

# Committee for Communities: Private Tenancies Bill

## 1. Introduction

This paper provides a response from the three Tenancy Deposit Protection (TDP) schemes operating in Northern Ireland to the provisions of the Private Tenancies Bill (the Bill). The comments are largely restricted to the areas of the Bill which have a direct impact on the operation of the schemes.

## 2. Background

Three TDP schemes are currently authorised to operate in Northern Ireland under the provisions of The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012.

**Letting Protection Service Northern Ireland** operates a custodial deposit protection scheme

**mydeposits Northern Ireland** operates custodial and insurance-backed deposit protection schemes

**Tenancy Deposit Scheme Northern Ireland** operates custodial and insurance-backed deposit protection schemes

As of September 2021, the three schemes protected a total of 65,637 tenancy deposits with a value of £41.9m; 37,180 were protected in custodial schemes (£23.1m) and 28,457 in insurance backed schemes (£18.8m).

Our comments are based on the provisions of the draft Bill and the Explanatory and Financial Memorandum.

### **Limit on tenancy deposit amount (5ZC)**

The principal provision relevant to the TDP schemes is the introduction of a limit on the amount of deposit paid or retained in relation to a private tenancy. We have noted that there will be a limit of no more than 1 month's rent placed on the size of deposit. All three schemes have experience of operating with deposit limits in our businesses in England, including dealing with the release of excess amounts on application, and we do not foresee problems with this in general.

As far as protection of the deposit is concerned, we assume that we should continue to accept deposit protections, even if they appear to be in excess of the limit. This will ensure that deposits are protected and avoid the schemes becoming involved in the enforcement of the limit.

Currently in England the schemes provide tools and guidance around the maximum deposit level, but permit registrations in excess of the applicable maximum. We would envisage operating in a similar way in Northern Ireland, but would welcome clarification on this point.

### **Recoverability of excess (5ZD)**

We understand that the Bill provides for any excess deposit to be recoverable at the point it is paid or retained, or at any time thereafter (post commencement).

The Bill defines retention to include the circumstances where a tenancy comes to an end and a new private tenancy is granted for the same property or another property and the existing deposit continues to be held for the new tenancy. For the schemes, we understand this to mean that any excess will be recoverable at the creation of the second private tenancy. The schemes are able to facilitate the release of any excess on application in these circumstances.

We understand that there is some uncertainty as to whether the decision in the case of *Superstrike v Rodrigues* 2013 has effect in Northern Ireland in creating a new legal tenancy when a fixed term tenancy becomes a periodic tenancy. In our current operations in England, we release excess deposits on application when a tenancy becomes periodic. We would welcome clarification as to whether we should do the same in Northern Ireland.

#### **Tenant to be given notice regarding certain matters (4A)**

#### **Tenant to be provided with a rent receipt for payment in cash (5)**

These clauses are not directly relevant to the TDP schemes, but we have noted that the notices and receipts need to be provided free of charge. In the unlikely event that a landlord attempted to make a deduction from the deposit to cover the cost of such a notice, our adjudicators would make no award.

#### **Increase in time limits for requirements relating to tenancy deposits**

We have noted the change in time limits relating to the protection of deposits and service of prescribed information and that the timescales for both continue to diverge. Although this does not have a direct impact on the schemes in that the obligation lies with the landlord, it has previously been highlighted that this divergence is contrary to other jurisdictions and to avoid confusion for landlords in terms of what needs to be done when, the alignment to 30 days for both may be worth considering.

We confirm that we will be helping publicise the new requirements when the provisions come into force.

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