Applies to an Assured Shorthold Tenancy (AST) *(See fact sheet on types of tenancy)* where a deposit was taken after 6 April 2007 – England and Wales only.

*Note that any deposits taken for an AST **before** this date are not required to follow this legislation, unless:-*

- *the AST has been re-issued (say it came to the end of the term, and was re-issued as fixed term, rather than allowed to go periodic);*
- *the original AST was for a fixed term, that changed to periodic after April 6th 2007;*
- *amendments have made to the original AST,*

then they will fall within this legislation, and the original deposit taken will have to be lodged.

- any deposit taken has to be money (goods, etc cannot be held as a deposit);
- within 30 days of taking a deposit:-
  - has to be held in one of three approved schemes(see below), and
  - the tenant has to be informed what has happened to the deposit in an approved manner*****.

Note, if BOTH of these do not happen, and the matter is discovered, the landlord will:-

- *be ordered to lodge the deposit into the mandatory scheme;*
- *be ordered to pay the tenant a non-returnable 'fine' of up to 3 times the deposit amount;*
- *not be able to issue a section 21 notice until the deposit has been satisfactorily lodged.*

NB – this applies to a tenancy deposit only, not a holding deposit held to guarantee the property for the tenant.

The current (February 2021) schemes are in two types, with three separate companies running both types:-

1. a Custodial Scheme, where the actual deposit is sent to the scheme provider, they hold the actual deposit, and will only release it at the end of let with the permission of both parties.
   If there is a dispute about any, or all of the deposit, the scheme will release any part of the deposit according to what has been agreed and will then arbitrate on the disputed amount, and will return it according to their findings.

For example:-

- an initial deposit is taken of £1,000, but at the end of the letting period it was agreed between the landlord and tenant:-
  - the landlord claims there are £450 worth of money owed to him;
  - but the tenant agrees that £150 is owed, but disagrees about the rest, therefore £300 is in dispute;

then:-

the scheme would send:-

- £150 to the landlord, as agreed;
- £550 (i.e. £1,000 less the £450) to the tenant;
- and would arbitrate on £300 in dispute. They would then return that £300 as they saw fit.

2. an insurance based schemes, where the deposit is held by the landlord (or agent), and the landlord (or agent) would pay the scheme an insurance fee to allow them to hold the deposit.
   In the event of a dispute, the above would still be true, but in our example (above) in the case of a dispute:-
   - the landlord would retain £150, as agreed;
   - the landlord/agent would send £550 (i.e. £1,000 less the £450) to the tenant;
   - and would send the £300 in dispute to the scheme provider.
   - The scheme would arbitrate and then return the £300 as they saw fit.

In the event of the landlord/agent not sending the disputed amount to the Scheme for arbitration, the scheme would still arbitrate, but the insurance would pay out if required.

Note that in this event the landlord/agent would not be able to use an insured scheme again, and would only be able to use a Custodial scheme.

The companies supplying these services are:-

- **The Deposit Protection Service (The DPS)**

For more information, visit the website www.depositprotection.com, or telephone 0330 303 0030.

- **Mydeposits**

For more information, visit the www.mydeposits.co.uk or telephone 0333 321 9401.

- **The Tenancy Deposit Scheme (TDS)**

For more information, visit the www.thedisputeservice.co.uk, or call 0300 037 1000.

For current fees visit the web site.

At the end of the tenancy:

If a dispute occurs and no agreements can be reached about how much of the deposit should be returned, there will be a free service, offered by the scheme protecting the deposit to help resolve any disputes – the Alternative Dispute Resolution (ADR) service.
ADR is free to use, but cannot rule on any financial matters, typically overdue rent. The Small Claims Courts has to be used for this.

Note that the majority of claims going to the ADR are found in the favour of the tenant, and the vast majority of these are soley due to the landlord being unable to prove their claim.
It is vital to have a full, and comprehensive AST and inventory, fully signed by the landlord (or agent), and the tenant(s) at the start of the tenancy.

NB – if you chose not to take a deposit, but it is vital that this is made clear, preferably marking the AST 'No Deposit taken'.

Critical points:-

1. **read, and understand the schemes rules. If in doubt, ask;**
2. **ensure the full deposit is lodged within the time scale;**
3. **ensure all interested parties receive the prescribed information, in the correct format within**
1. **the time scale. Again, if in doubt – ask;**
4. **ensure you can prove the prescribed information has been served on everyone. Suggest get**
2. **it signed for;**
5. **if the prescribed information has to be re-issued, ensure it is done correctly;**
6. **if you return all, or part of the deposit (at any time) ensure you have proof.**

If you get any of the above wrong you may have to pay a 'fin' of one to three times the deposit amount, which will be given to the tenant.
Please don't get it wrong – think carefully if it is worth taking a deposit, and the potential problems.
* The Approved Manner referred to is that the correct Prescribed Information must be issued in the correct manner to all interested parties.
It is recommended that when it is issued there is a note to the effect 'This Prescribed Information is being issued to you on the basis you are the only interested party'. No response from the tenant would be sufficient if another interested party appears later.
Naturally be careful of an obvious interested party – e.g. a cheque for the deposit from someone else other than the tenant.

from June 1st 2019 Deposits were capped at:-
- 5 weeks rent for rents below £50k;
- 6 weeks for rents above £50k.

Holding deposits are capped at 1 weeks rent, and can only be held for a maximum of 15 days, unless agreement to extend between the parties.
The holding deposit can be retained if the tenant:-
- pulls out;
- fails to take reasonable steps to enter into the tenancy;
- fails the Right to Rent check;
- provides false or misleading statements. Ensure your application form is correct.

Note that a genuine Holding Fee is not subject to the above legislation.

The holding deposit has to be returned if:-
- the landlord or agent pulls out;
- the let goes ahead to a successful tenant

Note that only one holding deposit can be taken per tenancy.