

SafeDeposits Scotland

Scheme Rules

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Definitions

The **Act** means the Housing (Scotland) Act 2006 in which the statutory requirements for tenancy deposit protection are contained and any statutory amendments thereto;

The **2004 Act** means the Antisocial Behaviour etc. (Scotland) Act 2004;

Approved Scheme means a Tenancy Deposit Scheme that has been approved under the Act;

Deposit Dispute or **Dispute** means a dispute about the amount of the deposit held by SafeDeposits that the Tenant should receive or pay;

DAN means the **Deposit Account Number** which is the account number of the designated account in which individual deposit is held by SafeDeposits;

Designated Account means an account maintained by SafeDeposits for the purpose of holding Deposits paid to the Scheme;

Dispute Resolution Form means the Form completed by the parties to submit evidence to the alternative dispute resolution procedure in relation to a dispute about the repayment of a tenant's deposit;

DRN means the **Deposit Repayment Number** issued to each party to request the deposit repayment;

Joint Tenancy and Joint Tenants 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 Relevant Tenancy.

Landlord means a landlord of a Relevant Tenancy. Reference to a landlord includes a reference to any person (including an Agent) acting on a landlord's behalf in relation to a tenancy. 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, SafeDeposits 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.

Lead Tenant means in a Joint Tenancy, where one of the Joint Tenants is authorised to act for and on behalf of all Joint Tenants in relation to any application for repayment of a deposit and Deposit Dispute.

Personal Identification Number (PIN) means the unique number given to the landlord or agent by SafeDeposits once they have registered with the Scheme;

Proposal for Deposit Repayment means the Form to be completed by tenant, landlord, or agent which sets out their proposal for the repayment of the deposit;

Registration means the landlord registration provisions in the Antisocial Behaviour etc. (Scotland) Act 2004 and/or the Housing (Scotland) Act 2004;

Relevant Tenancy has the meaning given by Regulation 3(3) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 and references to a 'tenancy' are to be construed accordingly;

Regulations (whether individually numbered or otherwise) or Tenancy Deposit Regulations means the Tenancy Deposit Schemes (Scotland) Regulations 2011.;

Rules of the Scheme or the **Scheme Rules** means these Rules;

Scheme Administrator means SafeDeposits which has been approved by the Scottish Ministers under the Act to operate an independent Tenancy Deposit Scheme;

Scottish Ministers means the Ministers of the Scottish Government responsible for the oversight of the tenancy deposit scheme;

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

Working Day means a day that is not a Saturday or Sunday nor any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

An introduction to SafeDeposits

1. The Housing (Scotland) Act 2006 and the Tenancy Deposit Schemes (Scotland) Regulations 2011

- 1.1 In the private rented sector many tenants are required to give their landlords a deposit as security against possible non-payment of rent, or damage to property. When a tenancy comes to an end, there is usually no disagreement about the return of the deposit. But sometimes there is, and this can cause hardship, delay and inconvenience to landlords and tenants.
- 1.2 The Housing (Scotland) Act 2006 (“the Act”) and the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the Regulations”) require all landlords who are obliged to register with their local authority to transfer the deposit to an approved tenancy deposit scheme to protect it. The references to Regulation numbers in these Rules refer to these Regulations.
- 1.3 Landlords in Scotland who are required to register as landlords with their relevant local authority, and who receive a deposit from their tenant, must not hold the money themselves. They must:
 - pay the deposit to an approved tenancy deposit scheme (such as SafeDeposits) within a specified timescale;
 - ensure that the deposit is held by the Scheme throughout the tenancy;
 - give details about whether the landlord is registered, or has applied to be registered, with the local authority when the deposit is transferred;
 - within a specified timescale, provide the tenant or tenants with information about the tenancy, the deposit, and the Scheme that will be protecting it; and the circumstances in which the landlord can make a claim on the deposit when the tenancy ends, with reference to the terms of the tenancy agreement.
- 1.4 Any deposit accepted by a landlord (or any agent acting on their behalf) on or after 2nd July 2012 must be deposited with an approved scheme in accordance with the Regulations . If the landlord (or any agent acting on their behalf) held deposits before 2nd July 2012 the landlord must still protect them, but will be allowed more time to submit them to an approved Scheme. For more information see the guidance document “When to comply with the Tenancy Deposit Regulations”.
- 1.5 It is a legal requirement for most landlords to register with the relevant local authority. SafeDeposits is required to collect information about that registration. This information will be reported to the relevant local authorities to assist in the identification of unregistered landlords. Licencing authorities will be able to take appropriate action where they think it is necessary.
- 1.6 As the person who takes a deposit, it is ultimately the landlord’s responsibility to comply with the duties in relation to deposits. This does not mean that a landlord cannot use an agent to act on their behalf. However landlords using agents should satisfy themselves that they are acting in accordance with the Regulations, depending on what they are contracted to do. Any sanctions imposed for non-compliance with the Regulations apply to the landlord.

2. Which deposits are covered?

- 2.1 SafeDeposits covers those tenancies to which the landlord registration provisions in the Antisocial Behaviour etc. (Scotland) Act 2004 apply. Therefore, if a landlord is required to register with a local authority, and takes a deposit from their tenant, that landlord must also comply with the Regulations. This includes landlords of assured and short assured tenancies, university accommodation, as well as various other types of occupancy arrangement.
- 2.2 Landlords of the following types of property are not required to register and so will not have to comply with the Regulations:
- Lets to family members
 - Life rents³³
 - Houses for holiday use
 - Properties used by religious orders and organisations
 - Accommodation with care
 - Houses subject to control orders
 - Agricultural and crofting tenancies
 - Resident landlords
 - Transitory ownership (executors, heritable creditors, and insolvency practitioners)
- 2.3 Landlords who live overseas and take a deposit, and who are not otherwise exempt, must comply with the Regulations.
- 2.4 It does not matter if a third party (e.g. a guarantor) pays the Deposit. Unless a Landlord is exempt from complying with the Tenancy Deposit Regulations, the Deposit must be submitted to an Approved scheme.
- 2.5 The SafeDeposits Scheme and these Regulations do not apply to tenancies outside Scotland.
- 2.6 This document sets out the SafeDeposits Tenancy Deposit Scheme Rules. The document does not apply to any other schemes which have been authorised for the protection of deposits.

3. Failure to comply with the tenancy deposit regulations: sanctions

- 3.1 If a deposit is not paid to an approved scheme within the required timescale, the tenant may apply to the court for sanctions against the landlord under Regulation 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011.
- 3.2 If the Sheriff is satisfied that the landlord failed to pay the deposit to an approved tenancy deposit scheme, the Sheriff must order the landlord to pay the tenant up to three times the amount of the deposit and, in addition, may order the landlord to submit the deposit to an approved scheme. The Sheriff will have discretion to take the individual circumstances of each application into account when deciding what amount of financial penalty should apply.

- 3.3 The same penalties apply if a landlord fails to provide the tenant with the required information about their deposit.
- 3.4 Where a tenant moves out of the tenancy property before realising that the landlord has not complied with the Regulations, they have up to three months after the end of the tenancy to make an application to the court for sanctions against the landlord.

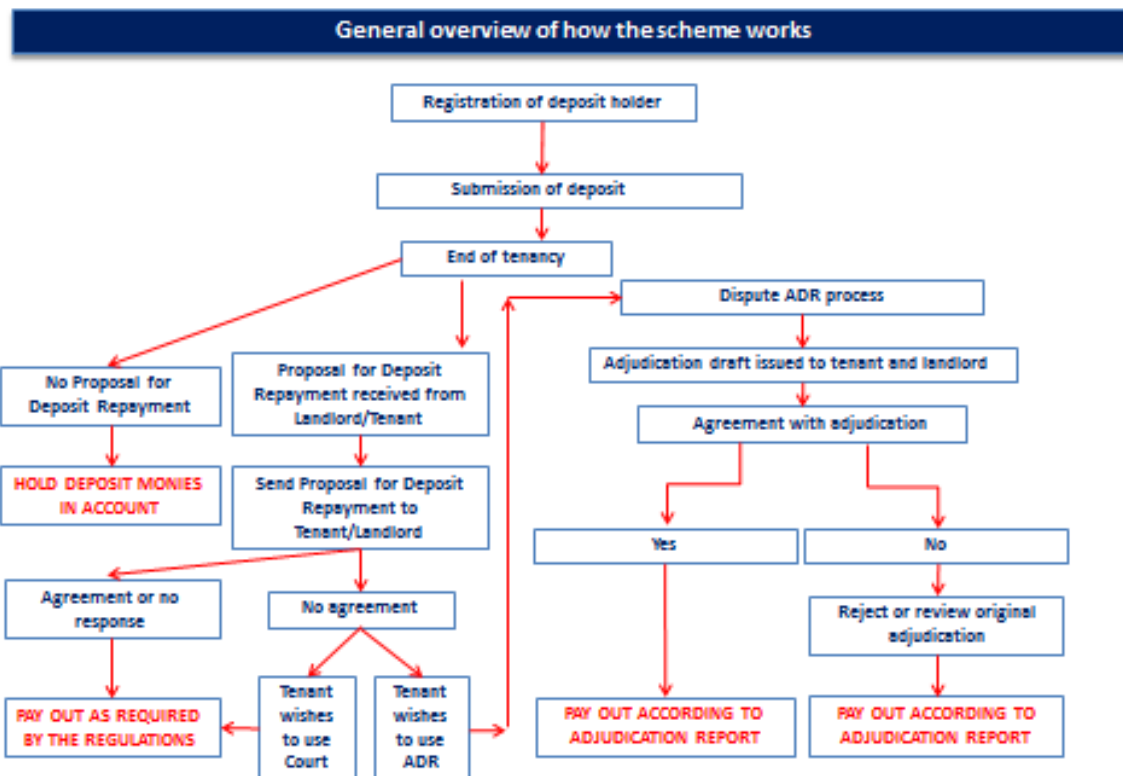
4. What is a tenancy deposit?

- 4.1 A tenancy Deposit is a sum of money which a landlord requires a tenant to pay at the start of the tenancy, and which will normally be returned to the tenant at the end of the tenancy. The money is security against the tenant not meeting their obligations in connection with a tenancy or occupancy arrangement. In certain circumstances a landlord may want to use some or all of the deposit at the end of the tenancy, for example:
- to pay for damage a Tenant may have caused to the property;
 - to pay cleaning bills if the property has been left in poor condition;
 - to cover any unpaid rent.
- 4.2 A written guarantee, as often used by rent deposit guarantee schemes, is not a sum of money and as such is not covered by the Tenancy Deposit Regulations.

5. What is SafeDeposits?

- 5.1 SafeDeposits Scotland Limited (“SafeDeposits”) is an independent tenancy deposit protection scheme (“Scheme”) approved by the Scottish Ministers under the Act. SafeDeposits is a not for profit company limited by guarantee with its current members being:
- The Dispute Service, a specialist provider of tenancy deposit protection and adjudication services;
 - The Scottish Council for Voluntary Organisations;
 - Landlords and lettings agents including NFOPP (the National Federation of Property Professionals), RICS (Royal Institution of Chartered Surveyors), SAL (the Scottish Association of Landlords);
 - National Union of Students Scotland.
- 5.2 SafeDeposits is designed to ensure that that tenancy deposits are securely held and protected throughout the tenancy, and that any disputes about their return are resolved quickly, cheaply and fairly. Under the Regulations the Scheme has to be free to use and must be available to all landlords, agents and tenants.
- 5.3 SafeDeposits can be contacted at:
- Office:** **SafeDeposits Scotland Ltd.**
Lower Ground
250 West George Street
Glasgow G2 4QY
- Call Centre:** 03333 213136
Open Monday to Friday 9am to 5pm (excluding UK public holidays)
- E-mail:** info@safedepositsscotland.com
- Web:** www.safedepositsscotland.com

6. A summary of how SafeDeposits works



- 6.1 SafeDeposits holds the deposit during the tenancy in order to keep it safe and to make sure it is available to be returned to the tenant if they have met the terms of the tenancy agreement. Where there is no dispute at the end of the tenancy, the landlord (or any agent acting on their behalf) and/or the tenant tells SafeDeposits how the deposit is to be paid out. Where there is a dispute about the deposit and it cannot be resolved after negotiation, the landlord (and any agent acting on their behalf) and tenant are invited to submit appropriate documentation to SafeDeposits, who will deal with the dispute fairly, quickly and impartially. SafeDeposits will apportion the disputed amount of the deposit and pay it to the parties in accordance with the decision of an independent adjudicator.
- 6.2 SafeDeposits operates in accordance with the Tenancy Deposit Regulations, details of which are specified in these Rules.
- 6.3 A landlord (or any agent acting on their behalf) who wants to use SafeDeposits to protect a tenant's deposit, must pay it to SafeDeposits within the timescales explained in **Section 1** of these Rules, in order to safeguard it. The landlord or agent must also give information about the landlord's registration with the local authority when the deposit is paid over to the Scheme.
- 6.4 At the same time, the landlord must ensure that certain information is given to the tenant, including details about the amount of the deposit and the Scheme where it is held. This information is specified by Regulation 42 of the Tenancy Deposit Regulations, a copy of which is in Appendix 1.

- 6.5 Where a tenancy involves more than one tenant, the landlord will be required to nominate a lead tenant. When the tenancy ends the lead tenant will be responsible for dealing with any claim for repayment of the deposit on behalf of the other joint tenants, and participating in any dispute about the deposit handled by SafeDeposits. Deposits relating to joint tenants will be dealt with by SafeDeposits in accordance with the procedures set out in the guidance document **How SafeDeposits deals with tenancies with more than one landlord or tenant**. A copy of this guidance document is available on the SafeDeposits website, can be provided upon request, and will be included in the SafeDeposits welcome pack.
- 6.6 The time limits are important because if a deposit is not paid to an approved scheme within the required timescale, or the required information is not given, the tenant may apply to the court for sanctions against the landlord.
- 6.6 SafeDeposits will accept payments of deposits by BACS, internet banking, bank debit card or cheque. This can be done by contacting the Call Centre, through the SafeDeposits website, or by post.
- 6.7 When SafeDeposits has received payment of a deposit successfully registered with the Scheme, it will:
- pay it into a designated account maintained for the sole purpose of holding tenancy deposits;
 - write to the tenant and landlord (and any agent acting on their behalf) to confirm that this has happened; and
 - provide the tenant and landlord (and any agent acting on their behalf) with the information SafeDeposits is required to provide by the Regulations. It will provide this information in the form of a Deposit Protection Certificate.
- 6.8 Landlords are always responsible for providing their tenants with information about when all or part of their deposit may be retained at the end of their tenancy. Landlords must ensure that this is clearly explained with reference to the terms of the tenancy agreement.
- 6.9 Notwithstanding the Deposit Protection Certificate produced by SafeDeposits, landlords must make their own arrangements to ensure that their tenants receive the information to which they are entitled, in order to avoid the statutory penalties for a failure to do so. For the avoidance of doubt the Scheme accepts no liability for the failure of a landlord (or any agent acting on their behalf) to provide a tenant with any of the information required by the Regulations.
- 6.10 When the tenancy ends, the landlord (or any agent acting on their behalf) or tenant can submit a Proposal for Deposit Repayment to SafeDeposits, setting out the amount of the deposit which they consider can be paid to each party.
- 6.11 SafeDeposits will write to the landlord (and any agent acting on their behalf) and tenant as appropriate, asking them to confirm whether they agree with the Proposal for Deposit Repayment, or wish to dispute the amount. Where the landlord and tenant agree how all or part of the deposit is to be repaid, it will be paid out within 5 working days of SafeDeposits receiving confirmation of the agreement between the parties. The return of the deposit will take longer where the amount is disputed, or the landlord or tenant cannot be contacted, or do not co-operate.
- 6.12 Any dispute regarding the repayment of the deposit or part of the deposit will be dealt with through an alternative dispute resolution procedure using adjudication, unless

the tenant indicates that they wish the matter to be dealt with by the Court. SafeDeposits provides this form of alternative dispute resolution through an independent service to resolve disputes as an alternative to court proceedings.

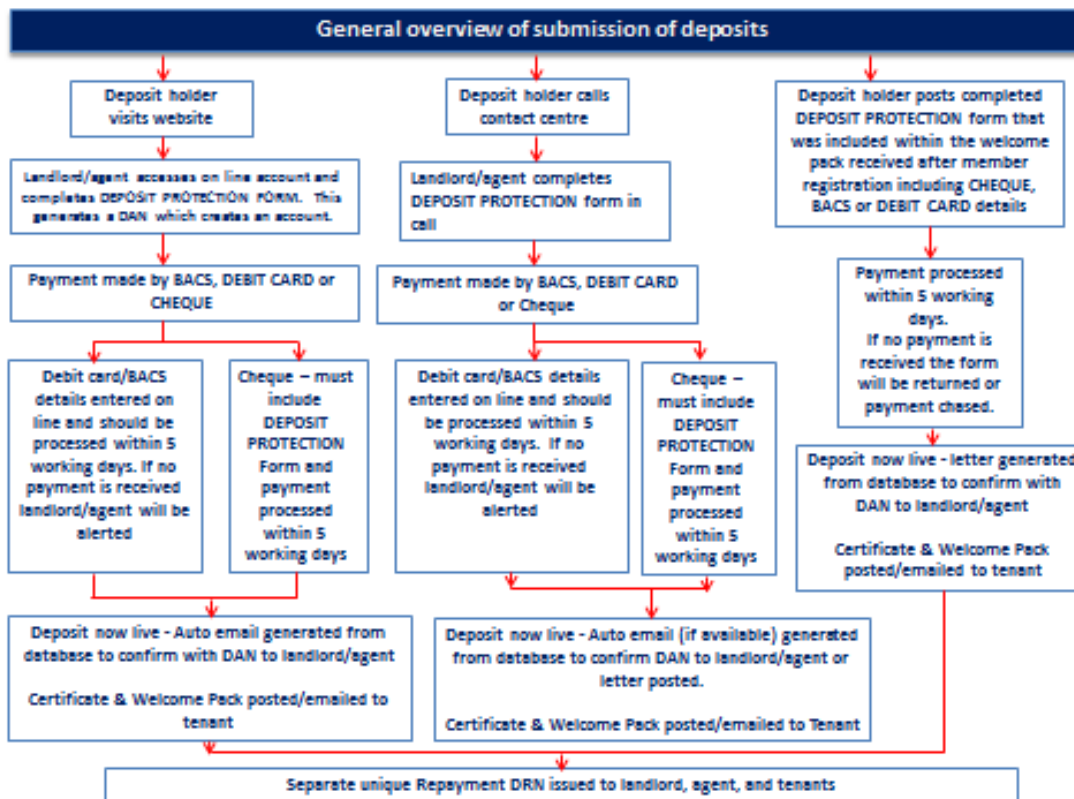
- 6.13 The deposit remains in the SafeDeposits account until it is repaid in accordance with the Scheme Rules and the requirements of the Regulations.
- 6.14 SafeDeposits can be contacted through its Customer Call Centre, online or by post to its office.
- 6.15 The online service will be available at all times, except for planned maintenance.
- 6.16 The Customer Call Centre will be available from 9am to 5pm on Monday to Friday (excluding public holidays). The Call Centre can supply information and forms.
- 6.17 If landlords, agents or tenants are unable to contact SafeDeposits online or by telephone they can write and send forms to the SafeDeposits office.

Registration of landlords and letting agents to use SafeDeposits

7. Registering with SafeDeposits

- 7.1 Regulation 13-(1) requires SafeDeposits to make the Scheme available to all landlords and their tenants. Regulation 12 also requires an agent, acting on behalf of the landlord, to be able to use the Scheme. SafeDeposits allows all landlords and agents to participate in the Scheme and to pay tenancy deposits to SafeDeposits.
- 7.2 Landlords and agents can register to use SafeDeposits online, by telephone or by post. Registration can be completed in advance of, or at the same time, as, paying a deposit to the Scheme
- 7.3 Landlords and agents should complete a Registration Form which will provide sufficient information to identify and contact the landlord or agent as required in Regulation 21. This will include amongst other things; their name and address and a contact telephone number and an e-mail address, if available, and whether they are acting as an agent.
- 7.4 If SafeDeposits is unable to process a Registration Form for whatever reason, it will seek to contact the landlord or agent for clarification. If it is still unable to process the Registration Form and any accompanying deposit (if applicable) after 5 working days from the date SafeDeposits receives it, the Registration Form will be rejected.
- 7.5 When the landlord (or agent) registration process is completed, SafeDeposits will confirm a Personal Identification Number ("PIN") for the landlord (or agent) which will be used in future communications with SafeDeposits. This will be sent by post, e-mail or allocated by the call centre. Where the call centre allocates a PIN this will be confirmed by e-mail or post. Online applicants will receive a verification e-mail including their PIN. SafeDeposits will send a welcome pack to the landlord or agent via e-mail or post. This pack will contain the relevant information to enable the landlord or agent to use the Scheme.
- 7.6 Regulation 21(a) requires that SafeDeposits must be able to contact the landlord and agent at the end of the tenancy, so it is a requirement that all landlords and agents who have submitted deposits must ensure that their details are kept up to date.

Submission of deposits



8. Introduction

- 8.1 Under Regulation 20, SafeDeposits is required to accept any tenancy deposit which has been received in connection with a relevant tenancy from or on behalf of a landlord.
- 8.2 Landlords (and their agents) can transfer any deposits for both new and existing tenancies online, by telephone or by post in a two stage process.
- 8.3 The first stage is to register the deposit with SafeDeposits using a Deposit Protection Form with the details required under Regulation 21 and the second is the payment of the money into a designated account in accordance with Regulation 22.
- 8.4 Deposit Protection Forms can be completed:
 - online, using the SafeDeposits website at www.safedepositsscotland.com;
 - by telephoning the SafeDeposits Customer Contact Centre on 03333 213136; or
 - by post.
- 8.5 After receipt of the monies, SafeDeposits will confirm receipt to both landlord (and any agent acting on their behalf), and the tenant and provide the landlord, agent and tenant with the information specified in Regulation 22-(2).

9. Submitting the deposits

- 9.1 The landlord or their agent should complete a Deposit Protection Form and pay the deposit to SafeDeposits before it can be protected.
- 9.2 The Deposit Protection Form requires the landlord or their agent to provide the information required by the Scheme and Regulation 21 to enable SafeDeposits to identify:
- the landlord, agent and tenant so they can be contacted;
 - the tenancy and the property in connection with which the tenancy deposit was paid to the landlord or agent;
 - any Lead Tenant in relation to the tenancy in question.
- 9.3 The Deposit Protection Form therefore includes sections for:
- names, addresses, telephone numbers, mobile telephone numbers and e-mail addresses of all parties (including any Lead Tenant);
 - the address of the property;
 - the amount of the tenancy deposit specified in the tenancy agreement;
 - the amount of the deposit being protected when the Deposit Protection Form is completed;
 - how payment is to be made.
- 9.4 The Deposit Protection Form will require the landlord or agent to confirm that the landlord:
- is entered on the local authority register for the area where the property is located; or
 - has made an application, but has not yet been entered on the register; or
 - is appealing a decision to remove a landlord's entry, or not to accept the landlord's application for entry on the register; or
 - is not registered.
- 9.5 Where a landlord is stated to have been registered with the local authority, the landlord or agent completing the Deposit Protection Form will be required to enter the landlord's local authority landlord registration reference number on the Deposit Protection Form.
- 9.6 When completing a Deposit Protection Form, the landlord or agent will be advised that SafeDeposits will pass the information prescribed in paragraph 9.5 above to the local authority concerned.
- 9.7 The Deposit Protection Form also requires the landlord or agent to state the PIN allocated at registration in order for SafeDeposits to verify their identity when protecting deposits.
- 9.8 If a Deposit Protection Form cannot be processed by SafeDeposits for any reason SafeDeposits will contact the landlord or agent completing the Form. If SafeDeposits is still unable to process the Deposit Protection Form after 5 working days from the date of receipt, the Form will not be accepted and any payment received will be returned.

9.9 On receipt of a completed Deposit Protection Form SafeDeposits will give the landlord, and any agent acting on their behalf, a unique Deposit Account Number ("DAN").

10. Payment of the deposit to SafeDeposits

- 10.1. Deposits can be paid to SafeDeposits by debit card, cheque, or bank transfer (BACS or personal internet banking payment).
- 10.2. In making the payment the DAN must be used as this is the reference to enable the payment to be matched by SafeDeposits to the Deposit Registration Form and allocated to the correct Designated Account. Cheques must also be accompanied by the Deposit Registration Form.
- 10.3. If an incorrect payment has been made, the payer must contact SafeDeposits.
- 10.4. If a cheque has been drawn incorrectly, SafeDeposits may be unable to process the Deposit Protection Form. If this is the case the cheque together with the Deposit Protection Form will be returned within 5 working days of receipt.
- 10.5. If money received cannot be matched by SafeDeposits to a Deposit Protection Form, then the funds will be held in suspense and a request will be sent to the payer asking for clearer instructions. Where no response to the request for clarification is received, the funds will be returned to the payer.
- 10.6. The landlord or agent completing the Deposit Protection Form is responsible for ensuring all payments have been correctly allocated to the specific designated account.

11. Confirmation of Deposit Protection

- 11.1 When SafeDeposits has received payment of a deposit as cleared funds it will:
 - pay the deposit into the designated account; and
 - send confirmation to the landlord, agent and tenant that the deposit has been protected by SafeDeposits.
- 11.2 The confirmation and a Deposit Protection Certificate, which gives key information about the tenancy and the deposit protected as required by Regulation 22-(2), will be sent to the landlord (and any agent acting on their behalf) and tenant by e-mail or by post to the addresses held on the Deposit Protection Form.
- 11.3 SafeDeposits will also send all parties to the tenancy agreement named on the Deposit Protection Form (and the agent if applicable):
 - a copy of the SafeDeposits scheme leaflet and Rules;
 - confirmation that paper copies of the rules are available on request;
 - a deposit repayment number (DRN) for each party, which will be necessary to request the deposit repayment once the tenancy has ended.
 - Confirmation of any Lead tenant.

12. Paying the deposit by instalments

- 12.1 Landlords or agents might not receive the full deposit from the tenant(s) in one sum – for example, where it is paid in stages/instalments, or where joint tenants pay different sums at different times.

- 12.2 Where possible landlords or agents should seek to register the full deposit once. It is only possible for landlords or agents to register one deposit per tenancy with SafeDeposits. However where part-payment of a deposit is unavoidable, SafeDeposits recommends that landlords or agents protect the amount of the deposit received by them, in accordance with the specified timescales. This may mean that landlords or agents will need to increase the amount of the deposit protected with SafeDeposits, where different sums are received at different times.
- 12.3 Having registered the first instalment of a deposit, landlords and agents will be able to 'top up' the deposit as each subsequent instalment is received. They will be required to update the existing information held by SafeDeposits to reflect the change in deposit amount, and pay the appropriate sum to SafeDeposits. SafeDeposits will then issue an updated Deposit Protection Certificate to reflect the increased deposit.

13. Making changes to information held by SafeDeposits

- 13.1 Under Regulation 43, landlords and agents are required to provide revised information to SafeDeposits when information which has been previously been supplied, becomes inaccurate. In some cases this can be done online but in other cases the landlord or agent will be required to contact SafeDeposits in writing to make changes.
- 13.2 SafeDeposits will allow tenants to make a limited number of amendments to their personal contact details. Notwithstanding the Landlord's responsibility to keep SafeDeposits advised of any changes in a tenancy, it is for any tenant including the Lead Tenant to ensure that SafeDeposits have up-to-date contact and personal details for all Joint Tenants.

14. Transferring a deposit to another approved scheme or to return it to the landlord

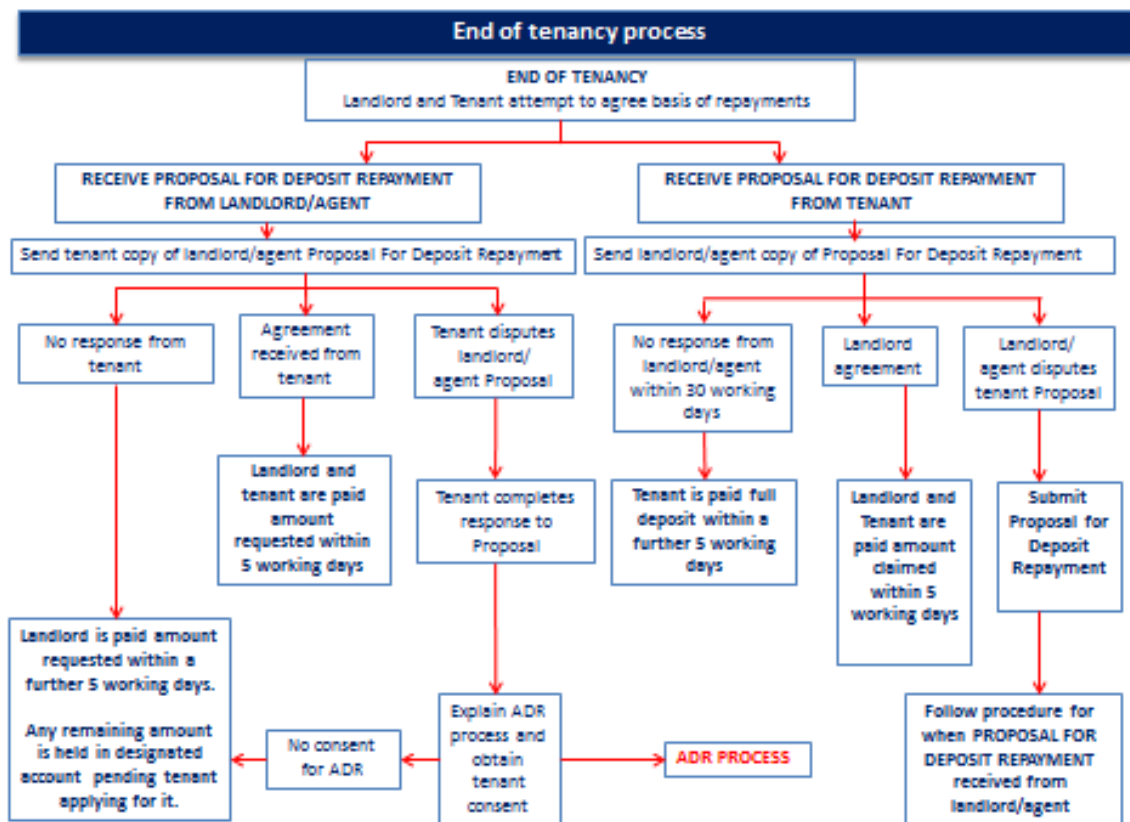
- 14.1 A landlord (or agent acting on their behalf) may apply to SafeDeposits for the repayment of a tenancy deposit from SafeDeposits, for the purpose of transferring it to another approved tenancy deposit scheme.
- 14.2 To make such an application, the landlord (or agent acting on their behalf) should complete a Deposit Transfer or Withdrawal Form. A Deposit Transfer or Withdrawal Form will have been included in the landlord's or agent's Welcome Pack. Further copies can be obtained online using the website or by telephoning the Call Centre.
- 14.3 Deposit Transfer or Withdrawal Forms can be completed:
- online, using the website;
 - by telephoning the Call Centre; or
 - by post.
- 14.4 SafeDeposits will verify the identity of a landlord (or agent acting on their behalf) before completing the Deposit Transfer or Withdrawal Form by requiring the DRN.

- 14.5 The Deposit Transfer or Withdrawal Form will require the landlord (or agent acting on their behalf) to certify that the purpose of applying for repayment of the deposit is to transfer it to another approved scheme.
- 14.6 If the Deposit Transfer or Withdrawal form cannot be processed by SafeDeposits for any reason SafeDeposits will contact the landlord or agent who completed it, to seek clarification. If SafeDeposits is still unable to process the transfer after 5 working days it will return the Form to the landlord or agent as appropriate.
- 14.7 Within 5 working days of receiving a correctly completed request for the transfer or withdrawal of a deposit, SafeDeposits will:
- if so requested, pay the deposit to the other approved tenancy deposit scheme on the landlord's behalf; or
 - in any other case return the deposit to the landlord (or the agent acting on their behalf).
- 14.8 When payment of the deposit has been made, SafeDeposits will also write to the landlord, any agent acting on their behalf, and the tenant(s) named on the Deposit Protection Certificate, to confirm the date on which the deposit was returned to the landlord (or agent acting on their behalf), or paid to the other approved scheme.

15. When a landlord is no longer covered by the Regulations

- 15.1 SafeDeposits covers those tenancies to which the landlord registration provisions in the 2004 Act apply. Where SafeDeposits is informed that a landlord will change, or has changed, to one which is exempt from the Regulations, SafeDeposits will contact the new landlord, or any agent acting on their behalf, to verify that they are exempt before paying the deposit to them.
- 15.2 SafeDeposits will contact the landlord and tenant, and any agent acting on the landlord's behalf, to confirm that the deposit has been repaid and that it is no longer protected by the scheme.

Application for repayment of tenancy deposits



16. Introduction to deposit repayment

- 16.1 In accordance with Regulation 24-(1) as soon as possible once the tenancy has ended, the landlord (or agent acting on their behalf) and/or the tenant can apply for the deposit to be repaid. This application can be made by completing a Proposal for Deposit Repayment form.
- 16.2 It is for the landlord (or agent acting on their behalf) and/or the tenant to claim the repayment of the deposit at the end of the Tenancy. SafeDeposits will not check that deposit repayments have been applied for.

17. Repayment of the deposit where there is no disputed amount

- 17.1 The landlord (or any agent acting on their behalf) and/or the tenant may apply for repayment of the deposit as soon as is reasonably practicable after the tenancy has ended. In order to do so, they should complete a Proposal for Deposit Repayment. These forms can be completed online or by post.

- 17.2 SafeDeposits will advise the other parties to the tenancy agreement (i.e. the landlord, any agent acting on their behalf, or the tenant) that a Proposal for Deposit Repayment has been made. SafeDeposits will ask them to confirm whether they agree with the claim that has been made, or whether they wish to dispute the amount.
- 17.3 SafeDeposits will also advise the tenant, landlord, and any agent acting on their behalf, that if a tenant tells SafeDeposits that they wish to abandon the dispute resolution mechanism within the 30 working days from the date that SafeDeposits contacts them and no agreement has been made between the parties, the deposit will be released as per the Proposal for Deposit Repayment made by the landlord or agent. The deposit will be paid in accordance with the Proposal for Deposit Repayment within 5 working days of SafeDeposits receiving the tenant's confirmation that they wish to go to Court.
- 17.4 If for any reason SafeDeposits is unable to process a Proposal for Deposit Repayment it will contact the party completing it, to seek clarification. If SafeDeposits is still unable to process the transfer of the Proposal for Deposit Repayment within 5 working days from the date it receives the request, it will reject and return the Proposal for Deposit Repayment.

Landlord (or agent) applying for the repayment of the deposit

- 17.5 The landlord (or an agent acting on their behalf) must complete a Proposal for Deposit Repayment form. The form will require the following key information (which includes the information stated in Regulation 24-(2)):
- the date the tenancy ended;
 - the amount of the tenancy deposit;
 - a proposal as to how the deposit should be released between the parties;
 - details of how any deposit due can be repaid to the party making the claim;
 - the latest contact details for the tenant;
 - the deposit repayment number ("DRN").
- 17.6 Where an agent completes a Proposal for Deposit Repayment, SafeDeposits will regard this as a claim for the repayment of the deposit made by the landlord.
- 17.7 When SafeDeposits receives a Proposal for Deposit Repayment from a landlord (or an agent acting in their behalf) it will send a copy to the tenant. It will advise the tenant that they have 30 working days from the date SafeDeposits contacts them to complete a Response to the Proposal for Deposit Repayment, if they wish to either:
- specifically agree to repayment of the deposit as specified by the landlord (or an agent acting in their behalf); or
 - dispute the Proposal for Deposit Repayment, in which case the tenant must notify SafeDeposits of the amount of the deposit which the tenant considers should be repaid to them, if different to the amount specified by the landlord or agent. The tenant will be asked whether they wish the dispute to be referred to adjudication.
- 17.8 Where a tenant fails to respond to a Proposal for Deposit Repayment from a landlord (or an agent acting in their behalf), the landlord will receive the amount of the deposit that they claim.
- 17.9 SafeDeposits will advise the tenant that:

- if they agree to the repayment of the deposit as claimed by the landlord or agent, the deposit will be paid within 5 working days of receiving their agreement;
- if the tenant does not respond agreeing to or disputing the Proposal for Deposit Repayment within 30 working days of SafeDeposits writing to them, SafeDeposits will:
 - pay the landlord the amount of the deposit claimed by them within 5 working days after the 30 working day time limit for the tenant's response has expired; and
 - keep any balance of the deposit due to the tenant(s), in case the tenant applies for it at a later date. Any balance so retained by SafeDeposits will be kept for 6 years after which it may be treated as ownerless and fall to be consigned to the Queen's and Lord Treasurer's Remembrancer (QLTR).

17.10 The tenant will also be advised that:

- adjudication is available to resolve any dispute about the return of the deposit;
- the landlord (and any agent acting on their behalf) will be required to use adjudication where the tenant requests it;
- both landlord (and an agent acting on their behalf) and tenant must accept the adjudicator's decision as final, subject to the process for the Review of the adjudicator's decision.

17.11 If SafeDeposits receives notification that the dispute has been resolved by agreement, SafeDeposits will pay the Deposit in accordance with that agreement within 5 working days.

17.12 Where SafeDeposits receives a response from the tenant indicating that they dispute the Proposal for Deposit Repayment, it will hold that amount in the designated account until the dispute is resolved. If any proportion of the deposit is undisputed, SafeDeposits will repay that amount as soon as is practicable. SafeDeposits will acknowledge receipt of the tenant's response, and remind them of the procedure to follow in order to request, or consent to, alternative dispute resolution.

17.13 Where SafeDeposits does not receive the tenant's consent to adjudication by the 15th working day after it received their response indicating that they dispute the Proposal for Deposit Repayment, SafeDeposits will write to the tenant to:

- remind them again of the procedure for requesting a referral to the alternative dispute resolution procedure;
- explain that if SafeDeposits does not receive their consent to adjudication by the 30th working day after it received the tenant's response to the Proposal for Deposit Repayment, it will pay the deposit in accordance with the amounts specified in the Proposal for Deposit Repayment.

17.14 Where SafeDeposits does not receive the tenant's consent to adjudication by the 30th working day after it received their response to the Proposal for Deposit Repayment, it will:

- write to the tenant to confirm that it is paying out the deposit in accordance with the amounts specified in the Proposal for Deposit Repayment;
- pay the deposit in the amounts specified in the Proposal for Deposit Repayment within a further 5 working days.

Tenant applying for the repayment of the deposit

- 17.15 Although the tenant may apply for the repayment of the deposit, if a Proposal for Deposit Repayment has already been made by the landlord (or an agent acting on their behalf), or is received within 30 working days of the tenant's Proposal, SafeDeposits will not be able to progress the tenant's Proposal.
- 17.16 A tenant must complete a Proposal for Deposit Repayment. The Proposal will require the following key information (which includes the information stated in Regulation 24-(4):
- the date the tenancy ended;
 - the amount of the tenancy deposit;
 - a proposal as to how the deposit, in the view of the tenant, should be released between the parties;
 - details of how any deposit due can be repaid to the tenant;
 - the latest contact details for the tenant;
 - the DRN.
- 17.17 The Proposal for Deposit Repayment will invite the tenant to confirm, where they have indicated that there is a dispute about the deposit, whether they wish to refer the dispute to adjudication.
- 17.18 When SafeDeposits receives a Proposal for Deposit Repayment from a tenant, it will send a copy to the landlord (and any agent acting on their behalf). SafeDeposits will advise the landlord (and any agent acting on their behalf) that they have 30 working days from the date SafeDeposits contacts them to also complete a Response to the Proposal for Deposit Repayment, if they wish to either:
- specifically agree to the repayment of the deposit as specified by the tenant; or
 - dispute the tenant's claim, in which case the landlord (and any agent acting on their behalf) will be invited to submit their own Proposal for Deposit Repayment.
- 17.19 SafeDeposits will also advise the landlord (and any agent acting on their behalf) that:
- where they agree the repayment of the deposit as claimed by the tenant, it will pay the deposit within 5 working days of receiving the agreement of the landlord (or any agent acting on their behalf);
 - if it does not receive a response from the landlord (or any agent acting on their behalf) agreeing to or disputing the tenant's Proposal it will pay the tenant the **full** amount of the Deposit within 5 working days after the 30 working day time limit for the response has expired.

18. Repayment of the deposit where there is a disputed amount

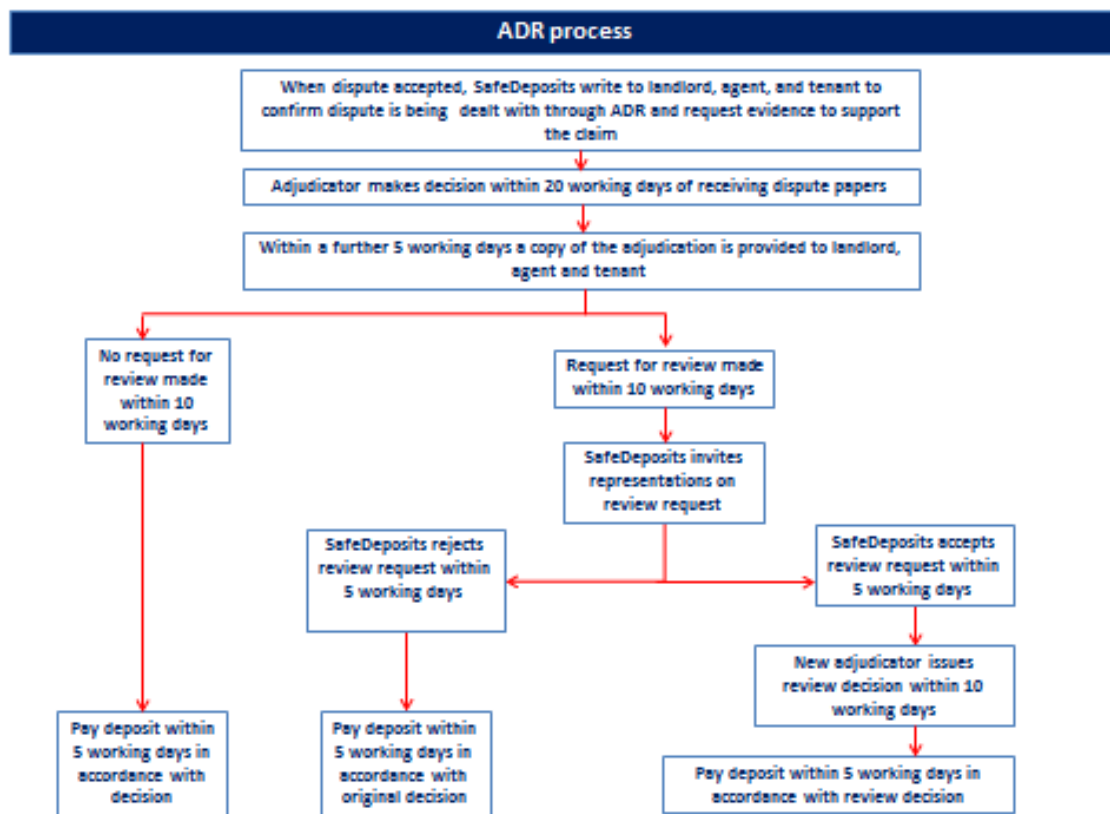
- 18.1 Where there is a dispute about the deposit, SafeDeposits will keep the disputed deposit amount in a designated account until the dispute is resolved. It will repay any amount of the deposit that is not in dispute, as soon as is practicable.
- 18.2 The adjudicator will make a decision about how the deposit should be repaid, based on evidence provided by the landlord (and any agent acting on their behalf) and the tenant. The landlord (and any agent acting on their behalf) and the tenant do not attend any hearing and the adjudicator will not visit the property.

- 18.3 Dispute resolution through SafeDeposits is not compulsory. The tenant can still opt to go to court, or use another form of redress to recover their deposit. However:
- the landlord (and any agent acting on their behalf) must accept adjudication by SafeDeposits where the tenant requests it;
 - cases will only be referred to adjudication where SafeDeposits is satisfied that the landlord (and any agent acting on their behalf) and tenant have attempted to resolve the dispute but without success;
 - in accepting adjudication by SafeDeposits, the landlord, any agent acting on their behalf, and the tenant agree that this Decision is final, subject to the process for the Review of the Adjudicator's Decision.

19. Dispute resolution by the court

- 19.1 The SafeDeposits adjudication procedure is designed to give free, quick, and easy resolution to tenancy deposit disputes.
- 19.2 Using the SafeDeposits adjudication process is not compulsory. Tenants have a choice between using this and taking their dispute to the Court. A tenant has 30 working days from the point they tell us that there is a dispute to notify SafeDeposits if they want to use the alternative dispute resolution procedure. If a tenant tells us that they want to go to court instead, the deposit will be released as per the Proposal for Deposit Repayment from the landlord (or agent acting on their behalf), which gives details of how much they feel is due to each party. The deposit will be returned in accordance with the Proposal within 5 working days of the end of the 30 working day period in which a tenant has to notify SafeDeposits that they wish to go to Court. SafeDeposits has no further role to play and it will be for the court to decide how the deposit should be allocated.

Dispute resolution by SafeDeposits



20. Introduction

20.1 SafeDeposits may decide not to accept disputes for adjudication where it considers that:

- the tenancy is not subject to a written tenancy agreement;
- in its opinion the landlord (or any agent acting on their behalf) has unreasonably sought to delay the repayment of the deposit or the referral of the dispute;
- the landlord (or any agent acting on their behalf) has not provided the tenant with the information about when all or part of their deposit may be retained at the end of their Tenancy, with reference to the terms of the tenancy agreement.

20.2 SafeDeposits will write to the landlord (and any agent acting on their behalf) and tenant to advise them that they can tell SafeDeposits that the alternative dispute resolution procedure has been abandoned. They must do this before a decision has been made by the adjudicator. The tenant must agree to the alternative dispute resolution procedure being abandoned. Where SafeDeposits is so notified it will within 5 working days repay the tenancy deposit:

- where the landlord and tenant have reached an agreement, in accordance with that agreement; or

- in any other case, in accordance with the amounts specified in the Proposal for Repayment of the Deposit completed by the landlord or agent acting on their behalf.
- 20.3 Disputes over the return of a deposit cannot be considered until after the tenancy has ended.
- 20.4 In accepting adjudication by SafeDeposits, the landlord, any agent acting on their behalf, and the tenant agree that this decision is final, subject to the process for the review of the Adjudication Decision.
- 20.5 At the end of the tenancy, the landlord, any agent acting on their behalf, and the tenant must make every reasonable effort to resolve the dispute between themselves. The landlord, any agent acting on their behalf, and the tenant must be able to show that they have tried to negotiate a resolution to any dispute before referring it to adjudication. Failure to do so may result in the dispute being returned to the parties to attempt resolution.
- 20.6 The landlord, any agent acting on their behalf, and the tenant must ensure that they meet the deadlines set out in these Rules.
- 20.7 The dispute resolution mechanism is required to be provided free of charge to landlords, agents and tenants (Regulation 34-1) and SafeDeposits will not meet any costs incurred by any party to a dispute.
- 20.8 SafeDeposits may allow an 'interested party' to act on behalf of a landlord or tenant. That party will need to submit written authority from the landlord or tenant consenting to them acting on their behalf.
- 20.9 If at any time after the submission of a dispute to SafeDeposits, a party proceeds to make a claim in relation to any element of a dispute via the courts, they must inform SafeDeposits. If the party/ies fail to do so, and as a result an Adjudication Decision is made and an award paid out contrary to the decision of the court, SafeDeposits will not be liable for any repayment of such an award. The party/ies who failed to notify SafeDeposits of such court action must indemnify SafeDeposits for any losses, claims or actions in respect of such payment. SafeDeposits will not accept any complaint from any party/ies in respect of such a failure.
- 20.10 SafeDeposits will accept valid disputes about the deposit for adjudication regardless of the value of the dispute (Regulation 35-(1)). However, disputes may not be accepted:
- where one of the parties has advised that they intend to take legal action to resolve the dispute;
 - that the matter has been the subject of a Court action.

21. Key adjudication principles

- 21.1 The deposit that is in dispute cannot be returned until:
- the dispute is resolved by an adjudication decision being made; or
 - the tenant wishes the dispute to be resolved by a court; or
 - the tenant and landlord otherwise reach agreement; or
 - the tenant and landlord agree to abandon the adjudication procedure.
- 21.2 The adjudication procedure is not investigative. Adjudications are based on the evidence presented by the parties and SafeDeposits will not normally search for evidence unless it considers it is critical to the adjudication *and* it has been withheld. Where SafeDeposits does make further enquiries, it will tell the parties and allow parties to give comments on the findings. It is for the party bringing the dispute to support their allegations with documentary evidence, and the respondent to refute them.
- 21.3 SafeDeposits can only make an award in respect of sums claimed by a landlord or any agent acting on their behalf against a deposit paid by a tenant. If the tenant raises issues which are intended to be a counter-claim against their landlord, they must pursue them with the landlord directly and seek independent legal advice should this be necessary. SafeDeposits is unable to take account of any issues raised in a possible counter-claim when deciding how the disputed deposit should be allocated.
- 21.4 SafeDeposits will not deal with disputes which seek to justify a set-off e.g. where the tenant claims rent was withheld because repairs were not carried out.
- 21.5 SafeDeposits is not able to make awards above the amount of the disputed deposit. If the sum claimed is in excess of the deposit it will treat the claims in the order set out in the tenancy agreement, where this has been specified. SafeDeposits will indicate where it believes an award would be appropriate; and if so, how much, up to the extent of the disputed deposit.
- 21.6 SafeDeposits is not obliged to accept the costs claimed or incurred by a landlord. Any awards SafeDeposits makes are based on what it considers to be the reasonable cost of making good. In determining the amount, SafeDeposits has regard to publicly available sources of information such as high street stores, and services and products available on the internet.
- 21.7 Any awards made will take account of the age and quality of the item concerned and the length of the tenancy. An award, if appropriate, is made to compensate a landlord for the loss in value of an item where that loss in value is caused by the tenant during the tenancy. Landlords cannot expect to receive full replacement value or betterment. Account will be taken of fair wear and tear during the course of the tenancy.
- 21.8 SafeDeposits will assume that the parties have stopped negotiating about the dispute when it is submitted to us for adjudication, unless otherwise informed. SafeDeposits will not accept responsibility for allocating the deposit in accordance with an agreement that the parties have reached between themselves, if SafeDeposits was not made aware of that agreement before the adjudicator started to review the case.
- 21.9 SafeDeposits will not adjudicate on any matters that have been agreed between the parties. SafeDeposits will take into account offers made by either party, where no

agreement has been made, unless they were made on a Without Prejudice basis. Once an award has been made, it cannot be challenged by one of the parties purely on the grounds that the other party was previously prepared to make a higher offer than the amount that was awarded.

22. Submitting evidence to SafeDeposits

- 22.1 The ADR mechanism requires evidence to be submitted by the parties to the dispute setting out the issues they wish the adjudicator to consider. Evidence can be submitted online at www.safedepositsscotland.com or by post to SafeDeposits Scotland, Lower Ground, 250 West George Street, Glasgow, G2 4QY.

Landlord (or agent) evidence

- 22.2 Once SafeDeposits has accepted a request to refer a dispute to adjudication, it will ask the landlord, and any agent acting on their behalf, to complete a Dispute Resolution Form and to return it to SafeDeposits within 10 working days.
- 22.3 The Dispute Resolution Form will invite the landlord, and/or any agent acting on their behalf, to provide a range of detailed information in support of their claim, including a copy of the tenancy agreement. In addition the Form will ask for information on what attempts have been made to resolve the dispute and confirmation that these have not been successful.
- 22.4 For more information on how to submit photographs, videos and DVDs as evidence please refer to the guidance leaflet **Use of photographs, videos and DVDs**
- 22.5 If the landlord, or any agent acting on their behalf, fails to make any response to the invitation to return their Dispute Resolution Form and any accompanying evidence before the time limit for them to do so has expired, SafeDeposits will invite the tenant to submit their evidence. The case will then proceed to adjudication based on the evidence submitted.

Tenant Evidence

- 22.6 Once the time limit for receipt of a Dispute Resolution Form from the landlord, or any agent acting on their behalf, has expired SafeDeposits will then ask the tenant to complete a Dispute Resolution Form. SafeDeposits will issue the tenant with a copy of the Dispute Resolution Form and any accompanying evidence received from the landlord and any agent acting on their behalf. The tenant should fill in and return the form to SafeDeposits within 10 working days of this request.
- 22.7 The Dispute Resolution Form will invite the tenant to confirm a range of information including the items in dispute and the amount of the deposit they are claiming. The tenant will also be able to provide evidence in support of the claim. In addition the form will ask for information on what attempts have been made to resolve the dispute and confirmation that these have not been successful.
- 22.8 For more information on how to submit photographs, videos and DVDs please refer to the guidance leaflet **Use of photographs, videos and DVDs**.
- 22.9 If the tenant fails to make any response to the invitation to return their Dispute Resolution Form and any accompanying evidence within the specified time limit,

SafeDeposits will proceed to adjudication based on the evidence otherwise submitted.

Landlord's supplementary evidence

- 22.10 A copy of the tenant's Dispute Resolution Form and accompanying evidence will be sent to the landlord and any agent acting on their behalf, who will have 5 working days to make a supplementary submission. Where a further submission is received from the landlord or any agent acting on their behalf it will be sent to the tenant for information but not comment.
- 22.11 If there is no response to the invitation for supplementary evidence within the specified time limit SafeDeposits will proceed to adjudication based on the evidence submitted.

How to submit evidence

- 22.12 Where possible, SafeDeposits recommends that the parties should submit their evidence online.
- 22.13 Where SafeDeposits has an email address for any of the parties to a dispute, SafeDeposits will send them an email to explain:
- that the Proposal for Deposit Repayment(s) and any evidence so far submitted is available for them to view online at www.safedepositsscotland.com;
 - that they will be able to complete a Dispute Resolution Form online;
 - the deadline for them to complete and submit their evidence.
- 22.14 Where SafeDeposits does not have an email address for any of the parties to a dispute, SafeDeposits will send them by post:
- a copy of the Proposal(s) for Deposit Repayment and any evidence so far submitted;
 - a Dispute Resolution Form for them to complete and return by post;
 - details of how to complete their Dispute Resolution Form and submit evidence online should they prefer to do so;
 - an explanation of the deadline for them to complete and submit their evidence.
- 22.15 All evidence submitted in respect of a dispute will be destroyed six months after the date of adjudication unless further action is still in progress e.g. consideration of a complaint. It is the responsibility of the parties to the dispute to inform SafeDeposits within that time if they want any of their evidence returned.
- 22.16 SafeDeposits will only return evidence when the tenant, landlord or agent submitting it asks SafeDeposits to do so in writing, and upon prior payment of any reasonable costs it incurs in recovering and returning the information requested. The parties to a dispute should keep their own copies of any evidence submitted to us.
- 22.17 If a party to a dispute for any reason finds it difficult to return the Dispute Resolution Form or any of the accompanying evidence within the required timescales they should contact SafeDeposits explaining the reasons. SafeDeposits will determine if any extension of time should be given.

23. The adjudicator's decision

- 23.1 When SafeDeposits has the forms and evidence relating to the dispute and the relevant deadlines has passed the adjudicator will review all of the documentation, including all evidence, supplied by the parties concerning the dispute and come to a decision about it.
- 23.2 The adjudicator must decide any dispute within 20 working days of receiving the referral from SafeDeposits (Regulation 36-(1)).
- 23.3 Within 5 working days of a decision having been made on a dispute, the adjudicator will send the Adjudication Decision to the landlord, any agent acting on their behalf, and tenant, explaining (Regulation 36-(2)):
- the facts on which the Adjudication Decision is based;
 - the reasons for the Adjudication Decision; and
 - the amounts of the disputed deposit to be repaid by SafeDeposits to the landlord and tenant.
- 23.4 The adjudicator will also explain to the landlord, any agent acting on their behalf, and tenant, that the Adjudication Decision is final, subject to the process for its Review.

24. Review

- 24.1 Within 10 working days of the adjudicator giving notice of the Adjudication Decision, the landlord, any agent acting on their behalf, and tenant may apply to SafeDeposits for that Adjudication Decision to be reviewed on the grounds that the adjudicator has erred in fact and/or law. (Regulation 37-(1)).
- 24.2 SafeDeposits can only accept a request for the Review of an Adjudication Decision if:
- the request for the Review of an Adjudication Decision is received by SafeDeposits within the 10 working days referred to in E5.1; and if
 - the adjudicator has erred in law and/or fact, for example if the adjudicator has ignored evidence that was provided to support the claim. A request for Review will not be accepted simply on the basis that the landlord, agent, or tenant does not like the outcome.
- 24.3 Having received a request for the Review of an Adjudication Decision within the 10 working days SafeDeposits will write to the applicant to acknowledge their request. SafeDeposits will send the request to the other party to the dispute:
- inviting them to submit their written representations on the request for the Review of an Adjudication Decision;
 - advising them that, to be considered, their representations must be received by SafeDeposits within 5 working days from the date SafeDeposits received the request for the Review of the Adjudication Decision.
- 24.4 Within 5 working days of receiving a request for the Review of an Adjudication Decision SafeDeposits will decide whether to accept or reject the request. In making that decision, SafeDeposits will take into account any written representations from the other party to the dispute that were received within the time limit referred to in paragraph 23.3 above.
- 24.5 Where SafeDeposits rejects a request for a request for the Review of an Adjudication Decision it will confirm to the parties that it has been rejected and on what basis. It will advise the applicant that they may not make a further request for Review of the

Adjudication Decision (Regulation 37-(3)), and that payment of the awards will be made once the time limit for both parties to request a Review of the Adjudication Decision has expired (Regulation 37-(4)).

- 24.6 If, after consideration of the request for Review and any representations received in the specified time, SafeDeposits accepts that there are reasonable grounds for believing that the adjudicator may have erred in fact and/or law, it will refer the Adjudication Decision to an adjudicator who was not involved in the original Adjudication Decision. (Regulation 38-(1)). The new adjudicator will review the original Adjudication Decision, the evidence and representations submitted by the parties, and either:
- affirm the original Adjudication Decision; or
 - make a different Adjudication Decision. (Regulation 38-(2)).
- 24.7 The reviewing adjudicator will make a final Adjudication Decision within 10 working days of the case being referred to them for Review.
- 24.8 Within 5 working days of reaching a final Adjudication Decision, the adjudicator will send confirmation of this Adjudication Decision to the landlord, any agent acting on their behalf, and tenant. This will explain:
- the facts on which the final Adjudication Decision is based;
 - the reasons for the final Adjudication Decision; and
 - the amounts of the disputed deposit to be repaid by SafeDeposits to the landlord or tenant.
- 24.9 The decision of the adjudicator following a Review is final. This means that the decision cannot be appealed further through the alternative dispute resolution procedure.

Payments

25. Payments after alternative dispute resolution

- 25.1 SafeDeposits will return the deposit within 5 working days of the end of the 10 working days allowed for a request for the review of an Adjudication Decision, where no review is undertaken.
- 25.2 Where a Review is undertaken, SafeDeposits will return the deposit within 5 working days from when it receives the final Adjudication Decision.
- 25.3 Interest earned on the deposits paid into and held by SafeDeposits is not refundable to any of the parties. The interest is used principally to pay SafeDeposits' running costs and for such other purposes as may be determined by the Board.

26. Repayment of the deposit to the landlord and tenant

- 26.1 SafeDeposits will pay any deposit due to the landlord(s) equally or to all landlord(s) named in the Deposit Protection Form, by bank transfer or cheque as instructed by the landlord(s) (or agent acting on their behalf). The only exception to this will be if a different allocation of the deposit repayment is authorised in writing and signed by all the landlords or where otherwise required by operation of law (for example where the landlords separate), or specified in the tenancy agreement, a copy of which is sent to SafeDeposits. The tenant will be notified of the payment made.
- 26.2 SafeDeposits will normally pay any deposit due to the tenant(s) equally or to all tenant(s) named in the Deposit Protection Certificate, by cheque or bank transfer as instructed by the tenant(s). The only exception to this will be if a different allocation of the deposit repayment is authorised in writing and signed by all the tenant(s) or where otherwise required by operation of law (for example where the tenants separate), or specified in the tenancy agreement. If there is no agreement (either by separate written agreement or underlying tenancy agreement), then SafeDeposits will assume the deposit has been paid jointly and severally by the tenants and distribute the deposit in equal shares to the tenants. SafeDeposits may also, at its sole discretion, consider evidence produced by tenants to support a different allocation of deposit repayment, for example, where such evidence shows that originally the deposit was not paid equally by tenants and should therefore not be repaid in equal shares. The landlord and agent acting on their behalf will be notified of the payment made.

Complaints

27. Complaints procedures

- 27.1 SafeDeposits is committed to providing an excellent service for protecting deposits and dealing with disputes for tenants, landlords and agents.
- 27.2 However, as in any organisation, things can go wrong. Whether you are a tenant, landlord or agent, you may feel that SafeDeposits has not handled your case as it should have done. Please tell SafeDeposits of any concerns about its service to you. SafeDeposits takes all complaints seriously and deal with them promptly, fairly and fully. SafeDeposits tries to learn any lessons that will help to improve its service.
- 27.3 The procedure for receiving and dealing with complaints about our service is available on SafeDeposits' website. SafeDeposits will also provide paper copies on request.
- 27.4 The complaints procedure has been drawn up to enable customers to complain about the way in which the service is delivered. It deals with complaints about:
- the service received from SafeDeposits;
 - unreasonable delays in the service, rudeness, falling to keep people properly informed.
- 27.5 This complaints procedure involves a two stage process, with a first stage review by the Managing Director and a final review by an Independent Complaints Reviewer appointed by the Board of SafeDeposits.
- 27.6 SafeDeposits will respond to you in a helpful and courteous way, and expect all parties to a dispute to deal with it in a similar way.
- 27.7 SafeDeposits will not deal with complaints made about Adjudication Decisions where these are to do with errors of law and/or fact. These should be dealt with by raising a request for the Review of the Adjudication Decision under Section 23 of these Rules.

Miscellaneous

28. Data requirements

- 28.1 The Regulations require that SafeDeposits collects information from landlords, agents and tenants.
- 28.2 When registering to use this Scheme and at the end of the tenancy Regulation 21-(a) requires SafeDeposits to collect information to identify and contact the landlord and tenant, and to identify the tenancy and the property in connection with which the tenancy deposit was paid to the landlord.
- 28.3 SafeDeposits is required to collect and maintain information about disputes referred to the disputes resolution procedure as set out in Regulation 39.
- 28.4 SafeDeposits may collect such other information that is necessary for carrying out and developing its Scheme.

29. Data protection

- 29.1 SafeDeposits is registered with the Information Commissioner under the Data Protection Act 1998 ("the Act"). 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 principles of the Act which say 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 protection.
- 29.2 Users of this Scheme must provide such information as SafeDeposits reasonably requires, both regularly and on a one-off basis, on the appropriate form, on-line, by computer disc or by e-mail.
- 29.3 Users of this Scheme must, without charge, provide copies of or, at its request, allow SafeDeposits to examine, any records and documents that it considers may be relevant to a dispute. Users of this Scheme must provide such other reasonable help as SafeDeposits may request from time to time.
- 29.4 Users of this Scheme give their consent to copy information they may supply concerning deposits registered with SafeDeposits, and deposit disputes in which they are involved:
- to other parties and organisations who SafeDeposits considers appropriate to the resolution of the dispute;
 - for use in confidential survey and research purposes;
 - to relevant professional bodies who have an interest and duty to maintain and sustain good practice and the integrity of SafeDeposits;
 - to satisfy the requirements of Regulation 45.
- 29.5 The Scottish Ministers have appointed SafeDeposits as a Scheme Administrator to act on its behalf to gather and process the information provided by users of the Scheme, together with information from other sources, for the purpose of providing a

tenancy deposit scheme in accordance with the requirements of the Act and the Regulations. This includes the provision of an alternative dispute resolution service.

29.6 Please also see Appendix 3 for The Scottish Minister's Fair Processing Notice.

30. Jurisdiction

30.1 SafeDeposits is subject to the exclusive jurisdiction of Scottish law.

31. Amendments to Rules

31.1 These Rules may be amended by SafeDeposits and all such amendments shall be deemed incorporated into these Rules with effect from the date that the revised Rules are published on the website.

32. SafeDeposits' liability to you

32.1 SafeDeposits cannot accept liability for any loss (including loss of profits, data, anticipated savings or wasted expenditure) other than any losses suffered or incurred due to its negligence or breaching these Rules, limited to ensuring that the payments to landlord, agents and tenants can be made in accordance with any agreement between those parties or as a result of the ADR procedure.

32.2 SafeDeposits does not limit its liability by law for death or personal injury caused by its gross negligence or wilful misconduct.

32.3 SafeDeposits does not accept liability to any one or more joint landlords for acting on the instructions of any other joint landlord. SafeDeposits does not accept directions from joint landlords to deal only with instructions agreed unanimously by joint landlords. Agents should explain this to their clients in their terms and conditions of business.

32.4 The limitation of any liability will be governed by the law of Scotland.

32.5 SafeDeposits shall not be held liable for any failure or delay in operating the Scheme where such failure arises as a result of any act or omission which is outside its control such as but not restricted to an act of God, civil unrest or changes in UK or Scottish law which might affect the operation of the Scheme.

32.6 It should be noted that information provided by SafeDeposits to landlords, agents or tenants using the Scheme is provided for information only and is not a substitute for independent professional advice .

32.7 All material presented on the SafeDeposits website is provided without any warranty or representation either direct or indirect of its accuracy, fitness for purpose, quality, security, non-infringement of copyright or compatibility.

32.8 SafeDeposits is not liable for any direct, indirect or consequential loss, damage, expense, loss of profits or data arising from the use of, or in connection with, the use of its website.

Appendix 1

Tenancy Deposit Schemes (Scotland) Regulations 2011

Appendix 2

Documents and Forms available from SafeDeposits

- the Landlord or Agent Registration Form
- the Deposit Protection Form
- Deposit Protection Certificate
- the Change of Landlord/Letting Agent Form
- the Deposit Transfer or Withdrawal Form
- the Proposal for Deposit Repayment
- the Response to a Proposal for Deposit Repayment Form
- the Landlord's and Agent's Dispute Resolution Form
- the Tenant's Dispute Resolution Form
- the Deposit Dispute Agreement Form

Appendix 3

Scottish Ministers Detailed Fair Processing Notice Scottish Ministers Detailed Fair Processing Notice

This notice applies to the Scottish Ministers for personal information about landlords, agents and tenants in connection with tenancy deposit schemes under the Housing (Scotland) Act 2006. The scheme will be operated for the Scottish Ministers by its Scheme Administrator SafeDeposits Scotland Ltd (the Scheme Administrator).

Personal information collected

The Scottish Ministers (via the Scheme Administrator) collects the information users of this Scheme are asked to provide during their registration or which they supply during the period that any deposit is protected for them.

The Scottish Ministers' websites and emails use common internet tools such as cookies and beacons.

The Scottish Ministers (via the Scheme Administrator) sometimes collect information about users of this Scheme from other sources, such as tenants, land registry data, postal services data or other sources necessary to confirm the identity of users of this Scheme or the instructions they provide to The Scottish Ministers.

For more information on the Scheme's information collection practices (including how to delete or refuse cookies) please contact SafeDeposits.

Uses and sharing

Personal information will be used solely for the purposes of the tenancy deposit scheme, which includes providing alternative dispute resolution services, although the Scottish Ministers may disclose details of the activities of users of this Scheme to regulators, industry bodies and other organisations for the purposes of fraud prevention and money laundering prevention and where there are concerns over their activities.

The Scheme Administrator will process the information on behalf of the Scottish Ministers.

In the event of a dispute, information may also be processed on behalf of the Scottish Ministers by any alternative dispute resolution service provider nominated by the Scheme Administrator.

These other organisations are required to protect this information on behalf of the Scottish Ministers and cannot use personal information for purposes unconnected with the Scheme.

Personal information may be transferred outside the European Economic Area for the purpose of providing access to the information if users of this Scheme access the information from a website outside the European Economic Area.

The Scheme Administrator will process the personal data that it holds on behalf of the Scottish Ministers about users of this Scheme in accordance with the Data Protection Act 1998.

The rights of users of this Scheme

Under the Data Protection Act 1998 users of this Scheme have the right to access any information that the Scheme Administrator holds about them. Users of this Scheme can ask the Scheme Administrator to correct any errors in the information. For more information on these rights please [click here](#) or contact SafeDeposits.

Contact SafeDeposits:

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