products to bridge the period a tenant has a period where deposit requirements overlap). Private solutions have the potential to offer innovative and flexible solutions for different groups.

We recognise these market innovations are in their infancy, but do not wish to curtail the progress that has been made. Therefore, as set out in the government's Rental Reform White Paper, we plan to:

- Monitor market-led solutions that aim to reduce the problems experienced during the overlap of tenancies with our expert industry-based working groups, such as the Tenancy Deposit Protection Working Group.
- Keep the impact and risks of market-led solutions under review, including their affordability and accessibility, with the Tenancy Deposit Protection Working Group
- Keep the current deposit protection and the broader deposit market under review.<sup>95</sup>

Generation Rent, which campaigns on behalf of tenants, expressed disappointment over the decision not to introduce a new lifetime tenancy deposit:

This is something of a retreat from the government's manifesto commitment to a Lifetime Deposit which would allow passporting of deposits between tenancies. There are some emergent schemes which may be affordable for some but none of the alternatives to traditional deposits are regulated and you need that if renters are to have faith in using them. Too many people have been stung by non-refundable deposit-free schemes to ignore them. Problems with deposits are probably the most common negative experience for private renters so it is frustrating to see that it is only being kept under review.<sup>96</sup>

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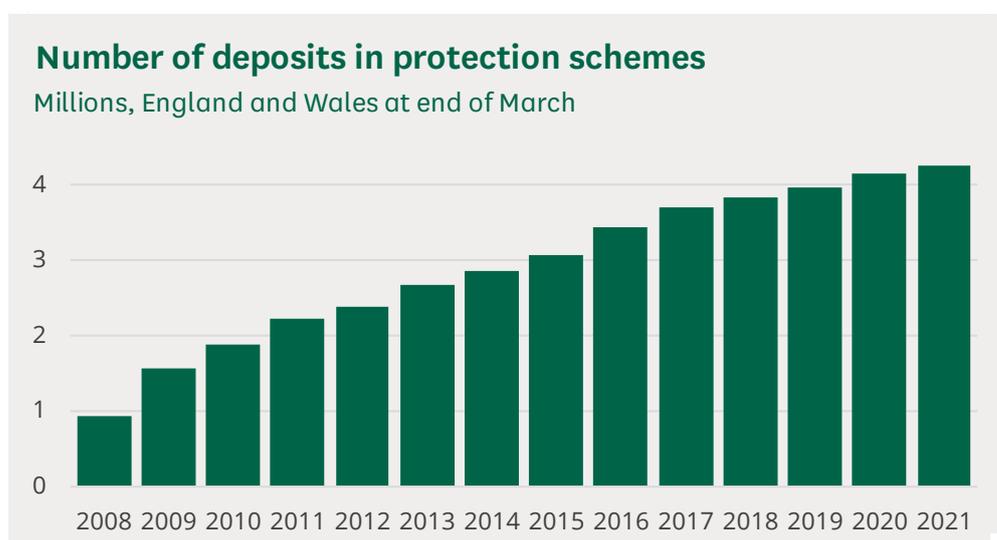
<sup>95</sup> Department for Levelling Up, Housing and Communities (DLUHC), [Tenancy deposit reform: a call for evidence - government response](#), 16 June 2022, Conclusions and next steps

<sup>96</sup> Generation Rent, [Renters Reform White Paper - our verdict](#), 16 June 2022

## 8 Statistics

### 8.1 Number and value of deposits protected

Statistics published by the Tenancy Deposit Scheme (TDS)<sup>97</sup> look at trends in the number and value of deposits protected by the three operators since the mandatory scheme was introduced. As the chart below shows, the number of deposits protected in England and Wales rose from 0.9 million at the end of March 2008 to 4.2 million at the end of March 2021. During the same period, the total value of deposits protected rose from £0.89bn to £4.35bn.



Source: Tenancy Deposit Scheme, [Statistical briefing 2020-21 \(PDF\)](#), September 2021, p.6

It is worth noting that deposit protection legislation only covers assured shorthold tenancies, although most private tenants in residential buildings in England and Wales will be subject to such an agreement.

The average value of a protected deposit has fluctuated somewhat. It was £958 in England and Wales during the year ending March 2008 before sinking to a low point of £880 in 2010. It then reached a high of £1,110 in 2018 and has since decreased slightly, to £1,025 at the end of March 2021.<sup>98</sup>

<sup>97</sup> Tenancy Deposit Scheme, [Statistical briefing 2020-21 \(PDF\)](#), September 2021

<sup>98</sup> As above, p6. We have calculated averages by dividing the total value of all deposits by the number of deposits protected.

The TDS report points out that deposit values started to fall in 2019/20 as a result of the introduction of a cap on the size of deposits in England.<sup>99</sup> See section 4 of this briefing for more on the cap.

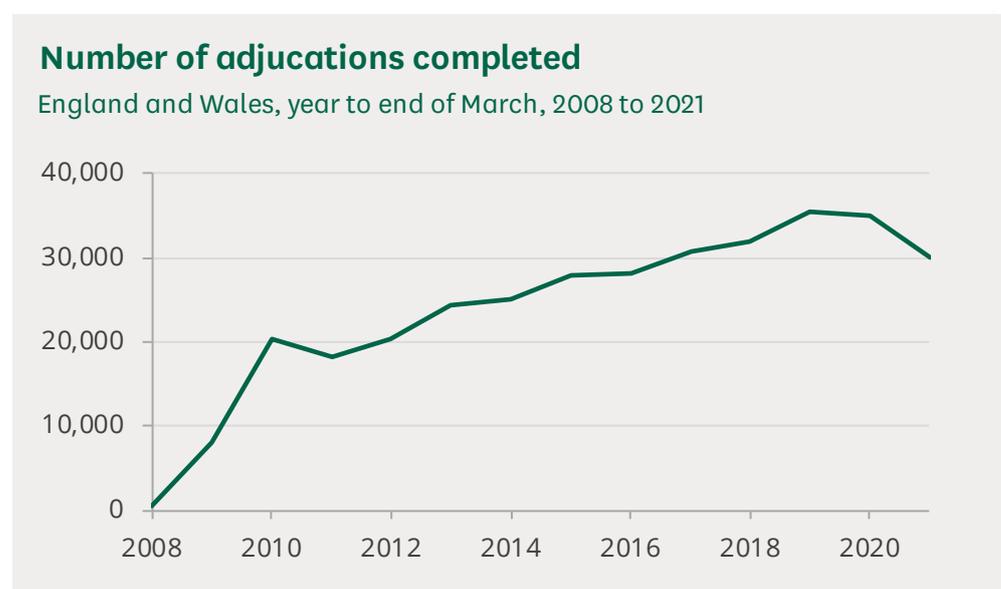
Tenancy Deposit Schemes were introduced in Scotland in 2012 and in Northern Ireland in 2013 (see section 5 above).

In Scotland, the number of deposits protected rose from around 116,800 in March 2013 to around 222,800 in March 2021. The value of deposits protected in March 2021 was around £162m.<sup>100</sup>

In Northern Ireland, the number of deposits protected rose from around 17,500 in March 2014 to around 63,900 in March 2021. The value of deposits protected in March 2021 was around £39.4m.<sup>101</sup>

## 8.2 Disputes

There were 29,967 disputes leading to adjudication in England and Wales over the year ending March 2021, according to figures published by the Tenancy Deposit Scheme (TDS).<sup>102</sup> The number of disputes increased sharply in the years following the introduction of the legislation, as shown in the chart below, but fell slightly in 2019/20 and 2020/21.



Source: Tenancy Deposit Scheme, [Statistical briefing 2020-21 \(PDF\)](#), September 2021, p.8

<sup>99</sup> Tenancy Deposit Scheme, [Statistical briefing 2020-21 \(PDF\)](#), September 2021, p21

<sup>100</sup> As above, p7

<sup>101</sup> As above, p14

<sup>102</sup> As above, p8

The report from TDS notes that the number of disputes represents a small proportion of all deposits protected (0.7% in 2020/21).<sup>103</sup>

According to TDS, the main causes of disputes in their own scheme in 2020/21 were cleaning (cited in 49% of disputes), damage (35%), redecoration (26%), gardening rent arrears (15%) and gardening (12%).<sup>104</sup>

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<sup>103</sup> Tenancy Deposit Scheme, [Statistical briefing 2020-21](#), September 2021

<sup>104</sup> As above, p8

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