

**National Assembly for Wales**

**Communities, Equality and Local Government Committee**

**2 October 2014**

Cynulliad  
Cenedlaethol  
Cymru  
National  
Assembly for  
Wales



## **Report on the Legislative Consent Memorandum (No.4) for the Deregulation Bill**

---

### **Background**

1. On 30 June 2014, the then Minister for Housing and Regeneration ('the Minister') laid Supplementary Legislative Consent Memorandum No. 4 ('the Memorandum') for the Deregulation Bill currently before the UK Parliament.
2. On 8 July 2014, the Business Committee agreed to refer the Memorandum to the Communities, Equality and Local Government Committee ('the Committee') for consideration. In referring the Memorandum, the Business Committee set a reporting deadline of 2 October 2014.
3. A Legislative Consent Motion ('the Motion') relating to the Memorandum is scheduled for debate in plenary on 7 October 2014.

### **Deregulation Bill**

4. The Deregulation Bill ('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.
5. Further information on the Bill's policy objectives can be found in paragraph 4 of the Memorandum.

### **Provisions in the Bill for which consent is sought**

6. The consent of the Assembly is sought for an amendment to the Bill that seeks to add four sections to Chapter 4 of Part 6 of the Housing Act 2004 in relation to tenancy deposit schemes. The proposed sections are:
  - Section 215A - Statutory periodic tenancies: deposit received before 6 April 2007;
  - Section 215B - Statutory periodic tenancies: deposit received on or after 6 April 2007;

- Section 215C – Renewed fixed term or contractual periodic tenancies: deposit received on or after 6 April 2007;
- Section 215D – Sections 215A to 215C: transitional provisions.

7. Further details on the proposed sections to be inserted by amendment can be found in paragraph 8 of the Memorandum.

8. The purpose of the amendment is to reverse the Court of Appeal decision in *Superstrike Ltd v Rodrigues*<sup>1</sup>, which interpreted existing tenancy deposit legislation differently from its original intention and accompanying UK Government guidance.

9. On this point, the Memorandum states:

“The decision concerned a tenancy which commenced shortly before the commencement of mandatory deposit protection legislation in 2007. The decision means that where a fixed-term shorthold tenancy comes 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 tenants.

“This decision meant that landlords in this situation may be (...) at risk of court action and financial penalties, despite following Government guidance. (...) The amendment (...) is intended to remove this risk.”

### **Committee consideration**

10. We considered the Memorandum on 17 September 2014 and wrote to the Minister to seek clarification as to how the amendment for which consent is sought accords with the Welsh government’s policy intentions in relation to tenancy deposit protection and the forthcoming Renting Homes Bill. A copy of the Minister’s response is attached at Annexe 1.

### **Our view**

11. We note the Minister’s response and we have no objection to the agreement of the Motion.

---

<sup>1</sup> *Superstrike Ltd v Rodrigues* [2013] EWCA Civ 669

Lesley Griffiths AC / AM  
Y Gweinidog Cymunedau a Threchu Tlodi  
Minister for Communities and Tackling Poverty



Llywodraeth Cymru  
Welsh Government

Christine Chapman  
Chair Communities, Equality and Local Government  
Committee

CELG.Committee@Wales.gov.uk

24 September 2014

Dear Christine

You wrote on 19 September seeking clarification on how the Tenancy Deposit Scheme (TDS) amendments to the Deregulation Bill, covered in Supplementary Legislative Consent Memorandum No.4 for the Bill, are in line with the Welsh Government's policy intentions in relation to tenancy deposit protection and the forthcoming Renting Homes Bill.

By way of background, the requirement for the TDS amendments arises directly from the *Superstrike vs Rodrigues* Court of Appeal judgement in 2013. The judges in that case have interpreted the tenancy deposit legislation to have a different effect to its original intention when enacted by the UK Parliament as per the accompanying UK Government advice given at the time. The judgement was not appealed which means the Court of Appeal's view is the definitive interpretation of the TDS legislation. This means potentially a significant number of landlords and letting agents are unable to evict tenants because of the judgment.

The amendment to the TDS legislation in the Deregulation Bill is intended to address this problem. The amendment provides that where the TDS requirements have been complied with by a landlord in relation to a fixed term shorthold tenancy, those requirements will not need to be complied with again for a replacement tenancy, either where a tenancy becomes a periodic shorthold tenancy, or where a replacement fixed term tenancy is entered into. Where those requirements did not apply to the first tenancy and a replacement statutory periodic tenancy is still in place, the amendment provides extra time for compliance. The amendments apply retrospectively.

These amendments fit with our overall TDS policy as it will mean TDS legislation works in the way it is was originally intended whilst not disadvantaging tenants or landlords or creating unnecessary bureaucracy and complexity. The forthcoming Renting Homes Bill will introduce further measures which will also provide simplified and fairer arrangements for renting, by introducing two types of contract for renting. Both of these measures accord with the Welsh Government's vision of a modern and better private rented sector for all.

As the current TDS legislation was introduced on an England and Wales basis and the schemes are run on behalf of Wales by the Department for Communities and Local

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

English Enquiry Line 0845 010 3300  
Llinell Ymholiadau Cymraeg 0845 010 4400  
Correspondence.Lesley.Griffiths@wales.gsi.gov.uk

Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

Printed on 100% recycled paper

Government, it seems sensible this change to the legislation should also be introduced on an England and Wales basis so the changes are identical and are implemented at the same time. This will avoid any unnecessary delay in introducing the amendments in Wales which would disadvantage landlords and tenants in Wales, compared to their English counterparts.

Regards  
Lesley

**Lesley Griffiths AC / AM**  
**Y Gweinidog Cymunedau a Threchu Tlodi**  
**Minister for Communities and Tackling Poverty**