EXPLANATORY MEMORANDUM TO

THE HOUSING (TENANCY DEPOSIT SCHEMES) ORDER 2026

2026 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 The Rt Hon Matthew Pennycook MP, Minister of State at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

2.2 Matt Abbott, Deputy Director for the Private Rented Sector Division at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Viktor Chavdarov at the Ministry of Housing, Communities and Local Government can be contacted by email at the following address with any queries regarding the instrument: prsguidance@communities.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument enables the Secretary of State for Housing, Communities and Local Government (the Secretary of State) to receive part of the interest accrued on tenancy deposits protected under a custodial Tenancy Deposit Protection (TDP) scheme. The instrument does not require any payment to be made or prescribe how any payment amounts would be determined.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. Policy Context

What is being done and why?

5.1 Tenants who rent housing in England under an assured periodic tenancy may be required to pay a deposit as security for any breach of tenancy terms. It is mandatory for landlords to protect such deposits in a government-approved TDP scheme. The purpose of TDP schemes is to safeguard tenant money and offer a free Alternative Dispute Resolution mechanism in the event of a dispute about the amounts that should be paid to the tenant and the landlord at the end of the tenancy.

5.2 In a custodial TDP scheme, an amount equivalent to the protected deposit is held by the scheme administrator in an account which may accrue interest. At the end of the tenancy, the original value of the deposit is paid to the tenant and/or landlord according to the agreed outcome under the scheme. The accrued interest is retained by the scheme administrator as revenue unless arrangements are in place for part of the interest to be paid to the tenant and/or landlord in addition to the original value.

5.3 The government considers that, where accrued interest exceeds the amount needed to operate the custodial scheme effectively and provide a reasonable return as profit to the scheme administrator, there is a policy case for enabling a portion of that interest to be used for the benefit of tenants in the private rented sector. The existing framework already allows the Secretary of State to require custodial scheme administrators to provide for part of the accrued interest to be paid directly to tenants and/or landlords.

5.4 This instrument adds a further option by enabling future custodial scheme arrangements to require part of the accrued interest to be paid to the Secretary of State, so that it can be used to support tenant-focused programmes. The instrument does not remove the option for interest to be paid directly to tenants and/or landlords.

5.5 This instrument does not itself require any payment to be made to the Secretary of State, nor does it prescribe how such amounts must be determined. Those matters would be determined through future scheme arrangements, including procurement and contractual processes. This approach allows the Secretary of State to take account of market conditions, scheme performance, operating costs, value for money and the need to maintain an effective free service for tenants and landlords.

5.6 The instrument is intended to provide flexibility for future arrangements between the Secretary of State and administrators of custodial schemes. The current expectation is that if the new power is used in future arrangements:

- The arrangements will allow the scheme administrator to keep part of the accrued interest to cover the cost of the free service it provides to tenants and landlords. This amount should be sufficient to enable the scheme to meet its key performance indicators.
- The arrangements will allow the scheme administrator to make a reasonable profit if it is a private sector entity.
- The Secretary of State would use the funds received towards programmes or activities that benefit tenants in the private rented sector, and would publish at appropriate intervals the amount received from the scheme, the programme(s) funded, and any metrics demonstrating the value delivered. Any arrangement for interest to be paid directly to the Secretary of State will be subject to agreement from His Majesty's Treasury.
- Future arrangements may also provide for part of the accrued interest to be paid directly to tenants and/or landlords, where Ministers decide that this is appropriate.

What was the previous policy, how is this different?

5.7 Prior to this instrument, the interest accrued by custodial TDP schemes could be used to fund their services and generate profit for their administrators. The Secretary of State could require part of the accrued interest to be paid directly to tenants and/or landlords in addition to the original value of the deposit. This option continues to be available.

5.8 The new policy offers additional flexibility and can be used in combination with existing powers. For example, the Secretary of State could require part of the accrued interest be paid directly to the tenant and/or landlord associated with the deposit, and another part to be paid to the Secretary of State and used to fund a programme supporting vulnerable tenants. The amounts collected by the Secretary of State and the programmes funded may change over time to reflect priorities for supporting tenants in the private rented sector.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument inserts a sub-paragraph in paragraph 3 of Schedule 10 to the Housing Act 2004. Schedule 10 sets out requirements with which custodial TDP schemes must comply. Paragraph 3 applies to custodial TDP schemes under which an amount equivalent to the tenancy deposits is held in a designated account by the scheme administrator.

6.2 Prior to this amendment, the scheme administrator could retain any interest accrued on monies held in the designated account. However, the scheme arrangements could provide for part of that interest to be paid, in addition to the original value of the deposit, to the landlord and/or tenant at the end of the tenancy.

6.3 The new sub-paragraph enables the relevant arrangements under section 212(1) of the Housing Act 2004 to require the scheme administrator to pay part of the accrued interest to the Secretary of State. This creates an additional permitted destination for accrued interest held within a custodial TDP scheme.

Why was this approach taken to change the law?

6.4 This is the only available approach to make the necessary changes. The current legislative framework does not permit the Secretary of State to receive a portion of the interest accrued on tenancy deposits protected under a TDP scheme. Without amendment, interest accrued in TDP scheme arrangements are limited to the uses currently provided for in the legislation.

6.5 For those reasons no alternative legislative approach was identified that would achieve the policy objective. Additionally, no non-legislative alternative was considered viable because the restriction arises from the statutory framework. As a result, the policy objective could only be achieved through legislative amendment.

7. Consultation

Summary of consultation outcome and methodology

7.1 A consultation has not been conducted because there is no statutory duty to consult and the instrument is enabling in nature. The instrument does not prescribe payment amounts or impose direct obligations on tenants, landlords, or letting agents. The Ministry of Housing, Communities and Local Government engaged with tenant representative groups and businesses interested in administering a future custodial TDP scheme to gather views on the proposal.

7.2 Tenant groups were broadly supportive of the Secretary of State receiving part of the interest accrued on deposits, provided it is used to create a tangible impact for tenants in the private rented sector.

7.3 Feedback from businesses was collected via a written and verbal pre-market engagement process. The businesses who participated, including the administrators of the incumbent TDP schemes, recognised that future arrangements could include a mechanism for sharing part of the accrued interest with the Secretary of State. Several businesses expressed the view that tenants should benefit from the interest, while others suggested redirecting the funds into wider housing or social objectives.

7.4 This instrument applies to tenancy deposits relating to housing in England let under an assured tenancy. Any procurement of custodial TDP schemes operating across England and Wales will take into account the legislation applicable to each jurisdiction.

8. Applicable Guidance

8.1 No guidance is considered necessary in connection with this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument. The provision's core effect concerns procurement which makes it out of scope of the Better Regulation Framework. The Ministry of Housing, Communities and Local Government considers there is no requirement to submit a full regulatory Impact Assessment to the Regulatory Policy Committee because the instrument does not implement any regulatory measure.

9.2 No quantitative assessment has been made because the instrument does not prescribe payment amounts or how such amounts are to be determined. Quantitative and qualitative appraisals considering the impact on tenants, landlords, businesses, and the public sector will be conducted on a case-by-case basis if and when the new power is used in the context of government procurement. The power, if used, is intended to deliver a positive impact on tenants by funding tenant-focused government programmes, however, such impacts would be consequential and cannot be assessed at present.

Impact on businesses, charities and voluntary bodies

9.3 Any direct impact on businesses would be limited to the administrator of a custodial TDP scheme where future scheme arrangements provide for part of the interest accrued on protected deposits to be paid to the Secretary of State rather than kept by the administrator as revenue. The extent of any impact cannot be quantified at this stage because it will depend on future contractual arrangements. There is no, or no significant, impact on charities and voluntary bodies.

9.4 No direct impact on small or micro businesses is expected, unless a small or micro business were appointed to administer a custodial TDP scheme under future arrangements. As the vast majority of landlords have fewer than 50 employees and a turnover of less than £10 million, they would be considered as a small and/or micro business. The instrument is not expected to have an impact on landlords. While an arrangement using the power could have the effect of reducing the amount a landlord would have otherwise received from a custodial TDP scheme as compensation for a breach of tenancy terms, this would depend on the particular arrangement and other means of redress, such as the County Court, would continue to be available to landlords.

9.5 If the power is used, any public sector impact is expected to be limited to the associated policy, analytical, procurement, and contract management costs, which are expected to be offset by the receipts paid to the Secretary of State by the scheme administrator.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Ministry of Housing, Communities and Local Government will monitor the implementation and operation of TDP arrangements through its existing contract management and oversight mechanisms.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Matthew Pennycook, has made the following statement:

10.3 "It would be inappropriate to include a statutory review clause as the instrument is enabling in nature and does not itself prescribe how the power is to be exercised. The impact of any use of the power introduced by this instrument will be assessed as part of the procurement, management and review of all TDP arrangements."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister of State has made the following statement regarding Human Rights: "In my view the provisions of The Housing (Tenancy Deposit Schemes) Order 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").