



Ministry of Housing,
Communities &
Local Government

Tenancy Deposit Reform

A Call for Evidence



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Scope of the call for evidence

Topic of this call for evidence:	Tenancy deposit reform
Scope of this call for evidence:	Challenges faced by tenants affording a new deposit when moving, exploring innovative approaches to address this deposit affordability problem, and looking at wider improvements to the way the deposit protection process works.
Geographical scope:	England only
Impact Assessment:	To be completed

Basic information

To:	This Call for Evidence is open to everyone.
Body/bodies responsible for the consultation:	The Ministry of Housing, Communities and Local Government.
Duration:	This call for evidence will last for 10 weeks from 27 June 2019.
Enquiries:	For any enquiries about the consultation please contact: DepositReform@communities.gov.uk
How to respond:	<p>You may respond by completing an online survey at:</p> <p>https://www.surveymonkey.co.uk/r/T9RYJCN</p> <p>Alternatively, you can email your responses to the questions in this consultation to:</p> <p>DepositReform@communities.gov.uk</p> <p>If you are responding in writing, please make it clear which questions you are responding to.</p> <p>Written responses should be sent to:</p> <p>Private Rented Sector Strategy and Reform Division Ministry of Housing, Communities and Local Government Third Floor, South West – Fry Building 2 Marsham Street London SW1P 4DF</p> <p>When you reply, please confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:</p> <ul style="list-style-type: none"> - your name, - your position (if applicable), - the name of organisation (if applicable), - an address (including postcode), - an email address, and - a contact telephone number.

Ministerial Foreword

The Government is committed to ensuring a fairer and more affordable private rented sector that provides security and stability for both tenants and landlords.

That is why I recently announced that we would put an end to no-fault evictions by repealing section 21 of the Housing Act 1988, to ensure that tenants cannot be evicted without good reason. I also committed to strengthening the grounds for possession under Section 8 of the Housing Act 1988 to deliver a fair and effective tenancy regime. I intend to consult with landlords, tenants and others in the rental sector on the details of a better system that will work for landlords and tenants.

And as of 1 June 2019, the cost of moving has been significantly reduced for tenants due to the Government prohibiting most fees for tenants through the Tenant Fees Act. This Act also capped security deposits to help tenants access the private rented sector.

The deposit cap will reduce the amount of money that a tenant needs to save before moving into a new home. However, there are still barriers to tenants moving home and I want to go further to improve mobility in the private rented sector by overcoming these.

It can take too long for some tenants today to get their deposits back when moving, and where tenants need a deposit for their new rented home, some will struggle to afford it. Some of these tenants risk falling into debt or ultimately finding themselves unable to move from their current home, missing out on the opportunity of finding a better place to live or taking a new job in a different area. I welcome innovative approaches that are already emerging to improve the lives of renters and challenge business and landlords to come forward with new ideas that mean tenants do not have to provide a second full deposit to move home.

I am committed to making the process for tenants getting their deposit back much smoother. I want to understand whether there should be a deadline for landlords returning deposits. I also want to look at whether existing initiatives are meeting tenants' needs and whether the market can offer improved products. Alongside this, I want to look more widely at whether innovative approaches to helping tenants move more easily, including allowing tenants to passport their deposit between tenancies.

It is important that good landlords have the confidence to let out their properties safe in the knowledge that a deposit will provide them with reasonable protection from damages to their property. Any improvements to the way deposits are returned at the end of a tenancy will need to ensure that deposits still serve this purpose and that deposit protection continues to work well for both tenants and landlords.

I established the Tenancy Deposit Protection Working Group in June 2018 and excellent progress has been made by the Working Group in exploring innovative models. I would like to thank the members for their valuable contributions.

I am expecting the Working Group to report their recommendations in full in the autumn. The Government will then consider whether more is needed to be done to help the private sector develop solutions to improve deposit affordability.

The Rt Hon James Brokenshire MP
Secretary of State for Housing, Communities and Local Government

Introduction

- 1.1. According to the English Housing Survey 2016-17 there were an estimated 23.1 million households in England. The number of private rented sector households has doubled since 1996-97 and the sector currently accounts for 4.5 million (or 20%) of households.
- 1.2. Most landlords in the private rented sector ask tenants to provide a security deposit at the start of a tenancy to protect the landlord from damages to the property and other breaches of tenancy agreements. Landlords have been required to protect deposits for all assured shorthold tenancies since 6 April 2007 under the Housing Act 2004. Deposit protection has increased confidence in the rental market by ensuring that tenants' money is protected and creating a more efficient end of tenancy process.
- 1.3. The Government has taken action to make deposits more affordable for tenants through the deposit cap which has been introduced through the Tenant Fees Act. When consulting on the deposit cap we stated that we wanted to work with the market to explore more innovative approaches to paying deposits to improve affordability for renters.¹
- 1.4. In June 2018 the Government established the Tenancy Deposit Protection Working Group formed of representatives of tenants, landlords and agents, the deposit protection schemes and Nationwide Building Society. The Working Group has been tasked with looking at whether improvements can be made to deposit protection to the benefit of tenants and landlords, so that it remains effective and affordable, and still fit for purpose in light of technological and economic changes that have taken place since its introduction. It has also been looking at the merits of innovative approaches to deposit protection.
- 1.5. The Working Group has prioritised exploring innovations that could make deposits more affordable for tenants. The Working Group has considered a wide range of options for achieving this, including building on existing affordability initiatives and exploring the merits of a deposit passporting system (that is, moving deposits smoothly from one landlord to another) could reduce cash flow problems and financial pressures faced by tenants when they move from one rental property to another.
- 1.6. The Working Group has also been looking at wider issues with deposit protection, including concerns that some tenants wait too long to get their deposit back, making it harder for them to manage the costs of moving.

¹ Banning letting fees paid by tenants: Government Response, November 2017, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/656211/Govt_response_to_consultation_on_banning_letting_fees.pdf

1.7. The Working Group is due to publish its final report, setting out its recommendations on potential improvements to deposit protection, in the Autumn. Once the Working Group has concluded, we intend to build on its work to find a viable passporting system and begin testing a potential model, as well as further considering alternative options.

New Deal for Renting consultation

1.8. The Government is also intending to consult on a package of reforms to improve security for tenants, and to provide the tools for landlords to end tenancies where they have legitimate reason to do so. We want to seek views on how to implement the Government's decision to remove Section 21 of the Housing Act 1988, and how grounds for possession might be strengthened to ensure landlords have a more secure legal framework and a more stable rental market to remain and invest in. Our reforms are expected to enable tenants to live in their rented homes for longer and as a result we would expect to see fewer moves within the private rented sector. Inevitably, this would lead to fewer instances of the need to provide an additional tenancy deposit. The Government also intends to carry over the existing tenant protections included in the section 21 eviction process (for example for the requirement for landlords to provide evidence that they have protected the tenant's deposit before an eviction can be granted by the court) into the new tenancy regime.

Topics in this Call for Evidence

1.9. This Call for Evidence builds on the Working Group's work to date to explore innovative approaches to deposit protection and look at improvements to the way the deposit protection process works.

1.10. In Chapter 2 we seek to better understand the difficulties that tenants face providing a new deposit when moving so that appropriate solutions can be developed.

1.11. In Chapter 3 we ask for views on existing initiatives which aim to alleviate the problem of deposit affordability.

1.12. In Chapter 4 we look at whether improvements should be made to existing deposit affordability initiatives.

1.13. In Chapter 5 we ask for views on what further innovative approaches could be used to alleviate the problem of deposit affordability.

1.14. In Chapter 6 we outline other issues with deposit protection which the Working Group has identified, beyond affordability. We ask questions in this Chapter to help us understand whether there is a need for changes to be made.

Responding to the Call for Evidence

All responses to the call for evidence should be submitted no later than 5 September 2019. We encourage respondents to use the online survey available at: <https://www.surveymonkey.co.uk/r/T9RYJCN>, although written responses can also be emailed to:

DepositReform@communities.gov.uk

or sent to:

Private Rented Sector
Ministry of Housing, Communities and Local Government
Third Floor, South West – Fry Building
2 Marsham Street
London
SW1P 4DF

About you

Questions for all respondents

1. In which capacity are you completing these questions?

- Landlord operating as an individual (answer questions 2 and 3)
- Landlord operating on behalf of an organisation (answer questions 2 and 3)
- Tenant (don't live with the landlord) (answer questions 4-10)
- Lodger tenant (live with the landlord) (answer questions 4-10)
- Letting/property agent (answer questions 2 and 3)
- Other- organisation (answer question 11)
- Other- individual (answer question 12)

Questions for landlords

2. As a landlord, which of the following best describes you:

- Private landlord
- Housing Association
- Local Authority Housing Company
- Other (please specify and add box)

3. In which region(s) do you let property? Tick all that apply.

- East
- East Midlands
- London
- North East
- North West
- South East
- South West
- West Midlands
- Yorkshire and the Humber

Questions for tenants

4. If you are a tenant, which of the following best describes the person that, or organisation which, owns your home [tick all that apply]:

- Landlord of a house with multiple occupancy or shared accommodation in the private rented sector
- Landlord in the private rented sector (not house in multiple occupancy or shared accommodation)
- Housing association
- Local Authority Housing Company
- I am unsure or do not know who owns the property I live in
- Other (please specify and add box)

5. In which region do you live?

East
East Midlands
London
North East
North West
South East
South West
West Midlands
Yorkshire and the Humber

6. Please state the amount of deposit paid to rent your current property (estimate if exact amount not known, or answer £0 if you have not paid one)
[Text box]

7. With which of the following tenancy deposit protection schemes is your deposit currently protected?

mydeposits
Deposit Protection Service (DPS)
Tenancy Deposit Scheme (TDS)
Don't know
I haven't paid a deposit
I paid a deposit, but it is not protected

8. What is your annual household income? If you are living in shared accommodation or a house with multiple occupancy, please tick the box that applies to your individual income.

Less than £20,000
£20,000 to £34,999
£35,000 to £49,999
£50,000 or more

9. Please state your current monthly rent (if you are living in shared accommodation or a house with multiple occupancy please just state your share of the rent)

[Free textbox]

10. I am in receipt of housing benefit or the housing element of Universal Credit

Yes
No

Questions for other organisations

11. If you are replying on behalf of an organisation, which of the following best describes you?

- Sector representative body
- Provider of services to the housing sector
- Charity that deals with housing issues
- Local government sector
- Legal sector
- Academic/research institution
- None of the above (please specify below)

Questions for other individuals

12. If you are replying as an individual, which of the following best describes you?

- Former tenant
- Former landlord
- A guarantor (for a tenancy)
- Concerned citizen/interested party
- Legal sector
- Charity sector/community activist
- Potential landlord
- Housing professional
- Both landlord and tenant
- None of the above (please specify below)

2. Costs of providing a second deposit

Reductions in the cost of moving

2.1. The Tenant Fees Act, which came into force on 1 June 2019, places a 5-week cap on deposits where rents are under £50,000-a-year (and 6-week cap where rents are £50,000 or over) and prevents landlords and agents from charging unnecessary fees to tenants. Fees are now transparent, and tenants can understand the true cost of renting a property; moving costs will be significantly reduced.

Identifying further affordability concerns

2.2. Tenants moving within the private rented sector will typically need to provide a second deposit when moving to a new house, with many having not yet received the deposit back from their first tenancy. There can be delays in landlords returning deposits to tenants, as we discuss in Chapter 5, which may mean there is an extended period of time where tenants struggle financially due to having paid deposits to their old landlord and new landlord respectively.

2.3. Data from the English Housing Survey suggests that there are tenants who are facing affordability challenges. 20% of private renters were in receipt of housing benefit during 2017-18. We also know that between 2016-17, 31% of tenants found it hard to pay their rent and 9% were in rent arrears. We would like to understand whether some of these tenants may be struggling to find another sum of money to meet the costs of providing a second deposit

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

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

2.6. It is unclear how significant the problem of deposit affordability is for tenants and how they are managing to bridge the gap of needing to find two deposit amounts, if indeed they are bridging the gap at all. We want to better understand the issues that tenants are facing so that we can target solutions to address this.

Questions for tenants

13. How many times have you struggled to afford a deposit?

- a. Never
- b. Once

- c. Twice
- d. Three or more times

14. If you have needed help to afford a deposit, how have you obtained help? [tick all that apply]

- a. Borrowed from friends or family
- b. Reduced or delayed spending on other items
- c. Taken out credit
- d. Used a deposit replacement product
- e. Used an employer-backed loan
- f. Other [please state]

15. Have any of the following ever resulted from you being unable to afford a deposit? [tick all that apply]

- a. Were unable to move to a new home
- b. Were unable to move closer to family
- c. Were unable to start a new job
- d. Became homeless
- e. No – cost of deposit has not prevented me moving
- f. Other

Questions for landlords/agents

16. How frequently have your prospective tenants had difficulty providing a deposit?

- a. Never
- b. Sometimes
- c. Often
- d. Always

Questions for all respondents

17. To what extent do you agree that tenants find it difficult affording a second deposit when moving within the private rented sector?

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. Strongly Disagree

18. Do you have any further evidence about the scale of the problem which you would like us to consider?

[Free text box]

3. Existing affordability initiatives

3.1. There are already initiatives that seek to address the challenge of tenants providing a cash deposit when they move tenancy and we explore some of these initiatives in this chapter.

Local authority schemes

3.2. Local authorities across England already run initiatives targeted at tenants who are threatened with homelessness or who are homeless and are eligible for help under the homelessness legislation. These deposit assistance schemes include rent deposit loans and deposit bond schemes, both of which avoid tenants needing to provide their own funding for a cash deposit. We know that the availability of these schemes varies across the country.

3.3. The Government has recently awarded £20 million through the Private Rented Sector Access Fund to 54 projects that will provide better access and sustainment of tenancies for those who are, or are at risk of, becoming homeless or rough sleepers.

3.4. One such project comprises 35 local authorities piloting an innovative transitional insurance policy to help more people access the private rented sector. Under this particular scheme, a transitional insurance policy is taken out by the local authority on behalf of landlords to provide protection against rental loss or property damage and can be used in lieu of a cash deposit from tenants. The majority of schemes run by local authorities are targeted at specific tenant groups and as such, can be limited in terms of eligibility.

Deposit replacement products and short-term credit

3.5. Some landlords and agents offer tenants the option of using a deposit replacement product as an alternative to them providing a traditional tenancy deposit. The deposit replacement market is currently small scale and in its infancy. However, it is evolving quickly and there are a range of product models, with some structured as insurance products and so subject to Prudential Regulation Authority and Financial Conduct Authority regulation.

3.6. Under the Tenant Fees Act 2019, landlords and agents cannot make it a requirement for tenants to use a deposit replacement product, as the upfront charge is treated as a prohibited payment. The tenant can choose to use a deposit replacement product as an alternative to a traditional tenancy deposit if all parties consent to this. However, it is important that tenants understand the products being offered. With a traditional deposit, as long as the tenant abides by their tenancy agreement, they will receive some or all of the deposit back at the end of the tenancy. In contrast, in the typical deposit replacement model, a fee (often equivalent to one week's rent) is taken as a non-refundable payment, with the tenant remaining liable for damages at the end of the tenancy. Tenants are also generally unable to make claims below the level of excess, in common with other insurance products.

3.7. These products sit alongside other means of short-term credit that tenants may be using to bridge this gap, such as overdrafts, credit cards or unsecured loans.

Employer-backed loans

3.8. Some employers across the private and public sectors offer their employees the option of a Rental Deposit Loan to help them pay their rental deposit. Under the rental deposit loan scheme, employees are offered an interest free loan by their employers to help them pay their deposit when moving into a privately rented home. Repayments are deducted from monthly salary over the course of up to a year, usually in monthly instalments, to repay the amount of the loan, although the scheme can be adapted by different employers to suit their needs. The scheme, initially piloted by Shelter and the Greater London Authority in London, was rolled out nationally in 2015. However, the extent to which the scheme has been made available by organisations across the private and public sectors, and take-up of this by their employees, is not fully known.

3.9. Ultimately, deposit assistance schemes, deposit replacement products and employer-backed loans are designed to address affordability issues for tenants who struggle to provide a deposit in full upfront, including when they move tenancy and have yet to receive their previous deposit back. We want to ask for views on existing initiatives which aim to alleviate the issue of deposit affordability, so that we can consider the potential to build on these initiatives. We will consider this alongside looking at innovative new approaches.

Questions for all respondents

19. Are you aware of any of these initiatives? [tick all that apply]
- Local authority schemes (deposit loans, deposit bonds, local authority-backed insurance policy)
 - Deposit replacement products (also known as 'zero deposit' schemes)
 - Rental deposit loans (employer-backed loans)
 - I'm not aware of any of these initiatives
20. Have you ever used any of these initiatives? [tick all that apply]
- Local authority schemes (deposit loans, deposit bonds, local authority-backed insurance policy)
 - Deposit replacement products (also known as 'zero deposit' schemes)
 - Rental deposit loans (employer-backed loans)
 - I have not used any of these initiatives
21. If not, why not?
- Wasn't aware of it
 - Didn't need it
 - Wasn't eligible
 - Not operating in my area
 - Other [please state]
22. If you used a scheme, did you experience any problems with it?
[Free text box]

4. Improving existing affordability initiatives and speed of deposit return

4.1. We set out in Chapter 3 that there are a number of existing initiatives that seek to address deposit affordability by reducing cash flow problems and financial pressures faced by tenants when they move from one rental property to another. These include rental deposit loans backed by employers, and schemes run by local authorities. We also considered the emergence of deposit replacement insurance products and whether tenants have enough understanding of the products that are being offered. There may be the potential to increase uptake of these initiatives through increased awareness and we want to gather views on how effective existing initiatives are at meeting tenants' needs. We want to consider the extent to which existing initiatives can address the barriers to tenants moving home, and how these products can be improved further.

Questions for all respondents

23. What could be done to improve awareness of employer-backed (rental deposit) loans?

[Free text box]

24. What could be done to improve the availability of employer-backed (rental deposit) loans?

[Free text box]

25. What could be done to improve the availability of local authority schemes? (deposit loans, deposit bonds, local authority-backed insurance policy)

[Free text box]

26. What could be done to improve the awareness and availability of alternative financial products designed to bridge the gap in the payment of deposits?

[Free text box]

27. Are there any other actions that could be taken to make it easier for tenants to pay for a new deposit when moving home?

[Free text box]

Speed of deposit return

4.2. We are also seeking views on whether a more definitive deadline for the return of deposits from landlords could help to ensure that tenants and landlords are more proactive in agreeing deposit deductions, and ultimately that deposits are returned more quickly to tenants. A speedier return of the deposit would make it easier for tenants to move within the private rental sector.

Current process

4.3. The Housing Act 2004 sets out the following timescales for the return of deposits in the insurance-backed and custodial models:

- Schedule 10 of the Housing Act 2004, states that custodial schemes, upon receiving notification to release funds, “must arrange for the relevant amount to be paid, in accordance with the agreement, within the period of 10 days beginning with the date on which the notification is received by the scheme administrator.”²
- There are similar provisions relating to the insurance schemes³. Schedule 10 of the Housing Act 2004 says in 6[2] that a tenant can raise a dispute with the scheme if the deposit has not been returned within 10 days of asking after the end of the tenancy.

Issues with the current process

4.4. The Tenancy Deposit Protection Working Group has been looking at evidence on the speed of deposit return. It has found that, whilst the legislation sets out a timeframe for the return of deposits, the timeframes only apply once both sides agree to deductions or otherwise raise a dispute. There are also set timeframes for tenants to raise a dispute in the insurance-backed model where the tenant requests the deposit be repaid and the landlord does not respond within the statutory deadline.

4.5. The Working Group believes that avoidable delays can arise where neither side engages with the repayment process at the end of the tenancy. The custodial dataset provided by the Tenancy Deposit Scheme (TDS) shows that the average speed of deposit return is slower when the landlord does not begin the process of returning the deposit. The average time taken for payment to be made where the tenant initiates the deposit return is 37 days, as opposed to 29 days where a landlord or agent starts off the process. As the landlord normally initiates the process, this may indicate that delays can arise when a landlord is not proactive in returning the deposit and the tenant has to take action themselves.

4.6. The Working Group is also concerned that delays can arise where neither side engages in the custodial model of deposit protection. A custodial scheme must have the consent of both parties before releasing any money. One party must wait for the other to engage with the process and there is no legislative requirement for both parties to be responsive during a dispute or when one party wants funds to be returned to them. Where,

² Housing Act 2004, Schedule 10: *Provisions relating to tenancy deposit schemes*, 4 (3)

³ Housing Act 2004, Schedule 10: *Insurance schemes: termination of tenancies*, 6 (1) - (9)

for example, one party has remained unresponsive to the repayment process, the other party must obtain a statutory declaration signed by a solicitor. There are concerns that the statutory declaration process can lengthen the timeframe for returning the deposit. A clearer deadline for returning deposits could potentially remove the need for the statutory declaration process. It should be noted that the non-responder issue does not arise in the insurance-backed model, as the scheme can reimburse tenants through its insurance policy.

4.7. It is important to note that a more definitive deadline for the return of deposits from landlords is a possible tool to bear in mind when considering alternative approaches to deposit affordability, although we want to understand more fully the possible implications of creating such a deadline.

Questions for all respondents

28. With your most recent move/letting, how long after the tenancy ended did it take for negotiations on deposit deductions to begin?
- a. Less than three days
 - b. 3-5 days
 - c. 6-10 days
 - d. 11-20 days
 - e. More than 20 days
29. Once you had begun negotiations, how long did those negotiations take?
- a. Less than three days
 - b. 3-5 days
 - c. 6-10 days
 - d. 11-20 days
 - e. More than 20 days
30. Are you aware of the statutory timeframes around the return of a deposit?
- a. Yes
 - b. No
31. Have you ever used the statutory declaration process to reclaim a deposit?
- a. Yes
 - b. No
32. If you answered yes to Q31, what was your experience of the process?
- a. Very positive
 - b. Positive,
 - c. Neither positive nor negative
 - d. Negative
 - e. Very negative
33. To what extent do you agree that the process for returning the deposit is too slow?
- a. Strongly agree
 - b. Agree
 - c. Neither agree nor disagree

- d. Disagree
- e. Strongly Disagree

34. Do you think that a definitive deadline for returning deposits could help improve the process?

[Free text box]

35. What do you think would be the consequences of imposing a deadline for deposit returns?

[Free text box]

5. Exploring new initiatives

5.1. The Tenancy Deposit Protection Working Group has made deposit affordability a key area of focus in its work. It has been considering whether there is a gap in current provision by the market and whether there is merit in potential innovative approaches to addressing this problem.

5.2. We welcome this focus on exploring new innovative products and would like to use this Call for Evidence to gather ideas for possible new market-led approaches from financial services providers, businesses, landlords, tenants and the third sector. These approaches could include introducing a new market-led deposit passporting scheme or encouraging the financial services sector to introduce a new deposit loan product for tenants.

5.3. The deposit passporting concept is that some of a tenant's deposit is transferred (either notionally or physically) from the first to the second landlord without first being returned to the tenant. Passporting could enable tenants to move without having to provide an additional deposit to their new landlord. It has been suggested that passporting could reduce cash flow issues for tenants and make it easier for them to move home.

5.4. Analysis of data from one of the deposit schemes, the Deposit Protection Service (DPS), suggests that, on average, tenants receive 77% of their deposit back, and 51% of tenants have their deposit returned in full. Most tenants will therefore eventually be entitled to the majority, or all of their original deposit. Arguably, some of this amount could be available for passporting to a new tenancy.

5.5. However, the DPS data also tells us that 20% of tenants lose 50% or more of their deposit. In these circumstances' landlords would need to be reassured that they will still be protected by their security deposit if their tenant causes damage to their property.

5.6. The Working Group has made good progress in considering whether there is a viable passporting system. It has though identified a number of complex operational and financial issues that require further exploration. These include the need for a system to work with the different Government-approved providers of deposit protection (currently, DPS, Tenancy Deposit Scheme (TDS) and mydeposits). It would also need to be compatible with the two different models offered by these providers: custodial and insurance-backed.

5.7. However, a number of issues remain, including the need to find a market-led solution for how to guarantee deposits that are passported, to ensure landlords remain protected. We also want to understand the impact a passporting scheme could have on tenant behaviour.

5.8. At present, most tenants look after their rented property well. Requiring a deposit on the tenancy creates a disincentive for tenants to do damage to the property because they have 'skin in the game'. It is quite clear under the current system that tenants are accountable for any damages and that deductions could be made from the deposit as a result.

5.9. In contrast, under a passporting system a tenant would 'passport' part of their deposit before the end of their old tenancy. We would like to understand whether this could lead to confusion about whether tenants would still be liable for damages at the end of their tenancy.

5.10. Similarly, we would like to understand whether landlords may change their behaviour if they believe they are protected by a guarantee against damages in a passporting system.

Questions for all respondents

36. What would encourage financial services providers to create a deposit loan product that is affordable for tenants?

[Free text box]

37. Do you think the Government should continue to explore the viability of a passporting system?

a. Yes [free text box]

b. No [free text box]

38. Do you think that passporting could lead to a change in landlord and tenant behaviour?

a. Yes

b. No

[Please explain your reasons]

39. What measures could be put in place to tackle or prevent negative behavioural changes in a potential passporting system?

[Free text box]

40. What other action could be taken to make it easier for tenants to pay for a new deposit when moving home?

[Free text box]

Questions for tenants

41. How much would you be willing to pay to be able to 'passport' some of your first deposit early, potentially reducing the need for you to pay a full additional deposit when moving?

a. Up to £25

b. Up to £50

c. Up to £100

- d. Up to £150
- e. Don't know

42. Do you think you would be more likely to choose to pay for a passporting service rather than a deposit replacement product if both were offered?

- a. Yes [free text box]
- b. No [free text box]
- c. Don't know [free text box]

6. Wider deposit protection reform

6.1. As well as considering deposit affordability, the Tenancy Deposit Protection Working Group has been reviewing whether wider improvements should be made to tenancy deposit protection, so that it continues to work effectively for both tenants and landlords. The Working Group has been looking at whether changes should be made to the dispute process and prescribed information requirements for landlords. The Working Group intends to conclude its work and make recommendations by the autumn. We seek evidence to better understand the issues the Working Group has identified.

Dispute process

6.2. The Working Group decided that a key area it should focus on was the end of tenancy process. As outlined in Section 5, the Working Group has been looking at potential delays in deposits being returned to tenants. Another part of the process that the Working Group has focused on is the use of the alternative dispute resolution arrangements provided by the deposit schemes.

6.3. Alternative dispute resolution arrangements provided by the tenancy deposit protection schemes are designed to make disagreements over the repayment of the deposit faster and cheaper to resolve than going to court. Where both the landlord and tenant agree to using the alternative dispute resolution service the case will be handled by an impartial and qualified adjudicator, and a decision will be made on the basis of the evidence provided.

6.4. The Working Group is looking at potential issues with the alternative dispute resolution process, including optionality which means that both sides must currently agree to participate in alternative dispute resolution or otherwise the dispute will go to court. While in most cases there is agreement from both parties on the use of alternative dispute resolution, there are concerns that where one party does not agree this can lead to costs to the other party and delays in the overall return of the deposit.

6.5. The Working Group has also been considering cases where one party does not agree with the alternative dispute resolution decision. At present, the deposit schemes allow for a complaint to be made and will review the decision if requested, however we believe awareness among tenants and landlords of the correct way in which to challenge a decision is low.

6.6. We would like to understand whether these issues with the dispute process are having a significant impact on tenants and landlords. The Working Group has been considering whether the approach taken in Scotland may offer better outcomes. In Scotland, where a tenant chooses to dispute a claim, adjudication is mandatory. Additionally, as alternative dispute resolution is mandatory, there is means to appeal a decision through a review clause. Where a request to review a decision has been made, the deposit scheme will investigate and decide if there has been an error made in fact or law. We are aware that while a review clause could increase confidence in the process it may also extend the time taken for the deposit to be returned.

Wider redress reform

6.7. Any changes will need to be considered alongside wider redress reform. In January 2019 we responded to our consultation, *Strengthening consumer redress in the housing market*, announcing plans for a new Housing Complaints Resolution Service.⁴

Prescribed information about the deposit

6.8. As part of the deposit protection process, there is a requirement for landlords to provide tenants with information about where their deposit is protected, as well as details of what happens at the end of the tenancy, so the tenant is clear what steps need to be taken by both the tenant and landlord to ensure the return of the deposit. It is also important that the tenant is informed what happens when the tenant and the landlord cannot agree on how to split the deposit and what options are available for resolving a dispute.

6.9. This 'prescribed information' must be issued to tenants by landlords within 30 days of the tenant paying their deposit. Landlords who fail to comply with the statutory requirements for prescribed information or otherwise fail to properly protect the deposit may be subject to a financial penalty of between 1 and 3 times the amount of deposit if the tenant brings proceedings under S214 of the Housing Act. Non-compliance also affects landlords' ability to rely on S21 of the Housing Act.

6.10. When responding to the English Private Landlords Survey 96 percent of landlords and agents stated that for their most recent letting they have protected the deposit with a tenancy deposit protection scheme, suggesting the vast majority of landlords and agents are compliant with the requirement to protect deposits on assured shorthold tenancies. However, in the English Housing Survey 2017-18, only 73% of tenants who paid a deposit reported that it had been protected, with 20% saying they did not know whether their deposit was protected. This may suggest there are some issues with landlords providing prescribed information to demonstrate to tenants that the deposit has been protected.

6.11. Concerns have been raised that landlords can face difficulty complying with the prescribed information requirements. The Working Group has been seeking to understand the difficulties landlords are facing and is considering whether there is merit in simplifying the current requirements and making use of the deposit schemes. However, it is important that tenants are still provided with information necessary to allow them to know that their deposit is protected and understand how to get their deposit back at the end of tenancy.

6.12. There are also concerns that tenants who receive the information may not be reading or understanding it. We would like to gather evidence on issues with the current prescribed information requirements and understand whether there is a case for making changes.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/773161/Strengthening_Consumer_Redress_in_the_Housing_Market_Response.pdf

Questions for all respondents

43. Are you aware of the existence of the alternative dispute resolution services provided by the deposit schemes?
- Yes
 - No
44. If you answered yes to Q43, have you ever used the dispute resolution services provided by the deposit schemes?
- Yes
 - No
45. If you answered yes to Q44, how satisfied are you with the current deposit dispute process?
- Very satisfied
 - Satisfied
 - Neither satisfied nor dissatisfied
 - Dissatisfied
 - Very dissatisfied
46. Are you aware of how to complain about an alternative dispute resolution decision regarding a deposit dispute?
- Yes
 - No

Questions for landlords

47. To what extent would you say that you find the prescribed information requirements easy to comply with?
- Very easy
 - Quite easy
 - Quite hard
 - Very hard
 - Not applicable
48. What difficulties, if any, have you encountered providing prescribed information to tenants?
- I was unclear about the information I needed to provide to the tenant [open text box]
 - I didn't know when to provide the information [open text box]
 - I wasn't clear about who had to sign the information [open text box]
 - I was unclear about the format in which I needed to provide the information [open text box]
 - I wanted to send the information to the tenant by email [open text box]
 - Not applicable
 - Other [open text box]

Questions for tenants

49. Thinking about your most recent tenancy, did you read the prescribed information provided about your deposit?

- a. Yes
- b. No

50. If yes, to what extent would you agree that the information provided was useful and easy to understand?

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. Strongly disagree

About this Call for Evidence

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Please be aware that, as a public authority, the Department is bound by information rights legislation (including the Freedom of Information Act (2000), the Environmental Information Regulations (2004), the Data Protection Act (2018) and the General Data Protection Regulation); the Department may, therefore, be obliged to, in the event of an information request, release information provided in response to this consultation.

If you want the information that you provide to be treated as confidential, it would be helpful if you could explain to us why you believe that should be the case. If we receive a request for disclosure of information we will take into account your explanation and where appropriate apply all relevant exemptions to withhold from disclosure the information. As each information request is judged on its own merits we cannot give an assurance that confidentiality will be maintained in all circumstances. We will process your personal data in accordance with the law and in most circumstances, this will mean that your personal data will not be disclosed. A full privacy notice is included at Annex A.

An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the [complaints procedure](#).

Annex A

Tenancy Deposit Protection Working Group

Terms of Reference

Purpose

Under the tenancy deposit protection legislation introduced by the Housing Act 2004, all landlords are required to protect deposits for all assured shorthold tenancies created since 6 April 2007 in one of the three government-approved schemes.

Tenancy deposit protection is largely viewed as being successful in increasing the confidence of tenants in the rental market while still allowing landlords to retain some deposit where their property has been damaged. However, there is room for it to be improved to the benefit of tenants and landlords.

The aim of the Tenancy Deposit Protection Working Group is to provide a forum to consider improvements to tenancy deposit protection, so that it is effective and affordable for both tenants and landlords and is still fit for purpose given technological and economic changes. It should look at what improvements can be made quickly within the existing tenancy deposit protection framework.

Membership

The Working Group shall be formed of experts in deposit protection, and representatives of tenants and landlords. It will be chaired by Dawn Eastmead, Deputy Director of the Private Rented Sector Division at the Ministry of Housing Communities and Local Government and officials from this Department will provide secretariat support.

Members should be able to commit time to attend Working Group meetings and contribute to the development of the interim and final reports. Members shall serve until the final report of the Working Group is issued.

All members will be expected to contribute with a view to improving tenancy deposit protection for the benefit of both tenants and landlords.

Members:

1. Dawn Eastmead, Deputy Director, MHCLG (Chair)
2. Poppy Terry, Senior Public Affairs Officer, Shelter
3. Dan Wilson Craw, Director, Generation Rent
4. David Malcom, Policy Officer, NUS
5. Steve Harriott, Group Chief Executive, Tenancy Deposit Scheme (TDS)
6. Daren King, Head of Tenancy Deposit Protection, The Deposit Protection Service (DPS)
7. Eddie Hooker, CEO, mydeposits

8. David Smith, Policy Director, RLA
9. Richard Lambert, CEO, National Landlords Association
10. David Cox, CEO, ARLA Propertymark
11. James Rowlands, Nationwide
12. MHCLG Secretariat.

Meetings are also attended by the Welsh Government and Cabinet Office

Scope

The Working Group may consider whether improvements can be made to the following in respect of tenancy deposit protection:

- Greater access and affordability for tenants
- Better education of landlords and tenants
- More robust check in and check out procedures
- Streamlining the process for protecting and reclaiming deposits, and the process of redress, including through use of technological innovation
- Whether the custodial deposit pool should be invested
- Alternatives to the current system of tenancy deposit protection

In particular, the Working Group should make recommendations on:

- The future role of insurance-backed tenancy deposit protection
- How to introduce passporting of deposits
- How to encourage the use of employer-backed loan schemes
- How to make readily available the option of paying deposits in instalments

In considering improvements the Working Group should have regard to the burden that would be placed on landlords, tenants and providers of deposit protection.

Outputs

The Working Group should produce an initial report with recommendations on the future role of insurance-backed tenancy deposit protection by December 2018. A final report should be produced by Autumn 2019. This report should set out:

- Detailed recommendations on changes that can be made quickly to improve deposit protection and, in particular, voluntary and non-legislative changes
- If necessary, recommendations for further work on changes that may require legislative amendments

These recommendations may be for landlords and agents and deposit protection providers as well as for Government.

Confidentiality

There will be a duty of confidentiality imposed on all Working Group members. Members may be exposed to sensitive information as part of Working Group discussions. Confidentiality is obviously extremely important and, while it is understood that Working

Group members' staff may see some documents connected to their work as a Working Group member, unnecessary involvement of third parties in handling this material is strongly discouraged.

Frequency and duration of meetings

- The Working Group shall meet every 6 weeks. Meetings will last no more than two hours
- The Working Group should continue to meet until the production of the final report.
- The secretariat will be provided by MHCLG, which will aim to:
 - Circulate papers a minimum of five working days before the meeting.
 - Provide minutes no longer than seven working days after the meeting.

Annex B

Personal data

The following is to explain your rights and give you the information you are entitled to under the Data Protection Act 2018.

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the call for evidence.

1. The identity of the data controller and contact details of our Data Protection Officer

The Ministry of Housing, Communities and Local Government (MHCLG) is the data controller. The Data Protection Officer can be contacted at dataprotection@communities.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the call for evidence process so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters. However, should you not wish to provide any personal data, you can still complete the online survey or submit a response requesting that we do not store or collect your personal data.

3. Our legal basis for processing your personal data

The Data Protection Act 2018 and the General Data Protection Regulation 2018 state that, as a government department, MHCLG may process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a call for evidence.

4. With whom we will be sharing your personal data

Respondents may choose to use Survey Monkey to respond to this call for evidence and Survey Monkey will therefore collect data for this purpose. We have taken all necessary precautions to ensure that your rights in terms of data protection will not be compromised by this.

5. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for two years from the closure of the call for evidence.

6. Your rights, e.g. access, rectification, erasure

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- a. to see what data we have about you
- b. to ask us to stop using your data, but keep it on record
- c. to ask to have all or some of your data deleted or corrected

d. to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

7. We use Survey Monkey, so your data will be stored on their servers in the first instance. Their privacy policy can be found here <https://www.surveymonkey.com/mp/gdpr>. We have taken all necessary precautions to ensure that your rights in terms of data protection will not be compromised by this. Once downloaded from Survey monkey your personal data will also be stored in a secure government IT system.

8. Your personal data will not be used for any automated decision making.

9. Your personal data will be stored in a secure Government IT system. Data provided to Survey Monkey will be moved from there to our internal systems by 30 June 2020.