

GDPR and Extended Licensing

June 2018

Welcome to summer. Having enjoyed a very warm introduction to May and June, landlords have had a busy time adapting to new legislation. Although we seem to be repeating news and articles in this edition of the Bulletin, it has been evident by the number of emails and telephone calls to the office that some ambiguity exists regarding GDPR and the extension of mandatory licensing.

You, like ourselves have no doubt been bombarded with requests from organisations giving you information regarding GDPR, Privacy Polices and asking for your permission to allow further contact. In this edition we have included a factsheet "GDPR for Private Landlords". This factsheet, we hope, will cover all of the facts you as a landlord need to know in order to make decisions on GDPR in relation to your business.

The Extension of Mandatory Licensing is also causing some of our members concern. To clarify what is required, we have included a slimmed down guide on how the new legislation affects landlords. Mark Chubb from PCC has produced a comprehensive document providing links to Government sites which will enable members to view various aspects of the legislation. This is published on the News Feed area of our website.

It is apparent, talking to various local authorities, that some are much more prepared for this extended form of licensing than others. If in doubt regarding your properties and the need to comply, contact your local authority.

Being an accredited landlord may reduce your HMO licensing fee. Accreditation lasts for 5 years and it costs just £65.00 for SWLA members to attend the day course.

Upcoming SWLA Courses

Landlord Training Course (HMO's, GDPR, Legislation Changes), Friday 6th July 2018, 9.30am – 4.30pm, Plymouth Guildhall, £65.00 for SWLA Members, £75.00 for non-Members

Landlord Accreditation Training Course, Tuesday 4th September 2018, 9.30 – 4.30, Plymouth Guildhall, £65.00 for SWLA Members, £75.00 for non-Members

Key Legislation Changes and Upcoming Changes

- 01 April 2018 – Minimum Energy Efficiency Standards
- 06 April 2018 – Gas Safety (Installation and Use) (Amendment) Regulations 2018
- 06 April 2018 – Banning Order and Rogue Landlord Database Introduced
- 25 May 2018 – EU General Data Protection Regulations
- 01 October 2018 – Extension of Mandatory HMO Licensing
- Ongoing since April 2017 – Yearly changes to mortgage interest relief
- Spring 2019 – Tenant Fees Bill will be implemented

GDPR and Extended Licensing

GDPR Information from SWLA

GDPR Quiz

Extension of Mandatory HMO Licensing of Houses in Multiple Occupation

SWLA Universal Credit Seminar

Deposit Reminders

Tips for Maintaining Your Properties

Preventing Rent Arrears

Remember Your Right to Rent Checks!

Minimum Energy Efficiency Standards (MEES)

Notice Board

Quiz Answers

GDPR Information from SWLA

All SWLA members received post in May 2018 regarding GDPR. The enclosures were;

- SWLA's Privacy Policy
- SWLA's Member Consent Form (to be completed and returned to the office)
- SWLA's GDPR for Landlords Guide

If you would like a copy of any of the above documents, please contact the SWLA office. If you have any questions regarding GDPR, you can also contact the ICO on 0303 123 1113.

FACTSHEET; GDPR for Private Landlords

The Legislation

The General Data Protection Regulations (GDPR) came in force from 25 May 2018. The Information Commissioners Office (ICO) is the supervisory authority responsible for data protection. The regulations are intended to give people greater control of their personal data, requiring organisations and businesses to be accountable and transparent for the processing of that data.

Who does it apply to?

Businesses, organisations and governments within the EU and those outside the EU who process EU residents' data. A private landlord is classed as a business and therefore must comply with GDPR and register with the ICO.

What is Personally Identifiable Information?

Personally identifiable information refers to any information relating to an identifiable person who can be directly or indirectly identified; this is also known as 'personal data'. This may include a name, bank details, right to rent documents, an email address, location data (IP address) thus reflecting the changes in technology and the way in which organisations collect information about people since the introduction of the Data Protection Act 1998.

Personally identifiable information also refers to sensitive information that relates back to a person, for example, the salary information of a prospective tenant along with their name would be classed as personal data. The fact a tenant is looking for a property in London would not be personal data.

Roles within GDPR

Within GDPR there are two roles that are important to understand. The role of the 'controller' and the role of the 'processor'. The controller determines the purpose for which, and the manner in which personal data is processed, therefore making the decisions. The processor is responsible for carrying out the controller's instructions and is limited to the scope of those instructions and must not process the data any further. GDPR places specific legal obligations on the processor. The processor will have a legal liability if they are responsible for a breach. Controllers will need data processing agreements with processors stating what can and cannot be done with personal data the processor is processing.

The ICO's Guide to the General Data Protection Regulation defines: a "data controller as determining the purposes and means of processing personal data and a data processor being responsible for processing personal data on behalf of a controller".

What is processing?

Processing is collecting, recording, storing, retrieving, using, erasing and the destruction of data.

What is consent?

- A lawful basis of processing and GDPR sets a high standard for consent but you will often not need consent.
- Consent offers individuals real choice and control, putting individuals in charge of their data.
- Consent should be obvious and requires a positive 'opt in', pre-ticked boxes, opt out boxes or any other method of default consent is not permitted under GDPR.
- Privacy notices must specifically cover the controller's name, the purposes of the processing and the types of processing activity.
- There is no time limit for consent. The length of time it lasts will depend on the context.
- It must be easy for people to withdraw consent at any time they choose.

The questions to ask are 'should our processing be based on consent?' / 'do we require consent to process the data?'

Lawful bases for processing

There are actually six lawful bases for processing, of which consent is only one and you must have a valid basis in order to process personal data. Examples might include:

1. Contractual fulfilment – most likely to be relied upon. A landlord provides their tenants' contact details to the carpenter in order to repair the kitchen cupboard door, this would be contractual fulfilment, the landlord fulfilling his contractual obligations to repair the property.
2. Legitimate interest – what the legitimate interest is must be identified and where a legitimate interest is identified this must be stated on the privacy notice. A landlord needs to ask themselves 'are you using the personal data in a way in which the tenant might reasonably have expected when they gave you the data'. A landlord would have a legitimate interest in referencing a tenant as they need to ensure the tenant is financially suitable to take on the responsibility of letting the property.
3. Consent – If you go beyond legitimate interest you may need to get consent. Consent is unlikely to be the most significant basis of processing within the private rented sector.
4. Compliance with the law – the landlord provides the tenant's/tenants' information to the deposit protection scheme in order to comply with the Housing Act 2004.
5. Protecting vital interests – this is literally life or death and must be in the vital interest of the data subject as opposed to the business. It is not likely to be relied on much in the private rented sector.
6. Public interest or official function – the landlord discovers the tenants are supplying illegal drugs from the property; this is not in the public interest therefore the landlord informs the police supplying them with personal data relating to the tenant.

What is a data audit and why is it required?

A thorough data audit (sometimes called an Information Asset Register) is the first step towards achieving GDPR compliance. You need to determine what data you hold, who is collecting it, how it is collected, why it is collected, the lawful basis of processing, who it will be shared with, how it is stored and when it will be deleted. As a private landlord your data subjects include maybe your agent (if personally named), tenants, previous tenants and contractors.

Privacy Notices

Being transparent and providing accessible information to data subjects about how you store their personal data is key; the way in which you can do this is by providing a privacy notice. Privacy notices are not new to GDPR; they are a requirement under the current Data Protection Act 1998. Privacy information is normally located at the bottom of a web page. The output of your data audit will be privacy notices.

Continued on next page...

Data Processing Agreement

Where a data controller engages a data processor the controller needs to provide the processor with a data processing agreement. Where data consists wholly or partly of personal data the law requires certain provisions to be included in the written agreement.

Subject Access Request

Currently, the Data Protection Act 1998 allows a business to make a charge of £10 and gives up to 40 days to respond to an individual's request. GDPR does not permit a charge and the timescale has been reduced to within one month of receipt.

Breaching GDPR

It is a breach of the regulations to destroy personal data accidentally, to lose it, to allow unauthorised alteration or to allow unauthorised access or disclosure. The legislation requires serious breaches to be reported to the ICO within 72 hours of the breach being discovered. Personal data breaches include sending personal data to an incorrect recipient, alteration of personal data without permission and loss of availability of personal data. Failure to comply with GDPR can lead to a fine of up to 20 million Euros or 4% of global annual turnover if that is higher than 20 million Euros.

Why does GDPR affect me as a private landlord?

As a private landlord you are processing the data of an EU resident and therefore, under GDPR, you are a data controller.

What do I need to do as a private landlord?

You will have the personal data of your tenant(s) and you will make decisions as to how the data is controlled and processed. You are required to register with the Information Commissioners Office, this can be completed online <https://ico.org.uk/for-organisations/register/> there is a charge dependent on your size and turnover but in the majority of cases it will cost £40.00 per annum. You will also need to issue data processing agreements to anyone you deem to be a data processor for example, your IT support or your contractors. You will need to issue your tenant with a relevant privacy notice, informing them of how you process and manage their data.

Scenarios

You send the tenant an email to chase the rent arrears or contact them by telephone to arrange a property visit. In doing both of these activities you are processing data and will need to comply with GDPR. Your lawful basis of processing would probably be "contractual fulfilment".

If as a let only landlord you instruct your agent to serve a section 8 notice on your behalf, you are the controller and the agent becomes the processor. The agent is not making any decisions, they are doing what you as landlord have instructed them to do in processing the data. The agent being the processor in this situation then becomes liable to you as the landlord, the controller of the data. Likewise you have responsibility for the processing by the processor.

If you give your tenant's/tenants' details to the plumber, you have shared the data. The plumber becomes the processor and is liable to you as the controller. The plumber is only going to do what you have requested with the data, i.e. use the contact telephone number of the tenant to arrange access to the property and the address to locate the property in question.

You will require a data processing agreement with the plumber and the agent in the above scenarios.

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GDPR QUIZ

How well do you know GDPR? Take our quiz and find out. Answers on the back page.

1. *GDPR relates to personal data. What is considered 'personal data'?*

- a. Name
- b. Date of Birth
- c. Address
- d. Any information that enables you to identify an individual

2. *What right do individuals have with GDPR in force?*

- a. The right to data portability and the right to be forgotten
- b. The right to change the data themselves
- c. The right to access a colleague's data
- d. The right to withhold information

3. *When was GDPR introduced?*

- a. 1st May 2018
- b. 25th May 2018
- c. 31st May 2018
- d. 31st May 2017

4. *What is the maximum penalty for non-compliance?*

- a. 4% of annual global turnover, or 20 million euros, whichever is higher
- b. 20 million euros
- c. 4% of annual global turnover or 10 million euros, whichever is lower
- d. 10 million euros

5. *According to the GDPR, personal data should be....*

- a. Processed lawfully, fairly and transparently
- b. Collected for explicit specified purposes and legitimate purposes and not further processed
- c. Accurate and kept up to date
- d. All of the above

6. *Data Subject requests for access should be responded to within.....*

- a. One day, with a charge for the provision of access
- b. One week, with a charge for the provision of access
- c. One calendar month, without charge for the provision of access
- d. One year, without charge for the provision of access

7. *If you personally receive a subjects' request for access, do you....*

- a. Refuse to provide information
- b. Collect the information and send the information as soon as possible
- c. Immediately refer to your company's Data Protection policy and notify the applicable person
- d. Verify the identity of the individual and then send the information

8. *Demonstrating compliance with the regulation requires.....*

- a. Implementing technical and organisational measures that ensure and demonstrate you comply
- b. Maintain documentation on processing activities
- c. In certain circumstances (public sector, systematic/mass processors) appoint a DPO
- d. All of the above

9. *What would be considered a breach of GDPR? Failure of security resulting in....*

- a. Destruction or loss of data
- b. Alteration of data
- c. Unauthorised disclosure of/access to data
- d. All of the above

10. *Notification of a breach must be made to the ICO within.....*

- a. 72 hours
- b. 48 hours
- c. 24 hours
- d. 12 hours

11. *A privacy notice should include.....*

- a. The data controller's address
- b. Information about right of access to personal data
- c. If any automated decision making, including personal data, will be conducted
- d. All of the above

12. *If an individual requests that personal data is amended, do you.....*

- a. Refuse to amend the data
- b. Amend the data within one month
- c. Ignore the request, but inform third parties also holding the data
- d. Amend the data and advise third parties also holding the data, within one month.

Extension of Mandatory HMO Licensing of Houses in Multiple Occupation

Extracted from information provided by Mark Chubb (PCC). Full details of the document on SWLA website www.landlordssouthwest.co.uk

House in Multiple Occupation (HMO)

An HMO is classed as any property occupied by 3 or more people who form more than one household. A household being either a single person or members of the same family who live together.

If the property is an HMO then the Management of Houses in Multiple Occupation (England) 2006 apply.

Licensable House in Multiple Occupation

Historically, since 6 April 2006, any property which had 5 or more tenants forming more than one household, over 3 or more storeys, required a licence from the local authority. This licence lasted for a period of 5 years and the property was required to meet the local authorities' standards and guidance for licensable HMOs. The legislation for the above remains extant until 30 September 2018 when it will be repealed.

As from 1 October 2018 new legislation will become effective. This legislation requires that every property occupied by 5 or more unrelated persons sharing facilities/amenities and irrespective of building height, will require a licence. The property will need to meet the local authority standards and guidance for licensable Houses in Multiple Occupation. New standards will apply to landlords seeking new licenses and landlords renewing will be given 18 months to comply. Councils can fine up to £30,000 for failure to comply.

What do Landlords need to know?

New legislation effective from 1 October 2018.

Properties falling under the new licensing legislation are one, two, three or more storeys with 5 or more unrelated persons.

Most local authorities will require a licence fee and they will complete a property inspection after application from the landlord.

Some local authorities are currently compiling details of licensable properties.

The majority of applications can be completed online.

Local authority guidance can be downloaded, see your local authority website for more details.

Two new mandatory licence conditions are also being brought in, minimum sizes for rooms used as sleeping accommodation, and a requirement to comply with council refuse schemes. The total number of all people across the different rooms must be the same as the number of persons for whom the property is suitable to live in. Flats above and below business premises and purpose-built flats where there are no more than 2 flats in the block are also brought within the scope of the new rules.

The new standards will apply to all landlords seeking new licences. Landlords of existing properties will have 18 months to make necessary changes when re-applying for a licence when it expires.

SWLA accreditation gives big reductions on licence fees with many local authorities e.g. Plymouth CC discount £150 per property, Exeter CC discount £120 per property.

IF YOU NEED A LICENSE, GET ACCREDITED WITH SWLA/LASW, SEE SWLA WEBSITE FOR COURSE DATES.

SWLA Universal Credit Seminar

On the 9th May, SWLA hosted a Universal Credit seminar at Plymouth Guildhall (venue kindly provided by Plymouth City Council) as part of a national program to keep landlords informed about the Universal Credit payment system which has replaced separate benefit payments. It was presented by the DWP Engagement Division. As well as landlord and letting agent members of both the SWLA and RLA, the event was open to all landlords and interested parties. Over 50 attendees were present with representatives from charities, credit unions, social housing providers, as well as landlords and agents. Gary Jenkins (DWP UC National Programme) was assisted by Gary Martin and Jacki Williams (DWP Devon, Cornwall and Somerset operational partnership team) in presenting the session. The assistance of the regional team was greatly appreciated as their local knowledge of implementation and rollout problems was invaluable.

Universal Credit Information for Landlords

Below is some information from Gary Martin at Plymouth DWP for our members who could not attend.

Managed Payments / Alternative Payment Arrangements;

Landlords can apply for a direct payment of rent or rent arrears deduction from a tenant's Universal Credit if they're having difficulty paying. Landlords can download the UC47 form from the gov.uk website, the form can be sent to DWP by email. Landlords can only use the UC47 to apply for direct payment if the tenant is in rent arrears. Once the application has been processed, the landlord will be advised of the decision. If the application is refused, DWP won't tell the landlord the reason why unless previous authority has been given to DWP by the tenant. This is because of data sharing regulations and claimant confidentiality. If a landlord has a vulnerable tenant who would require direct payment of housing costs to the landlord who are not in rent arrears, the tenant can request this via their on-line account or when they see their work coach.

If landlords do have any enquiries about a managed payment, in the first instance the landlord should engage with their tenant about the issue. The tenant has access to their own information via their online account. They can share the information from their account with their landlord, or other representative if they wish to as this contains information about housing payments made.

If more assistance is required, the claimant can ask through their journal, face to face or call the service centre and provide consent to share their personal information with their landlord or other representative. When contacting Universal Credit, the claimant's representative will be asked to confirm their identity, so the case manager can speak to the landlord direct.

If you are unable to engage with your tenant, you can contact the following number **0800 328 5644**.

As for the payments themselves, for private landlords, a BACS payment will be paid into the bank account nominated by the landlord at the end of the claimants Universal Credit assessment period on a monthly basis. The tenant's reference number and National Insurance number will be used as the BACS identifier and will appear on the transaction with the National Insurance number and 10 characters of the tenant's reference number in the following format: AB123451234567890.

Local Housing Allowance

There is a maximum Local Housing Allowance rate for claimants. You can look up each area on the gov.uk website.

Transitional Housing Payments

As of 11 April 2018 claimants who have a claim to Housing Benefit (HB) at the point they claim UC will continue to be paid HB at the full rate by their Local Authority for the first two weeks of their UC claim. 'The Universal Credit and You' (on the gov.uk website) booklet gives an excellent overview and gives advice on the types of evidence that a tenant may bring into the Jobcentre to verify rent payments.



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Deposit Reminders

Tenancy deposit protection rules apply if your tenant has an Assured Shorthold Tenancy. You must lodge your tenants deposit within 30 days of receipt. Within that timeframe you also need to provide your tenant with the prescribed information regarding the deposit. If there are any interested parties who have contributed to the deposit amount, they also need to be given the prescribed information regarding the deposit.

If you do not protect the deposit in time or fail to prescribe the correct information, your tenant can sue you for the return of the deposit plus up to 3 times the deposit in compensation. This includes ex tenants. The tenant can still sue you even if you return the deposit after realising that you have not lodged it properly.

Prescribed information includes;

The amount of the deposit.

The address of the property.

The name, address and contact details of the administrator or the tenancy deposit scheme with which the deposit is held.

The name, address and contact details of the landlord and tenants and any third parties who have contributed to the deposit.

Whichever deposit scheme you choose, it is recommended that you check their website to ensure that all relevant documents are served to your tenant, including terms and conditions where applicable. It is very important to get proof that your tenant has received these documents. On the back of the SWLA Assured Shorthold Tenancy agreement, there is a tick list of documents to serve your tenant. There is space here for the tenant to sign and date that they have received each document.

If you have any older tenancies, then please see the following;

Deposits paid before 6 April 2007 (which became a Periodic Tenancy before 6th April 2007).

Where a deposit is held in relation to a tenancy that became a Periodic Tenancy before 6th April 2007, landlords do not need to protect the tenant's deposit. However, landlords won't be able to issue a Section 21 Notice to regain possession of a property unless the deposit is protected or returned.

NB: There are no penalties for landlords who have not protected a deposit in these circumstances.

If landlords choose to protect deposits they must ensure that the deposit is registered with a government-backed tenancy deposit scheme and they provide tenants with the Prescribed Information and serve them details about the scheme.

Deposits paid before 6 April 2007 (which became Periodic Tenancy after 6th April 2007).

Where a deposit was received in relation to an Assured Shorthold Tenancy (fixed period) before 6 April 2007, but it was renewed or became a Periodic Tenancy after 6 April 2007, landlords needed to have protected the deposit and issued the Prescribed Information by 23rd June 2015 (within 90 days of 26 March 2015 when the Act came into force).

NB: If landlords fail to protect their tenants' deposit they could be fined up to three times the amount of the deposit.

Deposits taken after 6 April 2007 that have been protected and the Prescribed Information given to the tenant during the original fixed term (tenancy created for a specific length of time).

NB: Where a tenancy deposit was received after 6th April 2007 and the landlord placed the deposit in a tenancy deposit scheme and the Prescribed Information was given to the tenant, if a Periodic Tenancy starts, there is no need for the landlord to re-protect the deposit and/or re-serve the Prescribed Information.

If a landlord or agent move the deposit to a different service provider they must provide the tenant with details about the new scheme and re-serve the Prescribed Information.

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Tips for Maintaining Your Properties

Taking simple measures to protect your property in the summer could prevent much bigger complications down the line.

Carry out regular roof check-ups

Upkeep of your roof is vital. Gutters and downpipes need to be kept clear to ensure water can flow through during heavy rainfall.

Ensure tiles don't become loose or dislodged during extreme weather. Inspect them at least twice a year to make sure all tiles, lead flashing and pointing are secure and in good condition. This includes making sure they're clear of moss, which can absorb moisture, and then freeze and damage the tiles.

Chimneys, aerals, TV entertainment dishes and gutters need to be checked too – if these are loose, they can cause damage in high winds.

Prevent pipe problems

Cold temperatures can cause pipes to freeze and burst. So, if you've recently acquired a property, make sure you know where any problem pipes are.

'Lagging' or insulating your pipes to ensure they don't get too cold is one way of preventing bursts.

Condensing boilers also have a condensate pipe to drain away water, which can freeze if it is undersized, resulting in the boiler shutting down just when you need it most.

In cold areas of the home, such as the attic, you could also have a heat-trace element added to affected pipes. This produces a mild electric current that runs through a cable along the pipe, keeping the chill off.

If there is a burst pipe, do your tenants know how to turn off the water supply and who to contact in an emergency?

Keep condensation at bay

An unwelcome side effect of cold weather and central heating is condensation appearing on windows and walls. If left untreated, this can lead to mould, which will not only ruin the appearance of your property but can be dangerous to health.

Make sure your tenant is aware of ways to avoid creating excess condensation, such as not drying wet clothes on radiators and trying to maintain a reasonably constant indoor temperature.

Check the tumble dryer is well ventilated, plus any extractor fans.

If there are persistent mould/damp problems within your let property, call an expert who will be able to assess what is causing the problem. You may need to install an extractor fan or a positive ventilation system in the property. See the SWLA trade listing on our website for companies who can help you with this.

Don't forget to check your insurance

Check your property insurance to see how long your property is allowed to be left empty without invalidating the policy. If your tenants are away for a long period of time, you may need to arrange checks on the property yourself. If you need a quote for landlord insurance, you can call Excaliber or Landlord Insure (see adverts enclosed in this bulletin) and they will be happy to give you a quote tailored to your needs.

Frequency of electrical inspections/tests

When letting a residential property, it is the landlord's responsibility to ensure that the electrical installation and appliances provided by the landlord are safe when the tenancy begins and are in proper working order throughout the tenancy. The local authority can act to enforce electrical safety in residential accommodation under the Housing Health and Safety Rating System (HHSRS).

There is a recommended frequency of inspections and testing for;

Fixed electrical installations (i.e. wiring circuits, switches, sockets, light fittings and circuit boards)

Non-fixed appliances (i.e. appliances which can be plugged in and which will often be portable; refrigerators, electric cookers, kettles, toasters etc)

Landlords should be aware of this, as well as the additional requirements placed on the landlord of a house in multiple occupation (HMO).

Houses in Multiple Occupation

If the property is a house in multiple occupation (HMO), the Management Regulations require the manager to take safety measures and to maintain electrical installations. For all HMOs (not just licensable HMOs) there is an obligation to have fixed electrical installations in every HMO inspected and tested at intervals not exceeding 5 years by a qualified electrician. A certificate must be

obtained.

The government has proposed expanding this requirement to all rental property, SWLA will advise our members when this comes into force.

****Please see our article on HMO's and the changes happening in October 2018 to establish if you have an HMO****

Fixed Electrical Installations

The Landlord should carry out a regular basic visual safety check of the electrical installation to ensure that these are safe. This should detect broken items such as sockets and light switches or signs of scorching around the sockets due to overloading or damaged cables etc.

The Institute of Electrical Engineers recommends 10 years as the maximum period between tests of the electrical installation by an electrician, but this relates to the period between the initial inspection (when the installation was first installed) and the first periodic inspection/test. Subsequent periods for inspection/tests would depend on the condition of the installation. What the Electrical Safety Council now recommends is that periodic inspections/tests by a qualified electrician are carried out at least every 5 years or on a change of tenancy. If the property is a house in multiple occupation of any kind (which will include shared houses) there is a statutory requirement to carry out inspection every 5 years.

The Institute of Electrical Engineers also recommends for residential accommodation that an inspection/test is carried out on a change of occupancy. These are inspections/tests by a qualified electrician.

The Electrical Safety Council Guide says that where a change of tenancy occurs within a short period (for example not more than 6 months) a full inspection/test may not always be required. However, it is imperative that a landlord's representative carries out a visual electrical safety inspection prior to reletting. This should include a manual test of any residual current devices.

As an alternative to a full test/inspection the Guide suggests a visual condition report, also carried out by a qualified electrician. However a visual condition report is only suitable where the installations have been inspected and tested in the last two years and the result was satisfactory or any resulting defects have been rectified.

Non-Fixed Electrical Appliances

Tenants should be provided with instruction manuals and be told to read and follow them. In relation to portable electrical appliances, there is no legal obligation in the case of rented residential accommodation to carry out a portable appliance test (PAT test). It is left to the landlord's discretion. The exception to this would be where you have an employee working or living in rented accommodation. However, the Electrical Safety Council's Guidance recommends portable appliance testing to satisfy the obligation to ensure that any portable electrical appliances which the landlord provides under the tenancy are safe at the point of letting, and at periodic intervals after that.

The Guidance recommends that when providing portable appliances for tenants, the landlord should check that every appliance has a CE mark. It also recommends that you should only provide appliances with additional safety marks e.g. the British Standard Guidance mark or the BEAB approved mark.

If you do not undertake PAT tests, the Guidance recommends that portable electrical appliances should be checked by the landlord before letting the property to ensure that there are no cuts/abrasions to the cable, the plug is satisfactory, there are no loose parts or screws, that there are no signs of burning and there is no damage. You are recommended to regularly check them after that.

There is detailed guidance regarding the frequency of carrying out PAT testing. PAT testing must only be carried out by a qualified person.

Period of years between PAT tests for non HMOs;
Refrigerators/washing machines/electric fires - 4 years
Portable Equipment - table lamps, fans, kettles, toasters, vacuum cleaners - 2 years

Period of years between PAT tests for HMOs;
For HMOs, annual PAT testing is legally required.

Article Abridged from RLA

Preventing Rent Arrears

Step 1: Act quickly

Whenever the full amount of rent has not been paid on the agreed date, your tenant is in arrears. It's good to take some form of action as soon as possible; outstanding rent can quickly build up and make it difficult for you to afford necessities, such as essential maintenance works. It could even affect your ability to make your mortgage payments, which could in turn jeopardise your credit rating.

Step 2: Phone first; then email

Contact your tenant and take an informal approach to begin with, make them aware that the rent is short/overdue as it may be a genuine oversight. This will give you the opportunity to find out why.

If your tenant is having difficulties making the rent, try and meet in person to discuss the issue. It could be the first indication that something has gone wrong, meet at the property to further discuss the issue. Be sure to give at least 24 hours' notice and agree a suitable time prior to your visit.

Otherwise, meeting at a neutral space like a coffee shop might feel more comfortable. (It's a good idea to carry out correspondence via email as well, so that, if matters do escalate, you have evidence that you took reasonable steps before taking the matter to court.)

If you are unable to meet at the property, a phone call is better than written correspondence.

Step 3: 70% is better than nothing

Think of the issue as a joint problem that the two of you can work out together. If the tenant is having financial difficulties, discuss the support options available to them. Can they pay some of the rent? Receiving 70% of the rent that month, for instance, would be better than receiving nothing. The rent debt could then be made over a period to make it manageable whilst not effecting future rent.

Do they have a guarantor? If so, contact them. You could also offer the tenant the option of ending their tenancy early if they wish. They need to agree to this – a landlord cannot end a tenancy early due to rent arrears without applying for a possession order.

Do not agree to their using the deposit to pay outstanding rent. The deposit must never be considered until the tenancy has come to an end. Try to resolve the issue amicably, as, once the barriers go down and communication stops, things will only become more difficult.

Step 4: Check references thoroughly

The most effective way to avoid rent arrears is to ensure all of the correct checks are carried out up front. Check tenants' references thoroughly and ensure they provide guarantors if needed.

You may also want to consider taking out a rent-guarantee policy. Never let a tenant move in before they have paid at least one month's rent and a deposit.

Remember Your Right to Rent Checks!

Official statistics have highlighted that an average of four fines per week are being given to letting agents and landlords under the Right to Rent laws.

Landlords must check the immigration status of all tenants to ensure that they have permission to live in Britain. Failing to carry out the checks can result in fines of up to £5,000.00.

A Judicial Review of the policy is currently being sought by the Joint Council for the Welfare of Immigrants (JCWI) which is supported by various trade bodies. Chai Patel, legal policy director at JCWI feels that the Right to Rent checks are forcing landlords to act as immigration officials. JCWI feel that the policy discriminates against immigrants that have the right to stay in the UK but cannot prove their residency status.

If the judge agrees with the JCWI at the review, this could mean that the government will have to scrap the Right to Rent laws.

There is no date as of yet for the High Court review.

If you are concerned about a prospective tenant's ability to evidence their right to rent or concerned about the checks you are required to undertake, you can call the Home Office checking service on 0300 069 9799.

If your prospective tenant needs help and advice in evidencing their right to rent, they can call the Home Office to assist them; 0800 678 1925.

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Minimum Energy Efficiency Standards (MEES)

MEES arrived on 1st April 2018. If your residential let has an Energy Performance Certificate (EPC) rating below an E, there are 2 key dates to bear in mind.

From 1st April 2018 – no new tenancies can be granted to new or existing tenants if the property is below an E rating. This includes statutory periodic tenancies that automatically come into existence following the end of a fixed term tenancy.

From 1st April 2020 – all tenancies will be effected from this date, including existing tenancies. There are exemptions. If the landlord is exempt, they must register the exemption on the Public Exemptions Register. This should really be a last resort as the Local Authority will receive notification that your let property is F or G rated, this may result in the Local Authority taking action under the Housing Health and Safety Rating System (HHSRS) and they may request the landlord to carry out improvements works to remedy a cold hazard, with HHSRS unaffected by the exemption register. In short, you may have to do the works anyway.

It should be affordable for your tenant to be able to heat their home. There are grants available to fund energy improvements.

If you aren't sure whether your property has a valid EPC, you can check the EPC register online using the address of the property. You can also print certificates from the register. Remember, when letting a property, you should give your tenant a copy of the EPC as part of your landlord obligations. This should be available for prospective tenants to view prior to advertising the property.

SWLA Members

There are grants available to fund energy improvements, EasyGrant CiC is a local community focussed provider of grants and advice to local landlords. They are able to offer guidance, support and funding to help you bring your portfolio in line with the legislation. It is likely that the minimum rating under MEES will be increased to a "D" in 2025 although this has not yet been confirmed.

Contact EasyGrant on 01884 824303 (Option 1) or send an email to info@easygrant.uk to get the best advice and support with your grant applications.



NOTICE BOARD

SWLA stationery

SWLA stationery may change without notice so before using a document, make sure that you use the latest one on the SWLA website, by checking the issue date or check with the SWLA office at the email address or telephone number shown below. Don't forget our ability to advertise accommodation to let, property for sale in our office window

E-Mail address

If you change your email address **PLEASE TELL US** otherwise you might miss important messages from us!

KBG CHAMBERS - Barristers – Plymouth, Truro & Exeter

We will support members with legal advice and representation through public access. KBG cover all areas of Property Law.
Call 01752221551 or email Colin Palmer, Senior Clerk, on colin@kbgchambers.co.uk

Rory Smith, Enigma Solicitors

Rory Smith is a highly experienced specialist in a wide range of disputes and their resolution. Rory can also recommend to you other law firms in Plymouth who will all offer free initial advice to SWLA members in other specialist areas.
Contact Rory on 01752 600567 or by email at rls@enigmawork.com Enigma is located 5 minutes away from SWLA's office at Farrer Court, 77 North Hill PL4 8HB. The office is open 8:50 a.m. until 5:00 p.m. weekdays.

Richard Gore Solicitor in Bristol
Richard is with Greg Latchams on 0117 9069424 and will support initial telephone calls to discuss your problems

Did you know that SWLA have a trade listing of local businesses? Head to the SWLA website 'Trade Directory' for all of your landlord needs from Gas Safety Checks to Building Services

GDPR Quiz Answers;

1.D, 2.A, 3.B, 4.A, 5.D,
6.C, 7.C, 8.D, 9.D, 10.A,
11.D, 12.A

SWLA

South West Landlords Association

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You can contact our answerphone service on 01752 510913 or E-mail us at info@landlordssouthwest.co.uk, visit our website www.landlordssouthwest.co.uk

Or visit our office in Dale Road, it is open week days from 10am to 3pm

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