

Legislation

Being a landlord can be a rewarding and profitable venture. But, you need to stay on top of the ever-evolving legislation and regulations that can easily trip up an unwary landlord.

We often hear from seasoned landlords that looking after their property has become almost a full-time job, fixing leaky taps and servicing boilers is easy compared to the legislative compliance. As the legal responsibilities grow and become more complex, more and more landlords choose to appoint a professional agent to manage their property and take care of the hassle that comes with staying compliant.

Below we have compiled a brief summary of the most common pieces of legislation and regulations, which landlords have to bear in mind when letting their property.

The list is not exhaustive but may give you some insight into the constantly evolving nature of the Private Rented Sector and the reason so many landlords instruct a professional and experienced agent to look after their interests.

Landlord and Tenant Act 1985 the Homes (Fitness for Human Habitation) Act 2018, and Housing Act 1988 are three of the legislative cornerstones governing the relationship between landlords and their tenants. These set minimum standards in tenants' rights. All Landlords should familiarise themselves with these Acts as breaches have serious consequences including heavy fines or prison sentences.

Sections 11 to 16 of the Landlord and Tenant Act 1985 state that you must keep in repair and good working order: a. The structure and exterior of the property (including the drains, gutters and down pipes) b. The installations for the supply of water, gas, electricity, heating and hot water and; c. Sanitations including basins, sinks, baths and sanitary conveniences.

Homes (Fitness for Human Habitation) Act 2018 was introduced to amend the Landlord and Tenant Act 1985 to require that residential rented accommodation is provided and maintained in a state of fitness for human habitation; to amend the Building Act 1984 to make provision about the liability for works on residential accommodation that do not comply with Building Regulations; and for connected purposes.

Housing Act 1988 and amendments. Typically, tenancies between a landlord and individual tenants (as opposed to a limited company) where the tenant occupies the property as their only or principal main home, will be regarded as Assured Shorthold Tenancies (AST). Under an AST, provided the tenants comply with the terms of their tenancy agreement, they would normally be able to stay for as long as they wish, until the tenancy is terminated by the landlord. The Landlord would need to serve a Section 21 Notice giving the tenant correct notice of their intention to bring the AST to an end. If the tenant breaks the terms of their agreement, the landlord may rely on a Section 8 Notice to Quit. There are numerous grounds for possession. Grounds 1 to 8 are mandatory, meaning if the landlord can prove to the court that they apply then the court must grant the possession order. The other grounds are all discretionary.

Housing Act 2004 and Houses in Multiple Occupation - Due to this Act certain types of Premises may require a license. These properties are primarily Houses in Multiple Occupation (“HMOs”) occupied by three or more people who are not related. In certain local authority areas, licenses can be required for non-HMO property. It is important to determine whether you need a license and to make sure you obtain that license.

Also, as part of the Housing Act 2004 private dwellings must comply with the Housing Health and Safety Rating System (“HHSRS”) which is a means of measuring hazards and risk of injury at the Property. This system applies to all properties but is most commonly applied, and enforced, on tenanted property.

Tenant Fees Act 2019- The Tenant Fees Act bans most letting fees and caps tenancy deposits paid by tenants in the private rented sector in England. The ban on tenant fees applies to new or renewed tenancy agreements signed on or after 1 June 2019.

Deregulation Act 2015 - This Act was introduced to repeal some legislation, which no longer has practical use; but also imposes new obligations on landlords. For example, the Act prevents landlords from evicting tenants in retaliation to a complaint about the condition of the rented property. It also introduced some new rules for protecting the deposit.

Dilapidation Deposit and Deposit Replacement Scheme - If landlords choose to take a dilapidation deposit, typically this must not exceed five weeks rent as per the Tenant Fees Act. This deposit must be protected with one of the governments approved schemes and all rules set by the scheme provider must be complied with to avoid significant fines. Failing to follow all the rules correctly, could also mean that a landlord is unable to serve Section 21 notice to end the tenancy until the mistake has been rectified.

As an alternative, deposit replacement schemes are proving to be increasingly popular with landlords and tenants. It is important to remember that in order to comply with the Tenancy Fees Act 2019, the tenant must be given a choice to opt in for the deposit replacement scheme. Landlords must not insist that their tenant signs up to such a scheme unless they chose to do so.

Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 - Landlords are legally responsible to ensure that electrical safety standards are met during any period when the property is tenanted. All electrical appliances/equipment/wiring must be tested by a competent electrician, at least every five years or as necessary. An EICR (Electrical Installation Condition Report) must be provided to the tenant before they take occupation of the property.

The Gas Safety (Installation and Use) Regulations 1988- Under this regulation, it is the landlord's responsibility to ensure that all gas appliances and the fixed installation are maintained in good order and checked at least every 12 months by a Gas Safe registered engineer. It is a criminal offence if the landlord does not provide the tenant with a valid certificate prior to the commencement of the tenancy and any renewal.

Energy Performance Certificate – EPC - It is an offence to let a property without an EPC or if the property falls below a minimum “E” rating (unless the property is exempt). An EPC must be available to commence marketing and a copy made available to any prospective tenants.

Immigration Act and Right to Rent - The landlord is responsible to ensure all adult occupants have the right to rent in the UK. Failure to comply carries serious penalties including unlimited fines and imprisonment. Martyn Gerrard will provide pre-tenancy checks for their clients to ensure the tenant/s have the right to rent at the commencement of the tenancy and will also provide further follow up checks as required.

The Furniture and Furnishings (Fire) (Safety) regulations 1988 (amended 1993) - It is illegal for a Landlord to let a property that does not meet all the fire resistance requirements. In brief, the regulations require that the upholstered furniture (lounge suites, headboards, mattresses, bed bases etc.) must have fire resistant filling and the covering material must have passed a cigarette resistance test.

Legionnaire's disease risk assessment - Health and Safety Executive (HSE) legislation requires all residential letting property to carry out a regular legionella risk assessment which then allows for a suitable control scheme to be implemented as and if required. Although not as widely publicised as other safety regulations the consequences of non-compliance can be severe, up to and including significant fines and a custodial sentence. Visit hse.gov.uk for more information.

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 - Landlords must install a working smoke and carbon monoxide alarm in their properties. Smoke alarms must be fitted on every habitable level. A Carbon monoxide alarm must be fitted in every room where solid fuel can be burned. The alarms must be in working order on the first day of the tenancy and must be checked regularly.