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Rental Property Knowledge: a website for Landlords, Letting Agents and Tenants. The site hosts the UK's busiest on-line rental property forum

## Highlights:

The theme of this issue is the new **Tenancy Deposit Scheme (TDS)** which comes under the **Housing Act 2004** and its bundle of measures—the TDS element to be introduced in October 2006.

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## Tenancy Deposit Schemes - Part 2 - The Housing Act 2004

One of the key measures in the Housing Act is the introduction of what are to be called Tenancy Deposit Schemes (TDSs)

From October 2006, all landlords who take deposits and whose tenancies fall within the provisions of the Housing Acts (which includes all tenancies with a rental value of less than £25,000 a year) will have to join an authorised tenancy deposit scheme.

The idea is that these schemes will protect tenants' deposits from rogue landlords who don't pay up at the end of the tenancy.

In last months' newsletter, we looked at how the new tenancy deposit schemes will work, why the government is bringing in the changes and why you should not ignore the new system.

In this newsletter, we'll look at who will run the schemes, what the cost is likely to be and how you should prepare

## Welcome

This January 2006 issue is the second Newsletter we have devoted to the new Tenancy Deposit Schemes (TDS) which are due to come in to use in October this year.

No doubt there will be more information to come about the schemes as the ODPM are still at the stage of consultation on some matters (see above) and scheme

for these new schemes when they start in October 2006.

The ODPM have issued a [consultation paper](#) which sets out how the powers in the primary legislation are intended to operate and how the Government intends to implement these. There are a number of practical issues to be considered prior to implementation, which will be tackled through secondary legislation.

### **[ODPM Consultation period from 30 November 2005 to 1 February 2006](#)**

The paper seeks views of interested parties on these issues and invites them to comment on the approach to be adopted in secondary legislation.

A list of the questions asked throughout the paper is at Annex A. The paper does not seek views on the general policy of tenancy deposit protection, which was the subject of the consultation paper *Tenancy Money*:

administrators remain to be appointed.

It's still unclear exactly how the private DIY landlord will be accommodated in all of this.

Landlords using agents may know that ARLA, RICS and the NAEA already have a scheme in place—the Tenancy Deposit Scheme for Regulated Agents (TDSRA.)



*Probity and Protection*, issued by the then Department for Transport, Local Government and the Regions (DTLR) in 2002 as a forerunner to the provisions now found in the Housing Act 2004.

This consultation paper is accompanied by a partial regulatory impact assessment, found in Part Three.

The assessment follows on from the full regulatory impact assessment that accompanied publication of the primary legislation.

The consultation paper is being issued jointly with the Office of the Deputy Prime Minister and the Welsh Assembly Government (WAG), referred to collectively as 'ODPM' throughout the paper.

There's no doubt that deposits are the biggest cause of problems and disputes between landlords and tenants and in particular tenant advisory bodies such as Shelter and the Citizen's Advice Bureau have lobbied hard for this.

Let's hope that the scheme can be made to run smoothly and efficiently and to the benefit of both landlord and tenant. Editor.

## Who Will Run The Schemes?

The government intends that third party administrators will run the schemes and is now in the process of going out to tender to seek organisations to do this.

These “administrators” will have to have non-compulsory dispute resolution procedures available for landlords and tenants who can’t agree about the return of deposits.

For both the custodial and insurance based schemes, it seems that only one provider will end up running each scheme. The British Property Federation’s Ian Fletcher has said that, “In effect, the Government is creating a state

backed monopoly. Like all private monopolies it is therefore important that there are sufficient checks and balances in place, and we will be heavily scrutinising this as the bidding process moves ahead.”

There are also concerns about how well the new schemes will be communicated.

Consulting firm PKF, which produced a ‘scoping report’ on deposit schemes for the Government has apparently advised against a national media advertising campaign to reach the 2.2m tenants and 700,000 land-

lords who will be affected.

This also worries the British Property Federation who say, “We are concerned about the consultants’ dismissal of a national advertising campaign bearing in mind that, on their figures, a strategy of targeting landlords through agents and associations would only reach one quarter of those affected, and with little else aimed at the other three quarters. For the policy to be effective, the government must ensure it is reaching those landlords it most needs to target.”

### Useful Links

ODPM—[Tenancy](#)

[Deposit Scheme](#)

[The Dispute Service—](#)

[Deposit Scheme for](#)

[Regulated Agents](#)

ODPM—[Consultation](#)

[Paper](#)

## Are There Examples of Similar Schemes?

Landlords using agents may know that ARLA, RICS and the NAEA already back an existing scheme called the Tenancy Deposit Scheme for Regulated Agents (TDSRA.)

This is currently open only to “letting bodies which regulate the activities of their members and who are covered by a recognised bonding scheme.” Its Chief Executive, Laurence Greenberg claims that, “Lots of letting agents are signing up to this scheme at the moment.”

Under the TDSRA, it’s up to each agent how they charge the cost of the scheme back to landlords though most seem to be rolling up the cost up in their letting fees.

The TDSRA scheme looks set to meet the likely requirements under the new rules, though it will need to be made available to all landlords to meet government procurement rules.

Referrals to the TDSRA scheme generally contain more than one area of dispute, says Mr. Greenberg.

“As well as opinions differing over what is clean or what is not, we are most often called upon to adjudicate on the costs of small amounts of damage where redecoration is needed above fair wear and tear.

Another area of dispute is damage caused by pets,

especially when pets have not been specifically allowed under the terms of the tenancy agreement. The amounts in dispute have ranged from £70 to £12,000“. (To find out more on the TDSRA see [www.tds.gb.com](http://www.tds.gb.com).)

The UK Government looked at the Australian, New Zealand and Canadian schemes when designing this legislation.

UK Landlords point out that here there is a quid pro quo abroad in that tenants who don’t pay their rent in these countries can be evicted much faster than is the case in the UK.



**“The government intends that third party administrators will run the schemes and is now in the process of going out to tender to seek organisations to do this.”**



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## What if I Don't Want to Use an Agent?

Landlords associations are keen to help their members by getting on board with some kind of third party run schemes.

The schemes will cost money. Given the probable complexity of administration and adjudication involved in settling disputes they are not going to come cheap either.

The cost to letting agents of joining the TDSRA insurance based scheme is £312 per letting office per year.

However, the devil is in the detail and how much the schemes will actually cost will depend on how they work in practice. The government will have to provide more detail, not least on the data collection requirements involved

There is likely to be more information to come on how the schemes will work, over the course of the year.

However, there are other things you can do. Nick Goble at Winkworths estate

agents says, "Experienced landlords can do a lot to help themselves."

He adds, "Landlords should have a detailed inventory and communicate with their tenants in the run-up to when they leave. Where tenants know exactly what they have to do before leaving day - whether that's cleaning or getting the council to remove unwanted possessions - there is rarely a problem with the return of the deposit."



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### Book Review: [A Practical Approach to Commercial Conveyancing and Property](#) (published February 2006)

The "A Practical Approach" series by OUP is aimed a solicitors in the commercial property field but is the perfect partner for commercial property landlords and agents who want a practical guide to changes in the law.

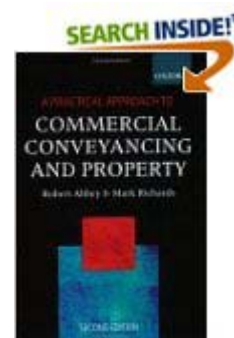
This new edition has been updated both to reflect the recently improved layout

and style of the "A Practical Approach" Series, and provide comprehensive coverage of all the legislative changes to commercial property law since the publication of the last edition in June 2003.

Significant changes include: the June 2004 reforms to the Landlord and Tenant Act

1954 Part II; the April 2005 amendment of the 1987 Use Classes Order; the bringing into force of the Enterprise Act 2002 in September 2003; the 2004 changes to the Standard Commercial Property Conditions; and the replacement of Stamp Duty with Stamp Duty Land Tax in December 2003.

ISBN: 0199291500



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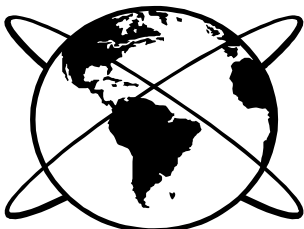
Newsletter

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LandlordZONE  
circles the Globe

Volume 1, Issue 5  
January 2006

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