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**THE TOP TEN THINGS
EVERY LANDLORD NEEDS
TO KNOW IN 2020**



THE TOP 10 THINGS EVERY LANDLORD NEEDS TO KNOW IN 2020

Contents

New/updated legislation for 2020

1. Extension of the homes (fitness for habitation) act
2. MEES (minimum energy efficiency standards)
3. Electrical safety standards in the private rented sector regulations
4. Changes to Capital Gains tax and landlords relief

Other landlord legislation

5. Gas safety (installation and use) regulations
6. The Smoke and Carbon Monoxide Alarm regulations
7. HMO and other selective licensing regulations
8. Legionella - Landlord responsibilities
9. Fire and Furnishings regulations
10. Right to rent immigration checks

2020 saw both new legislation come in to force and stop gap dates for previous laws that had to be put in place for all current tenancies

1 - HOMES (FITNESS FOR HUMAN HABITATION ACT) 2018

Fitness for habitation

A property defined as unfit for human habitation is 'so far defective in one or more of those matters that it is not reasonably suitable for occupation in that condition.'

'Matters' refers to:
Repair; Stability;
Freedom from damp;
Internal arrangement;
Natural lighting; Facilities for preparation and cooking of food; Water supply; Drainage and sanitary conveniences; Ventilation; and facilities for the disposal of waste water

THE REGULATIONS

The Homes (Fitness for Human Habitation) Act 2018, known as the Homes Act, replaces Section 8 of the Landlord and Tenant Act 1985 (LTA 1985) in England, with the purpose of improving living standards in the private and social rented sectors.

THE CHANGES

Under the Homes Act 2018, landlords and letting agents acting on their behalf must ensure properties, including common parts where they have an estate or interest, are fit for human habitation at the beginning and throughout the duration of a tenancy. Tenants will now be able to take direct legal action if their agent or landlord does not comply with the Act.

DOES IT APPLY TO ME

The rules have applied to all domestic tenancies granted or renewed **on or after 20 March 2019** and all Periodic Tenancies that **commenced before 20 March 2019 are subject to the legislation from 20 March 2020**. The legislation effects tenancies in England only.

The Act does not cover those with 'Licences to Occupy'. This includes, but is not limited to lodgers, those living in temporary accommodation and some property guardians.

ENFORCEMENT

Where a landlord or letting agent fails to rectify a hazard within a reasonable amount of time, the tenant has a right to take action in the courts for a breach of contract on the grounds that the property is not fit for human habitation. If the Court identifies that the agent or landlord has breached their obligation to keep the property fit for human habitation, the Court can order two things:

1. That the agent or landlord must make the property fit for human habitation.
2. And/or that the agent or landlord must pay compensation to the tenant.

Where a tenant seeks redress under this Act through the Courts, this does not exempt the agent or landlord from Local Authority enforcement. This includes powers to tackle poor practice from agents and landlords, including when necessary repairs are not carried out. The Court may make its decision without expert advice. An example of this being if a property has no plumbed sanitary conveniences, which would not require an expert opinion as the property is evidently unfit for habitation.

2 - MEES (MINIMUM ENERGY EFFICIENCY STANDARDS STANDARDS) AND EPC (ENERGY PERFORMANCE CERTIFICATE)

WHAT IS AN ENERGY PERFORMANCE CERTIFICATE (EPC)?

- An EPC gives a property an energy efficiency rating from A (most efficient) to G (least efficient) and is valid for 10 years.
- They are needed whenever a property is built, sold or rented.
- It contains information about a property's energy use and typical energy costs as well as recommendations about how to reduce energy use and save money.

Since October 2015, where a landlord hasn't provided an assured shorthold tenant with an EPC, they won't be able to evict them using a Section 21 Notice.

THE REGULATIONS

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 introduced measures to improve the energy efficiency of private rented property under the Energy Act 2011.

Part Two of these Regulations allow the tenant of a private rented property to request permission from their landlord to make energy efficiency improvements in the property they rent.

CHANGES FOR 2020

Part Three of the Regulations outline that private sector landlords must not grant a new tenancy of a property (including an extension or renewal), nor continue to let the property (on an existing tenancy) after **1 April 2020**, where the Energy Performance Certificate (EPC) is below the minimum level of energy efficiency for private rented properties of band E.

DOES IT APPLY TO ME

The Regulations apply to all privately rented properties that are legally required to have an EPC and where rooms are let on one of the qualifying tenancy types in England and Wales. The rules came into force on **1 April 2018**. The Regulations do not affect sales of properties.

The qualifying tenancy types are an assured tenancy (including an assured shorthold tenancy) defined in the Housing Act 1988; a regulated tenancy defined in the Rent Act 1977; a domestic agricultural tenancy as set out in the Energy Efficiency (Domestic Private Rented Property) Order 2015 under section 24 of the Housing Act 1988, section 3(6) of the Rent (Agriculture) Act 1976 and section 4(6) of the Rent (Agriculture) Act 1976.

Where an owner or occupier of a building which is not legally required to have an EPC has got one voluntarily the landlord will not be required to comply with the minimum standard Regulations and no exemption will be necessary.

ENFORCEMENT

A local authority is the enforcement authority for properties in their area and can choose which function they wish to use to enforce the Regulations. For example, Trading Standards Officers or Environmental Health Officers. From 1 April 2018, where the local authority considers that a landlord may be in breach of the rules or a landlord has been in breach of the rules at any time in the past 12 months, it may serve a Compliance Notice requiring the landlord to provide evidence to the enforcement authority.

3 - THE ELECTRICAL SAFETY STANDARD IN THE PRIVATE RENTED SECTOR (ENGLAND) REGULATIONS 2020

DEFINITIONS

Electrical safety standards: the inspection and test of the installation is carried out in accordance with the eighteenth edition of the wiring regulations BS 7671:2018 (the national standard to which all domestic wiring must conform).

Electrical installation: fixed electrical cables or fixed electrical equipment located on the consumer's side of the electricity supply meter as set out in the Building Regulations 2010.

Qualified person: someone who is competent to undertake the inspection and testing as well as any further investigative or remedial work in accordance with the electrical safety standards.

THE REGULATIONS

The Electrical safety Standards in the Private Rented Sector (England) Regulations 2020 were passed by Parliament on 18 March 2020

THE CHANGES

Private landlords must ensure:

- Electrical safety standards are met when the property is occupied during a tenancy.
- Every fixed electrical installation at the property is inspected and tested at least every five years by a qualified person.
- The first inspection and testing is carried out before new tenancies commence on or after 1 July 2020 and by 1 April 2021 for existing tenancies. Where the most recent report requires an inspection and testing to be at intervals of less than five years, it must be at intervals specified in that report.

DOES IT APPLY TO ME

The Regulations apply in England to all **new tenancies from 1 July 2020** and all **existing tenancies from 1 April 2021**.

For Contractual Periodic Tenancies, the periodic tenancy will be part of the same tenancy and no new tenancy would be created.

For Statutory Periodic Tenancies, the periodic tenancy would be a new tenancy. Therefore, properties let on statutory periodic tenancies where the Fixed Term expires between **1 July 2020 and 1 April 2021** will require an inspection and test at this point under the Regulations

ENFORCEMENT

Where a local housing authority is satisfied, beyond reasonable doubt, that a landlord has breached the rules, the local authority may impose financial penalties not exceeding £30,000.

Before imposing a financial penalty, the local authority must serve a Notice of Intent within six months from when the landlord is in breach outlining the amount, reasons and right to appeal. Landlords can appeal within 28 days from when the Notice of Intent was served. After this period the local authority must decide whether to impose a financial penalty that will need to be paid with 28 days.

At any point the local authority can withdraw or reduce the amount in a Final Notice. Landlords can appeal to the First-tier Tribunal against the decision or the amount of the penalty. If the landlord refuses to pay, local authorities can pursue the amount through the county court.

4 - CHANGES TO CAPITAL GAINS TAX AND LANDLORD RELIEF

If you take a loan for both residential and commercial properties, you'll need to use a reasonable apportionment of the interest to work out the finance costs for your property. Only the finance costs for the residential property are restricted. This also applies if your loan was partly for a self employed trade and partly for residential property.

THE CHANGES

From **April 2017**, the tax relief that landlords of residential properties get for finance costs has been restricted to the basic rate of Income Tax. This was introduced in phases between April 2017 and 6th April 2020.

After April 2020, landlords can no longer claim tax relief on mortgage interest payments - the amount of Income Tax relief landlords can get on residential property finance costs will be restricted to the basic rate of tax.

Finance costs won't be taken into account to work out taxable property profits. Instead, once the Income Tax on property profits and any other income sources has been assessed, your Income Tax liability will be reduced by a basic rate 'tax reduction'. For most landlords, this'll be the basic rate value of the finance costs.

DOES IT APPLY TO ME

You'll be affected if you're a:

- UK resident individual that lets residential properties in the UK or overseas
- non-UK resident individual that lets residential properties in the UK
- Individual who let such properties in partnership trustee or beneficiary of trusts liable for Income Tax on the property profits

You won't be affected by the introduction of the finance cost restriction if you're a:

- UK resident company
- Non-UK resident companies
- Landlord of Furnished Holiday Lettings

You'll continue to receive relief for interest and other finance costs in the usual way.

The finance costs that will be restricted include interest on:

- mortgages
- loans - including loans to buy furnishings
- overdrafts

Other costs affected are:

- alternative finance returns
- fees and any other incidental costs for getting or repaying mortgages and loans
- discounts, premiums and disguised interest

5 - GAS SAFETY (INSTALLATION AND AND USE) REGULATIONS 1998 AND SUBSEQUENT AMENDMENTS

The checks are a requirement for both mains gas and liquefied petroleum gas (LPG) appliances including hobs and gas fires.

Gas appliances, fittings and flues in a communal area of a property, but which may be used by tenants also fall under the responsibility of landlords. If a landlord is using a letting agent, the landlord is ultimately responsible for complying with the rules.

THE REGULATIONS

Landlords are legally responsible for the gas safety of their properties. The Gas Safety (Installation and Use) Regulations 1998 outlines what landlords must do to ensure gas appliances, fittings and flues provided for tenants are safe

LANDLORD OBLIGATIONS

Landlords must ensure that pipework, appliances and flues are maintained in a safe condition. Gas appliances should be serviced in accordance with the manufacturer's instructions. If these are not available it is recommended that they are serviced annually unless advised otherwise by a Gas Safe registered engineer.

In addition, Landlords must arrange an annual gas safety check on every gas appliance and flue by a registered Gas Safe engineer. Before any new tenancy starts landlords must ensure these checks have been carried out within one year before the start of the tenancy date, unless the appliances in the property have been installed for less than 12 months, in which case they should be checked within 12 months of their installation date.

DOES IT APPLY TO ME

The law applies to all landlords across the UK. It covers fixed as well as portable appliances (gas cookers, gas fires, gas heaters, gas boilers and water heaters) provided by the landlord for tenants' use and flues (chimneys and pipework) they are connected to. The rules are applicable to property rented under either an Assured Tenancy, Fixed Term Tenancy, licence or leases granted for a term of seven years or less.

ENFORCEMENT

If landlords do not maintain the gas appliances and pipework they are responsible for in property they let this could result in loss of life and prosecution including a fine and / or a period of imprisonment up to six months in the Magistrates Court.

Tenants can make a complaint to the Health and Safety Executive (HSE) against landlords who do not carry out checks or refuse to provide copies of the gas safety record. In shared houses that are licensed by a council, such as a house in multiple occupation (HMO), tenants can contact their local council who might also take action against landlords.

If the matter is referred to the Crown Court the maximum penalty may be imprisonment (up to two years), or an unlimited fine, or both. Furthermore, failure to carry out correct checks can also render property or landlord insurance invalid.

6 - THE SMOKE AND CARBON MONOXIDE ALARM (ENGLAND) REGULATIONS 2015

Landlords are also required to demonstrate that the alarms were working at the start of the tenancy, so it is advisable to get the tenant to sign a receipt confirming the smoke and carbon monoxide alarms are working or ensure it's in the inventory at check-in which is signed by the tenant.

During the tenancy it is a tenant's responsibility to ensure the alarms work and it is their responsibility to change the batteries during the tenancy. However, should the alarms become faulty during the tenancy landlords are responsible for replacing them.

THE REGULATIONS

The Government introduced the Smoke and Carbon Monoxide Alarm Regulations (2015) to make landlords in the private rented sector in England responsible for ensuring that smoke and carbon monoxide detectors are appropriately installed and are in proper working order at the start of a new tenancy. The Regulations effect England only and came into force on 1 October 2015.

LANDLORD OBLIGATIONS

From 1 October 2015 landlords will have to ensure that a smoke alarm is fitted on every floor of their property where there is a room used wholly or partly as living accommodation. They will also have to put a carbon monoxide alarm in any room where a solid fuel is burnt, such as wood, coal or biomass and includes open fires. It does not include gas, oil or LPG. Landlords or agents will then have to ensure that the alarms work at the start of each new tenancy. For example by pressing the test button until the alarm sounds

DOES IT APPLY TO ME

The law applies to all landlords renting residential accommodation to one or more tenants occupying all or part the property as their only or main place to live.

ENFORCEMENT

Local authorities will be responsible for enforcing the new rules. If the local authority thinks that a landlord has not implemented the new rules correctly they will issue a notice advising the landlord what they need to do to resolve the problem.

The local authority must give the notice within 21 days from when they believe that the landlord has breached the rules. The landlord has 28 days to respond and/or make good what is needed to comply.

If landlords do not take action, the local authority can arrange for the required work to be carried out (with the consent of the occupier) to ensure that tenants are protected. Local housing authorities also have the right to impose a fixed penalty charge (like a parking ticket) of up to £5,000 on landlords who do not comply with the rules.

7 - HMO AND OTHER SELECTIVE LICENSING

What is an HMO?

Under the Housing Act 2004 an HMO is where three or more people share accommodation and amenities (washing and cooking facilities) and form two or more separate households (this can be a family, a couple or a single person).

Large HMOs are properties consisting of three or more floors and occupied by five or more people living in two or more single households where the occupiers share basic amenities. Since 6 April 2016 all large HMOs must be licenced with a local Council under mandatory licensing.

THE REGULATIONS

In May 2015, the UK Government announced that they would extend mandatory licensing of Houses in Multiple Occupation (HMOs) to address poor conditions and overcrowding.

The Housing Act 2004 allows local authorities to apply for Selective Licensing of privately rented properties in areas which are experiencing low housing demand and/or suffering from anti-social behaviour.

LANDLORD OBLIGATIONS

It is a requirement for the licence holder of a licenced HMO (mandatory or additional) to provide: An annual gas safety certificate; keep electrical appliances and furniture safe; ensure smoke and carbon monoxide alarms are fitted and kept in working order; provide written tenancy agreements.

When a Selective Licensing scheme is launched landlords or letting agents will need to apply to the local authority. They will be required to provide evidence that shows they are a 'fit and proper' person and that the proposed management and finance arrangements for the property are satisfactory.

If the local authority determines that the landlord or agent is not 'fit and proper' it can refuse to grant a licence. It must give 14 days' notice of its intention, during which time the landlord or letting agent can appeal. The local authority can also withdraw a licence after issue if the licensee is no longer considered a 'fit and proper' person.

ENFORCEMENT

HMO

Failure to licence an HMO; failure to comply with an Improvement Notice; breach of HMO licence conditions; failure to comply with an Overcrowding Notice; and breach of Management Regulations can result in prosecution with an unlimited fine or a Fixed Penalty Notice of up to £30,000. A Fixed Penalty Notice can be issued as an alternative to prosecution for each separate breach of the HMO rules. A landlord who breaches the condition of a licence could also be subject to a Banning Order. See our fact sheet, Housing and Planning Act Banning Orders.

OTHER SELECTIVE LICENSING

If a local authority believes that a landlord or letting agent has breached licence conditions they can issue a fine of up to £5,000 for each offence or summary conviction in a Magistrates Court. Landlords and letting agents operating a property without a licence in a designated area can receive an unlimited fine or a Fixed Penalty Notice of £30,000.

What is Legionella?

Legionnaires' is a pneumonia-like disease commonly caused by the inhalation of small droplets of contaminated water, that contain the Legionella bacteria

LANDLORD OBLIGATIONS

Landlords must assess and control the risk of exposure of tenants to legionella to ensure the safety of their tenants, but this does not require an in-depth detailed assessment. Control measures can include:

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

Tenants should be kept informed of any control measures and tell the landlord if problems occur with the water system or if the water is not heating properly.

The hot water should be set so that the water is heated up to 60°C. Tenants should be advised to not interfere with the settings on the boiler or hot water system.

TESTING

Most landlords can assess the risk themselves and do not need to be professionally trained. However, landlords can arrange for a competent person to carry out the assessment if they wish.

The Health and Safety Executive (HSE) does not recognise a 'Legionella test certificate' and health and safety law does NOT require landlords to obtain or produce one.

RECORD KEEPING

Records of any assessments should be kept and follow up checks need to be carried out periodically, such as when undertaking the annual gas safety check or routine maintenance visits

9 - THE FIRE AND FURNISHINGS (FIRE) (SAFETY) (AMENDMENT) REGULATIONS 1988

Under the regulations, upholstered furniture must

- Have a fire resistant filling
- Have passed a 'match resistance' test, or in some cases, the cover should have a fitted fire resistant liner
- Be able to pass the 'cigarette resistance' test

This test means that if a lit cigarette is held up to a piece of furniture, it will not burst in to flames

THE REGULATIONS

The Furniture and Furnishings (Fire) (Safety) Regulations 1988 as amended by Regulations made in 1989 and 1993 contain regulations that set levels of fire resistance in domestic upholstered furniture, furnishings and other products which contain upholstery.

All furnishings and upholstered furniture supplied by landlords must meet these fire resistance requirements.

LANDLORD OBLIGATIONS

It is the landlord's responsibility to ensure that any furniture left at the property complies with the regulations.

The regulations cover the following items, if they contain upholstery (soft furnishings):

- Beds, headboards, mattresses and bed bases
- Sofa beds and futons
- Sofas, armchairs and foot stalls
- Nursery furniture
- Garden furniture suitable for use indoors (deckchairs and parasols would not therefore be covered)
- Scatter cushions and seat pads
- Pillows
- Padded seats
- Loose and stretch furniture covers

The regulations do not apply to:

- Bed covers, including mattress protectors and duvets
- Curtains
- Carpets
- Furniture made before 1950 (as long as it has not been re-upholstered).

ENFORCEMENT

Non compliance is a criminal offence and may lead to a fine of up to £5,000 and/or a prison sentence of up to six months. The trading standards office is responsible for seeing that the regulations are complied with.

10 - RIGHT TO RENT IMMIGRATION CHECKS

The Right to Rent check applies to new tenancy agreements on or after 1 February 2016.

You need to make Right to Rent checks if you are a private landlord; have a lodger; are sub-letting a property; are an agent appointed by a landlord to make Right to Rent checks.

Any occupier who sub-lets all or part of their accommodation to a person for money will be classed as landlord under the law and liable for penalty. However, the sub-letting can ask their landlord to accept responsibility for conducting checks and this agreement should be made in writing.

THE LAW

Under Section 22 of the Immigration Act 2014 a landlord must not authorise an adult to occupy property as their only or main home under a residential tenancy agreement unless the adult is a British citizen, or European Economic Area (EEA) or Swiss national, or has a Right to Rent in the UK.

The law introduces a requirement from 1 February 2016 for all landlords of private rental accommodation in England to carry out Right to Rent checks for new tenancy agreements to determine whether occupiers aged 18 and over have the right to live in the UK legally. Checks must be conducted on all adult occupiers (over 18) not just the tenancy holder.

LANDLORD OBLIGATIONS

STAGE 1

Establish who will live in the property. Obtain, check and copy one or more original documents that demonstrate the Right to Rent in the UK for all adult occupiers for that property in the presence of the holder. Acceptable documents include a UK passport and a permanent residence card or travel document showing indefinite leave to remain.

STAGE 2

Where the initial check shows that a person has the right to be in the UK for a limited time you can let to that person but you must also make a follow up check

Follow up checks must be carried out just before the expiry date of the tenant's right to be in the UK or 12 months after the original check whichever is the later.

STAGE 3

If the follow up check shows that the person no longer has the right to be in the UK you must make a report to the Home Office.

The report must include the full name and address of the occupier, the date they first took up occupation plus copies of their documents when you first undertook the initial Right to Rent check.

ENFORCEMENT

You can be fined up to £3,000 per occupier if you rent your property to someone who isn't allowed to stay in the UK and you can't show that you checked their Right to Rent. You can also be fined if you make a follow up check and don't make a report to the Home Office saying that a tenant's stay has run out or you don't make a follow up check on a tenant who has a time limited permission to stay in the UK:

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We started Properly after many years of working for other companies, to try to offer customers what they deserve - the ability to choose how their property is marketed, use the newest technology and offer the best customer service in the market place.

We cover all aspect's of Estate Agency in London, Sales, Lettings and Property management, and can also conduct a whole of market property finding service.

If you think we can help, then please do reach out using the contact details below - we would be delighted to hear from you.

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All information provided in this guide was accurate to the best of our knowledge at the time of publication. If you are unsure then please get in touch, or seek clarification from the respective governing body.