

LANDLORD FACTS AND LEGAL REQUIREMENTS

Complying with the law and Safety Obligations as a Landlord

More and more legislation is coming out every year, making it increasingly difficult for Landlords to comply. And even though some of the legislation is not 'statutory', if anything goes wrong, then you will still end up with a fine or imprisonment. Better to listen to a professional agent guiding you properly!

Whilst many of these issues are not explicit legal requirements, they are considered good practice. It is important to note that the Consumer Protection Act 1987 clearly states that any rented property must be safe for the purpose. Unless a landlord can prove they have taken all reasonable steps to ensure the property is safe then they may be found criminally negligent if anything happens to their tenant. In these cases the test would be whether the landlord followed best practice.

In case you feel this is all cost and no benefit, it is important to remember that tenants move on from poorly maintained properties. These tenants also tend to be less likely to care for the property whilst they are there. Both these things create a cost for the landlord, which may far exceed the cost of meeting the safety obligations.

General Safety

Landlords are required to ensure their property is safe. Therefore obvious problems need to be addressed, such as loose or torn floor coverings, sharp edges, broken glass, greenhouses to be removed and ponds to be filled etc. In any event it is general good maintenance to keep on top of these things.

Energy Performance Certificate

It is illegal to advertise a property for rental without a current Energy Performance Certificate (EPC). A copy of the certificate also needs to be provided to the tenants when they move in. The aim of this is to drive tenants toward properties which use energy more efficiently. We are increasingly finding tenants take notice of these ratings.

There are also potential actions you may need to take based on the rating shown on your Energy Performance Certificate.

We will routinely check whether there is a current EPC on all properties. If there is not we will arrange for one to be produced after agreeing the cost with you.

Do I have to do anything with the Energy Performance Certificate?

From a legal perspective, not yet! As of April 1st 2018 it is a legal requirement that all properties will require to be an EPC rating of E or higher ie F or G is not acceptable.

The good news is your Energy Performance Certificate will show what steps you can take to improve the rating, allowing you time to budget to get the work done. As more tenants are considering the rating when choosing a property, it may be sensible to increase the rating before you are obliged to.

Gas Safety Report Certificate

Landlords are **legally** responsible for ensuring a gas safety check is carried out annually by a Gas Safe Registered engineer. You must keep a record of the safety check for two years and ensure a copy is issued to each existing tenant within 28 days of the check being completed and a copy is issued to any new tenants before they move in. Where we manage your property we will do this for you.

Failure to hold a valid certificate, provide a copy to your tenants and to your agent generates a legal risk. Given this we usually automatically get this work done on the landlords' behalf to avoid any problem. We have negotiated competitive rates which include a boiler check as well as the gas safety certificate.

Helpful website:

www.hse.gov.uk/pubns/indg285.pdf



Oil Fired Boiler

There is no legal requirement for a landlord to obtain a landlord safety certificate for oil fired equipment installed within a let property. However, BS 5410: Part 1 requires oil fired appliances and equipment to be serviced periodically in accordance with the manufacturer's instructions. Therefore if this does not happen and there is a problem then the landlord would have little defence.

Given this landlords should have an annual safety check and boiler service by an OFTEC Registered Engineer.

Where we manage your property we will do this for you.

Electrical Installation Condition Report (EICR)

This reports the condition of the circuits in the property, i.e. the wires and sockets in the walls, to ensure they are safe to use (i.e. it meets the requirements of BS7671). The report is centrally recorded so progress and history can be monitored.

There is a guidance note to the BS7671 standard which indicates that domestic properties should be tested every 10 years.

In the absence of any specific guidance for residential rental properties the prudent advice is to follow the five year inspection frequency for the higher risk HMO premises.

This assumes any issues identified by the EICR are fully addressed and any subsequent significant electrical installations are carried out by a qualified electrician, who would provide an appropriate certificate as an addition to EICR.

If you have an old fashioned fuseboard, the EICR will almost certainly say it needs upgrading to a modern distribution panel with trip switches RCD breaker switch.

Additionally where there are changes of tenants between EICRs there should be a check for obvious problems (broken sockets and light fittings) plus a manual test of any Residual Current Device (RCD) in the property. Where issues are found it is advisable to complete a Periodic Inspection Report, which tests the circuits for problems. The PIR produces a report but is not centrally recorded.

Helpful website:

<https://www.gov.uk/private-renting/your-landlords-safety-responsibilities>

Portable Appliance Testing (PAT Testing)

Any appliance with an electrical plug is considered 'portable' (even a fridge). A PAT checks the electrical integrity of any appliance to ensure it is safe to use. Once tested a label is put on the plug or appliance to show when it was tested. The Regulations do not specify what needs to be done, by whom or how frequently. However it is good practice to test appliances annually, certainly no less than every two years.

Cost per appliance is low but with minimum number of appliances if a specific visit to the property is required. Therefore it is advisable to link the test with other electrical works to keep costs down.

Helpful websites:

<http://www.hse.gov.uk/ELECTRICITY/faq-portable-appliance-testing.htm>

Water Safety Risk Assessments - Legionella

Domestic water systems in rental properties need to be checked to minimise the chance that the system encourages the growth of harmful organisms, particularly Legionella. There is no legal mandate about how this should be done, as there is with annual gas safety certificates. However the Health and Safety Executive (HSE) produced a clear code of practice in November 2013. Any landlord failing to follow this code would have little defence against any claim or prosecution.

As the HSE Code is relatively new there are elements which are open to interpretation. These will be clarified through case law, i.e. when someone is prosecuted. The code does make it clear that landlords need to:

Ensure there is a risk assessment which:

- 1. is completed by a 'competent' person who has experience and qualification**
- 2. to undertake the risk assessment**
- 3. provides a clear record of the assessment & details of the water system**
- 4. provides details of any risks**
- 5. recommends steps required to address the risks**

If the risk assessment shows work is required, this needs to be addressed. The timescale will depend on the scale of the risk.

If the assessment shows there may be an issue then the water probably needs testing for the presence of Legionella bacteria

Review the risk assessment regularly (currently assessed to be every two years)

Ensure the water system is regularly maintained. This includes landlords being responsible for ensuring the system free from lime scale

A key issue is whether there are water storage tanks on the property. If so we recommend that the tanks are cleaned and treated when the risk assessment is completed, as this is more cost effective. It is good practice to complete this work no less than every two years. It is important to note that letting agents have an obligation to ensure landlords can show their water systems are safe where they manage your property.

Helpful website:

www.hse.gov.uk/legionnaires/what-you-must-do.htm

Smoke and Carbon Monoxide (England) Regulations 2015

All properties built since June 1992 (and all Houses in Multiple Occupation (HMOs)) must be fitted with mains operated smoke detector/alarms and with at least one detector per floor.

From 11 March 2015 there was a new legal requirement to fit smoke and carbon monoxide alarms in residential rental properties for all tenancies from 1 October 2015. A new Regulation was agreed by Parliament in September 2015; the 'Smoke and Carbon Monoxide Alarm (England) Regulations 2015'.

These Regulations say:

- 1. a smoke alarm must be provided on each storey of the premises on which there is a room used wholly or partly as living accommodation**
- 2. a carbon monoxide alarm must be provided in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance**
- 3. alarms need to be checked and in proper working order at the start of each tenancy.**

The Regulations do not specify what type of alarm, as it is expected that Landlords will follow 'best practice' for their property. Emma Creasey Lettings Ltd are therefore recommending to landlords to consider placing tamperproof 10 year life alarm units to every floor unless main wired alarms are installed as stated below.

Smoke Alarms

Many local councils have their own best practice guidelines for landlords, all of which tend to be similar. These have usually been set in conjunction with the local fire and rescue service.

The Cheshire Fire and Rescue service website says:

'The minimum recommended level of provision is to fit a smoke alarm on each floor of your home, at the bottom of the staircase and on each upstairs landing'.

They also say that:

'best practice is to have mains powered alarms that are linked together'.

Therefore we as stated already we recommend that landlords of a normal family home with related occupants should fit, as a minimum, a smoke alarm meeting British Standard 5446 Part 1, showing a British or European approval mark, such as a Kitemark. We advise using sealed alarms with a 10 year guarantee as these appear to be more cost effective in the long term.

Carbon Monoxide Alarms

The 2015 draft regulations limit the alarms to rooms with solid fuel appliances. Carbon monoxide is also likely to come from a faulty gas or oil device, so the annual gas or oil safety check is essential and should reduce the risk to tenants. However if there is no alarm and there was a tragedy, there is a potential claim that the landlord did not take reasonable steps to ensure tenant safety, particularly given the low cost.

All agencies (HSE, NHS, local councils, fire service) strongly recommend the use of audible carbon monoxide alarms wherever fuel is burnt (i.e. oil, gas, coal, logs etc).

Therefore we recommend that landlords of a normal family home with related occupants should fit an audible carbon monoxide alarm meeting British Standard EN 50291, showing a British or European approval mark, such as a Kitemark.

It is possible to get combined smoke and carbon monoxide alarms. Most alarms are also available with either replaceable batteries or sealed a guaranteed 10 year life. Whilst the latter are more expensive they need less maintenance.

Furniture and Furnishings

Landlords must make sure that all furniture is fire resistant and complies with current regulations. Even if items are stored in a shed, garage or cordoned-off section of the loft, these items must still adhere to all the Legislation. Also any items sold to the tenant will still have to comply. This applies to any soft furnishing (sofas, their covers, cushions) as well as the furniture, including garden furniture that can be used indoors. It does not apply to curtains.

Helpful website:

<http://www.firesafe.org.uk/furniture-and-furnishings-fire-safety-regulations-19881989>

Fire Escapes

All landlords must follow fire safety regulations. For individual, single family homes that means ensuring tenants have access to escape routes at all times. Therefore if there is only one door to the property it is important to ensure the windows can be opened, as they would be the escape route.

Where your property is in a block of flats the block should have been built with safe escape routes protected by fire-resisting walls and fire doors, which help to give all occupants time to exit their homes to safety. You will need to make sure that these exit routes are kept clear by whoever manages the exit areas for the block.

Where your property is split into many households, particularly sharing kitchens& bathrooms (e.g. houses split into bedsits) there are extra legal obligations to provide a safe means of escape. These will alter dependent upon each building. You will need to speak to your Fire Officer who will advise you of the requirements.

Housing Health and Safety Rating System (HHSRS)

The local authority has responsibility for the Housing Health and Safety Rating System (HHSRS) which categorises any problems. In extreme 'category 1' cases the Authority can say the property is not fit for human habitation, meaning it can't be rented until the issues are corrected. These would be issues such as damp and mould growth; excess cold or heat; asbestos; carbon monoxide etc..

Therefore landlords must make sure their property is safe and maintenance completed when required.

Helpful website:

<https://www.gov.uk/government/publications/housing-health-and-safety-rating-system-guidance-for-landlords-and-property-related-professionals>

Blinds and Window Coverings

The British Standards Institution published new standards in February 2014 (based upon the European Standards on safety requirements) to address certain risks posed to children by internal blinds and corded window coverings.

The Standards apply to blinds which have cords or chains fitted with a hazardous loop that could create a hazard in premises where there are children aged between 0 and 42 months who are likely to have access or be present.

If a blind or curtain track is purchased new then it should contain a label regarding safety and compliance with the Standard together with a safety device installed to prevent strangulation of a young child by a dangerous loop made of cord material or ball bearings.

Existing properties where blinds or tracks with cords are already fitted should be checked and if there is a long or loose loop arrange the fitting of a cleat or snap connector.

Helpful website:

<http://shop.bsigroup.com/ProductDetail/?pid=000000000030261213>

Consent to Let

If you have a mortgage you must obtain consent from your mortgage lender. If your interest in the property is leasehold your lease may require you to obtain consent from your landlord prior to sub letting. Additionally if the property is jointly owned it is essential that both parties agree and sign all relevant documentation prior to letting out the property.

Insurances

All landlords must ensure that the building and contents of a property are adequately insured.

It is of the utmost importance to inform your insurance company that you are letting your property as it may affect your policy.

We advise our landlords to discuss the letting with your Insurer.

We also recommend our landlord's check their policies to confirm they have public liability insurance which also covers them for being a landlord. In particular this is important in leasehold properties, where this may not be covered by existing building insurance.

Landlords are recommended to consider choosing a full landlords insurance package which are available on the market These provide you with building and contents cover as well as a separate landlord's public liability cover. Insurance companies can also provide you with rent indemnity insurance schemes. Emma Creasey Lettings use the services of Let Alliance who offer a very comprehensive Landlords Insurance Policy

<https://www.letalliance.co.uk/landlords/landlords-building-contents-insurance/> Please quote 750065 for a discount



Health & Safety in rented accommodation

It is a landlord's responsibility to ensure that their property is safe. We recommend that attention is paid to all aspects of safety in the property and have listed examples of things to consider below (this is not an exhaustive list):

- Ensuring glazing is safe and safety glass installed in accordance with regulations and that all windows are capable of being fully opened.
- The property is free from vermin infestations.
- The property is free from dampness, condensation and mould growth. We strongly recommend that all rented properties have trickle vents on windows and all bathroom/en-suites and kitchens have humidistat extractor fans installed.
- There is no broken glass, damaged asbestos, falling plaster or dangerous materials inside or outside the property.
- All ponds and greenhouses are made safe, especially for young children.
- There are no blocked drains or problems with rubbish or sewerage.

Any work carried out to the property (repairs, improvements or extensions; including loft conversions) to fully comply with current building regulations.

Tenancy deposit registration

From 6 April 2007, new legislation was introduced to help tenants and landlords avoid and resolve disputes relating to the return and use of a tenant's deposit. Under the legislation, if landlords fail to protect the tenant's deposit, they may have to pay the tenant up to three times the value of the deposit and this will also cause difficulties in seeking possession under Section 21.

There are various Government back schemes available to landlords. Landlords / Agents legally have to provide a tenant with a Deposit Certificate within 30 days from tenancy commencement. In conjunction with registering a tenancy deposit it is recommended that all Landlords / Agents arrange for their tenants to sign a inventory/schedule of condition at commencement of tenancy. Terms of Business also need to be served to the Tenant.

Emma Creasey Lettings subscribe to the Deposit Protection Service (DPS) which is the custodial scheme. Should there be a dispute with the deposit it will eventually be arbitrated for free by the DPS.

Tax and non-residency information

Income Tax is payable on rental income irrespective of where you live. Landlords must declare this income and notify the Inland Revenue of any liability. As the Inland Revenue assesses your income individually, properties that are jointly owned require tax returns to be completed by each legal owner. There is a requirement under Self-Assessment to keep adequate records to ensure that the calculations included in the return are accurate.

Under the non resident landlord tax scheme, this requires UK letting agents to deduct basic rate tax from any rent they collect for non resident landlords. If a non resident landlord doesn't have a UK letting agent acting on their behalf and the rent is more than £100 a week, their tenant must deduct the tax each month. When working out the amount to tax the letting agent/tenant can take off deductible expenses.

Lettings agent and/or tenants do not have to deduct tax if HM Revenue & Customs (HMRC) advises that each individual non resident landlord has successfully applied for approval to receive rents with no tax deducted (and HMRC will issue the agent or tenant with an Exemption Certificate/Approval Number to confirm this). Even though the rent may be paid with no tax deducted it remains liable to UK tax and so non resident landlords must include it in their tax return.