Knowsley Council

Knowsley Landlord Accreditation Scheme (KLAS)
and Property Register

Landlord Newsletter

Spring 2019

Fit for Human Habitation Act 2018

The new act, which comes into force on 20 March 2019, requires that any property let by a landlord (private or social) is fit for human habitation, both at the beginning and throughout a tenancy. The act covers all tenancies less than seven years in length including periodic and regulated tenancies in both the social and private rented sectors.

The act covers all parts of the building owned by the landlord. A property would be deemed to be unfit for habitation if there are serious defects in any of the following:

- Repair
- Stability
- Freedom from damp
- Internal arrangement
- Natural lighting
- Ventilation
- Water supply
- Drainage and sanitary conveniences
- Facilities for preparation and cooking of food and for the disposal of waste water

Who is responsible?

Landlords are responsible for carrying out any remedial work, although there are some exemptions.

The landlord is not obliged to:

- Rebuild or reinstate a destroyed building
- Put right unfitness the tenant is responsible for causing
- Carry out works which are the responsibility of a superior landlord, or for which they cannot obtain third-party consent

In the case of dispute, the act empowers tenants to take the matter to court themselves where they can provide their own evidence such as photographs of the disrepair and evidence they have attempted to communicate with the landlord with no success. This does not replace the council's powers to take enforcement action against landlords but provides the tenant with an alternative mechanism to take action themselves.

Failure to carry out such works may result in the claims made before the court, forcing the landlord to carry out works and could result in damages being awarded.

As with any new regulations time will tell exactly how effective the new bill will be in practice.

House of Multiple Occupation (HMO's) legislation changes

What's excluded?

- Purpose-built flats in multiple occupation situated within a block of three or more self-contained units
- Section 257 HMO - building or part of a building that has been converted to self-contained flats and the conversion does not conform to building standards and less than two-thirds of the flats are owner occupied

The legislation went further to incorporate:

- minimum room sizes depending on the make-up of occupants
- landlords must now provide facilities for tenants to store waste in between scheduled council refuse collections

Minimum room sizes

- for a child under 10 years of age - 4.64m²
- for any single person over 10 years of age - 6.51m²
- for two people - 10.22m²
- anything under 4.64m² cannot be used for sleeping

Note - If any part of the room has a ceiling height of 1.5m or below then this portion of the floor area is **NOT** included when calculating the floor area of that room.

Failure to comply or obtain a licence

Under the Housing Act 2004, operating a licensable HMO without a licence is an offence. The council can issue a civil penalty of up to a £30,000 fine or the landlord could be prosecuted. The courts can impose an unlimited fine upon conviction. Failure to comply with the conditions of a licence can also result in a civil penalty or the landlord prosecuted. Additionally, if a landlord breaches a **Banning Order** imposed under Section 21 of the Housing and Planning Act 2016 the council can issue a fixed penalty of up to £30,000 or prosecute the landlord. If convicted the landlord can face imprisonment of up to 51 weeks and/or a fine.

Getting a licence

If you currently let a HMO which didn't previously require licensing but does now, then you will need to apply for a licence.

The new regulations allows for transitional arrangements where the HMO does not meet the new standards. For instance if the sleeping rooms are below the new minimum sizes, councils can give a landlord a maximum of 18 months to make the necessary changes to the property to make it compliant.

If you already have a Mandatory HMO licence under the previous definition, this will continue to be valid until that licence expires and you will then need to apply for a new licence as usual. The HMO must then comply with the new national rules on sleeping room sizes and waste storage from that point onwards.

If you believe you need to obtain a Mandatory HMO licence, then contact the Environmental Health and Consumer Protection Service (details below), providing your details and the address of the property concerned.

If you have any queries or wish to discuss this further or are considering developing a HMO then, contact **0151 443 4712** or email **environmental.health@knowsley.gov.uk**

Making Tax Digital (MTD)

If you're an incorporated landlord with an income over £85,000, you will have to keep digital records for Value Added Tax (VAT) purposes from April 2019 and submit your VAT return to HMRC through an approved software system. Landlords with an income below this threshold can sign up voluntarily.

How and when will MTD affect other landlords?

If you're an unincorporated landlord or small business with an annual turnover between £10,000-£85,000, you will need to join MTD from April 2020. At this stage you'll need to:

- Keep digital records detailing dates, rental values, income and expenses
- Send quarterly reports to HMRC using third party software, summarising your business's income, expenditure and profits
- Make an end of year declaration (after any necessary adjustments)

All of this will be done through your personal tax account which will securely store all of your tax records.

If a property is in joint ownership, each individual who receives income will report it separately.

What are the benefits of MTD?

It is hoped MTD will help landlords and other small business owners in the long run because:

- It puts an end to manual submissions at year end and hopefully fewer mistakes
- Quarterly reports will show you how much you owe in real time allowing landlords better budget control
- You'll have a single picture of your liabilities and entitlements through your personal tax file

For further information about MTD and to find out about compatible software packages please visit GOV.UK website.

Deregulation Act 2015 Changes: Section 21 notice forms, time limits and prescribed requirements

The Deregulation Act introduced a series of changes to how Section 21 notices are serviced as well as information landlords must supply to tenants when creating and managing tenancies. Initially the changes related to tenancies which began on or after 1 October 2015, however some of the changes now apply to tenancies regardless of when they began.

Section 21 notices and time limits:

The Deregulation Act introduced restrictions on the timings of serving Section 21 notices including preventing the landlord from serving a Section 21 notice within the first four months of the original Assured Shorthold Tenancy (AST). Section 21 notices now also have an expiry period. If proceedings are not commenced within six months from the date the notice was given (the period is slightly longer if more than two months' notice is required), the notice will expire and the landlord will need to serve a fresh notice if they want to bring a possession claim.

The 'use it or lose it' provision now applies to all Section 21 notices served regardless of when the tenancy commenced. This means that landlords will have to issue possession claims promptly.

Retaliatory eviction

The retaliatory eviction rules prevent landlords from serving a Section 21 notice for six months if the local authority has served an Improvement Notice or Emergency Remedial Action Notice (a "relevant notice") when dealing with hazards at a property. It also makes a Section 21 notice already served invalid if the local authority serves a relevant notice before a possession order is made.

Again, retaliatory eviction provisions will apply to both old and new tenancies regardless of when they commenced.

Prescribed requirements - How to Rent Guide, Gas Safety and Energy Performance Certificate

How to Rent Guide

The How to Rent Guide currently only applies to new tenancies that started after October 2015 or which were actively renewed after that date. A landlord is not required to provide a further copy to a tenant if the:

- guide is updated during the tenancy, or
- tenancy is renewed or becomes a statutory periodic AST, unless the guide has been updated since it was originally granted to the tenant

The How to Rent Guide has recently been updated and the latest issue is available **here**

Gas Safety and Energy Performance Certificates

This restriction only applies to ASTs created (or renewed) on or after 1 October 2015.

Under the Deregulation Act 2015, a landlord cannot serve a valid Section 21 notice where he/she has failed to provide the tenant with a current copy of the Gas Safety Certificate and Energy Performance Certificate (EPC). Since October 2015, if a landlord hasn't previously issued a Gas Safety Certificate and wish to serve a Section 21, they should issue the certificate followed by the Section 21.

However, under the Gas Safety (Installation and Use) Regulations 1998, a copy of the Gas Safety Certificate must be provided to new tenants prior to moving in. For re-tests for existing tenants, then a copy of the Gas Safety Certificate must be supplied within 28 days of the test.

It remains unclear whether a failure to provide a copy of an EPC or Gas Safety Certificate before the start of the tenancy (which are requirements of the respective regulations governing EPCs and gas safety) will invalidate a Section 21 notice. This is due to the Deregulation Act 2015 setting no time limits on when the certificates must be issued.

Landlords beware…

Recently, a prominent Housing Judge found that failing to provide a copy of a Gas Safety Certificate at the outset of the tenancy (which commenced post October 2015) did invalidate a Section 21 notice, even where the gas safety certificate was provided later.

What does this mean for landlords?

Although not tested in the High Court and until the legislation is amended, it would be best practise for landlords to abide by the Gas Safety (Installation and Use) Regulations 1988 and ensure they provide the Gas Safety Certificate to the tenant prior to moving in and with 28 days of any re-tests.

Housing 'how to' guides

As part of the Deregulation Bill 2015, the Government made it a legal requirement to issue the latest How to Rent Guide to tenants. The Government has subsequently issued further how to guides to help landlords, leaseholders and tenants with the private rented sector in England.

These forms are available to download…

1. **How to rent - a guide for current and prospective tenants**
2. **How to rent a safe home - a guide for current and prospective tenants**
3. **How to let - a guide for current and prospective private residential landlords**
4. **How to lease - a guide for current and prospective leaseholders**

Landlord energy efficiency improvement obligation raised

Since April 2018, new regulations requiring private landlords to ensure their properties reach at least an Energy Performance Certificate (EPC) rating of E came into force for any new tenancies to new or existing tenants. These requirements will then apply to all private rented properties in England and Wales - even where there has been no change in tenancy arrangements - from 1 April 2020.

Providing the improvement works do not exceed £2,500 to bring up to the required standard, landlords must install measures recommended in the report to bring the property up to a minimum E rating. However, the Government has recently announced that they will be lifting the cap to £3,500 meaning few owners would be exempt. To bring properties with an F or G up to an E rating is expected to cost landlords on average £1,200 and save tenants on average £180 per year. Overall this will help to reduce carbon emissions, reduce fuel poverty for tenants, encourage greater tenancy sustainment and make the property more attractive to let in future.

It is anticipated that the revised expenditure cap will be introduced from 1 April 2019.

Exemptions for EPCs

You don't need an Energy Performance Certificate (EPC) if you can demonstrate that the building is any of these:

- listed or officially protected and the minimum energy performance requirements would unacceptably alter it
- a temporary building only going to be used for two years or less
- used as a place of worship or for other religious activities
- an industrial site, workshop or non-residential agricultural building that doesn't use much energy
- a detached building with a total floor space under 50 square metres
- due to be demolished by the seller or landlord and they have all the relevant planning and conservation consents

Vacant buildings and demolition

A building is also exempt if all of the following are true:

- it's due to be sold or rented out with vacant possession
- it's suitable for demolition and the site could be redeveloped
- the buyer or tenant has applied for planning permission to demolish it