

DEREGULATION ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 31: Tenancy deposits: non-compliance with requirements

160. This section amends sections 214 (proceedings relating to tenancy deposits) and 215 (sanctions for non-compliance) of the Housing Act 2004 to clarify the legal position following the Court of Appeal's decision in December 2014 in the case of *Charalambous and another v Ng and another* [2014] EWCA Civ 1604. In that case the Court decided that section 215(1)(a) of the 2004 Act applies even where the landlord received the deposit prior to the coming into force of the tenancy deposit legislation on 6 April 2007 in respect of a tenancy which began before that date and which has continued without renewal since before that date. The Court of Appeal's decision means that, even though the deposit could not be said to have been "paid" after the coming into force of the tenancy deposit legislation, landlords in this situation will need to protect such deposits if they wish to be able to rely on the no-fault ground for possession in section 21 of the Housing Act 1988 at the end of the tenancy.
161. Although it was never the government's intention – either in 2007 or following amendments made to the tenancy deposit legislation in 2012 by the Localism Act 2011 – that the tenancy deposit legislation should apply to such deposits, the amendments enshrine the Court of Appeal's decision in the legislation. However, they also make it absolutely clear that, since the tenancy deposit requirements in section 213 of the 2004 Act have never applied to such deposits, the other sanctions and penalties provided for in sections 214 and 215 do not apply in such cases. *Subsection (2)* amends section 214(1) to make it clear that section 214 does not apply in relation to such deposits. Section 214 (proceedings relating to tenancy deposits) enables tenants to apply to the court for a mandatory financial penalty where a landlord has failed to comply with the tenancy deposit requirements in section 213.
162. *Subsection (3)* replaces the current subsection (1) in section 215 (sanctions for non-compliance) with two new subsections. The new subsection (1) gives legislative effect to the Court of Appeal's judgment by making it clear that no matter when a tenancy deposit was last "paid" the landlord will need to protect that deposit if he or she wishes to serve a valid notice under section 21 of the Housing Act 1988 on the tenant (unless the deposit has already been returned to the tenant in full or with agreed deductions).
163. The new subsection (1A) replicates the effect of the current section 215(2)(b), making it clear that it applies only where a deposit has been received on or after 6 April 2007 (the commencement date of the tenancy deposit provisions).
164. The new section forms part of the law of England and Wales. It comes into force on the day on which the Act is passed.