

Regulation Guide



am



REGULATIONS

3750

Timeline of PRS changes over recent years

Here's an overview of what has occurred since 2015:

October 2015

The Smoke and Carbon Monoxide Alarm (England) Regulations

Making sure that landlords have at least one smoke alarm installed on every storey of their properties and a carbon monoxide alarm in any room containing a solid fuel-burning appliance. These alarms must be working at the start of each new tenancy.

February 2016

Right to Rent

Legislation which requires landlords – or letting agents working on their behalf – to carry out checks on prospective tenants to confirm they have the legal right to rent in the UK. Changes have been made to these rules as a result of both Brexit and Covid.

April 2016

Replacement Relief system is introduced

The Wear and Tear Allowance – which allowed landlords to claim tax relief against 10% of their profits each year – was replaced with the Replacement Relief system. This initiative allows landlords only to claim tax relief for wear and tear costs they have actually incurred.

April 2017

Reduction of interest tax relief

The buy-to-let mortgage interest tax relief landlords can claim is being reduced over a number of years until it reaches the basic rate of income tax, which is currently 20%.

April 2018

Minimum Energy Efficiency Standards (MEES)

A minimum standard which requires landlords to make sure their rental properties have an Energy Performance Certificate (EPC) rating of at least a band E-. Letting a property with an EPC rating of F- or G- is now illegal.

See page 10 for more details.

October 2015

The Deregulation Act

Introduced to protect renters and ensure that landlords comply with a number of legal responsibilities, including securing a tenant's deposit, providing prescribed information and supplying Gas Safety certificates and 'How to rent' guides.

April 2016

3% stamp duty surcharge on additional homes

In a bid to create more favourable conditions for first-time buyers, a 3% stamp duty surcharge on the purchase of second homes and buy-to-let properties was introduced. The additional tax has to be paid on top of the investor's existing stamp duty bill.

January 2017

Restrictions on buy-to-let mortgage lending

New rules were introduced which require lenders to ensure landlords can pass more stringent 'stress tests' before they are granted buy-to-let mortgage finance. The rules were then extended to cover portfolio landlords, who now also have to provide additional financial information before they can get a buy-to-let mortgage.

April 2017

Civil penalties for criminal landlords

Powers under the Housing and Planning Act 2016, which allow local authorities to impose fines of up to £30,000 for a range of offences under the Housing Act 2004.

April 2018

Banning orders for criminal landlords

Under the Housing and Planning Act 2016, local authorities were handed new powers which allow them to hand out banning orders to landlords who have been convicted of specific offences.

October 2018

Extension of Houses in Multiple Occupation (HMO) licensing

All HMOs – a property occupied by five or more people from two or more separate households – were brought under mandatory licensing rules. Previously, HMOs had to have three or more storeys in order to fall under the scope of mandatory licensing.

October 2018

New minimum space requirements in rental homes

To limit overcrowding and unsafe living conditions, new minimum room sizes for PRS properties were introduced. Bedrooms used by one adult must be no smaller than 6.51 square metres, bedrooms used by two adults have to be at least 10.22 square metres and rooms slept in by children aged 10 or below can be no smaller than 4.64 square metres.

April 2019

Mandatory Client Money Protection for letting agents

Letting agents are now required to be members of a Client Money Protection (CMP) scheme. They also have to display their CMP certificate prominently and have appropriate CMP handling measures in place. CMP provides consumers with compensation in the event that a letting agent goes bust or misappropriates their money.

[See page 13 for more details.](#)

May 2021

Breathing Space

The Debt Respite Scheme, also known as Breathing Space, means a debt adviser authorised by the Financial Conduct Authority or a local authority can start what is known as a 'breathing space moratorium', providing someone in financial difficulties with legal protections from creditors – in this case the landlord.

October 2018

Changes to the Section 21 evictions process

Rules introduced under the Deregulation Act were extended to all tenancies, meaning landlords need to issue a Form 6A when serving a Section 21 notice to any tenant. The rule which makes Section 21 notices valid for only six months from the date they were served was also applied to all tenancies, rather than just tenancies which started on or after October 1st 2015.

March 2019

Homes (Fitness for Human Habitation) Act

Legislation which amended the Landlord and Tenant Act 1985 and requires landlords to ensure rental accommodation is fit for human habitation. An unfit home could have issues such as overcrowding, damp or a lack of ventilation. The act also gives tenants the right to take landlords to court over poor property conditions.

[See page 8 for more details.](#)

June 2019

Tenant Fees Act

Letting agents and landlords are banned from charging tenants any upfront fees apart from rent, deposits and three exempted 'default fees'. The Act also includes a cap on security and holding deposits.

[See page 6 for more details.](#)

October 2021

Capital Gains Tax reporting time doubled

In the last Budget, Chancellor Rishi Sunak doubled the deadline by which landlords have to file a tax return for Capital Gains – from 30 days to 60 days. A welcome bit of news for landlords.

The Tenant Fees Act: A ban on upfront fees

The Tenant Fees Act, known commonly as the tenant fees ban, is arguably the biggest change to the PRS in recent years. It was first announced in 2016 and became law earlier this year after a long period of lobbying, consultations and legislation drafting.

The fees ban has a range of implications for both landlords and letting agents. It's therefore important to know what you can and can't do, as well as the obligations of your letting agent.

Effective from June, covering most tenancies

The Tenant Fees Act officially came into force on June 1 2019, initially for new and renewed tenancies. However, since May 2020, it has applied to all existing tenancies, regardless of when they began.

Any agreements granted before June 1st will not come under the Act until May 31st 2020 or when they are renewed, whatever comes first.

The fees ban applies to all Assured Shorthold Tenancies, student lettings and licence agreements (which includes lodgers). Contractual lettings, such as company or professional lets, are unlikely to come under the legislation.

Previously, letting agents and landlords were able to charge tenants a range of fees throughout a tenancy. These included administration charges, referencing fees, cleaning fees, inventory fees and more. All of these fees, and anything that is not a rental payment, deposit payment or exempt default fee (outlined right), are now banned.



Knowing which fees are banned and legitimate



The first exempt default fee is for lost keys. If a tenant needs replacement keys, you can charge them a 'reasonable' amount. You will, however, have to provide evidence of the costs incurred with a receipt.



The second exemption is for changes to a tenancy agreement. If a renter wants to change a name, terminate their agreement early or add a pet clause to their contract, they can be charged up to £50 for these changes. However, if tenants ask for an extension or renewal of their tenancy agreement, you are not allowed to charge them a fee.



The third default fee is for late rent payments. If tenants are in arrears by more than 14 days, landlords can charge them a fee at 3% of the rent plus the Bank of England's base interest rate (currently 0.75%).

To be able to legitimately charge these default fees, they must be laid out in your tenancy agreements.

Explained – compliance and enforcement of the Tenant Fees Act

If you fail to comply with the Tenant Fees Act you could be hit with a range of fines or even a criminal conviction.

The first time you breach the legislation, you could be liable for a fine of up to £5,000. If you commit a second offence within a five-year period, it will be considered a criminal banning order offence and you could be liable for a larger fine.

Any fines you receive will be required to be paid on top of the fees that you repay tenants.

The legislation is being enforced by a combination of Trading Standards officers, a dedicated lead enforcement team based in Bristol ([the National Trading Standards Estate & Letting Agency Team](#)) and local authorities.

The Tenant Fees Act continued: Security and holding deposit caps

Two parts of the Tenant Fees Act which affect landlords most significantly are the caps on security and holding deposits.

Here are our answers to a range of Frequently Asked Questions:

What is the holding deposit cap?

Prospective renters can be charged refundable [holding deposits](#), which allow them to reserve a property ahead of making a formal application.

Once a tenant pays a holding deposit, the landlord can no longer actively market the property. As part of the Tenant Fees Act, holding deposits are now capped at equivalent to one week's rent.

How long can you keep a holding deposit?

Landlords are able to keep hold of a holding deposit for 15 days, unless an alternative period is agreed in writing with the prospective tenant. After the 15-day deadline, you will be required to return the deposit to the tenant within a week.

What happens if the tenant decides to rent the property?

If the tenant decides to rent the property, you can return their holding deposit in full. Alternatively, they could request for some or all of their holding deposit to go towards their security deposit or first rental payment.

For what reasons can you retain a holding deposit?

If the prospective tenant has made a formal offer for the property after paying a holding deposit, there are four scenarios in which you are allowed to keep the money:

- ▶ The tenant makes a formal application to rent the property and then withdraws from the process.
- ▶ The tenant fails a Right to Rent check after making an application.
- ▶ The tenant provides false information (such as a fabricated salary) which materially affects their suitability to rent your property.
- ▶ The tenant fails to take 'reasonable steps' to enter into the tenancy after making a formal application.

How are security deposits being capped?

The deposit that you can take from a tenant when they move into your property is now capped at five weeks' rent if the annual rental is below £50,000. If the tenant pays more than £50,000 in rent each year, their deposit will be capped at six weeks' rent.

Quick facts

- ▶ Deposits for annual rents up to £50,000 are capped at a maximum of five weeks' rent.
- ▶ Deposits for annual rents over £50,000 are capped at a maximum of six weeks' rent.
- ▶ Landlords are able to keep a holding deposit for 15 days. After which, they are required to return the money to the tenant within a week.

How will existing deposits above the cap be affected?

If you have existing agreements which required deposits higher than the five or six-week cap, the value of these deposits will have to fall in line with the relevant cap the next time the tenancy renews or after May 31st 2020, whichever comes first.

If this happens, you will need to refund your tenants the difference so that their deposit is effectively capped.

Does the deposit cap affect lets with pets?

In the past, landlords who have allowed tenants to keep pets have generally charged a higher security deposit to cover the additional risks associated with keeping animals.

With security deposits now capped at five or six weeks, the majority of landlords will no longer be able to charge a higher deposit to allow pets.

This means many landlords may no longer allow pets in their homes, or will have to increase the cost of the annual rent in order to cover the increased risk of allowing animals.

The Homes (Fitness for Human Habitation) Act 2018 explained

Another major piece of legislation introduced in the first half of 2019 was the [Homes \(Fitness for Human Habitation\) Act 2018](#), which came into force on March 20th 2019. It was extended to nearly all tenancies in March 2020.

It amended the Landlord and Tenant Act 1985 to ensure that all rented accommodation is suitable for human habitation at the start of the tenancy and throughout. It also strengthens the redress options renters have if they believe their home is not fit for habitation.

What does the new legislation mean for landlords?

All landlords must make sure that their properties, including any common parts of buildings, are fit for human habitation at the beginning of the tenancy and throughout.

The new legislation states that there is an implied agreement between the tenant and landlord at the beginning of the tenancy that the property will be fit for human habitation.

Renters now have the power to hold their landlord to account without having to rely on their local authority, with the capacity to take you to court for a breach of contract if they believe their home is unfit.

If the court rules in the tenant's favour, and finds that you have been non-compliant with the Act, it can order you to pay compensation to your tenant and insist that you carry out the necessary works to improve the property.

Landlords can still face action from their local authority even if the tenant has sought redress in the courts – meaning you could be penalised twice if you let a home that is not fit for human habitation.

Once a landlord is made aware of an issue, they have a reasonable amount of time to resolve it if it's their responsibility.

What would make a home unfit for human habitation?

There are a number of things which could mean a home is no longer deemed fit for tenants, including a building that is structurally unstable, issues such as damp, overcrowding and a lack of ventilation, and problems with drainage and the supply of hot and cold water.

Homes which have unsafe layouts, buildings that have been neglected, and properties that don't provide enough natural light or space to prepare/cook food are also highly likely to be deemed unfit.

Additionally, if a home contains any of the 29 hazards outlined in the [Housing Health and Safety \(England\) Regulations 2005](#), the courts are likely to decide that it's not fit for human habitation.

Certain exceptions are in place, however. You will not be deemed responsible for an unfit home if the tenant has caused the problem, if issues have been caused by the tenants' own possessions, or if unfitness has been caused by events known as 'acts of God' (fires, storms and floods) which a landlord has no control over.

Landlords are also under no obligation to fix a home's unfitness if they've been unable to get consent – i.e. planning permission or permission from freeholders. Landlords must, though, be able to highlight evidence of reasonable efforts to gain permission.





Why have energy efficient homes become so important?

The [The Minimum Energy Efficiency Standards \(MEES\)](#), introduced in April 2018, require landlords to be more proactive when it comes to energy efficiency.

Landlords must now ensure that properties have an Energy Performance Certificate (EPC) rating of E- or above when letting to new tenants. This means it's illegal to let any properties with a rating of F- or G- to new tenants.

From April 2020, the rules will also apply to all existing tenancies, meaning every rental property will come under MEES.

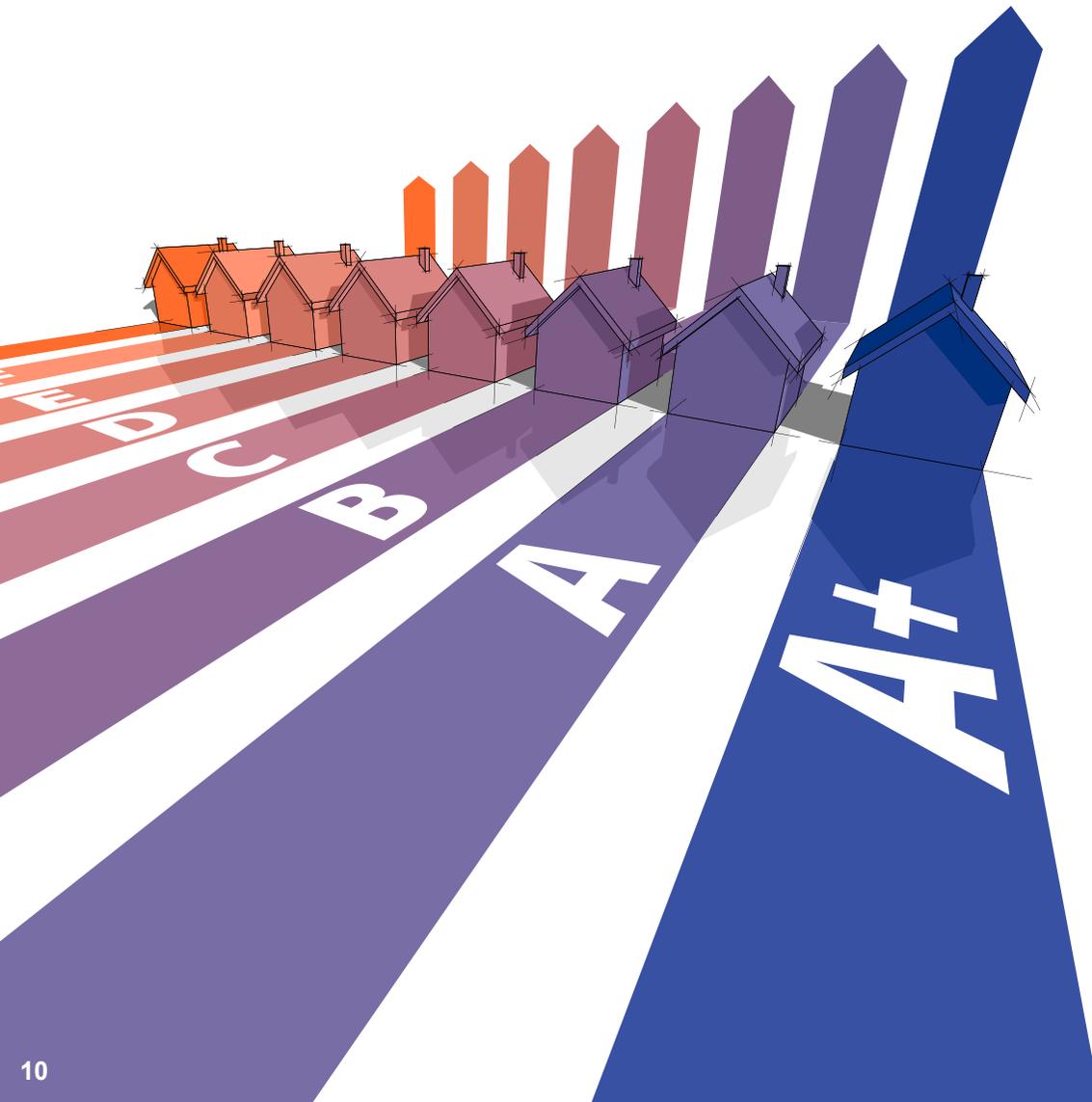
It was also announced in late 2018 that the government would be [tightening the existing MEES rules over the course of 2019](#).

The exemption cap for the cost of improvements is being increased from £2,500 to £3,500. This means that if landlords want to register for an exemption due to the cost of upgrades, they'll now need to prove that improvements will cost £3,500 or above.

What are the exemptions from MEES?

- ▷ **Wall insulation**
If installing wall insulation is not suitable for your property.
- ▷ **New landlord**
If you become a landlord in sudden or unexpected circumstances, you can apply for a six-month exemption.
- ▷ **Consent**
If improvements require consent from a third party, which is subsequently rejected.
- ▷ **Seven-year payback**
If the expected value of savings from improvements is less than the cost of repaying it.
- ▷ **Devaluation**
If you can prove energy efficiency improvements could devalue your property by 5% or more.
- ▷ **No funding**
If you can't access 'no cost' funding to finance recommended improvements to your property.
- ▷ **All improvements made**
If you have carried out all recommended improvements, and your EPC rating is still F- or G-.

[You can find more detailed information on all possible exemptions as well as how to apply for one here.](#)



What can you do to make your property more energy efficient?

There are a range of significant improvements which will cost more and take longer to implement, as well as smaller, cosmetic changes which can help you to make changes quickly and on a budget.



Insulating the loft or cavity wall

The best way to stop your property from losing heat and wasting energy.



Installing double or triple glazing

Traps heat and reduces noise, on the wish list of most tenants.



Smart Meters



Upgrading the boiler

A long-term investment, which is highly likely to reduce energy bills.



Installing solar panels

One of the most expensive options, but could represent a long-term investment.



Thick curtains



Water-saving showerheads



Eco appliances



Draught excluders



Tenants increasingly want energy efficient homes

There has been increasing evidence in recent years that tenants both want, and are willing to pay more for, an energy-efficient home, as renters become more climate aware and the government pushes for its net-zero by 2050 targets.

A survey of tenants carried out by YouGov in 2019 found that:

80% of renters agreed that landlords **should consider the environmental impact** of their property and undertake relevant measures to ensure it's eco-friendly.

Meanwhile, [a survey last year](#) revealed that:

98% of respondents would prefer a **home optimised to increase energy efficiency**, cut energy costs and minimise environmental impact.

53% were prepared to pay more for a **greener property**, while just over a half of these would willingly pay 10% more rent, a further third would accept a 5% rent increase, and one in 12 even said they would accept a 20% rise.

With the cost-of-living crisis caused by surging energy prices, an increased awareness of environmental issues among tenants, and the government's attempts to green the rental market, it pays for landlords to let properties with an eco-friendly focus.

At the same time, the money-saving benefits of an energy efficient home are clear and will continue to play a part in tenants' decision-making for many years to come.



What is mandatory Client Money Protection?

On April 1st 2019, mandatory [Client Money Protection \(CMP\) membership](#) for letting agents was introduced to further professionalise the sector and safeguard the money of both landlords and tenants.

It's now a legal requirement for every letting agent to be a member of a CMP scheme, which provides protection to consumers in scenarios where an agent misappropriates or fraudulently uses rent or deposit money that they've been holding on behalf of clients.

The move to make CMP membership mandatory and a legal requirement aims to prevent rogue operators treating landlords and tenants badly by offering a further layer of compliance for agents to adhere to.

CMP schemes offer consumers the chance to reclaim their money if it is used fraudulently or stolen by the agent, or if the agency goes bankrupt. Given letting agents currently hold around £3 billion of client money, there have long been calls for this money to be protected in a more secure and transparent way.

Who is providing CMP?

A number of CMP schemes received government approval in the lead-up to the introduction of the new regulation, with Propertymark, Client Money Protect, Money Shield, NALS Client Money Protection and UKALA Client Money Protection all offering agents a way of holding money safely and securely.

In addition to being a member of an approved scheme, all agents need to hold client money in an account with a bank or building society authorised by the Financial Conduct Authority (FCA), as well as holding and maintaining appropriate professional indemnity insurance.

Furthermore, agents must have suitable CMP handling procedures in place and obtain a certificate confirming their CMP membership, displayed prominently in their offices and on their websites.

Landlord and letting agent compliance is crucial

It's not just letting agents who need to be fully compliant. Of course, as a landlord it's vital that you protect your tenants by providing them with a home that is fit for habitation, free from safety risks, and abide by the regulations surrounding energy efficiency, deposit protection and the tenant fees ban.

Alongside your obligations to keep tenants safe, it's important to comply with legislation in order to protect your property investment for the long-term. Moreover, it's vital that you stay on the right side of the law as there are serious consequences for non-compliance which could see you hit with a substantial fine or even a custodial sentence.

Work is ongoing to professionalise and reform the sector, with the ultimate aim of ridding it of a minority of rogue landlords and agents who give everyone a bad name.





Looking to the future: What new rules could come into force?

Despite a raft of new rules for landlords to abide by in recent years, there's still more to come:

Strengthening energy efficient rules

The government has committed to upgrade as many private rented homes as possible to Energy Performance Certificate (EPC) Band C by 2030, where practical, cost-effective and affordable, with numerous consultations underway to make this so. Landlords, however, are concerned that the push for net zero, which includes upgrading the energy efficiency of a significant chunk of the country's rental stock, is unrealistic and unaffordable without proper schemes and funding in place to help.

Rental reform

The long-talked about Renters' Reform Bill, which has been on ice since the pandemic began in March 2020, is expected to transform the rental sector in the most wide-ranging way for a generation. The recent Levelling Up White Paper reiterated the plans to scrap Section 21 eviction notices, as well as ensuring that all homes in the private rented sector will have to meet a minimum standard, to be known as the Decent Homes Standard.

The government has also promised to consult on introducing a landlords register and set out plans for a crackdown on rogue operators, including making sure fines and bans 'stop repeat offenders leaving renters in terrible conditions'.

Lifetime deposits – which would move from one tenancy to another, to make the process simpler and cheaper for renters – have also been talked about plenty in recent years, while some kind of mandatory redress scheme for landlords also remains a possibility.

Another White Paper – the long-promised one on rental reform – is expected this year, after which the Renters' Reform Bill is finally expected to start its journey through Parliament. It has wide cross-party and public support, but there is also significant opposition from trade bodies, landlord groups and others to some elements of the plans, which is likely to delay or soften its implementation.



Kennington Office

Tel: 020 7840 3205

181 Kennington Lane, SE11 4EZ

kennington@atkinsonmcleod.com

Hackney Office

Tel: 020 8510 4430

295 Mare St, London E8 1EJ

hackney@atkinsonmcleod.com

Canary Wharf Office

Tel: 020 7001 9680

45 Westferry Rd, London E14 8JH

canarywharf@atkinsonmcleod.com

Wapping Office

Tel: 020 7488 5050

143 Leman St, London E1 8EY

city@atkinsonmcleod.com

Property Management

Tel: 020 7068 7650

45 Westferry Rd, London E14 8JH

propertymanagement@atkinsonmcleod.com

am atkinson
mcleod

