

**SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM
(MEMORANDUM NO. 4)**

**DEREGULATION BILL: AMENDMENT IN RELATION TO TENANCY
DEPOSIT LEGISLATION**

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within, or modifies the legislative competence of the National Assembly.
2. The Deregulation Bill (“the Bill”) was introduced in the House of Commons on 23 January 2014. The Bill can be found at:

<http://services.parliament.uk/bills/2013-14/deregulation.html>

Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Cabinet Office. The UK Government’s policy objectives for the Bill are to remove or reduce unnecessary regulatory burdens that hinder or cost money to businesses, individuals, public services or the taxpayer.
4. The Bill includes measures relating to general and specific areas of business, companies and insolvency, the use of land, housing, transport, communications, the environment, education and training, entertainment, public authorities and the administration of justice. The Bill also provides for a duty on those exercising specified regulatory functions to have regard to the desirability of promoting economic growth. In addition, the Bill will repeal legislation that is no longer of practical use.

Provisions in the Bill for which consent is sought

5. The consent of the Assembly is sought to the amendment to the Deregulation Bill, tabled on 16 June 2014, which makes amendments to add four sections to Chapter 4 of Part 6 of the Housing Act 2004 (Tenancy Deposit Schemes). The amendment was tabled by Tom Brake MP, Deputy Leader of the House of Commons and Oliver Heald QC MP, Solicitor General. The amendment reference is NC20.
6. These Tenancy Deposit Scheme amendments follow a Court of Appeal decision in 2013¹ which interpreted existing tenancy deposit legislation differently from its original intention and accompanying Government guidance. The decision concerned a tenancy which commenced shortly before the commencement of mandatory deposit protection legislation in

¹ *Superstrike Ltd v Rodrigues* [2013] EWCA Civ 669

2007. The decision means that where a fixed term shorthold tenancy came to an end and was replaced with a statutory periodic tenancy, landlords should have registered the deposit with a tenancy deposit protection scheme and issued information relating to the scheme to the tenants². This decision meant that landlords in this situation may be subject to sanctions for not complying with the tenancy deposit legislation, despite following Government guidance. The penalties for breach of these obligations by the landlord results in two alternative but simultaneously available sanctions: (a) a landlord cannot serve a s.21 notice to terminate the tenancy for so long as he or she had failed to comply with those requirements³; and (b) a tenant would be entitled to both the return of the deposit and a compensatory sum equivalent to three times that deposit's value⁴. This means that landlords may be unable to evict a tenant, or be at risk of court action and financial penalties, despite following Government guidance. The amendment tabled on 16 June is intended to remove this risk.

7. Having these amendments apply to Wales will mean the risk of court action and fines for letting agents and landlords in Wales, and the risk of an eviction notice by the landlord being frustrated, are removed in the same way as for letting agents and landlords in England in regard to these elements of tenancy protection legislation. At the same time agreeing to these amendments will not disadvantage tenants in Wales but mean the tenancy deposit legislation across England and Wales operates in the way it was intended to work.
8. The amendments are to Chapter 4 of Part 6 of the Housing Act 2004 (Tenancy Deposit Schemes). After section 215, the amendment inserts sections 215A to 215D which provide for the following:
 - **Section 215A Statutory periodic tenancies: deposit received before 6 April 2007.** This applies to cases where a tenancy deposit was received in connection with a fixed term tenancy prior to 6 April 2007 and, on or after that date, a statutory periodic tenancy arose on the expiry of the fixed term tenancy.
 - 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.
 - 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 is likely to have long

² Section 213(3), (5) and (6) of the Housing Act 2004

³ Section 215 of the Housing Act 2004

⁴ Section 214 of the Housing Act 2004

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 (where the requirements relating to the deposit under section 213 have not been complied with) 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).

- Subsection (4) provides that in cases where, at the time this clause 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(3), (5) and (6) of the 2004 Act. By virtue of new section 215D(1), this section is treated as having had effect since 6 April 2007 subject to the exceptions provided for in the remainder of section 215D.
- **Section 215B - Statutory periodic tenancies: deposit received on or after 6 April 2007.** This section concerns cases where a deposit is received on or after 6 April 2007 in connection with a fixed term tenancy and, at the expiry of the fixed term, the tenant continues to occupy the property under a statutory periodic tenancy arising under section 5 of the Housing Act 1988. The effect of this section is that where the tenancy deposit requirements are complied with in relation to the deposit held in connection with the fixed term tenancy, then as long as the deposit continues to be held in the same authorised tenancy deposit scheme when the statutory periodic tenancy arises, the landlord will be treated as having complied with the tenancy deposit protection requirements afresh at the start of the statutory periodic tenancy.
- **Section 215C - Renewed fixed term or contractual periodic tenancies: deposit received on or after 6 April 2007.** This section is similar to new section 215B but concerns cases where a deposit is received on or after 6 April 2007 in connection with an assured shorthold tenancy and, at the end of that tenancy, the same landlord grants the same tenant a new fixed term tenancy or a new contractual periodic tenancy in respect of the same premises, i.e. the landlord expressly renews the tenancy. The effect of this section is that where the tenancy deposit requirements are complied with in relation to the deposit held in connection with the earlier tenancy, then as long as that deposit continues to be held in accordance with the same authorised tenancy deposit scheme from one tenancy to the next, the landlord is not required to re-issue the same prescribed information to the tenant at the start of each new, renewed tenancy, the requirements of section 213(5) and (6) will be treated as if they have been complied with.

- **Section 215D - Sections 215A to 215C: transitional provisions.**
Section 215D provides that new sections 215A to 215C are to be treated as having had effect since 6 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 or settled between the parties prior to the date on which this clause comes into force. Further transitional provisions are made by this section in relation to ongoing proceedings.

9. All the provisions outlined above apply in relation to Wales.

10. The amendment to the Deregulation Bill described above inserts sections 215A to 215D into the Housing Act 2004. This amendment to the Deregulation Bill does not provide any powers for the Welsh Ministers to make subordinate legislation.

11. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to tenancy deposit schemes under paragraph 11 of Part 1, Schedule 7 to the Government of Wales Act 2006.

Advantages of utilising this Bill rather than Assembly legislation

12. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales. The inter-connected nature of the Tenancy Deposit legislation, and the fact that the schemes are run on an England and Wales basis, overseen by the Department for Communities and Local Government, mean that it is most effective and appropriate for the Bill provisions for both to be taken forward at the same time in the same legislation.

Financial implications

13. There are no financial implications for the Welsh Government.

Carl Sargeant AM
Minister for Housing and Regeneration
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