

# ANTONY ASLAN

GUIDANCE FOR LANDLORDS

## **Navigating Property Rental**

This extensive handbook aims to provide clarity on your duties and roles as a landlord. Regardless of whether you're venturing into property rental for the first time or have previous experience in managing rental properties, you must adhere to a complex web of over 145 legislations. The ever-evolving regulatory landscape means that staying informed is paramount to avoid unintentionally violating legal provisions.

### **Landlord licensing for letting property**

#### SELECTIVE LICENSING

Check whether you need a license from your local council before renting out your property. If your local authority has introduced landlord licensing then it will be illegal to operate without one.

The Housing Act 2004 introduced Selective Licensing to help ensure landlords maintain their rental properties to a good standard, particularly in areas which are experiencing low housing demand and/or suffering from anti-social behaviour.

### **How much can I rent my house for?**

Get to know your market and find out how much similar properties in your area are being let for so you can set your rent accordingly. Think about your target demographic and consider who your property would be suitable for: young families, students, single professionals, etc.

Decide whether to let the property as furnished or unfurnished. A property that offers a blank canvas is more appealing to most prospective tenants but students are unlikely to have accumulated enough belongings to furnish a house.

### **Legal responsibilities for landlords**

The role of a landlord is not an easy one, to put it into perspective, there are currently around 145 pieces of legislation you need to adhere to when letting a property. By law, you must ensure your property is fit for purpose and the safety of your tenants is paramount. Take a look at our detailed guides to help you get to grips with your responsibilities.

### **Tenancy Agreements and Deposit Safeguarding**

In Scotland, providing a written tenancy agreement is a legal requirement, while it is considered best practice in the rest of the UK. The agreement delineates everyone's responsibilities; however, it is crucial to note that the mere presence of a clause in the agreement, even if signed, does not guarantee enforceability. In England, along with the tenancy agreement, tenants must also receive a copy of "How to Rent: the checklist for renting in England." If you collect a deposit from your tenant, it must be safeguarded within a Government-approved tenancy deposit protection scheme. Deposits should be protected within 30 days from receipt. In England, tenancy deposits are capped at five weeks' rent when the annual rent is less than £50,000, and at six weeks' rent when the annual rent is £50,000 or more. There is no formal cap on tenancy deposits in Wales. Once protected, you must furnish the tenant with the "Prescribed Information," which details the chosen scheme and whether it is insurance-based or custodial. Failure to protect a deposit can lead to issues regarding eviction, the full refund of the deposit, and a fine of up to three times the deposit's value.

## Landlord Insurance

You must inform your current buildings and contents insurer of your intention to rent out the property; otherwise, you risk voiding your policy. Specialised landlord insurance policies are available to protect you against potential losses. It is advisable to compare offerings from different insurance providers to find the most suitable deal. Although insurance premiums may seem costly, the savings and compensation provided in the long run are invaluable. Typically, these policies offer protection for:

1. Buildings insurance: covers potential damage to the property's structure or built-in features.
2. Loss of rent insurance: safeguards against situations where you cannot rent out your property through no fault of your own (e.g., due to a flood or fire).
3. Tenant default/rent guarantee insurance: covers any lost rent due to tenant non-payment.
4. Contents insurance: protects any contents you have supplied (tenants should secure a separate policy for their belongings).
5. Liability insurance: covers potential legal expenses if you are taken to court, such as in cases where the property causes injury to a tenant or visitor.

### ARE LEGAL FEES INCLUDED IN YOUR INSURANCE POLICY?

In extreme cases, you may need to take a tenant to court (or they may take legal action against you), incurring additional costs. Some insurance policies may cover legal expenses resulting from landlord-related matters. However, by diligently adhering to your responsibilities and following legal procedures, you can often avoid court proceedings altogether.

## Preventing Disputes with a Thorough Inventory

Regular property inspections are also beneficial, but remember that you cannot enter the property without the tenant's consent. It is advisable to provide tenants with written notice of at least 48 hours (as stipulated in your tenancy agreement) before conducting an inspection. Additionally, make copies of any keys required by tenants for windows, doors, gas supply, and electricity meters. Consider locating instruction manuals for appliances like boilers, cookers, white goods, thermostats, or house alarms, ensuring that tenants are well-informed about their proper use.

## Tax Considerations for Property Investments

Navigating the tax landscape associated with property ownership can be intricate. Optimising the tax efficiency of your income and gains is essential for enhancing your investment returns. This guide aims to shed light on various tax aspects related to property investment, offering insights into how minor adjustments can potentially save you money.

Property investment encompasses a range of forms, such as purchasing a residence for personal use, renting it out, or utilising it as a furnished holiday home for supplemental income. Minimising tax liabilities can differ significantly depending on your chosen option.

## Buy-to-Let Property Investments

Whether you own a single property or manage a substantial portfolio, the tax treatment for direct property ownership is generally uniform.

## **Taxation on Furnished Holiday Lets**

Furnished holiday lets can be classified as business assets, making them eligible for certain advantageous tax reliefs. However, specific criteria must be met for a property to qualify. Primarily, it must be let out on a commercial basis, which entails:

- Availability for letting for a minimum of 210 days annually.
- Actual letting for at least 105 days each year.
- Exclusion of continuous letting periods exceeding 31 days.

## **INCOME TAX**

In recent years, most Income Tax benefits associated with furnished holiday lettings have been removed, and they are now subject to income tax in a manner akin to other rental properties. Nevertheless, it's worth noting that the restrictions on loan interest relief do not apply to furnished holiday let businesses.

## **CAPITAL GAINS TAX AND INHERITANCE TAX**

Meeting the furnished holiday let conditions can lead to substantial reductions in Capital Gains Tax (CGT) and Inheritance Tax (IHT). The property may qualify as a business asset for Business Asset Disposal Relief (formerly known as Entrepreneurs' Relief), resulting in a lower CGT rate of 10 percent instead of 28 percent upon sale.

Qualifying as a business asset also carries IHT benefits, as business assets may qualify for 100 percent Business Relief (previously referred to as Business Property Relief or BPR). This exempts the property from any IHT liability. The same applies to lifetime gifts of these assets. The property can be placed in a discretionary trust, safeguarding it for future generations without incurring IHT charges.

Income generated can then be utilised as a tax-efficient means to cover grandchildren's school fees. While the transfer may trigger a CGT charge, any gain can be deferred until the property's eventual sale.

It is important to be aware that meeting the criteria for Business Relief has become more challenging for holiday letting businesses. HMRC is scrutinising the services provided more closely to ascertain whether a genuine business is being conducted. Several cases have been unsuccessful in court. To increase the likelihood of a successful claim, offering additional facilities and services beyond what is expected of a standard landlord can be advantageous.

## **Ownership Structures for Property Investments**

There are various ways to structure property ownership to mitigate tax liabilities. The primary structures include:

1. Direct ownership
2. Joint ventures
3. Partnerships
4. Limited companies

The tax implications for direct ownership, joint ventures, and partnerships are quite similar. In each case, profits are taxed at individual marginal rates, with capital gains taxed upon sale. Partnerships offer the advantage of utilising the personal allowances and lower rate tax bands of all partners, which may include other family members.

## Limited Companies

Holding property within a limited company can provide tax savings since the current corporation tax rate is 19 percent. As of April 1, 2023, the corporation tax rate is expected to rise to 25 percent, but it will remain at 19 percent for companies with profits below £50,000, with marginal relief applicable to profits between £50,000 and £250,000.

Whether this approach is advantageous depends on the need to extract income from the company, as this could lead to double taxation and negate the savings.

Similar to partnerships, it is possible to involve lower-earning family members as shareholders. Such arrangements are often referred to as family investment companies. If shareholdings are structured correctly, dividends can be distributed to make use of the shareholders' dividend allowances and lower-rate tax brackets, allowing for efficient profit extraction.

This approach can be particularly helpful for families covering university fees or assisting young adult children in purchasing their first homes. Additionally, substantial IHT savings can be achieved, as the property's value or capital invested in the company is transferred to other family members when they become shareholders.

However, double taxation may occur when properties are sold, as gains are taxed within the company and additional tax may be due upon distribution to shareholders. Therefore, this structure may not always be beneficial for individuals seeking a higher-taxed income or anticipating property sales.

Company ownership is generally favourable when retaining profits and gains for investment purposes or safeguarding them for future generations is the primary goal, as it can offer substantial tax advantages. This depends on whether the property in question is classified as higher value residential property (as detailed below).

## Higher Value Residential Property

Additional annual charges are imposed on high-value residential properties owned by non-natural persons, including companies. These charges apply to properties valued at over £500,000 and commence at £3,800 per year in the 2022/23 tax year. Their purpose is to incentivise investors to remove properties from enveloping structures and return them to the standard Stamp Duty Land Tax (SDLT) regime. To further discourage enveloping, the SDLT rate for properties exceeding £500,000 purchased by non-natural persons was set at 15 percent. Numerous exemptions are available against these supplementary charges, including properties let out for commercial purposes, but exemptions must be claimed. The Annual Tax on Enveloped Dwellings (ATED) rates for the period from April 1, 2022, to March 31, 2023, are outlined below.

| Residential property value | 2022/23  |
|----------------------------|----------|
| £500,000 - £1 million      | £3,800   |
| £1 - £2 million            | £7,700   |
| £2 - £5 million            | £26,050  |
| £5 - £10 million           | £60,900  |
| £10 - £20 million          | £122,250 |
| Above £20 million          | £244,750 |

## Understanding the Role of a Letting Agent

As a landlord, the ultimate responsibility and liability for your property remain with you, even if you've entrusted the management to a letting agent. Selecting the right agent is a crucial decision, but what exactly are the duties of a letting agent, and how can you find one that suits your needs?

## Letting Agent Services

Letting agents offer a range of service levels, allowing you to choose your level of involvement in property management. By law, they are required to display their service fees in their branches and on their websites, making it essential to compare costs from various agencies. While each agent may have unique offerings, there are common services, including:

### 1. Tenant Find:

Typically a one-time fee, usually around a month's rent. This service involves the letting agent finding a suitable tenant for your property. It includes tasks such as taking professional photos, creating floorplans, advertising the property, arranging and conducting viewings, performing reference and Right-to-Rent checks, preparing the tenancy agreement, and creating an inventory. Once a tenant is secured, the subsequent responsibilities are yours.

### 2. Rent Collection:

Normally a percentage of the monthly rent, typically around five percent or more. In some cases, rent collection may be part of the tenant find service. The letting agent handles deposit protection, rent collection, and legal requirements. They also manage rent arrears, issue notices, and may offer insurance to protect your income in case of rent defaults.

### 3. Fully Managed:

A more comprehensive service, often costing around 15-20 percent of the monthly rent. With a fully managed service, the letting agent takes charge of all aspects of property management, encompassing the tenant find and rent collection services. They liaise with tenants throughout the tenancy, arrange maintenance, inspections, check-ins, check-outs, and handle deposit disputes.

## Selecting the Right Letting Agent Service

The choice of service depends on factors such as the number of properties you own, their location, and your level of involvement as a landlord. If you manage one or two properties yourself, you might only require assistance in finding tenants. Rent collection becomes relevant if you prefer not to deal with chasing payments. A fully managed service is suitable for properties located far from your residence or if you manage multiple properties.

## Questions to Ask a Letting Agent

When evaluating a letting agent, consider asking the following questions:

### 1. What type of tenants would you place in my property?

Ensure the agent selects tenants who match your property's suitability, preventing mismatches like students in family homes.

2. How long does it typically take to find a tenant?

Strive for minimal rental voids, but ensure the agent's timeline is both reasonable and realistic.

3. What documentation do you provide to tenants at the start of the tenancy?

Understand what legal documents they issue, as you remain ultimately responsible for compliance.

4. What is your process for handling rent arrears and regaining possession of the property?

Ensure the agent has effective plans for rent recovery and eviction procedures if necessary.

5. Do you conduct regular safety checks and inspections?

Confirm that the agent complies with all relevant legislation and keeps you informed about your property's condition.

6. What independent redress and Client Money Protection scheme are you affiliated with?

Verify the agent's membership in a government-approved independent redress scheme and their possession of Client Money Protection (CMP), which is a legal requirement.

## **Understanding Client Money Protection (CMP)**

Client Money Protection (CMP) is designed to offer reassurance that your money is secure while it's in the custody of a letting agent. This guide aims to provide a clearer insight into how CMP safeguards your interests and why we have strongly advocated for its mandatory implementation.

Since April 2019, all property agents in England must be part of a government-approved CMP scheme, with the risk of facing a £30,000 fine for non-compliance. Before this legal requirement, estimates indicated that approximately 60-80 percent of agents had voluntarily enrolled in CMP schemes. It has long been a prerequisite for all our members to have CMP coverage.

## **How Client Money Protection Functions**

Client Money Protection (CMP) is essentially an insurance scheme that allows landlords and tenants to claim compensation for lost deposits or unpaid rent if an agent mishandles client funds. In simple terms, CMP ensures that your money remains safeguarded in case an agent experiences financial difficulties or engages in fraudulent activities.

If you can provide evidence that an agent has misappropriated your funds, you can make a claim without the need for a lengthy court process. The typical procedure involves reporting the incident to the police and then filing a claim with the agent's CMP provider within 12 months. To support your claim, you'll typically need the following documents:

1. Tenancy agreement
2. Terms of Business
3. Bank statements demonstrating a pattern of payments followed by non-payment
4. Tenant's bank statements confirming rental payments

## Real-Life Instances

Every year, landlords and tenants who lack CMP protection suffer financial losses when agents mishandle funds. For instance, in a true case, rogue letting agent Manish Manek was convicted of 17 counts of theft involving rent owed to landlords, amounting to £47,000. He had been diverting tenant deposits and rent into his personal account. Despite his subsequent arrest and imprisonment, his victims never recovered their lost money.

## Our Campaign for Mandatory CMP

We collaborated closely with the Ministry of Housing, Communities and Local Government (MHCLG) to lead a successful campaign advocating for the mandatory implementation of CMP for all letting agents. In other parts of the UK, agents in Wales are required to have CMP under the Rent Smart Wales initiative, while Scotland introduced CMP as a legal requirement in January 2018.

## What CMP Covers

CMP provides coverage for various financial aspects, including a landlord's repair funds, rent, service charges, and arbitration fees. If a tenant pays a deposit, it must also be protected within a Tenancy Deposit Protection (TDP) scheme to ensure its safety during that period.

Given the existing TDP regulations, the new CMP legislation only covers a deposit while it is under the agent's custody, either before or after it's placed in the TDP scheme. Agents who do not handle client funds, such as when rent is directly paid to the landlord, are not required to have CMP.

## Government-Approved CMP Schemes

While it is mandatory for all agents handling client money to have CMP, unscrupulous operators may still exist. Before entrusting any funds or entering into an agreement with a property agent, it is essential to verify their CMP certificate and confirm the provider of the coverage. Agencies are obligated to prominently display their CMP certificate in their branches and on their websites.

Our Propertymark CMP scheme is among the approved schemes, subject to annual audits of our members' accounts. We offer reimbursement to landlords and tenants, with an annual limit of £15 million for agents in our primary scheme and £35 million for agents in our large corporate scheme. Individual claims have a maximum award limit of £50,000 per claimant. A list of other organisations offering approved CMP schemes can be found [here](#).

## Guidelines for Tenant Eviction: Dos and Don'ts

The decision to evict a tenant is a serious one that should not be taken lightly. However, circumstances may arise where eviction becomes the only viable option. To initiate the eviction process and regain possession of your property, it is imperative to adhere to precise procedures for tenant removal. We've assembled this list of actions to take (the "Dos") and actions to avoid (the "Don'ts") to help you comprehend your responsibilities as a landlord.



## What to Do When Evicting a Tenant

1. Engage in Communication with Your Tenant: It is always preferable to resolve disputes without resorting to legal action. Attempt to reach an agreement with your tenant or assist them in devising a plan to vacate the property or settle any outstanding rent arrears.
  - Maintain a record of all correspondence.
  - Document any agreements reached in writing.
  - Follow up oral discussions with confirmation emails.
2. Serve Proper Notice: If you decide to serve an eviction notice, ensure you comply with these steps:
  - Keep a record of the notice's service date.
  - Request the tenant's signature as acknowledgment.
  - Utilize Form N215: Certificate of service or include "served by [your name] on [the date]" on the notice.
3. If the tenant does not vacate by the specified date, you can use the completed Form N215 or the notice to apply for an accelerated possession order.
4. Determine the Appropriate Eviction Process: When contemplating eviction, England offers two processes for ending a tenancy:
  - Section 21 Notice: Use this if you wish to reclaim your property after the fixed term or during a periodic tenancy.
  - Section 8 Notice: Utilize this when you need the property back for reasons other than the fixed term's expiration, such as lease violations.
5. Be aware of the specific requirements for each type of notice.
  - Section 21 Notice: You must provide at least two months' notice, not before the first four months of the tenancy. Certain conditions, like recent council notices or documentation, apply.
  - Section 8 Notice: Reasons for eviction (grounds) must be specified, either mandatory or discretionary.
6. Ensure all legal obligations have been met before proceeding with eviction.

## What Not to Do When Evicting a Tenant

1. Neglect Your Landlord Obligations: During the notice period, you must continue fulfilling your end of the tenancy agreement. Neglecting maintenance and other responsibilities could lead to legal repercussions.
2. Change Locks Without Proper Notice: Changing locks without notifying the tenant and before their departure is a criminal offense, potentially resulting in fines or imprisonment.
3. Remove Tenant's Belongings: Holding a tenant's belongings in lieu of unpaid rent or removing them from the property before the tenant leaves is also a criminal offense. Failure to return their possessions could lead to prosecution.
4. Disconnect Utilities: Shutting off utilities like gas, water, or electricity is a serious act that violates legal obligations. Disrupting a tenant's water supply, for instance, can result in criminal action.

These Dos and Don'ts provide essential guidance for navigating the eviction process as a responsible landlord. Always ensure you follow the correct legal procedures and act within the boundaries of the law when seeking to regain possession of your property.

## Understanding Fair Wear and Tear in Rental Properties

At the conclusion of a tenancy, some landlords may expect their rental property to remain in precisely the same condition as it was at the tenancy's commencement. Nonetheless, it's important to recognize that landlords are not entitled to profit financially or materially beyond their initial or expected state at the tenancy's conclusion. This is where the concept of fair wear and tear comes into play.

### What Constitutes Fair Wear and Tear?

Fair wear and tear refers to the gradual deterioration or "wear" that naturally occurs in the condition of a rented property, including its contents, fixtures, and fittings, as a result of a tenant's normal and reasonable use.

When assessing fair wear and tear upon the tenancy's termination, it is crucial to consider the following factors:

1. **Age, Quality, and Condition:** The initial state of an item at the tenancy's outset.
2. **Average Useful Lifespan:** The typical expected duration an item serves before requiring replacement.
3. **Reasonable Expected Usage:** How an item is typically used under normal circumstances.
4. **Number and Type of Occupants:** The occupants' impact on property wear.
5. **Length of Tenancy:** The duration of the tenant's stay.

### Betterment and Applying Apportionment

To prevent betterment, landlords must apply apportionment. If any damage surpasses fair wear and tear, it is essential not to enhance the property's value beyond its initial condition. Landlords should not financially or materially benefit when a tenancy concludes.

When making deductions from a tenancy deposit, the consideration should encompass fair wear and tear, determining whether repair or replacement is the appropriate remedy. The cost of the remedy must then be divided equitably between the landlord and the tenant through apportionment.

#### Example: Replacing a Carpet

- **Stain on the Carpet (Repair):** If cleaning the carpet costs £50 but the landlord opts for a new carpet priced at £500, it is not permissible to charge the tenant for the entire new carpet. The cost should be shared between the landlord (£450) and the tenant (£50 for cleaning).
- **Severe Damage to Carpet (Replace):** When the damage to the carpet significantly affects the property's quality and rental potential, the most suitable solution may be carpet replacement. However, charging the tenant the full replacement cost would be unfair, so the cost must be apportioned between the landlord and tenant.

### Betterment Formula

The following formula considers the carpet's value and expected lifespan, distributing the purchase cost across its useful life. This approach can be applied to other items within the property. The anticipated lifespan of the carpet should align with fair wear and tear conditions, accounting for factors like the number and type of occupants. Landlords should maintain evidence of this calculation, including the original purchase invoice and an explanation of how the asset's expected lifespan was determined, which can be invaluable in case of a dispute with the tenant.

|   |  |          |
|---|--|----------|
| A | The replacement cost of similar carpet | £500     |
| B | Age of carpet                          | 2 years  |
| C | The expected lifespan of the carpet    | 10 years |

|   |  |              |
|---|--|--------------|
| D | The remaining lifespan of carpet<br>(C - B)    | 8 years      |
| E | Annual depreciation (A / C)                    | £50 per year |
| F | The apportioned cost to the tenant<br>( D x E) | £400         |

## Utilise an Inventory

To facilitate the assessment of whether damage exceeds fair wear and tear, landlords should conduct an inventory check at the tenancy's outset, agreed upon with the tenant. This inventory should include photographic evidence of item conditions, which can be compared during the check-out inspection.

Additionally, landlords should retain receipts for purchased items or invoices for any work performed. These documents serve as evidence of an item's age and can provide comprehensive coverage in the event of a deposit dispute with the tenant.

## **Landlord Safety Responsibilities: What You Need to Know**

As a landlord, ensuring the safety of your tenants should be your paramount concern. To help you comprehend your obligations, we have delineated the primary safety considerations you need to be aware of and the legal requirements you must adhere to.

### **Smoke Alarms and Carbon Monoxide (CO) Alarms**

In England, all rental properties must adhere to The Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022, which will take effect on 1 October 2022. It is imperative that landlords fully grasp these regulations. Landlords (or their agents) should promptly install new alarms, address any existing alarm issues, and update property management procedures in preparation for the 1 October 2022 deadline. There will be no transitional period after this date, and landlords found in breach may face fines of up to £5,000.

Carbon monoxide alarms must be installed and maintained in proper working order in any living accommodation room containing a fixed combustion appliance (excluding gas cookers). These appliances are typically fuelled by gas, oil, coal, or wood, such as gas or oil-burning boilers and wood-burning stoves. Furthermore, at least one smoke alarm should be present on every floor of the property where a room is used or partly used as living accommodation.

Each alarm must be in good working order on the first day of a new tenancy.

### **Electrical Safety Obligations**

In England, Wales, and Scotland, landlords have a legal duty to ensure the safety of all electrical items provided in their rental property throughout the tenancy. In addition to appliances, landlords must also guarantee the safety of all electrical systems, including sockets, switches, and light fixtures.

### **Electrical Safety for Landlords in Scotland**

Landlords in Scotland are legally required to conduct electrical safety inspections for both new and existing tenancies. This process comprises two essential parts:

1. Inspection of installations, fixtures, and fittings.
2. Record of testing for appliances.

These tests must be performed at least every five years by a competent individual. Following an inspection, landlords must furnish tenants with a copy of the inspection report. Additionally, when commencing a new tenancy, landlords must provide tenants with the most recent inspection report. For further electrical safety guidance, refer to [electricalsafetyfirst.org.uk](https://www.electricalsafetyfirst.org.uk).

### **Electrical Safety for Landlords in Wales**

Under the Renting Homes (Wales) Act, as of 15 July 2022, all rented properties in Wales must undergo periodic inspection and testing (PIT) of all electrical installations. These tests must be conducted at least every five years, resulting in the creation of an Electrical Installation Condition Report (EICR).

The current EICR must be made available to the tenant within seven days of their occupancy date. Non-compliance with these regulations may result in legal action. Landlords in Wales can access comprehensive guidance [here](#).

## **Legionella Risk Assessment**

Legionnaires' disease is an infection resembling pneumonia, often caused by inhaling small water droplets contaminated with Legionella bacteria. Landlords are obligated to evaluate and manage the risk of their tenants' exposure to Legionella. Risk control measures encompass:

- Flushing the water system before renting the property.
- Ensuring cold water tanks possess secure lids to prevent debris from entering the system.
- Establishing control parameters to maintain water at the correct temperature.
- Removing unused pipework.

Tenants should be informed of self-manageable control measures, such as cleaning shower heads or running all taps for five minutes following an extended absence. Tenants should also promptly notify landlords (or their agents) if any water system issues arise or if there are heating problems. Records of Legionella assessments should be maintained, with scheduled follow-up checks. For additional advice on mitigating Legionella risk, consult the Health and Safety Executive.

## **Furniture and Furnishings**

The Furniture and Furnishings (Fire) (Safety) Regulations 1988 stipulate fire resistance standards for domestic upholstered furniture, furnishings, and related items with upholstery. All furnishings must pass the 'smouldering cigarette' and 'match flame' resistance tests and bear labels confirming compliance.

Generally, items manufactured in the UK after 1990 conform to these requirements and display the appropriate permanent compliance label. Non-compliant items should be removed from the property before letting, unless they qualify for an exemption (e.g., furniture manufactured before 1950).

## **Frequently Asked Questions Regarding Electrical Safety for Landlords**

These inquiries provide fundamental information to help landlords understand their responsibilities. To ensure full compliance with regulations and gain confidence, we recommend seeking guidance from your accredited letting agent.

### 1. What are the electrical safety standards?

- All fixed electrical cables and equipment must undergo inspection and testing by a qualified individual in accordance with the 18th edition of the wiring regulations. This includes appliances directly connected to the electrical supply, like showers or built-in kitchen appliances. After inspection and testing, a qualified person will provide an Electrical Installation Safety Report.

### 2. What is an Electrical Installation Safety Report?

- This report contains the inspection and test results and specifies the date for the next inspection and test. Typically, you will receive an Electrical Installation Condition Report (EICR), but alternative reports may be used.

### 3. Which tenancies are affected?

- Any new fixed-term tenancy starting on or after July 1, 2020, must adhere to electrical safety standards. Existing tenancies have until April 1, 2021, to comply, considering that the rules came into effect on June 1, 2020. The standards apply to all residential property tenancies unless excluded. Excluded tenancies include social housing, long leases, student halls, hostels, care homes, hospitals, shared accommodations with a landlord or landlord's family, and more.
- Renewed fixed-term tenancies starting after July 1, 2020, and Statutory Periodic tenancies renewed from that date must also comply. Contractual Periodic tenancies with a rolling monthly tenancy clause should adhere to the standards by April 1.

### 4. What is a qualified person?

- A qualified person is someone competent to perform inspections, testing, and any necessary remedial work in line with electrical safety standards. Typically, this person is part of a recognized competent persons scheme like NAPIT or NICEIC.

### 5. What should I do once I receive the Electrical Installation Safety Report?

- You must:
  - Provide a copy to each existing tenant within 28 days of the inspection and test.
  - Furnish a copy of the most recent report to any new tenant before they move in.
  - Provide a copy of the most recent report to any prospective tenant within 28 days of their request.
  - Retain a copy of the report for the qualified person conducting the next inspection.
  - Supply a copy to the local authority within seven days when requested.

### 6. How long is the Electrical Installation Safety Report valid?

- The regulations require every fixed electrical installation to be inspected and tested at least every five years by a qualified person.

### 7. What if further work is needed to meet the standards?

- If remedial work is required, it should be completed by a qualified person within 28 days of the report or the specified period in the report if less than 28 days. After completion, you should receive written confirmation, which must be sent to the existing tenant and your local housing authority along with a copy of the report.

### 8. Does my electrical installation need to comply with the 18th edition of the Wiring Regulations?

- No, unless it is determined to be unsafe. Landlords with existing reports should review them and contact the inspector to assess compliance with electrical safety standards.

### 9. If my certificate indicates ten years, do I still need to renew it every five years?

- Yes, if the existing certificate was issued more than five years ago, even if it's valid for ten years, it won't meet these regulations. To comply with electrical safety standards, the existing EICR must be less than five years old (dated back five years from when the tenancy agreement was signed).

### 10. What is the penalty for breaching the rules?

- Local authorities can impose fines of up to £30,000. Before issuing a financial penalty, the local authority must serve a Notice of Intent within six months of the landlord's breach, outlining the amount, reasons, and the right to appeal.

## **Conducting an Annual Safety Inspection**

It is essential to schedule an annual safety check for all gas appliances and flues, employing the services of a Gas Safe registered engineer. You have the flexibility to arrange this safety check up to two months before your current certificate's expiration date, ensuring that you maintain the same expiry date, similar to how a car's MOT works.

This approach allows you to coordinate a convenient time with your tenant to perform the inspection, ensuring compliance with legal obligations. To stay on top of your safety checks, consider setting up a free reminder on [StayGasSafe.co.uk](http://StayGasSafe.co.uk).

If your tenant possesses their own gas appliances, remember that you remain responsible for maintaining the gas pipework but not the tenant-owned appliances themselves or any flues exclusively connected to such tenant-owned appliances.

## **Maintaining Pipework, Appliances, and Flues**

It is also your duty to ensure that all gas pipework in the property remains in a safe and well-maintained condition. Regular inspections will help identify any necessary repairs. It is advisable for an engineer to inspect and test the pipework between tenancies to minimize disruption.

Please note that the installation pipework is not covered by the annual gas safety check. Therefore, request your engineer to perform a tightness test on the gas system and visually inspect the pipework for any defects.

## **Before Commencing the Tenancy**

Prior to renting out your property, it is imperative to ensure the safety of all gas equipment, including any appliances left by the previous tenant. If any safety issues are identified, they must be promptly addressed or the equipment removed before a new tenant moves in.

## **Maintain a Gas Safety Record**

A Gas Safe registered engineer will issue a gas safety record following the annual safety check. You are obligated to provide a copy of this record to your tenant within 28 days of the inspection's completion or to a new tenant at the beginning of their tenancy. You must retain copies of these records for at least two years. Electronically stored records are acceptable, provided they can be printed if requested, are secure from loss or tampering, and clearly identify the engineer who issued the record.

## **"Danger, Do Not Use" Warnings**

Since January 2013, flues that facilitate the removal of fumes from sealed, fan-assisted boilers concealed within voids (e.g., in ceilings, behind walls, or within enclosures) must have adequately sized inspection hatches installed. These hatches allow a Gas Safe registered engineer to inspect the entire length of the flue.

If a flue is inaccessible, hatches are improperly positioned, or not of sufficient size to permit a full inspection, the engineer will classify the appliance as "at risk" and affix a "Danger, Do Not Use" label to it.

Should an engineer deactivate an appliance and issue a warning notice, it is strictly prohibited to reactivate the appliance under any circumstances. The "Do Not Use" sticker should only be removed once an engineer has rectified the defects, and your tenant has an obligation not to use the appliance until it is deemed safe.

## **Issues with Access**

Your tenancy agreement should stipulate that access must be granted for maintenance or safety checks, but you should never use force to gain entry to the property. In cases where a tenant refuses access, it is crucial to document all reasonable efforts made to comply with legal requirements.

Ensure that you can furnish evidence of repeated attempts to conduct the safety check, such as written communications to your tenant explaining the legal requirement for their safety.

## **What to Do in Case Your Tenant Hasn't Paid Rent**

When a tenant falls behind on rent payments, it can be a challenging situation for both the landlord and the tenant. It is crucial to maintain a documented record of your actions, and the following steps can guide you in resolving the issue smoothly:

### 1. Communicate with Your Tenant:

- If you notice that the rent has not been paid, the first step is to contact your tenant. Initiating contact can begin with a phone call or a text reminder, followed by a formal letter or email. Ensure that you keep records of all written correspondence, as it may be important if the situation escalates. It is essential to maintain a polite and courteous tone, as these situations can be sensitive, and any unreasonable behavior may impact your legal position if court proceedings become necessary.

- If the tenant is facing financial difficulties, you might consider arranging a payment plan to help them pay what they can afford in the short term. In the long run, you can guide them toward applying for the housing element of Universal Credit to assist in covering the rent shortfall.

### 2. Contact the Guarantor:

- If the tenant has a guarantor listed in the tenancy agreement or a Deed of Guarantee, you can request that they cover the rent arrears. If the rent remains unpaid after 14 days, reach out to both the tenant and guarantor again, requesting rent payment. Using written communication, such as a letter or email, is advisable for record-keeping purposes.

### 3. Consult Your Landlord Insurance Provider or Tenancy Deposit Scheme:

- Most landlord insurance policies include coverage for unpaid rent, ensuring your income is protected if your tenant falls into rent arrears. Contact your insurance provider to understand how to make a claim to recover the owed rent.

- If the tenancy concludes with outstanding rent payments, you can request to deduct the unpaid rent from the tenant's deposit. Contact the tenancy deposit scheme for further guidance on this process.



#### 4. Initiate Eviction Proceedings:

- If the tenant accumulates two months of rent arrears and shows no effort to communicate or address the situation, you can begin eviction proceedings by serving a Section 8 Notice based on rent arrears. At this stage, the tenant may choose to pay their arrears, which would render the Section 8 Notice invalid if the matter goes to court.

- If the tenant challenges the eviction, and the case proceeds to court, you must provide evidence of your communication with the tenant. It is crucial to demonstrate that you made every effort to inform them of their arrears and provide an opportunity to pay. Maintaining a record of correspondence is vital to strengthen your case.

Alternatively, to avoid a court battle, you may consider asking the tenant if they are willing to voluntarily surrender the tenancy. This action can help you mitigate losses and prevent the situation from escalating further, potentially incurring additional court costs.

### **What Is Tenant Referencing?**

Tenant referencing involves a landlord or letting agent gathering and verifying information about a potential tenant. This process helps landlords make an informed decision about renting their property to a particular individual. Through referencing, landlords aim to establish trust that the tenant will meet their rent obligations, treat the property respectfully, and not disrupt neighbours or other residents.

### **What Types of Tenant Referencing Checks Can Be Conducted?**

There are various forms of tenant referencing checks available to gain a better understanding of a potential tenant's suitability to rent a property.

### **Tenant Fees Act and Charging for Reference Checks**

Following the enactment of the Tenant Fees Act in England in 2019, tenants cannot be charged for any referencing checks. This legislation categorises reference checks as Prohibited Payments. Similarly, in Wales, the Renting Homes (Fees etc.) (Wales) Act 2019 prohibits such fees from being charged to tenants. In Scotland, these charges are considered unlawful premiums, so landlords are responsible for covering the cost of any desired referencing checks.

### **Returning the Holding Deposit**

If, based on their references, you decide not to rent to a potential tenant, any holding deposit collected must be returned to the tenant within seven days of your decision. You may retain the holding deposit only under specific circumstances, such as when the tenant fails the Right to Rent check or intentionally provides false or misleading information. In such cases, you must notify the tenant within seven days, explaining why you are retaining the holding deposit. Failure to provide this explanation within the stipulated time will result in the return of the holding deposit, regardless of failed checks.

## **Utilising a Guarantor**

In cases where a tenant receives an unfavourable reference, landlords have the option to consider a guarantor. A guarantor is an individual who agrees to assume responsibility for the tenant's obligations, including rent payments, if the tenant cannot fulfil them. This practice is particularly common with student tenants. To ensure the guarantor's viability, conduct financial checks, seek employer references, and perform credit checks. Clearly outline the guarantor's responsibilities through a deed of guarantee or within the tenancy agreement.

## **When Is It Unlawful to Refuse a Tenancy?**

The decision to accept or reject a tenant ultimately lies with the landlord, and referencing aids in making an informed choice. However, landlords cannot lawfully refuse a tenancy if their reasons could be categorised as discriminatory. Refusing a tenant based on characteristics such as age, gender, marital status, pregnancy or having children, religious beliefs, race/ethnicity, disability, or health issues would constitute unlawful discrimination.

## **Universal Credit and Housing Benefits**

Landlords can only refuse a tenant on Universal Credit if their buy-to-let mortgage explicitly prohibits renting to tenants receiving housing support.