

Tidying up tenancy deposits

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CATEGORY:
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Tenancy deposit schemes were created under the Housing Act 2004 and became compulsory for all residential assured shorthold tenancies (ASTs) created on or after 6 April 2007.

If a landlord failed to protect a deposit in an authorised scheme or provide the tenant with prescribed information, the landlord was prevented from serving a section 21 notice under the Housing Act 1988 to gain possession of the property and was liable for financial penalties if the tenant initiated legal action.

An opportunity to rectify flaws in the current legislation is progressing through Parliament. The House of Lords has approved further amendments in the Deregulation Bill 2015 for deposit protection. The Bill got its third reading before the House of Lords on 4 March 2015.

The Bill will require all AST deposits to be in a scheme irrespective of when they were taken or the tenancy began.

When the Bill gains Royal Assent, the following changes are expected (subject to further amendment):

- **Deposits received before 6 April 2007**
Deposits received on tenancies that have since become periodic must now be protected. Landlords will have 90 days from the day the Bill gains Royal Assent to protect the deposit and send the prescribed information to the tenant. If the tenancy has already ended or the deposit returned, the landlord will face no penalty for non-protection. If a landlord wishes to avoid the penalties for failure to comply, the deposit must be returned before the 90 days expire.
- **Deposits received after 6 April 2007**
Deposits that were protected do not need to be re-protected nor new prescribed information served when the tenancy renews (either fixed term or periodic) provided the landlord, tenant, deposit protection and premises all remain the same. NB: Scheme rules may require new protection on new fixed term tenancies, depending on the scheme and membership.

There is no protection for those landlords who never protected the deposit during the original tenancy.

- **Section 21 notices**
Regardless of when the deposit was received, no section 21 notice can be used to regain possession if the deposit is not protected. If unprotected or prescribed information is not served, the deposit must be returned or protected before the section 21 notice can be served.
- **Letting agents**
Where the agent has received and protects the deposit for the landlord, their details can be given in the prescribed information instead of the landlord's details.

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