

Tenancy Deposit Scheme for Landlords Membership Rules

5th Edition

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Rules of Membership for the Tenancy Deposit Scheme for Landlords

This edition of the Rules effective from 1 August 2013 applies to:

- Landlords owning residential property in England and Wales who protect a maximum of £100,000 of Deposits with the Scheme at any one point in time; and
- all new and Renewed ASTs for such Landlords, which are covered by the Scheme on or after 1 April 2013.

Definitions

In these Rules, certain words and phrases have a special meaning. These words or phrases are indicated by using initial capital letters, and their meaning in the context of these Rules is set out below. Definitions given in these Rules in the singular shall, where the context allows, include the plural meaning and vice versa.

1988 Act means the Housing Act 1988, in which the statutory requirements for ASTs are contained, and any statutory amendments to it, and secondary legislation made under it.

2004 Act means the Housing Act 2004, in which the statutory requirements for Deposit protection are contained, and any statutory amendments to it and secondary legislation made under it.

Adjudication means a decision about a Dispute made by the Adjudicator.

Adjudication Rules means the Rules for the Independent Resolution of Tenancy Deposit Disputes (as published by TDS from time to time).

Adjudicator means a person appointed by TDS to resolve Disputes.

ADR means alternative dispute resolution (eg negotiation, mediation, adjudication) provided by TDS to facilitate the resolution of Disputes as an alternative to court proceedings.

Agent or **Lettings Agent** means an individual or company appointed by an owner to let or manage property on his behalf.

Assured Shorthold Tenancy or **AST** means an assured shorthold tenancy as defined in the 1988 Act (as amended) and is the usual form of letting for a private tenant renting from a private landlord; where the tenancy began on or after 15 January 1989; the annual rent does not exceed £100,000; the house or flat is let as separate accommodation; and is the tenant's main home. A **Non-AST** means a tenancy that is not an Assured Shorthold Tenancy. An AST may be for a fixed term or it may be a periodic tenancy.

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

Company means a company limited by shares and registered in the UK (including a public limited company), unless it appears in the expression "company limited by guarantee".

Department means the Department for Communities and Local Government (DCLG), or any other government department which from time to time is responsible for overseeing Deposit protection schemes.

Deposit or Tenancy Deposit means a sum of money which a Landlord requires a Tenant to pay at the start of the tenancy, or which the Landlord holds over from a previous tenancy with the same Tenant. The money is security in case the Tenant does not meet their obligations in connection with the tenancy.

Dispute means a dispute at the end of an AST about the allocation of a Deposit Protected in the Scheme.

Disputed Amount means that sum of the Deposit over which the Landlord and Tenant cannot reach agreement at the end of a tenancy.

Fixed Term Tenancy means a tenancy with a specific start and end date stated in the tenancy agreement.

An **Insolvency Event** occurs if:

- a) the Member admits inability to pay its debts or (being a Company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
- b) the Member begins negotiations with creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Member; or
- d) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Member; or
- e) a floating charge holder over the Member's assets has become entitled to appoint or has appointed an administrative receiver; or
- f) a person becomes entitled to appoint a receiver, or a receiver is appointed, over the Member's assets; or
- g) the Member, being an individual, (or, in the case of more than one individual operating other than in a partnership, any one of them) is the subject of a bankruptcy petition or order; or
- h) a creditor or encumbrancer of the Member attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Member's assets and such attachment or process is not discharged within 14 days; or
- i) the Member suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

- j) the Member, being an individual, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation and reasonably suitable arrangements for continuation of the Member's business are not put in place within 14 days of the death or incapacitating event.

Where a change is made for the sole purpose of arranging a solvent amalgamation of the Member with one or more other Companies or individuals or the solvent reconstruction of the Member, it shall not be an Insolvency Event.

Insurer means the insurer or insurance broker appointed by TDS from time to time to arrange the insurance cover required to operate the Scheme under paragraph 5(3) of schedule 10 of the 2004 Act.

Joint Tenancy means a tenancy with two or more Tenants, each of whom is jointly and severally liable for the performance of the obligations in, and the discharge of liabilities under or in connection with a tenancy. **Joint Tenants** means each and all the Tenants in a Joint Tenancy.

Landlord means an individual or individuals who are shown on the land registry title of the property as registered proprietor, owning either the freehold interest or a long leasehold interest in excess of 40 years, and letting a residential property. For the avoidance of doubt, "rent to rent" arrangements are not included in this definition, and rent to rent clients must not use this scheme.

Reference to a Landlord includes a reference to any person (including an Agent) acting on a Landlord's behalf in relation to a tenancy, except as regards the eligibility criteria for Membership of this Scheme. Reference to a Landlord also includes any one or more joint Landlords. Irrespective of the terms of any partnership agreement, declaration of trust or other arrangement between joint Landlords, TDS will regard all Landlords of a tenancy as being jointly and severally liable for the Landlord's obligations and will treat the authority of any one or more joint Landlords as binding on the others.

Member means a Landlord who has joined, and is a current Member of the Scheme and **Membership** shall mean the state of being a Member, or the Members of the Scheme as a whole, as the context requires.

Membership Termination Notice means Notice served by TDS on a Member (with a copy to all affected Tenants) identifying the Deposit in question, confirming the date when Membership of the Scheme will end, and reminding the Member of their obligation to re-protect the Deposit before the Deposit ceases to be Protected by TDS.

Non-AST see Assured Shorthold Tenancy.

Notice means written Notice, sent by ordinary first class post or an equivalent service that offers next day delivery in the majority of cases, to the postal address supplied by the relevant party and such Notice will be deemed served as described in Rule 15. **Notify** shall mean the giving of Notice and **Notification** shall be interpreted accordingly.

Prescribed Information means such information as a Landlord is required to provide to a Tenant and any Relevant Person, in accordance with the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 (Statutory Instrument 2007 No 797 available to view at www.legislation.gov.uk) or such other information as may be prescribed from time to time pursuant to section 213(5) of the 2004 Act.

Protect means register a deposit with the Scheme and remain for the time being entitled to the Scheme's benefits of insurance protection and access to the ADR process.

Protection, Protecting and Protected shall be construed accordingly.

Relevant Obligation means the duty on a Member to comply with a direction given by TDS under paragraph 5(2) of Schedule 10 of the 2004 Act (as amended by article 4 of the Housing (Tenancy Deposit Schemes) Order 2007 (Statutory Instrument 2007 No 796)) or any obligation under the Scheme which is specified in these Rules as a Relevant Obligation for the purposes of paragraph 5(7) of Schedule 10 of the 2004 Act (as amended) (see Rule 10). If a Member does not fulfil a Relevant Obligation (e.g. by failing to pay a Disputed Amount on time) then TDS has the power to terminate that Membership, or cease Protection of the Deposits which the Member has registered with the Scheme. (The 2004 Act and statutory instruments are available to view and download free of charge from www.legislation.gov.uk)

Relevant Person means any person who paid the Deposit or any part of it on behalf of a Tenant.

Renewed AST means a second or subsequent AST where the immediately preceding AST was a letting of the same or substantially the same property to the same Tenant (or to one or more persons who were previously one or more of the Joint Tenants of the immediately preceding AST) whether or not the property is let by the same Landlord, and whether or not the property is let on different terms and conditions. References to a Renewed AST shall include references to any contractual extension of an AST, and to any Statutory Periodic Tenancy where there is a material change in the terms from the Fixed Term Tenancy (e.g. change in Tenant, change in amount of Deposit), but shall not include a Statutory Periodic Tenancy where the terms are in all material respects the same as those that applied to the Fixed Term Tenancy.

RLA means the Residential Landlords Association.

Rule means any Rule published by The Dispute Service Ltd in relation to the operation of the Scheme. **Rules** includes these Rules and the Adjudication Rules.

Scheme or **Statutory Scheme** or **Tenancy Deposit Scheme** means any one (and, as the context requires, each and all) of the schemes run by TDS (set up in accordance with the 2004 Act and operated under a service concession agreement with the Department) for the Protection of Deposits and the resolution of Disputes about their allocation at the end of a tenancy. In these Rules **this Scheme** means TDS' Tenancy Deposit Scheme for Landlords.

Scheme Leaflet refers to the information booklet about the Scheme published by TDS from time to time. The Scheme Leaflet is part of the Prescribed Information.

Stakeholder means any person or body who holds the Deposit at any time from the moment it has been paid by the Tenant until allocated and paid as agreed by the parties to the AST, or as ordered by the court, or as directed by an Adjudicator.

Statutory Periodic Tenancy means an AST which arises by virtue of section 5 of the 1988 Act after the end of a Fixed Term Tenancy. A Statutory Periodic Tenancy shall not arise if, on the coming to an end of the Fixed Term Tenancy, the Tenant is entitled, by virtue of the grant of another tenancy, to possession of the same or substantially the same property as was let under the Fixed Term Tenancy. For the purposes of these Rules

where there is a material change in the terms of a periodic tenancy from the terms that applied during the Fixed Term Tenancy (e.g. change in Tenant, change in amount of Deposit) the periodic tenancy shall be treated as a Renewed AST. A Statutory Periodic Tenancy where there is no material change from the terms that applied during the Fixed Term Tenancy is, by law, a new tenancy but for the purposes of these Rules it will not be treated as a Renewed AST.

Statutory Time Limit means the time limit as set out in the 2004 Act (as amended) in which Deposits must be protected, initial requirements of the Scheme must be met, and Prescribed Information must be provided to the Tenant and any Relevant Person. For the purposes of these Rules, the Statutory Time Limit shall begin on the day the Member receives the Deposit (whether or not in cleared funds) or is deemed to have received a Deposit. Examples of when a Member may be deemed to have received a Deposit are given in the document ***Operational Procedures and Advice for Members***.

TDS, TDS Ltd or The Dispute Service means The Dispute Service Limited, a company limited by guarantee registered in England and Wales with registered number 4851694.

Tenancy Deposit Protection Certificate means a certificate issued by TDS providing details of a Protected Deposit.

Tenancy Deposit Protection Charge means the amount payable by Members to TDS for Protecting an individual Deposit in the Scheme. The Rules stipulate the circumstances in which a Tenancy Deposit Protection Charge must be paid.

Tenancy Deposit Scheme has the same meaning as Scheme or Statutory Scheme (see above).

Tenant means one or more individuals who holds or possesses property under an AST. The expression **Tenant** includes Joint Tenants and former Tenants by whom a Deposit was paid.

Unipol means the Unipol code operated by Unipol Student Homes

VAT means value added tax.

Working Day means a day that is neither a Saturday or Sunday, nor any day that is a bank holiday under the Banking and Financial Dealings Act 1971, nor a customary or public holiday in England and Wales.

We/Us/Our means TDS.

Write, Writing and **Written** include electronic communications within the meaning of Section 15 (general interpretation) of the Electronic Communications Act 1971.

1 Application for Membership

- 1.1** Any Landlord may apply to join this Scheme as long as they satisfy the Membership entry criteria set out in Rule 1.89, Members of this Scheme must not hold more than £100,000 of Deposits at any one time with this Scheme. Landlords who look after properties on behalf of other landlords, or wish to Protect more than £100,000 of Deposits, and Agents who do not own rented properties, are not eligible for this Scheme. They may, however, be considered for Membership of the Tenancy Deposit Scheme for Lettings Agents and Corporate Landlords.
- 1.2** Prospective Members must complete and submit an online application, providing information to enable TDS and the Insurer to decide whether they can be accepted as Members.
- 1.3** Applications may be made on line at www.tenancydepositscheme.com.
- 1.4** TDS may require applicants to submit documentation in support of their application or to demonstrate compliance with Membership criteria at any time and TDS may at its own discretion seek relevant information from third parties in the course of processing an application for Membership of this Scheme.
- 1.5** TDS may, at the applicant's expense, carry out an audit of a Member or prospective Member if TDS reasonably considers that this is necessary.
- 1.6** Membership will be refused or terminated if information supplied as part of an application proves to be false or misleading in any material respect.
- 1.7** Applications are considered on an individual basis. Membership will only be given if the application is accepted by the Insurer.
- 1.8** The Insurer's estimate of risk will affect the fees payable by successful applicants to Protect Deposits under this Scheme. The Insurer's decision on such matters is final and may be subject to change from time to time.
- 1.9** To become a Member, applicants must be accepted by the Insurer and:
 - 1.9.1** agree to abide by the Rules of this Scheme; and
 - 1.9.2** agree to comply with the Adjudication Rules; and
 - 1.9.3** advise TDS if they are members of the RLA or the Unipol code; and
 - 1.9.4** own the rented property to which the Deposit relates; and
 - 1.9.5** be the Landlord (as defined on page 5) and be named on the relevant AST agreement as the Landlord. A "Rent to Rent" arrangement does not constitute a landlord and are not accepted as part of these rules;
 - 1.9.6** hold not more than £100,000 of Deposits at any one time with the Scheme;
 - 1.9.7** undertake to TDS that, if TDS Notifies them to pay a Disputed Amount, the Member will pay the Disputed Amount to TDS within 10 days of receiving the Notice – even though at that time they may no longer be a Member; and
 - 1.9.8** in the case of a Company or limited liability partnership the applicant must be registered as such in the UK and the body corporate (that is, the company or limited liability partnership, as opposed to individual directors or members) must in its own name:

- (a) own the freehold or long leasehold in the rented property, and be registered as such with The Land Registry as defined on page 5 of these rules;
- (b) be named as Landlord on the relevant AST agreement; and
- (c) be the party which applies for Deposit Protection.

1.10 TDS may, at its discretion, reject applications to join or renew Membership of this Scheme. The decision of TDS on such matters is final.

1.11 Members and prospective Members must Notify TDS as soon as practicable if any of the information provided at application stage is no longer accurate or if their circumstances change in any material way.

1.12 When a Landlord becomes a Member of this Scheme, TDS will issue the Landlord with a user name and password to enable them to access their section of TDS' website. Members who are also in the RLA or Unipol code can access their section of TDS' website using their existing RLA or Unipol login. Members will need to log on in order to protect a Deposit and/or submit a Dispute for ADR at the end of a tenancy.

1.13 Members must undertake to TDS that, if TDS Notifies them to pay a Disputed Amount, the Member will pay the Disputed Amount to TDS within 10 days of receiving the Notice – even though at that time they may no longer be a Member.

1.14 Agents and rent to rent schemes are not eligible to use the Tenancy Deposit Scheme for Landlords unless they own the rented property and they wish to Protect a Deposit on their own account as Landlord. If they do, they can join this Scheme as long as they satisfy the Membership entry criteria set out in Rule 1.89. Agents who are not eligible to use this Scheme may be eligible to join the Tenancy Deposit Scheme for Lettings Agents and Corporate Landlords.

2 How much does it cost to Protect a Deposit?

2.1 There is no annual Membership Subscription for this Scheme.

2.2 Members must pay a Tenancy Deposit Protection Charge for each Deposit they Protect in the Scheme. The Tenancy Deposit Protection Charge will cover the whole of a Fixed Term Tenancy and any Statutory Periodic Tenancy that follows it, as long as there are no material changes to the terms.

2.3 If there is a material change in the terms during a Fixed Term Tenancy or during a periodic tenancy, or if the terms of a periodic tenancy are materially different from the terms of a preceding Fixed Term Tenancy (e.g. change in the amount of Deposit, change in the parties), a Renewed AST arises.

2.4 If a Renewed AST arises, the Member must enter the required details about the Deposit on the TDS tenancy database within 30 days of the change and pay a new Tenancy Deposit Protection Charge.

2.5 The Member must also pay a new Tenancy Deposit Protection Charge if a Fixed Term Tenancy is renewed, even if the renewal is on the same terms as the previous tenancy.

2.6 If a Statutory Periodic Tenancy arises without any material change to the Fixed Term Tenancy that preceded it the Member will not have to pay a new Tenancy Deposit

Protection Charge at that point. If there is a material change during the Statutory Periodic Tenancy, the Member will have to pay a new Tenancy Deposit Protection Charge at the time of the change.

- 2.7** TDS will set the amount of the Tenancy Deposit Protection Charge from time to time. Details of current Tenancy Deposit Protection Charges and data entry fees are posted on the TDS website www.tenancydepositscheme.com. All fees and charges for this Scheme include VAT at the applicable rate.
- 2.8** Members of this Scheme must pay their Tenancy Deposit Protection Charges electronically. A Deposit will not be Protected in the Scheme until TDS has received confirmation that the Tenancy Deposit Protection Charge has been received and authorised through World Pay.
- 2.9** Members can enter data on the TDS tenancy database. When Members do this themselves there is no extra charge. A Member who is unable to use the TDS tenancy database should contact TDS for details of how to apply by other means. Where it is reasonable to do so, TDS may charge a fee for inputting data to the TDS tenancy database on the Member's behalf. The data will not be entered until the Tenancy Deposit Protection Charge and the charge for data entry have been authorised as paid. Late payment may result in the Landlord failing to comply with the 2004 Act.
- 2.10** Rules 8, 9 and 10 set out circumstances where Protection may end sooner than the end of the tenancy.

3 Tenancies covered by this Scheme

- 3.1** This Scheme Protects Deposits registered by Members on the appropriate part of the TDS tenancy database once TDS has received the applicable Tenancy Deposit Protection Charge.
- 3.2** Subject to Rule 3.3, a Deposit is eligible for Protection in this Scheme if, on or after the date the Member joined the Scheme, the AST to which it relates:
 - 3.2.1** is already in existence; or
 - 3.2.2** is a new Fixed Term Tenancy; or
 - 3.2.3** is or becomes a Renewed AST; or
 - 3.2.4** is or becomes a Statutory Periodic Tenancy; or
 - 3.2.5** was a common law tenancy but has become an AST.
- 3.3** Notwithstanding Rule 3.2, a Deposit cannot be protected in this Scheme if:
 - 3.3.1** the Member does not hold the Deposit (for example if an Agent holds it on the Member's behalf); or
 - 3.3.2** the Member does not own the property (freehold or long leasehold) to which the Deposit relates.

- 3.4** Where one of the exceptions in Rule 3.3 applies, the Deposit may still be eligible for Protection under the Tenancy Deposit Scheme for Lettings Agents and Corporate Landlords.
- 3.5** It is the Member's responsibility to ensure that each time they register a Deposit they continue to meet the Membership entry criteria set out in Rule 1.89 above and that the Deposit is eligible for Protection under Rule 3.2. If the Membership entry criteria are not met, or if either of the exceptions in Rule 3.3 applies, TDS may make an award to the Tenant without formal Adjudication in the event of a Dispute. In such cases TDS will seek to recover the award from the Member, through legal action if appropriate.

4 Joint tenancies

- 4.1** TDS will treat Joint Tenancies as a single tenancy in which each Joint Tenant has an equal interest, unless there is clear evidence in the tenancy agreement to the contrary. This means that (unless the tenancy agreement stipulates otherwise):
- 4.1.1** the Member must register the Deposit as a single Deposit, even if the Joint Tenants have paid a share of the Deposit individually;
 - 4.1.2** there is no need to nominate a "lead tenant";
 - 4.1.3** only one application for ADR may be made in respect of the same Joint Tenancy and one tenant only will be permitted to raise or reply to a dispute on behalf of all joint tenants;
 - 4.1.4** TDS cannot refer a case for ADR if any one of the Joint Tenants objects to using ADR;
 - 4.1.5** TDS will pay any Adjudication award to Joint Tenants in equal shares to each of them, unless (a) there is a clause in the tenancy agreement that specifies otherwise or (b) TDS receives Written instruction from all the Joint Tenants that some other arrangement (which the Tenants must specify) is to apply.
- 4.2** Further information how to submit a Dispute and TDS' treatment of Disputes relating to Joint Tenancies is given in the Adjudication Rules.

5 Members' management of the Deposit

- 5.1** If a Member of this Scheme has client money protection insurance it must hold the Deposit in accordance with the requirements of its insurers. As a minimum requirement of the Scheme, all Members must hold the Deposits which they receive, in a bank account in the UK.
- 5.2** Members must only Protect Deposits which are taken in relation to residential property that they own and which is let (or agreed to be let) under an AST naming the Member as the Landlord.
- 5.3** At the end of a tenancy, Members must promptly release to the person entitled to it any part of the Deposit over which there is no disagreement.

- 5.4 If there is a Dispute, the Member must transfer the Disputed Amount to TDS within 10 days of receiving Notice to do so and must not use the Disputed Amount for any other purpose or pay it to any of the parties to the Dispute.
- 5.5 If a Member carries out works at a property in advance of an Adjudication, they do so at their own cost and risk.
- 5.6 The 2004 Act prohibits the holder of the Deposit from paying Deposit money without the agreement of both the Landlord and Tenant. If Landlord and Tenant do not agree, a Disputed Amount can only be paid out following a decision by an Adjudicator or the courts. It is advisable for Landlords to obtain the Tenant's agreement to any settlement in Writing, as Tenants have up to three months from the end of the tenancy to submit a Dispute for Adjudication.

6 Complying with the requirements of the 2004 Act

When a deposit is received

- 6.1 Section 213 (1) of the 2004 Act stipulates that a Deposit must, as from the time when it is received, be dealt with in accordance with an authorised tenancy deposit protection scheme. It is important to be able to establish the date or receipt because the Statutory Time Limit for Deposit protection is 30 days, beginning on the day the Deposit is received and/or is deemed to have been received. A Landlord or his Agent may receive a Deposit when payment is made, or be deemed to have received it at some other time. Guidance about when a Deposit is likely to be deemed to have been received is available in the document ***Operational Procedure and Advice for Members***.

Initial Requirements

- 6.2 Section 213 (3) of the 2004 Act requires a Landlord to comply with the initial requirements of an authorised tenancy deposit protection scheme within the Statutory Time Limit.
- 6.3 This Scheme's 'initial requirements' are that the Member must enter on the TDS tenancy database all the required details about a Deposit if that Deposit has not previously been Protected.
- 6.4 After the Member has entered all the required details relating to a Deposit on the TDS tenancy database for the first time the Member does not need to do so again. This Scheme has no initial requirements for Renewed ASTs and/or Statutory Periodic Tenancies if all details about the Deposit were entered on the TDS tenancy database at the start of a prior tenancy. A fixed term which continues as a contractual periodic tenancy, after the fixed term has run out is a single tenancy and not a Renewed AST.
- 6.5 If (despite using reasonable endeavours) it is not possible for the Member to enter the required details on the TDS tenancy database, the Member should follow the procedure in clause 7.3.

Prescribed Information

- 6.6** Sections 213 (5) and (6) of the 2004 Act require a Landlord to give the Tenant Prescribed Information, including any leaflet published by the applicable tenancy deposit protection scheme, within the Statutory Time Limit. This is not an initial requirement of these Rules or of this Scheme, but it is what the law requires.
- 6.7** Landlords should serve Prescribed Information (including the Scheme Leaflet) on the Tenant and any Relevant Person when a Deposit is first actually received, or is first deemed to have been received (see Rule 6.2) after 6 April 2007. Prescribed Information need only be reissued where there is a change to the tenant(s), landlord(s), premises or tenancy deposit protection scheme.. If Prescribed Information is not served within Statutory Time Limits, the Member could risk Tenants and/or Relevant Persons bringing legal proceedings under the 2004 Act.
- 6.8** TDS is not responsible for providing Tenants and Relevant Persons with Prescribed Information. It is the Member's responsibility to:
- 6.8.1** check that the Prescribed Information is correct and complete;
 - 6.8.2** update the Prescribed Information if there is any change to it during the tenancy; and
 - 6.8.3** serve it on the Tenant and any Relevant Person.

Late registration

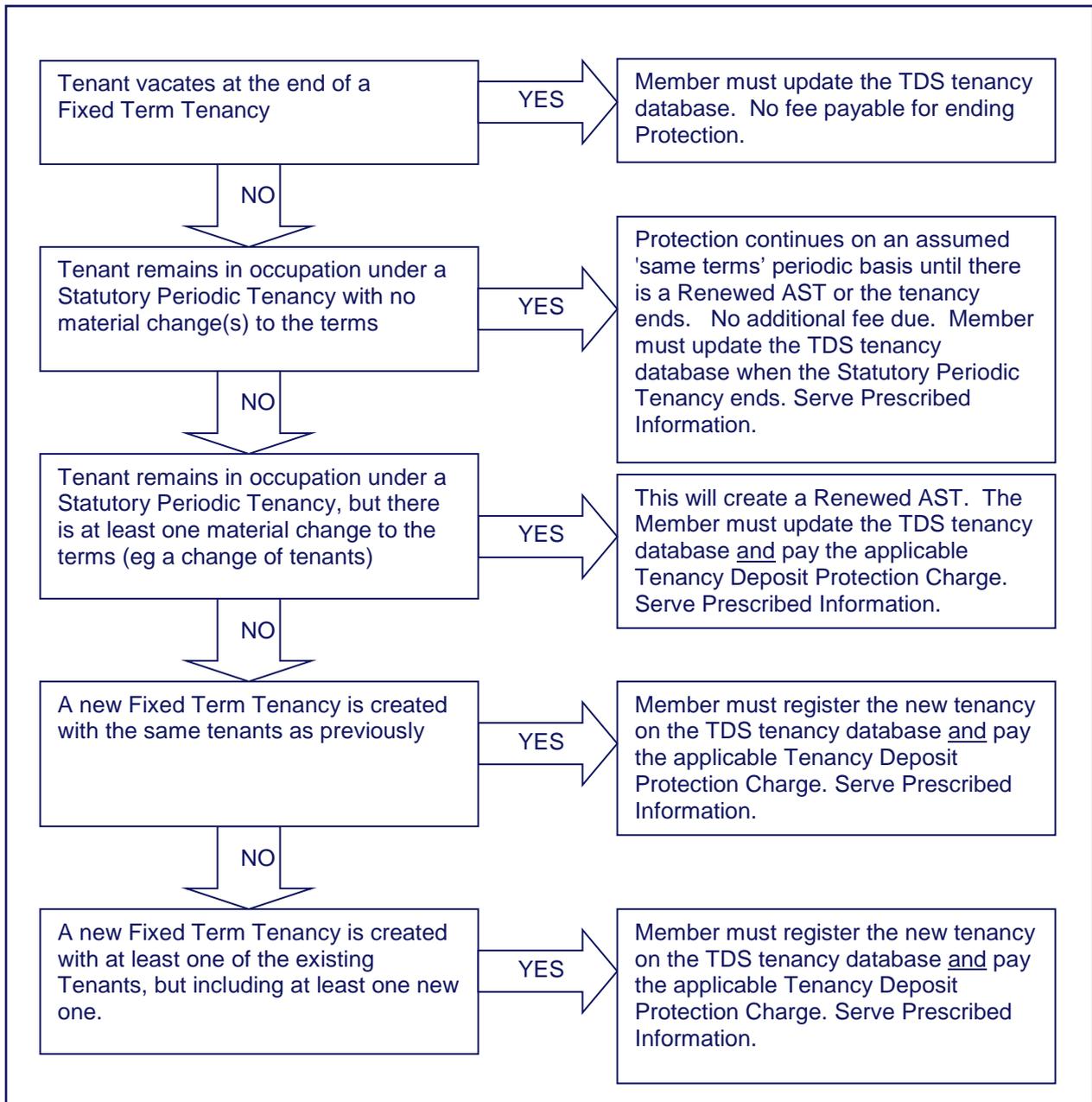
- 6.9** TDS has discretion to allow a Member to Protect a Deposit outside the Statutory Time Limit, as long as the tenancy is in existence at the date of Protection. Guidance on the factors TDS takes into account can be found in the document ***TDS and the late protection of Deposits***. If TDS does Protect a Deposit outside the Statutory Time Limit, a Dispute arising from that Deposit may be submitted to TDS for ADR.
- 6.10** The fact that TDS has permitted late registration will not in itself prevent a Tenant or Relevant Person from taking legal proceedings against a Landlord for failure to comply with the 2004 Act.
- 6.11** TDS will not be liable for any loss the Member suffers or costs which the Member incurs if TDS refuses to Protect a Deposit outside the Statutory Time Limit.
- 6.12** TDS accepts no liability if a Tenant or Relevant Person makes a claim against a Member who does not meet the initial requirements, or provide the Prescribed Information, within the applicable Statutory Time Limit.

7 Protecting a Deposit and ending Protection

- 7.1** Members are encouraged to apply for Deposit Protection using the TDS tenancy database.
- 7.2** To apply to Protect a Deposit in this Scheme the Member must provide TDS with such information as TDS reasonably requests at the time of application and confirm that:

- 7.2.1** the freehold or long leasehold of the rented property is owned by the Member (either as an individual or as a company; alone or jointly with others) ; and
- 7.2.2** the Member is named as Landlord on the tenancy agreement.
- 7.3** A Member who is unable to use the TDS tenancy database should contact TDS Member Relations team for details of how to apply by other means. Where it is reasonable to do so, TDS may charge a fee for inputting data to the TDS tenancy database if the Member does not do this itself. In such cases, the Deposit will not be Protected until the next Working Day after the Member has paid the data entry fee and provided the data to TDS. It is the Member's responsibility to ensure that they submit any data for inputting, and any applicable fees in cleared funds to TDS at least 2 Working Days before the Statutory Time Limit expires.
- 7.4** Members must pay the applicable Tenancy Deposit Protection Charge for each Deposit they apply to Protect under this Scheme. A Tenancy Deposit Protection Charge cannot be paid, and therefore a Deposit cannot be Protected, until all the information referred to in Rule 7.2 has been entered in full onto the TDS tenancy database.
- 7.5** Once payment of the Tenancy Deposit Protection Charge has been confirmed, TDS will e-mail the Tenancy Deposit Protection Certificate to the Member. Members will also be able to download the Tenancy Deposit Protection Certificate from the TDS website www.tenancydepositscheme.com .
- 7.6** Members should keep their entries on the TDS tenancy database up to date. For example, when a Fixed Term Tenancy ends, the Member should record on the TDS tenancy database if it has been replaced by a Renewed AST or if Protection of the Deposit should end.
- 7.7** TDS may make changes to the TDS tenancy database, or direct the Member to do so, at a Tenant's request if the Tenant is able to demonstrate to TDS that information has been wrongly entered.
- 7.8** The Member must update the TDS tenancy database if a Fixed Term Tenancy or Statutory Periodic Tenancy comes to an end and there is no Renewed AST. No fee is currently payable for ending Protection.
- 7.9** Unless and until the Member updates the TDS tenancy database, TDS will assume that a Statutory Periodic Tenancy on the same terms has arisen at the end of a Fixed Term Tenancy.
- 7.10** Where a Statutory Periodic Tenancy on the same terms follows a Fixed Term Tenancy no further Tenancy Deposit Protection Charge is payable. The Deposit will remain Protected until the end of the Statutory Periodic Tenancy or until there is a material change in the terms (e.g. change in Tenant, change in the amount of the Deposit). [Note: the Landlord will be responsible for serving Prescribed Information again on the Tenant and any Relevant Person if a Statutory Periodic Tenancy arises, even if there is no change in the terms)].
- 7.11** If the amount of Deposit changes, or if there is any other material change, during a Statutory Periodic Tenancy or a Fixed Term Tenancy the Member must update the Deposit record on the TDS tenancy database, or telephone TDS' Contact Centre, to show that there is a Renewed AST. The Member must then Protect the Deposit again and pay a new Tenancy Deposit Protection Charge.

- 7.12** Where a Member informs TDS that the Protection of a Deposit should be ended, TDS will use reasonable endeavours to inform the Tenant before ending Protection.
- 7.13** If the tenancy has not ended, the Tenant (or one of the Joint Tenants) can object to the ending of Protection by telephoning the TDS customer contact centre.
- 7.14** Where the tenancy has ended and the Tenant is not satisfied with the proposed allocation of the Deposit, then the Tenant may apply to TDS for ADR within three months after the end of the tenancy.
- 7.15** A Deposit will be fully allocated when (and not before) it has been paid in full to the person(s) entitled as a result of:
- (a) agreement between the parties (and where there are Joint Tenants, between all of them); and/or
 - (b) an order made by a court of England and Wales; and/or
 - (c) an Adjudication.
- 7.16** If TDS becomes aware that the Member has not Protected or re-Protected a Deposit as required by these Rules and a Dispute arises, TDS may award the Tenant the Disputed Amount without referral to the ADR process and seek to recover the amount of the award from the Member.
- 7.17** A summary of the different options available to the Member for the continuing Protection of a Deposit is set out in the following table. The table is subject to Rules 8, 9 and 10, which shall take precedence if Membership terminates.
- 7.18** Although a Deposit may remain Protected for some time after the end of the tenancy, anyone wishing to use the ADR process must apply to TDS within three months after the end of the tenancy.
- 7.19** If the Member pays the Deposit or any part of it to any person other than TDS before Protection with TDS ends, the Member does so at their own risk. If the Member intends to allocate the Deposit in accordance with an agreement between the parties, it is prudent for the Member to obtain the parties' Written confirmation of what has been agreed before making any payment. This is because the parties have up to three months from the end of the tenancy to submit a Dispute to TDS. The Member remains liable to pay the Deposit to TDS unless and until the Deposit has been fully allocated (that is, paid to the person(s) entitled as agreed between the parties, as ordered by the court or as directed by an adjudicator) or, if sooner, until the Deposit has been protected with an alternative approved tenancy deposit protection scheme and Prescribed Information about that scheme has been served on the Tenant.
- 7.20** TDS does not refund any Tenancy Deposit Protection Charge if the Member transfers the Deposit out of the Scheme or if a tenancy ends sooner than expected.



7.21 By registering a Deposit on the TDS tenancy database, a Member who is one of joint owners of a rented property (a) represents and warrants to TDS that he has the authority of all other owners to register the Deposit with the Scheme and (b) agrees to indemnify TDS against all costs and losses arising from claims made against TDS by co-owners.

7.22 Where the rented property is owned jointly, TDS will treat the co-owners as jointly responsible for any payment due to TDS and will regard any one co-owner as having authority to bind the other owner(s) in any matter relating to the Deposit.

7.23 Where there is a Renewed AST, TDS will make a Tenancy Deposit Protection Certificate available for the Member to download. The Member should give Prescribed Information (including a Scheme Leaflet to the Tenant and any Relevant Person) within the Statutory Time Limit, where it is necessary to do so. If a Statutory Periodic Tenancy arises, with no material change in the terms from the

Fixed Term Tenancy the Scheme has no initial requirements to be met at that point, although TDS will make available a new Tenancy Deposit Protection Certificate.

7.24 TDS may contact the Tenant when a Deposit is registered or when the tenancy database is updated, but it is solely the Landlord's responsibility to make sure that the Prescribed Information is served, and that the initial requirements of the Scheme are met, in order to comply with the 2004 Act. A Deposit is likely to be treated as having been "received" afresh when a Renewed AST or Statutory Periodic Tenancy arises, even if in practice the Deposit has been held over from the preceding tenancy.

8 Changes in the ownership of the property

8.1 For the purposes of this Rule 8 TDS will not treat transmission of a property into a deceased Member's estate as a cessation of the Member's ownership, but TDS will treat a sale, assent, gift or other disposal by the Member's personal representative(s) as a cessation of the Member's ownership.

8.2 If a property to which a Deposit relates is sold, or for some other reason ceases to be owned by the Member, the Member (or, where applicable, the personal representative(s)) must promptly give TDS Notice of the change of ownership. The Notice must give the identity and contact details of the new owner, explain briefly why ownership has changed and state what arrangements are to be put in place for the continuing safeguarding of the Deposit. The Notice should also provide TDS with the name and contact details (if known) of any Agent for the new owner.

8.3 When TDS receives a Notice of change of ownership:

8.3.1 Deposits relating to tenancies that ended before the transfer of ownership will remain Protected for a period of 3 months after the end of the tenancy; and

8.3.2 Deposits relating to tenancies that were current at the point of transfer of ownership will remain Protected for a period of 3 months after the date upon which TDS is Notified of the change of ownership, or, if earlier, until TDS is provided with Written confirmation (satisfactory to TDS) that:

- (a) the Deposit has been protected under another authorised tenancy deposit protection scheme; and
- (b) Prescribed Information in relation to the other scheme has been given to the Tenant and to any Relevant Person.

8.4 As long as the Deposit continues to be Protected by TDS, the Member remains liable to pay a Disputed Amount to TDS if directed to do so (even if the Member has paid the Deposit to the new owner).

8.5 If a Member ceases to own a rented property, the Member must inform all current Tenants in Writing promptly, and in any event within no more than 10 days, of the change in ownership. They must also inform Tenants who their new Landlord is and explain to Tenants what arrangements have been made for the continuing safeguarding of the Deposit.

8.6 If the arrangements for continuing the safeguarding of the Deposit are that the new owner will Protect the Deposit with TDS, the new owner will be responsible for

registering the Deposit with TDS and paying the Tenancy Deposit Protection Charge within 30 days of the change of ownership.

- 8.7** If the new owner does not Protect the Deposit with TDS, Protection will end as set out in Rule 8.3. TDS accepts no liability to a Member or a new owner, or Tenants or Relevant Persons, for any losses sustained or costs incurred if Protection ends due to cessation or changes of ownership.
- 8.8** If the new owner wishes to Protect the Deposit with TDS but does not qualify for Membership of this Scheme, the new owner will have to be or become a Member of the TDS Scheme for Lettings Agents and Corporate Landlords and register the Deposit in accordance with the Rules that apply to that Scheme.
- 8.9** TDS will issue a new Deposit Protection Certificate to the new owner if the Deposit is re-Protected with TDS. It will be the Member's and the new owner's responsibility to comply with any statutory requirements relating to the Deposit (including serving Prescribed Information) if ownership of the rented property changes.
- 8.10** TDS will not refund all or any part of a Tenancy Deposit Protection Charge if a Member ceases to own a property.

9 Resigning from the Scheme

- 9.1** If a Member wants to resign or withdraw a Deposit from the Tenancy Deposit Scheme for Landlords the following conditions and procedure will apply:
 - 9.1.1** The resigning Member must give at least 28 days' prior Notice to TDS of their intention to resign or withdraw the Deposit.
 - 9.1.2** A resigning Member must not offer Protection of Deposits under the Scheme after the date of giving Notice nor state or imply that they remain a Member of this Scheme.
 - 9.1.3** TDS may require a resigning Member to give TDS a Written undertaking, in such form as TDS may from time to time prescribe, if circumstances have changed since the Member gave any earlier undertaking. All such undertakings shall continue in full force and effect after the Member has left the Scheme.
 - 9.1.4** Tenancy Deposit Protection Charges already paid to TDS will not be refunded and Tenancy Deposit Protection Charges due to TDS will remain payable by the Member.
 - 9.1.5** The Member remains liable to pay TDS any Disputed Amount for as long as the Deposit remains Protected or a Dispute remains eligible for ADR.
- 9.2** Within 14 days of receiving a Member's Notice of intention to resign or withdraw any Deposit from the Scheme (and, if later, receiving any revised undertaking that is required), TDS will consider the Member's Notice and determine the date on which Deposits registered by the Member are to cease to be retained under the Scheme.
- 9.3** After making its decision TDS shall promptly give Notice to the Landlord and to the Tenant:
 - 9.3.1** identifying the Deposit in question;

- 9.3.2** informing the Landlord and the Tenant of the date when the Deposit will cease to be retained under the Scheme; and
- 9.3.3** reminding the Landlord and the Tenant that the Member has an obligation to comply with the initial requirements of the authorised scheme to which the Deposit will be transferred, and provide Prescribed Information in relation to that scheme, before the Deposit ceases to be retained under this Scheme.
- 9.4** The 2004 Act requires that a Notice given under Rule 9.3 must be given at least two months before the date on which (a) the Deposit ceases to be retained under the Scheme, or (b) the Landlord's Membership terminates (as the case may be).
- 9.5** The Deposit will cease to be Protected by TDS on the date referred to in Rule 9.3.2 or, if earlier, on the date when the Member provides TDS with Written confirmation (satisfactory to TDS) that:
- (a) the Deposit has been Protected under another authorised tenancy deposit protection scheme; and
 - (b) Prescribed Information in relation to that scheme has been given to the Tenant and to any Relevant Person.
- 9.6** With regard to tenancies that ended before termination of a Membership, the Scheme will continue as if the Landlord were still a Member. In such cases:
- 9.7.1** The Member must send a Disputed Amount to TDS if directed to do so;
 - 9.7.2** Protection will continue until the Deposit has been fully allocated (i.e. paid as agreed, as ordered by the court or as directed by an Adjudicator);
 - 9.7.3** Access to the ADR process will remain available for 3 months after the last day of the tenancy.
- 9.7** No Dispute may be submitted to the ADR Process more than 3 months after the last day of Membership.
- 9.8** Until the Deposit has been fully allocated the former Member must transfer a Disputed Amount to TDS if TDS directs.
- 9.9** Until TDS receives satisfactory confirmation that the Deposit has been protected in a different authorised tenancy deposit protection scheme the Member must transfer the Disputed Amount to TDS if TDS directs.
- 9.10** TDS may, but has no obligation to, inform the Department or any authorised tenancy deposit scheme that the Member is no longer in this Scheme.
- 9.11** A Member who serves on TDS a Notice of intention to resign or transfer a Deposit out of the Scheme may (in Writing) withdraw the Notice at any time before TDS issues a Notice confirming the date of termination of Protection under Rule 9.3, but not afterwards. TDS may charge the Member an administration fee where a Notice of intention to resign or transfer a Deposit out of the Scheme is withdrawn, to cover its costs of dealing with the Notices and any withdrawal.
- 9.12** If a Member does not give Notice of intending to resign or withdraw a Deposit from the Scheme after a Deposit has been Protected, but simply fails to update details on

the TDS tenancy database, or pay further Tenancy Deposit Protection Charges when due, Protection of the Deposit will end:

9.12.1 at the end of the term if the failure occurred during a Fixed Term Tenancy;

9.12.2 when the Statutory Periodic Tenancy ends or a Renewed AST is created, if the failure occurred during a Statutory Periodic Tenancy.

9.13 TDS accepts no liability for any losses suffered or expenses incurred if a Member fails to ensure that a Deposit is Protected as required under the 2004 Act.

10 Expulsion from the Scheme

10.1 TDS may terminate a Membership in accordance with this Rule if, in its reasonable opinion, the Member has not complied with a Relevant Obligation. The following constitute Relevant Obligations:

10.1.1 to comply with the Rules of this Scheme and the Adjudication Rules;

10.1.2 to comply with any undertakings the Member has given to TDS;

10.1.3 to act professionally and with integrity at all times and in accordance with good industry practice and to use all reasonable endeavours to comply with the relevant provisions of the 2004 Act.

10.1.4 to co-operate with TDS in the manner reasonably to be expected of a Member;

10.1.5 to maintain the status on which Membership was granted;

10.1.6 to maintain its accounts in accordance with good accounting practice and the Scheme Rules;

10.1.7 to ensure that the Member is at all times able to pay its debts as they fall due (whether owed to TDS or otherwise) and for the avoidance of doubt the occurrence of an Insolvency Event will be a breach of this obligation;

10.1.8 to comply with the Insurer's requirements as notified to the Member from time to time;

10.1.9 to meet the Membership and Insurer's eligibility criteria (as notified to the Member from time to time) throughout their Membership;

10.1.10 to charge Tenants fairly if recovering from them the costs of using the Scheme or assisting with a Dispute;

10.1.11 to communicate promptly and effectively with all parties, including TDS, having an interest in a Deposit paid or held on behalf of the Member;

10.1.12 not, in TDS' opinion, to generate a disproportionately high number of Disputes – whether the Adjudicator finds in the Member's favour or not. This obligation includes ensuring tenancy agreements and other documents used in connection with an AST are clear and appropriate to the tenancy, as well as dealing fairly and professionally with Tenants

when proposing deductions from Deposits and making proper and reasonable attempts to settle Disputes before referring them to TDS.

10.2 Before terminating a Landlord's Membership for failure to comply with a Relevant Obligation TDS will:

10.2.1 give Notice to the Member that TDS proposes to end the Membership together with a statement of its reasons for the proposed termination;

10.2.2 allow the Member to make representations to TDS as to why Membership should not be terminated within such period as TDS may stipulate in the Notice of proposed termination, which shall not be less than 14 days from the deemed date of receipt of the Notice (for deemed date of receipt see Rule 15);

10.2.3 consider the Member's representations (if any) before reaching a decision on whether to terminate the Membership;

10.2.4 decide whether or not to terminate the Membership and give the Member Notice of TDS' decision.

10.3 During the period between TDS' service of the Notice of proposed termination and TDS' final decision on termination of the Membership, the Member will be treated as suspended and will not be able to Protect any new Deposits with TDS or renew the Protection of any Deposits already registered with TDS. Deposits that were Protected before the Member was suspended will continue to be Protected as usual during the period of suspension and the Member must transfer any disputed amount to TDS if TDS directs.

10.4 During the period of suspension, the Member will be in breach of the 2004 Act if they continue to take Deposits, or if Deposits are carried forward to Renewed ASTs or Statutory Periodic Tenancies and the Member does not protect them (or renew protection in another authorised tenancy deposit protection scheme). For further information please refer to the Housing (Tenancy Deposit Schemes) Order 2007 (Statutory Instrument 2007 No 796 available to view and download at www.legislation.gov.uk).

10.5 If TDS confirms its decision to terminate the Membership, TDS must serve a Membership Termination Notice on the Member and on each Tenant whose Deposit was Protected in the Scheme by the Member:

10.5.1 identifying the Deposit in question;

10.5.2 informing the Member and the Tenant of the decision made by TDS and stating the date when the Deposit will cease to be Protected; and

10.5.3 reminding the Landlord and the Tenant that the Member has a statutory obligation to comply with the initial requirements of the authorised scheme to which the Deposit will be transferred, and provide Prescribed Information in relation to that scheme, before the date on which the Deposit will cease to be Protected under this Scheme.

10.6 The 2004 Act stipulates that TDS may not terminate a Landlord's Membership for failure to comply with a Relevant Obligation within the period of 3 months beginning with the date on which the Notice of proposed termination was received (see Rule

10.2), and TDS will not do so. TDS must serve any Membership Termination Notice at least 2 months before TDS terminates the Membership.

10.7 The Landlord's Membership will terminate on the termination date specified in the Membership Termination Notice. This must be at least 2 months after the date TDS serves (or is deemed to have served, if later) the Membership Termination Notice.

10.8 When Membership ends under this Rule:

10.8.1 Protection ends for Deposits registered by the Member relating to tenancies which continue beyond the termination date specified in the Membership Termination Notice;

10.8.2 Protection continues for Deposits registered by the Member relating to tenancies which ended before the termination date specified in the Membership Termination Notice, until allocation of the Deposit has been finalised (ie paid as agreed by the parties, as ordered by the court, or as directed by an Adjudicator). The Member must transfer any Disputed Amount to TDS if TDS directs. Access to Adjudication will remain available in such cases for 3 months after the last day of the tenancy.

10.9 Deposits relating to ASTs and agreements for ASTs entered into or arising after service of a Membership Termination Notice will not be Protected by the Scheme.

10.10 TDS may at its sole discretion, and subject to the Insurer's approval, continue to Protect Deposits for longer than the periods specified in this Rule.

10.11 Without any liability to the former Member, TDS may publish by which means, and in which media, TDS considers most appropriate the fact and circumstance of a former Member's removal from the Scheme and/or publish details relevant to the Membership termination. TDS may also notify any other relevant body or organisation of the fact and circumstances of the end of the Landlord's Membership, again without TDS having any liability to the Landlord. This Rule does not purport to exclude liability for defamation or malicious falsehood.

10.12 If TDS decides to exclude a Member:

10.12.1 the Member must not, after receiving the Membership Termination Notice, represent to actual or prospective Tenants or Relevant Persons that new Deposits taken by the Member will be Protected by this Scheme, or that Deposits which have fallen due for re-protection will be Protected by the Scheme or, after the Membership has terminated, state or imply that they remain a Member of the Scheme;

10.12.2 TDS will not refund any pre-paid fees to the Member and notwithstanding termination of Membership the Member will remain liable for any unpaid fees and any other sums due or payable to TDS, including any Tenancy Deposit Protection Charge or Disputed Amount, until they are paid;

10.12.3 as regards any Deposit relating to a tenancy that has or will come to an end before termination of the Membership, the Member will comply with TDS' instructions until the Deposit has been distributed either as agreed between the Landlord and the Tenant, or as awarded through TDS, or as ordered by the court and until all sums owed by the Member to TDS have been paid, whichever is the later;

- 10.12.4** the Member will abide by TDS' Adjudications relating to Disputes that are eligible for the ADR process;
- 10.12.5** TDS will Notify affected Tenants that the Deposit will continue to be Protected until the date specified in the Membership Termination Notice or (where a tenancy has ended) that the Tenant may apply for Adjudication for up to 3 months after the end of the tenancy.
- 10.13** During the period between TDS serving a Membership Termination Notice and the date for the end of Membership specified in the Membership Termination Notice the Member must:
- 10.13.1** not make any representation or imply that:
- (a)** new Deposits taken by the Member will be Protected by TDS; or
 - (b)** Deposit will be Protected by TDS for longer than the timescales in this Rule;
- 10.13.2** comply with TDS' instructions relating to Deposits and Membership;
- 10.13.3** comply with the Rules of this Scheme and the Adjudication Rules.
- 10.14** TDS may also terminate the Membership of a Member in the event that the Insurer refuses to provide insurance cover for Deposits held by the Member. Such termination will be subject to the procedure outlined in Rules 10.2 to 10.13 except that the timescales for termination of Membership shall be at TDS' discretion, having regard to the availability of insurance.
- 10.15** TDS may also terminate the Membership of a Member following a change in the Scheme Rules. Such termination will be subject to the procedure outlined in Rules 10.2 to 10.13.
- 10.16** Until TDS receives satisfactory confirmation that the Deposit has been protected in a different authorised tenancy deposit protection scheme the Member must transfer the Disputed Amount to TDS if TDS directs – even if at the time they are no longer a Member.
- 10.17** If TDS decides against terminating a Membership, the Deposit will continue to be Protected until Protection ends in accordance with these Rules.
- 10.18** If TDS decides against terminating a Membership, TDS will promptly give Notice of its decision to the Member and the Member's suspension will end on the date TDS serves such Notice. TDS will not contact the Tenant in cases where Membership will continue.
- 10.19** Provided TDS has acted in accordance with this Rule and the 2004 Act, TDS will have no liability to a Member or Tenants or Relevant Persons for any losses sustained or costs incurred during any period of suspension (whether or not the Member is expelled from the Scheme) or in relation to TDS' termination of the Membership.
- 10.20** Where it is reasonably necessary or appropriate for TDS to bring legal proceedings against a Member (whether under any Rule or under the general law), the Member

will fully and effectually indemnify TDS against any and all costs and expenses, including legal and other professional costs and disbursements, incurred in relation to or in contemplation of such proceedings and in the enforcement or attempted enforcement of any judgment against the Member.

11 What happens to Deposits when Membership ends?

11.1 Whilst a Landlord remains a Member of this Scheme, the Deposit will remain Protected as set out in Rule 7 unless the Member registers the Deposit with a different authorised tenancy deposit protection scheme. If the Member registers the Deposit with a different authorised tenancy deposit protection scheme, the Member must inform TDS promptly, and Protection in the Scheme will end.

11.2 When a Member resigns from the Scheme (see Rule 9) the Deposit will cease to be Protected on the date referred to in Rule 9.3.2 or, if earlier, on the date when the Member provides TDS with Written confirmation (satisfactory to TDS) that:

11.2.1 the Deposit has been protected under another authorised tenancy deposit protection scheme; and

11.2.2 Prescribed Information in relation to that scheme has been given to the Tenant and to any Relevant Person.

11.3 When a Member is expelled from the Scheme (see Rule 10):

11.3.1 Protection ends for a Deposit registered by the Member if that Deposit relates to a tenancy which will continue beyond the termination date specified in the Membership Termination Notice.

11.3.2 Protection continues until allocation of the Deposit has been finalised (see Rules 7.12 and 7.15) if a Deposit registered by the Member relates to a tenancy which ended before the termination date specified in the Membership Termination Notice referred to at Rule 10.5.

11.4 Whether a Member is due to leave the Scheme following resignation under Rule 9 or expulsion under Rule 10:

11.4.1 The departing Member will be responsible for arranging to protect the Deposit in a different authorised tenancy deposit protection scheme immediately Protection with TDS ends. A former Member will have failed to comply with the 2004 Act if they did not do so.

11.4.2 If a Deposit registered by the Member relates to a tenancy that ended before the Membership ended, the parties to that tenancy shall be entitled to use the ADR process in relation a Dispute concerning that Deposit, for a maximum of 3 months from the last day of the tenancy.

11.5 If TDS directs a Member or former Member to submit a Disputed Amount during the period when a Dispute about the Deposit is eligible for ADR, the Member or former Member must pay the Disputed Amount to TDS.

12 Providing information about Deposit Protection

- 12.1** Documentation relating to the Scheme, including these Rules, the Adjudication Rules and the Scheme Leaflet can be downloaded from the website www.tenancydepositscheme.com.
- 12.2** It is the Member's responsibility to comply with The Housing (Tenancy Deposits) (Prescribed Information) Order 2007. A copy of the Order (Statutory Instrument 2007 No 797) is available free to download at www.legislation.gov.uk.
- 12.3** TDS will provide a Tenancy Deposit Protection Certificate to the Member, after the Tenancy Deposit Protection Charge has been confirmed as paid and the Deposit has been registered on the TDS tenancy database. **TDS is not responsible for providing a certificate or the Prescribed Information to Tenants or Relevant Persons.** It remains the Member's responsibility to provide the Prescribed Information to the Tenant and any Relevant Person, give the parties the opportunity to sign to say it is correct, and (if they wish) obtain and provide proof of service. Members should serve the Prescribed Information within the Statutory Time Limit when a Renewed AST or Statutory Periodic Tenancy arises, or they could risk the Tenant (and any Relevant Person) bringing legal proceedings under the 2004 Act. Members should consider serving Prescribed Information afresh if and when any of the information originally provided changes.
- 12.4** TDS will provide Scheme Leaflets in hard copy on request (for which the Member will have to pay TDS a fee, fixed by TDS from time to time) or electronically (free of charge) for Members to pass on to Tenants and Relevant Persons. Members must give Tenants and Relevant Persons a copy of the Scheme Leaflet as part of their Prescribed Information obligations.
- 12.5** TDS has an obligation to collect and maintain appropriate data on each Deposit that it Protects. Members are required to submit data, on each Deposit that they apply to Protect, within the Statutory Time Limit of when the Deposit was first received or first deemed to have been received.
- 12.6** If the Member is not able to enter the data on-line, they may record it on the TDS Form **Registration of a Tenancy** and submit the Form to TDS within 7 days of receiving the Deposit. (This deadline is in the Member's own interest to ensure that Statutory Timescales will be met). TDS will make an extra charge (fixed by TDS from time to time) to cover data entry costs. TDS will not enter the data (and the Deposit will not be Protected) until the data entry fee has been paid.
- 12.7** Members may make limited changes to their details via the website. Members should consult TDS as to the best manner to update any other changes to the TDS tenancy database and may have to pay a new Tenancy Deposit Protection Charge (for example if the tenancy has been extended or renewed).
- 12.8** If there is no dispute about the Deposit, Members must provide the following data to TDS promptly following the end of the tenancy:
- 12.8.1** The date that Protection ended i.e. when agreement on the allocation of the Deposit has been formalised; and
 - 12.8.2** The amount of the Deposit paid to each party.
- 12.9** Members should be aware that if the Tenant does not receive the Deposit within 10 days of asking the Member to return it (beginning with the date the request was

made) the Tenant is entitled to apply to TDS for ADR in the three-month period after the end of the tenancy.

12.10 Where a Dispute arises, TDS must collect and maintain the following data for each dispute:

- 12.10.1** name and contact details of each Tenant;
- 12.10.2** property address to which the Deposit relates;
- 12.10.3** name and address of the Landlord;
- 12.10.4** total value of the Deposit;
- 12.10.5** total value of the Disputed Amount;
- 12.10.6** nature of the Dispute;
- 12.10.7** outcome of the Dispute.

12.11 Members must co-operate with TDS in collecting the data required by TDS. It is the Member's responsibility to make sure that they have all necessary licences and consents to enable them to do so lawfully.

12.12 TDS may request from Members such other information as may be necessary for the purposes of operating the Scheme or the ADR service or providing statistical information to the Department.

13 Data protection responsibilities

13.1 TDS is registered with the Information Commissioner under the Data Protection Act 1998. It is aware of its obligations relating to the obtaining, recording, holding or disclosing of personal data. It has suitable systems and controls to comply with the eight data protection principles, namely that such personal data must be: fairly and lawfully processed; processed for limited purposes; adequate, relevant and not excessive; accurate; not kept longer than necessary; processed in accordance with the data subject's rights; secure; not transferable to other countries without adequate safeguards.

13.2 Members must provide TDS with such information as it reasonably requires, both routinely and on request, on the appropriate form, on-line, by computer disc or by e-mail. Forms are available direct from TDS or by downloading from the website www.tenancydepositscheme.com. It is the Member's responsibility to ensure that they have complied with the Data Protection Act 1998 (as amended) in relation to any personal data which they transfer to TDS.

13.3 Members must, without charge, provide copies of or, at TDS' request, allow TDS to examine, any records and/or documents that TDS considers may be relevant to a Deposit.

13.4 Members must provide such other reasonable assistance as TDS may request from time to time, such other information as TDS may reasonably require to reduce the possibility of money laundering and/or fraud, and such information as TDS may be required to collate by the Department.

13.4 By applying for Membership, Landlords and Agents are deemed to give TDS their consent to store, copy or otherwise process such information as they may supply concerning their Membership and any Dispute in which they are involved, and:

13.4.1 disclose it to other parties and organisations which TDS considers to be appropriate to the resolution of a Dispute;

13.4.2 disclose to a third party for or use it for confidential survey and research purposes

13.4.3 disclose it to relevant bodies who have an interest in and/or a duty to maintain and sustain good practice and the integrity of the Scheme or their profession.

13.4.4 share it with any regulator where TDS considers disciplinary action may be appropriate.

13.4.5 provide information relating to a tenancy of premises, including personal or business address data of Landlords or Agents, to Local Housing Authorities in England in accordance with section 212A of the Housing Act 2004. Local Authorities may combine this information with other information obtained by them, and they may pass this information to an organisation who provides services to the authority in relation to their duties under parts 1-4 of the Housing Act 2004.

13.5 By applying for Membership, Landlords represent and warrant to TDS that:

13.5.1 they are appropriately registered with the Information Commissioner (unless they are exempted from doing so) and will provide written proof of registration upon request from TDS within 14 days of any such request being made;

13.5.2 they are and will remain the data controller of all their Tenants' (and any Relevant Person's) personal data and will comply with the Data Protection Act 1998 (as amended) in all respects for as long as they are a Member or subject to an undischarged undertaking given to TDS;

13.5.3 they will inform Tenants (and any Relevant Persons) of the purposes for which TDS may use their personal data, including the fact that TDS or the Department may invite Tenants to participate in surveys from time to time.

13.6 The Department has appointed TDS as administrator of the Scheme to act on the Department's behalf to gather and process information obtained from Members and other sources, for the purpose of safeguarding Deposits and facilitating the resolution of Disputes. The Department may ask TDS to provide information about tenancies generally for the purpose of fulfilling its statutory functions.

13.7 Further information about TDS and the Scheme is available from the TDS website www.tenancydepositscheme.com or by contacting TDS (address and other details are given at the end of these Rules).

14 Complaints

- 14.1** TDS is committed to providing an excellent Deposit Protection and Alternative Dispute Resolution service to Landlords and Tenants.
- 14.2** TDS and Members agree that each of them will deal with complaints in a constructive, helpful and courteous way.
- 14.3** The procedure for receiving and dealing with complaints about the service is available on TDS' website (www.tenancydepositscheme.com). TDS will also provide paper copies of the complaints procedure on request.

15 Jurisdiction and service of documents

- 15.1** These Rules shall be governed by the laws of England and Wales.
- 15.2** Any legal proceedings to be served in respect of the Rules which are to be served outside the said jurisdiction shall be deemed to be sufficiently served if they are sent by first-class surface or airmail post (provided they are properly addressed and the correct postage has been paid).
- 15.3** All legal proceedings served by or on behalf of TDS may be in English without the necessity for translation into any other language.
- 15.4** In this Rule 15, "address" shall include electronic addresses and fax numbers where the context requires. The "last-known address" of a Landlord, Agent or Tenant shall be the address current on the TDS tenancy database at the time a Notice or document was sent.
- 15.5** Except where the 2004 Act provides otherwise, the provisions for the delivery and service of Notices and other documents relating to or required by these Rules (other than legal proceedings) are as follows:
- 15.5.1** Service by text message or other standard messaging or similar service shall not be proper service.
- 15.5.2** Notices and other documents sent (including courier service) to the last-known address of the intended recipient shall be treated as having been received and served:
- (a) By hand or courier service:
 - (i) on the day after delivery if delivered before 17.00 hours; or
 - (ii) on the second day after delivery if delivered after 17.00 hours.
 - (b) By special or recorded delivery: at the time proof of delivery was obtained from the actual recipient.
 - (c) By ordinary first-class post: on the second day after the day of posting.
 - (d) By ordinary second-class post: on the fourth day after the day of posting.
 - (e) By electronic means:

- (i) at the time of transmission if sent before 16:00 hours; or
- (ii) the day after transmission if sent after 16:00 hours.

15.5.3 Where there is a dispute about service of a Notice or other document, the burden of proof shall be on the sender.

15.5.4 Service on TDS of any document relating to actual or intended legal proceedings must be by post and marked for the attention of The Company Secretary. TDS does not accept service of documents relating to actual or intended legal proceedings by fax or e-mail. Until further notice, TDS' address for service will be: The Dispute Service Ltd PO Box 1255, Hemel Hempstead, Herts, HP1 9GN.

16 Exclusions and limitations of liability

16.1 TDS does not accept liability for the actions or omissions of any third party who is neither an employee of TDS nor an Adjudicator acting in the course of their duties.

16.2 TDS does not accept liability for losses occurring or costs incurred as a result of any event which is outside TDS' reasonable control (such as, without limitation, computer failure, industrial or terrorist action, fire, epidemic, flood, serious adverse weather conditions and any other event generally considered to be a *force majeure* or an Act of God).

16.3 TDS does not accept liability to any one or more Joint Landlords for acting on the instructions of any other Joint Landlord. TDS does not accept directions from Joint Landlords to deal only with instructions agreed unanimously by Joint Landlords.

16.4 If a Joint Landlord dies, it will be their personal representatives' responsibility to Notify TDS and to indicate whether the Joint Landlord owned the property as beneficial joint tenant or tenants in common. The personal representatives should take legal advice if they are uncertain of the meaning of these terms, or do not know which applies. A probate solicitor will usually be able to help.

16.5 TDS may delay or suspend an application for Membership or Deposit Protection to enable further consideration of the application (for example, where there is a reasonable suspicion that someone is attempting to commit fraud). TDS will notify a Member or prospective Member where there is a delay in processing their application, but shall not be liable for any cost to the Member of, or for any consequential or economic loss arising from, a delay in processing, or rejection of, an application for Membership or Deposit Protection.

16.6 TDS does not accept liability for cheques missing in transit or any money sent to TDS electronically which does not reach TDS' account. If a Member expects to receive a payment from TDS and it has not arrived, the Member must notify TDS promptly and co-operate with TDS in resolving the problem.

16.7 Various other exclusions and limitations appear in these Rules and in the Adjudication Rules and shall have no lesser effect if not repeated in this Rule 16.

17 Amendments

- 17.1** These Rules and the Adjudication Rules may be amended by TDS from time to time and all such amendments shall be deemed incorporated and shall take effect on the next Working Day after TDS Notifies such changes to Members, or such later date as the Notification may specify.
- 17.2** Members agree to abide by the Scheme Rules and the Adjudication Rules as amended and in force from time to time, even if an amendment to the Rules, or a later edition of the Rules, is implemented after a Deposit has been Protected in the Scheme.
- 17.3** If in TDS' opinion, proposed changes to any Rules are significant, TDS will consult with Members to the extent and in the manner it deems appropriate, and consider Members' representations before deciding whether to implement such a change.
- 17.4** If any changes incorporated into these Rules are reasonably regarded by any Member as material and unreasonable, that Member may Notify TDS of its intention to withdraw from the Scheme in accordance with the provisions set out in Rule 9. In such cases, the Scheme Rules in force immediately before the Member's Notification shall continue to apply to Deposits held by that Member until Protection by TDS ends according to Rule 9. Undertakings given by the Member to TDS will remain effective until discharged.
- 17.5** If any court in England and Wales should decide that any Scheme Rule is unreasonable or for some other reason unenforceable, only so much of the Rule as is unenforceable shall not apply. Similarly, if a court should decide that any amendment to a Scheme Rule is unenforceable, the Rule as it was immediately before amendment shall continue to apply to the extent that is possible without altering the general intent and purpose of such of the amended Rules as are enforceable, or any Member's undertaking which has not been discharged.

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Contact details

Tenancy Deposit Scheme
PO Box 1255
Hemel Hempstead
Herts HP1 9GN

Tel: 0300 037 1000

Email: deposits@tenancydepositscheme.com

Web: www.tenancydepositscheme.com

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