

SCHEDULES

SCHEDULE 2

Section 5

TREATMENT OF HOLDING DEPOSIT

Application

- 1 This Schedule applies where a holding deposit is paid to a landlord or letting agent in respect of a proposed tenancy of housing in England.

Interpretation

- 2 (1) In this Schedule “the deadline for agreement” means the fifteenth day of the period beginning with the day on which the landlord or letting agent receives the holding deposit.
- (2) But the landlord or the letting agent may agree with the tenant in writing that a different day is to be the deadline for agreement for the purposes of this Schedule.

Requirement to repay holding deposit

- 3 Subject as follows, the person who received the holding deposit must repay it if—
- (a) the landlord and the tenant enter into a tenancy agreement relating to the housing,
 - (b) the landlord decides before the deadline for agreement not to enter into a tenancy agreement relating to the housing, or
 - (c) the landlord and the tenant fail to enter into a tenancy agreement relating to the housing before the deadline for agreement.
- 4 If paragraph 3 applies, the deposit must be repaid within the period of 7 days beginning with—
- (a) where paragraph 3(a) applies, the date of the tenancy agreement,
 - (b) where paragraph 3(b) applies, the date on which the landlord decides not to enter into the tenancy agreement, or
 - (c) where paragraph 3(c) applies, the deadline for agreement.
- 5 (1) The person who received the holding deposit must repay it if—
- (a) that person believes that any of paragraphs 8 to 12 applies in relation to the deposit, but
 - (b) that person does not give the person who paid the deposit a notice in writing within the relevant period explaining why the person who received it intends not to repay it.
- (2) In sub-paragraph (1) “the relevant period” means—
- (a) where the landlord decides not to enter into a tenancy agreement before the deadline for agreement, the period of 7 days beginning with the date on which the landlord decides not to do so;

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- (b) where the landlord and tenant fail to enter into a tenancy agreement before the deadline for agreement, the period of 7 days beginning with the deadline for agreement.

Exceptions

- 6 Paragraph 3(a) does not apply if or to the extent that the amount of the deposit is applied, with the consent of the person by whom it was paid—
 - (a) towards the first payment of rent under the tenancy, or
 - (b) towards the payment of the tenancy deposit in respect of the tenancy.
- 7 If all or part of the amount of the deposit is applied in accordance with paragraph 6(b), the amount applied is treated for the purposes of section 213 of the Housing Act 2004 (requirements in connection with deposits) as having been received by the landlord on the date of the tenancy agreement.
- 8 Paragraph 3(b) or (c) does not apply if—
 - (a) the landlord is prohibited by section 22 of the Immigration Act 2014 (persons disqualified by immigration status) from granting a tenancy of the housing to the tenant,
 - (b) the landlord did not know, and could not reasonably have been expected to know, the prohibition applied before the deposit was accepted, and
 - (c) if the landlord has instructed a letting agent in relation to the proposed tenancy, the letting agent did not know, and could not reasonably have been expected to know, the prohibition applied before the deposit was accepted.
- 9 Paragraph 3(b) or (c) does not apply if the tenant provides false or misleading information to the landlord or letting agent and—
 - (a) the landlord is reasonably entitled to take into account the difference between the information provided by the tenant and the correct information in deciding whether to grant a tenancy to the tenant, or
 - (b) the landlord is reasonably entitled to take the tenant's action in providing false or misleading information into account in deciding whether to grant such a tenancy.
- 10 Subject to paragraph 13, paragraph 3(c) does not apply if the tenant notifies the landlord or letting agent before the deadline for agreement that the tenant has decided not to enter into a tenancy agreement.
- 11 Subject to paragraph 13, paragraph 3(c) does not apply where the deposit is paid to the landlord if—
 - (a) the landlord takes all reasonable steps to enter into a tenancy agreement before the deadline for agreement, and
 - (b) if the landlord has instructed a letting agent in relation to the proposed tenancy, the agent takes all reasonable steps to assist the landlord to enter into a tenancy agreement before that date, but
 - (c) the tenant fails to take all reasonable steps to enter into a tenancy agreement before that date.
- 12 Subject to paragraph 13, paragraph 3(c) does not apply where the deposit is paid to the letting agent if—
 - (a) the agent takes all reasonable steps to assist the landlord to enter into a tenancy agreement before the deadline for agreement, and

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- (b) the landlord takes all reasonable steps to enter into a tenancy agreement before that date, but
 - (c) the tenant fails to take all reasonable steps to enter into a tenancy agreement before that date.
- 13 Paragraph 10, 11 or 12 does not apply (so that paragraph 3(c) does apply) if, before the deadline for agreement—
 - (a) the landlord or a letting agent instructed by the landlord in relation to the proposed tenancy breaches section 1 or 2 by imposing a requirement under that section on the tenant or a person who is a relevant person in relation to the tenant, or
 - (b) the landlord or a letting agent instructed by the landlord in relation to the proposed tenancy behaves towards the tenant, or a person who is a relevant person in relation to the tenant, in such a way that it would be unreasonable to expect the tenant to enter into a tenancy agreement with the landlord.