

## **DEREGULATION ACT 2015**

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### **EXPLANATORY NOTES**

#### **COMMENTARY ON SECTIONS**

##### ***Section 32: Tenancy deposits: deemed compliance with requirements***

165. This section inserts three new sections into Chapter 4 of Part 6 of the Housing Act 2004 (“the 2004 Act”) which makes provision about the protection of tenancy deposits in the private rented sector.
166. By way of background, the tenancy deposit protection provisions in the 2004 Act require that where a deposit is paid in connection with an assured shorthold tenancy (the most common form of tenancy in the private rented sector) it must be protected by the landlord or agent in a government authorised scheme and certain information (“the prescribed information”) must be sent to the tenant within 30 days of the deposit being received. Landlords who fail to comply are liable for a financial penalty of between 1 and 3 times the amount of the deposit, payable to the tenant, on the tenant bringing court proceedings under section 214 of the 2004 Act. Landlords who fail to protect deposits also lose the ability to rely on the no-fault ground for possession in section 21 of the Housing Act 1988 unless they return the deposit to the tenant in full (or with deductions agreed by the tenant) or until court proceedings under section 214 have been resolved. Chapter 4 of Part 6 of the 2004 Act came into force on 6<sup>th</sup> April 2007 and certain amendments were subsequently made by section 184 of the Localism Act 2011.
167. The purpose of the new provisions is to deal with certain issues arising out of the Court of Appeal’s decision in the case of *Superstrike v Rodrigues* [2013] EWCA Civ 669. That case concerned a deposit which was received in connection with a fixed term tenancy prior to commencement on 6<sup>th</sup> April 2007. When the fixed term tenancy expired sometime after that date, the tenant continued to occupy the property under a statutory periodic tenancy in accordance with section 5 of the Housing Act 1988 and the landlord continued to hold the same deposit in connection with the periodic tenancy. The landlord in the case argued that the tenancy deposit protection legislation only applied if the deposit was physically received on or after 6<sup>th</sup> April 2007. However, the Court did not agree and found that the deposit must be treated as having been paid by the tenant and received by the landlord afresh at the start of the statutory periodic tenancy. As such, section 213 of the 2004 Act (requirements relating to tenancy deposits) applied and the landlord was required, at the point the tenancy became periodic, to make arrangements for the deposit to be held in accordance with an authorised scheme and to send the prescribed information to the tenant. This is contrary to the original guidance for landlords issued by the government that in this specific situation the legislation would not apply to the deposit. New section 215A is intended to deal with this issue.
168. The Court of Appeal’s decision also has implications for deposits which have been protected. This is because it has been interpreted by some as meaning that every time a tenancy becomes a statutory periodic tenancy or is renewed the duty on the landlord to comply with the tenancy deposit protection requirements arises afresh at the start of the new tenancy, even though the deposit remains protected in accordance with the

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same authorised scheme from one tenancy to the next. New section 215B is intended to deal with this issue.

169. 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.

**New section 215A Statutory periodic tenancies: deposit received before 6 April 2007**

170. New section 215A applies to cases where a tenancy deposit was received in connection with a fixed term tenancy prior to 6<sup>th</sup> April 2007 and, on or after that date, a statutory periodic tenancy arose on the expiry of the fixed term tenancy.
171. Subsection (2) provides that in cases where the periodic tenancy is still in existence as at the date of commencement of this section and some or all of the deposit paid in connection with the fixed term tenancy continues to be held by the landlord in connection with the periodic tenancy, the tenancy deposit protection requirements do apply. However, the landlord has an extended period within which to comply with those requirements (see commentary on subsection (3) below). Subsection (2) further provides that the requirements apply to any of the original deposit which continues to be held in connection with the periodic tenancy and to any additional deposit which the landlord may have received in connection with the tenancy.
172. Subsection (3) provides that instead of the landlord being required to comply with the tenancy deposit requirements at the start of the statutory periodic tenancy, a date which will have long passed in such cases, there is an extended period within which to comply. This is any time prior to the date which is 90 days after commencement of the new provisions or, if earlier, at any time prior to the date on which a court determines an application for penalties under section 214 of the 2004 Act or determines whether to make a possession order under section 21 of the Housing Act 1988 (or decides an appeal against either type of determination).
173. Subsection (4) provides that in cases where, at the time this section is commenced, the landlord no longer holds any deposit in connection with the periodic tenancy or the tenancy has ended, the landlord will be treated as having complied with the requirements in section 213 of the 2004 Act.
174. By virtue of new section 215C(1), this section is treated as having had effect since 6<sup>th</sup> April 2007 subject to the exception provided for in section 215C(2) (see commentary on new section 215C).

**New section 215B Shorthold tenancies: deposit received on or after 6 April 2007**

175. New section 215B is intended to deal with the issue mentioned at paragraph 168 above. It covers cases where a landlord “receives” a deposit on or after 6 April 2007 (which could be at the start of a brand new tenancy or at the start of a renewed tenancy – see subsection (3)) and subsequently protects that deposit and sends the required information to the tenant. If the tenancy is subsequently renewed or rolls over into a statutory periodic tenancy, then so long as the deposit remains protected in accordance with the same authorised tenancy deposit scheme from one tenancy to the next, subsection (2) makes clear that there is no requirement for the landlord to re-send the same information to the tenant each time the tenancy is renewed or rolls over: the landlord will be treated as having complied with the tenancy deposit protection requirements afresh at the start of each new tenancy. Subsection (1)(d) and (e) make clear that subsection (2) applies not just to the first “renewal” of the tenancy but also to cases where there are multiple tenancy renewals, which could include a mixture of fixed term tenancies and periodic tenancies.

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176. By virtue of new section 215C(1), this section is treated as having had effect since 6<sup>th</sup> April 2007 subject to the exception provided for in section 215C(2) (see commentary on new section 215C).

**215C Sections 215A and 215B: transitional provisions**

177. New section 215C provides that new sections 215A and 215B are to be treated as having had effect since 6<sup>th</sup> April 2007, the date on which tenancy deposit provisions in the 2004 Act came into force. However, subsection (2) provides that they do not have effect in relation to legal proceedings under section 214 of the 2004 Act or section 21 of the Housing Act 1988 which have either been finally determined by a court (see subsection (6)) or settled between the parties prior to the date on which this section comes into force.
178. If legal proceedings have been instituted but have not been finally determined or settled before the date on which this section comes into force, subsections (3) to (5) apply so as to protect the tenant from liability for the landlord's legal costs where, as a consequence of new section 215A or 215B, the court decides against the tenant's claim under section 214 of the 2004 Act and/or decides to grant the landlord a possession order under section 21 of the Housing Act 1988. In those circumstances a court must not order the tenant to pay any part of the landlord's costs in the proceedings which it reasonably considers are attributable to the tenant's claim under section 214 of the 2004 Act and/or the possession proceedings under section 21 of the Housing Act 1988. This provision recognises that the court proceedings involving the landlord and tenant may also comprise claims and/or counter-claims (for instance in respect of rent arrears) which are not directly affected by new sections 215A or 215B.