



A Landlord's Guide to Letting

Landlord's update 2022

Whether you are an existing or first-time landlord, you need to be aware of a number of recent changes impacting landlords. There are now around 150 laws, and over 400 regulations that need to be followed to legally let a property in England and Wales and as a landlord you need to be aware of current legislation and stay up to date with regular changes and amendments.

Tax Changes

Many landlords will be aware of the uplift in Stamp Duty on buy-to-let and second homes, but fewer may be ready for the changes to tax relief that have been introduced from April 2017. Whilst landlords won't see the impact until 2019, there is no reason to be complacent, and landlords should assess their portfolio as soon as possible in order to keep their investments sustainable.

Energy Efficiency Ratings

From 1st April 2020. It became unlawful to rent a property with a minimum energy performance rating of E, unless an exemption (as set out in the regulations) applies.

The government is set to press ahead with its plans to improve energy-efficiency in the private rented sector in 2022, but there are still many unanswered questions. Landlords will have until 2026 (a year longer than the original deadline of 2025) to ensure all newly let properties achieve a minimum of a band C on Energy Performance Certificates (EPCs), and 2028 for existing lets to meet the requirement.

A consultation on the proposed changes, which recommended a £10,000 cap on the costs Landlords must pay to make upgrades, closed in January 2021, but the government is yet to provide a further update. For now, it is a case of 'watch this space' for Landlords, who remain in the dark about specific upgrades required or if any funding will be made available.

The Homes (Fitness For Human Habitation) Act 2018

The Homes (Fitness for Human Habitation) Act 2018 was passed on the 20 December 2018 and took effect from 20 March 2019. Basically any new tenancy granted after this date, including renewals and statutory periodic tenancies arising, will have to comply with the legislation from the renewal. If the tenancy was running periodic from before 20 March 2019 then you will have to comply with the new rules from 12 months later, i.e. the 20 March 2020. If a fixed term tenancy is running before 20 March 2019 then as long as the fixed term tenancy continues it remains outside of the legislation, regardless of the fixed term (see the next point though).

The rules for when this new rule applies very closely mirror the section 11 repairing obligations, therefore it does not apply to fixed terms of in excess of seven years, provided the landlord cannot break the fixed term before seven years.

The landlord is not required to keep fit for human habitation anything the tenant has damaged, i.e. fire, flood etc. and things the tenant is entitled to remove from the property.

There are now 29 HHSRS hazards as reasons for not being fit for human habitation. It is this latter point that causes the most concern as there is no prescribed standard, e.g. it must not have any category one hazards. This means that a landlord will not have any certainty about committing an offence until the judge decides if it is fit or not.

Housing Redress Scheme For Landlords

Private Landlords will be legally required to join a housing redress scheme and will face a fine up to £5,000 if they do not sign up to a dispute scheme.

Tenant Fee Act 2019

From 1st June 2019 it is unlawful to request a deposit of more than 5 weeks from your Tenant, this includes demanding a higher deposit for a pet or animals.

It also restricts the payments that Landlords or Agents can charge a Tenant. The only payments that are permitted are the following:

- Holding deposit – 1 weeks' rent
- Deposit – 5 weeks' rent
- Rent
- Changes to the tenancy
- Charges to replace keys
- Charges for late payment of rent
- Charges for early termination of the tenancy

As a result, Agents have either passed these costs directly to their Landlords or split them.

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The Landlord is not required to keep fit for human habitation anything the Tenant has damaged, i.e. fire, flood etc. and things the Tenant is entitled to remove from the property.

There are now 29 Housing health and safety rating system hazards as reasons for not being fit for human habitation. It is this latter point that causes the most concern as there is no prescribed standard, e.g. it must not have any category one hazards. This means that a landlord will not have any certainty about committing an offence until the judge decides if it is fit or not.

Tax Changes

Many Landlords will be aware of the uplift in Stamp Duty on buy-to-let and second homes, but fewer may be ready for the changes to tax relief that were introduced April 2017, although Landlords wouldn't have seen the impact until 2019. All Landlords should annually reassess their portfolio in order to keep their investments sustainable and tax efficient.

This information is provided as a guide and should not be taken as financial or tax advice. You should consult a tax expert should you require further information on how these tax changes may impact yourself as a landlord.

Landlord Safety Responsibilities

It's More Than Smoke Alarms and Gas Checks

To help you get to grips with what is expected, we have outlined the main safety concerns that you need to be aware of and any legal obligations that you must meet.

Landlords need to be aware of all such legislation, as failure to comply with all the legislation relating to letting accommodation may lead to heavy financial penalties or, in some severe cases, even a prison sentence.

Smoke & Carbon Monoxide Alarms

It is a legal requirement that all rental properties in England follow the Smoke & Carbon Monoxide Regulations. These regulations require that you install at least one smoke alarm on every floor of the property where a room is used wholly or partly as living accommodation and a carbon monoxide alarm must be installed in any room containing a solid fuel burning appliance such as a wood burner, coal fire or biomass boiler.

At the commencement of a new tenancy, you or your letting agent test each alarm to ensure that they are in good working order.

Gas Safety

As a Landlord, you are legally responsible for the gas safety within your rental properties. It is a legal requirement to:

Maintain any Pipe-work, Appliances and Flues

Any gas appliances and flues/chimneys must be maintained and kept in a safe condition. You should be able to do this by following the manufacturer's service instructions. However, if you can't find these instructions, you should make sure they are serviced annually unless a Gas Safe registered engineer advises otherwise.

As well as any appliances it is also your responsibility to make sure that any gas pipework in the property is maintained and kept in a safe condition. Regular inspections will help you with this by highlighting repairs you need to make. It's worth noting that installation pipework is not covered by the annual gas safety check and so ask

your engineer to carry out a tightness test on the gas system and visually examine the pipework for any defects or damage at the same time.

Before you let your property you need to make sure that all the gas equipment (including any appliances left by a previous Tenant) are safe, if they are not, make sure you get them fixed or removed before your new Tenant moves in.

If your Tenant has their own gas appliances, you're still responsible for maintaining the pipework but not for the maintenance of the actual appliance.

To help minimise disruption it is seen as good practice to ask your engineer to inspect and test the pipework in between tenancies.

Complete an annual Landlords Gas Safety Check

You must arrange an annual safety check on all gas appliances and flues with a qualified Gas Safe registered engineer.

New regulations came into force in April 2018 which gave landlords more flexibility, by allowing them to get a new Gas Safety Certificate up to two months before the current certificate expires, whilst keeping the same expiry date – similar in style to a car's MOT.

Keep a Gas Safety Record

A record of the annual safety check should be issued by a Gas Safe registered engineer, and you must give a copy of the record to your Tenants within 28 days of the check being completed, or to a new Tenant at the start of their tenancy.

You will need to keep copies for at least two years, however, if you have used the new regulations to give you flexibility in arranging your gas safety checks, you need to keep hold of the records until two further gas safety checks have been carried out.

You can keep your records electronically, as long as you can reproduce it in hard copy format when it's requested, ensure it is kept secure from loss and interference, and clearly identifies the engineer who issued the record.

Electrical Safety Checks

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 – states From 1st July 2020 it is a legal requirement to supply Tenants with an EICR (Electrical Installation Condition Report) at the start of a new tenancy and as of April 2021, to provide an EICR for all existing tenancies. A new certificate will need to be completed every 5 years. Brock Taylor have preferred contractors who can undertake this at a fixed cost on your behalf.

As a landlord, you have a legal duty to ensure that your rental property, and any electrical equipment that you have provided, is safe before a tenancy begins and throughout its duration.

You must ensure that:

- All electrical systems are safe (e.g. socket, switches and light fittings); and
- All appliances they supply are safe (e.g. cookers and kettles)

Tenants should flag electrical problems as soon as they appear, and they have the responsibility to maintain any electrical items that they bring into the property.

Legionella

Legionnaires' disease is a pneumonia like infection caused by Legionella bacteria, commonly through the inhalation of small droplets of contaminated water.

Landlords must assess and control the risk of exposure of Tenants to Legionella.

Control measures include:

- Flushing out the water system before letting the property
- Ensuring cold water tanks have a tight lid to stop debris from getting into the system
- Setting control parameters to ensure water is stored at the correct temperature
- Removing any unused pipework

You should let your Tenants know about any control measures they should be doing including regularly cleaning any shower heads.

You should also ask them to let you or their agent know if problems occur with the water system, or if the water is not heating properly.

Also, if they have been out of the property for a while, Tenants should run taps thoroughly to help reduce risk.

You should keep any records of any legionella assessments and plan follow up checks to be carried out periodically.

Furniture & Furnishings

The Furniture and Furnishings (Fire Safety) Regulations 1988 set levels of fire resistance for domestic upholstered furniture, furnishings and other products containing upholstery.

All furnishings should pass the 'smouldering cigarette' and 'match flame' resistance test and carry a label confirming this. Generally, items manufactured in the UK after 1990 are likely to meet the required standards and display the appropriate permanent label confirming their compliance.

If items do not comply they should be removed from the property before it is let, apart from where they are exemptions (e.g. furniture manufactured before 1950).

Consumer Protection From Unfair Trading Regulations 2008 (CPR)

These regulations are the result of EU requirements that all companies treat "consumers" fairly. For the agent consumers are Sellers, Buyers, Landlords, Tenants and all applicants for whatever service. At the centre of the CPR is a requirement that all companies must be transparent in their dealings with consumers and provide information to consumers that a competent professional might reasonably be expected to provide about the product so that an average informed consumer can make an informed economic decision. In this context a product includes the services and properties that are offered on behalf of client consumers. Landlords and Agents are also required to meet the regulations set out in November 2013 by the Advertising Standards Authority.

Deposits

If you are asking a prospective tenant for a deposit, be aware of the legal requirements to protect the tenant's deposit in one of the deposit schemes and give the required documentation to the tenant, and anyone who paid toward the deposit, within 30 days of receiving the deposit. Failing to protect the deposit within those 30 days has serious consequences for a landlord and they can incur fines up to three times the original deposit amount.

Right To Rent

Landlords must check that their tenants have the right to lawfully live in the UK. Failure to undertake a Right to Rent under the Immigration Act 2014 can result in a fine or even a jail term, so it's important they are conducted thoroughly. The following temporary changes were made on 30 March 2020 and remain in place until 30 September 2022 (inclusive):

- Checks can currently be carried out over video calls
- Tenants can send scanned documents or a photo of documents for checks using email or a mobile app, rather than sending originals
- Landlords should use the Home Office Landlord Checking Service if a prospective or existing tenant cannot provide any of the accepted documents

Tenancy Agreements

Although written agreements are not a legal requirement, it's best practice so that both the tenant and Landlord are clear on what their rights and responsibilities are. We currently use the PropertyMark approved Assured Shorthold Agreement drawn up with Dutton Gregory Solicitors.

Landlord Licensing

Landlords should check if a Landlord license is required from the local council before your property can legally be rented out. This legislation was introduced in 2006 with the main purpose of ensuring landlords maintain their rental properties to a good standard.

Landlords clearly need to know what they are doing, have a thorough understanding of which legislation they need to comply with and just as importantly, how to get professional help when needed.

If a Landlord hasn't complied with all the relevant and important steps at the start of the tenancy, they may find themselves in a vulnerable position should anything go wrong, whereby they are unable to evict the Tenants, without lengthy delays.

For clarity, the eviction process can literally take anywhere between **14 days and up to 6-8 months**. But the reality of how long an eviction will take is dependent on the circumstances; mostly what it boils down to is how wilful your Tenant is and whether the correct documentation has been issued.

As a property owner, if you are confident that you understand all the laws and can implement them correctly, you can self-manage. If you are not, and do not want to risk significant fines, and a potential prison sentence, then we recommend you use an ARLA Propertymark Protected agent, like Brock Taylor, who will guide you through the process and ensure **you are legally compliant**.

Letting your property is a big decision, both for you and the tenants that will be living there, and it is very important to understand and appreciate what this business relationship entails.

For more Help and Advice contact:

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