

LANDLORDS' RESPONSIBILITIES AND THE LAW

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This information is intended to give general guidance on the most important legislation governing your responsibilities as a landlord. Although it has been prepared with every care, Aylesford accepts no responsibility for its accuracy or any loss arising from it. If in doubt, please contact your solicitor.

1 *The Furniture and Furnishings (Fire) (Safety) Regulations 1988 and The Furniture and Furnishings (Fire) (Safety) (Amendment) Regulations 1993*

It is a criminal offence, punishable by a fine and/or a prison term, to let premises with furniture or soft furnishings which cannot be shown to comply with the above Regulations. The Regulations apply to all upholstered furniture which must pass the 'ignitability test'; that is, they must be resistant to ignitability if a lit match or cigarette is placed on the item.

It must also contain foam which is self-extinguishing. The following items of furniture must comply:

- all upholstered furniture;
- three-piece suites;
- beds and divans including the upholstered bases;
- padded headboards;
- sofa-beds;
- furniture with loose or fitted covers;
- children's furniture;
- cots and other items used by a baby or small child;
- cushions;
- high chairs;
- mattresses of any size;
- pillows;
- garden furniture which may also be used indoors.

In essence, the Regulations cover all furniture normally intended for private use in a dwelling, with the exclusion of bedding, carpets and mats.

All furniture in the property must have a permanent label clearly stating that it passes the ignitability test. If it does not, it should be removed from the property as it may be illegal. If furniture was purchased after 1990 it should comply with the Regulations, but if it has not got permanent labels this may be difficult to prove. You should not remove these labels from your furniture, even if you consider them unsightly. Imported furniture will not have the required labels and should not be used in rental property.

'Period' or 'Antique' furniture is not included in the requirements. Furniture manufactured before 1 January 1950 is exempt from the requirements, but if it has been re-upholstered it must comply with the above Regulations.

Failure to comply with the Regulations is a criminal offence. The Landlord will be liable, and the penalty is six months' imprisonment and/or a fine of up to £5000. Also be aware that a tenant could make a personal injury claim for damages. These could be substantial and would not be covered by the Landlord's insurance.

It is a legal requirement that all blinds and curtains which include a cord or chain must comply with current safety standards. Legally all new blinds and curtains must have built in safety systems. Blinds and curtains that are already fitted to a property must be made safe or replaced. Further information can be found at www.bbsa.org.uk

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2 Gas Safety (Installation and Use) Regulations 1998

The Regulations state that the Landlord must have his gas appliances checked annually to ensure that they are safe. The Regulations came into force in October 1994 but have subsequently been strengthened to give greater protection to tenants. Testing must be carried out by an installer registered with the Gas Safe Register in accordance with the Gas Safety (Installation and Use) Regulations 1998. It is up to the agent or the Landlord to ensure that the person used is a registered installer and to check their registration documents.

If a fault is found in a gas appliance the installer must inform both the Landlord and Tenant in writing. Remedial action must be taken. If the appliance is dangerous, the engineer should disconnect the appliance and put a sticker on it showing it has been condemned. The Landlord, Tenant, Occupant or Licensee should also be informed that it is an offence to continue using the appliance.

A record must be maintained of when each gas appliance was checked, the defects found, and the remedial action taken. The records for the last two years should be available for inspection on request, typically by a Trading Standards officer or the environmental health department. Landlords may scan the records and store them on a computer provided they can be printed out and produced in a paper format if asked.

A copy of the property's Gas Safety Certificate MUST be given personally to the tenant, and prior to the tenancy commencing if it is a new tenancy. It is not sufficient just to leave a copy in the property. When the safety check is due for renewal the check must be carried out and a copy of the safety certificate given to the tenant within 28 days of the date of renewal.

The penalty for non-compliance with the Regulations is a fine of £5000 and/or up to six months' imprisonment. However, in the event of a fatality due to a defective appliance the Landlord could be prosecuted for manslaughter.

Where Aylesford does not manage a property (i.e. if we only let it and collect the rent), THE LANDLORD IS RESPONSIBLE for carrying out the annual safety check and necessary servicing of all appliances. No tenancy can start until we hold a copy of a current Gas Safety Certificate.

Where Aylesford is appointed to manage the property we will, on the Landlord's behalf, be responsible for instructing the check and any necessary servicing required where these fall due during the period of our management. Please note we must hold sufficient funds from the Landlord in order to commission this work.

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3 Electrical Installation Condition Report (EICR)

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force on 1st June 2020. It means that all new tenancies that were signed on or after 1 June 2020 and which started from 1 July 2020 and all existing tenancies from 1st April 2021 must have an Electrical Installation Condition Report. The Regulations require landlords to ensure that every fixed electrical installation is inspected and tested at least every five years by a qualified engineer. You will be required to obtain a report which gives the results of the inspection and test, supply that report to each tenant within 28 days and retain a copy until the next inspection is due. A copy of the latest report must be provided to any new tenant before occupation, or any prospective tenant within 28 days of a request. Proven breaches of the regulations can result in a financial penalty of up to £30,000. If you would like us to book an Electrical Inspection in on your behalf, please don't hesitate to contact us.

**IT IS COMPULSORY, TO
HAVE AN EICR CARRIED
OUT BY A QUALIFIED
ENGINEER.**

4 Smoke Alarms

The Building Regulations 1991 require that all properties built since June 1992 must have mains-powered, battery-backed, interlinked smoke alarms fitted on every floor. Although there are no such regulations regarding older property, we recommend that smoke alarms are fitted regardless. You should be aware that local authority officers have a right to inspect a property under the HHSRS (see below) and if they do so they will insist that you fit smoke alarms to the property.

5 Carbon Monoxide Alarms

Regulations from 1st October 2015 require private rental sector landlords to provide a carbon monoxide alarm in any room containing a solid fuel burning appliance (i.e. rooms containing an open fire, log burning stove, etc.). However, as gas appliances can emit carbon monoxide, we would expect and encourage reputable landlords to ensure that working carbon monoxide alarms are installed in rooms with these.

YOU ARE REQUIRED TO INFORM THE HM REVENUE & CUSTOMS WHEN YOUR PROPERTY IS FIRST MADE AVAILABLE FOR LETTING AND YOU WILL NEED TO FILE AN ANNUAL TAX RETURN IF YOU EARN MORE THAN A CERTAIN SUM FROM YOUR LETTING.

6 Occupier's Liability

All occupiers of a property (which will be the Landlord or could also be the Tenant depending upon the circumstances) may have liability for the safety of all visitors, trespassers or residents of a property. This responsibility means that a Landlord should check his property, looking for any dangerous items, equipment, structure or fixtures. The Landlord should be aware that he cannot tell a tenant to take care or absolve himself of the risk of injury or death to a tenant or allow a property to be let if anything is dangerous. Damages claims can run to many thousands of pounds. Although a Landlord may not be liable for foolish or careless behaviour by his tenants, he must be sure that obvious dangers are removed or acceptably reduced.

7 Tax

All persons earning an income in the UK are potentially liable to pay tax, and this includes rental income. You are required to inform the HM Revenue & Customs (HMRC) when your property is first made available for letting and you will need to file an annual tax return if you earn more than a certain sum from your letting. You can make deductions from your taxable income of expenses associated with the letting, including our fees.

You can find more information on taxation of rental income and permissible deductions at: www.direct.gov.uk/en/MoneyTaxAndBenefits/Taxes/TaxOnPropertyAndRentalIncome/DG_4017814.

From 6th April 1996 letting agents or, when there is no letting agent, tenants must account for tax at the basic rate on the United Kingdom rental income

of a Landlord whose usual place of abode is outside the UK (a non-resident Landlord). Therefore, Aylesford will deduct tax at the basic rate on the rent received and pay this tax to HMRC (after deducting allowable expenses) each quarter. At the end of each tax year a non-registered Landlord will receive a certificate of deduction of income tax.

If you wish to be approved to receive rental income gross, you can apply to HMRC. Provided your tax affairs are satisfactory and are up to date you will normally be issued with a certificate. A copy will be sent to us which will be our authority to pay rent to you without deduction of tax. Until authority is received from the HMRC, tax will be deducted at basic rate. The Landlord has the right of appeal if refused a certificate. **ALL NON-RESIDENT LANDLORDS IN RECEIPT OF UK PROPERTY INCOME WILL NEED TO FILE ANNUAL TAX RETURNS.** Please note that should a Landlord not wish to apply for self-assessment or if a Landlord is refused an exemption certificate by HMRC, Aylesford reserves the right to charge the Landlord an additional fee of £250 (plus VAT) £300 (inc VAT) per annum for the work involved in reporting to the HMRC. You can find more information about the non-resident landlord scheme along with all the relevant application forms on the HMRC website at: www.hmrc.gov.uk/international/nr-landlords.htm.

Please note that Aylesford are not tax advisers and will not accept responsibility for the accuracy or otherwise of our understanding of tax law. We strongly recommend that Landlords seek professional advice on their tax position and the handling of their rental tax liabilities and deductions.

You should be aware that under the Landlord and Tenant Act 1985 Section 11, the landlord implicitly undertakes to carry out certain covenants relating to the repair and maintenance of any property where the fixed term of the lease or tenancy agreement is for less than seven years.

The covenants the Landlord undertakes are:

- a. to keep in repair the structure and exterior of the property. If the property is a flat, the covenant extends to any part in which he has a legal interest. The obligation extends to the walls, in some cases the roof, the guttering, drains, external pipes and any flagstones or steps giving access to the house.
- b. the landlord must also keep in repair and 'proper working order' all the installations for the supply of gas, electricity and water, the sanitary installations and any installations that provide space heating or which heat water.

The Landlord has no liability under section 11 until he is informed of the defect, and the disrepair must be an actual physical defect in the property rather than a loss of amenity or inefficiency. The obligation of the Landlord to remedy any disrepair has been interpreted by the courts as meaning that the property should be restored to its condition at the commencement of the tenancy, not to improve the house.

The statutory provision imposing an obligation to repair on the Landlord cannot be removed by any contractual provision of the tenancy agreement.

The remedies of the Tenant for breach of repairing obligations by the Landlord include suing for damages for breach of covenant; the object being to put the tenant back into the position he would have been had the breach not occurred, rather than to punish the Landlord. The court may also be prepared to order specific performance of the Landlord's covenant to repair under section 17 of the 1985 Act.

Self-help remedies available to the Tenant are to execute the repairs himself, then deduct the cost of the repairs from rental payments. Before taking such action, the Tenant must give the Landlord a notice of repair. However, his right to recoup the cost of repairs is limited to amounts that the court would deem just and equitable in all the other circumstances. The other option is to sue the landlord for damages seeking to have this offset against any non-payment of rent. In both cases the Landlord would be liable to the tenant for damages for the loss of value of the property to the Landlord.

THE LANDLORD MUST
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INSTALLATIONS THAT
PROVIDE
SPACE HEATING
OR HEAT WATER.

LANDLORDS' RESPONSIBILITIES AND THE LAW

IF AYLESFORD MANAGE
THE PROPERTY
WE WILL USE OUR BEST
ENDEAVOURS TO
ENSURE THAT YOU
COMPLY WITH YOUR
STATUTORY
OBLIGATIONS
PROVIDED WE HOLD
SUFFICIENT FUNDS.

If Aylesford manages the property, we will use our best endeavours to ensure that you comply with your statutory obligations, provided we hold sufficient funds to action any required works. If we do not manage the property you will be responsible for arranging all repairs within a reasonable time of being notified.

9 Money Laundering

In order to comply with the Money laundering, Terrorist Financing and Transfer of Funds Regulation 2017, Aylesford requires the Landlord to provide one proof of identity and one proof of residence, which can be selected from the list below. The Landlord should send the original documents for copying and returning; or provide copies certified by a solicitor as genuine. Printouts of online bank statements or utility bills cannot be accepted.

List A: Proof of Identity

- Full Passport;
- National Identity Card;
- Full Driving Licence;
- Cheque (please mark this as "Void").

List B: Proof of Residence

- Council Tax bill;
- Utility bill;
- Mortgage statement;
- Bank Statement;
- Credit or Charge Card Statement.

If the Landlord is a public limited company Aylesford will require a certified copy of the Certificate of Incorporation. If the company is not quoted certified copies of any two of the following documents are required:

- Memorandum and Articles of Association;
- Certificate of Incorporation;
- A set of the latest accounts;
- The most recent annual Companies House return.

In addition, Aylesford will need proof of identity and residence of one of the directors of the Company.

10 HHSRS

The Housing Health and Safety Rating System (HHSRS) is designed to improve the standard of residential property in England & Wales. Qualified officers carry out an assessment to gauge the likelihood of an accident in the property and the possible level of injury. They can then demand changes in the property to improve its standard. A failure to comply promptly with a notice requiring improvements is a criminal offence punishable by a fine. In this event the Local Authority will probably carry out the work themselves and then charge you for the costs. This system applies to all residential properties but rented properties are more commonly inspected. It is the Landlord's responsibility to ensure that his premises comply. We can make suggestions on how your property can be made more likely to be deemed satisfactory under the HHSRS. However, we cannot guarantee

that our recommendations will avoid a notice from the Local Authority seeking further works, or that our recommendations are in fact necessary to avoid a compliance notice. If we accept an instruction to let premises and subsequently receive an order to comply with the HHSRS, and if we incur any costs, we will reserve the right to deduct them from rent or any other monies we have received. If we are not holding funds, the Landlord agrees to reimburse us within 14 days of written demand.

11 Houses in Multiple Occupation

Houses in Multiple Occupation (HMOs) were affected by changes under the Housing Act 2004 which became law on April 6th, 2006 and were enforceable from July 2006. There is a general wide definition of the regulations which state that the following are HMOs:

- Properties inhabited by three or more people who are from more than one household and share kitchen and bathroom facilities. A household is defined as co-habiting couples, parents, grandparents, children, grandchildren, aunts, uncles, nephews, nieces and cousins.
- A building converted into flats pre-June 1992 which does not comply with the Building Regulations 1991; has not been subsequently updated to the relevant fire safety standard; and where a third or more of the properties are rented on tenancies of less than 21 years.

Some HMOs require licences. This depends on the size of the property, the number of occupiers and the policy of the local housing authority. If you fail to get a licence you can be prosecuted, and the tenants can seek the return of some or all of their rent. You may also find it difficult to get your property back.

Mandatory Licensing

Landlords of larger HMOs will need to be licenced by their Local Authority. If we believe that your property falls into this category, we will inform you of this fact, and of the alterations that we have been informed by the Local Authority may be required to allow you to gain a licence for your property. If your property potentially requires a licence you will either need to obtain one from the relevant Local Authority or accept that we will only let your property to a single-family group.

The property will require a licence if it falls into the following definition: if the property is three storeys or more, and/or has five or more occupiers who do not form one household and share kitchen or bathroom facilities. It is

the responsibility of the Landlord to apply and pay for the licence. We will only offer a property for let when we have received a copy of the mandatory licence or a certificate stating that the Landlord has applied for one. If you refuse to supply us with a copy of your licence or refuse to obtain one, we will not accept any further instructions from you and will take no further part in the letting or management of your property. If we dis-instruct once a Tenancy has commenced, you will remain liable for our full fees for the initial Term of the Tenancy. We will inform the Tenant and the relevant Local Authority in writing of the reasons for dis-instructing.

Additional Licensing

Some local authorities require landlords of smaller HMOs to hold licences. It is your responsibility to check with the Local Authority governing your property whether it requires a licence, and to keep abreast of any changes

THE HOUSING HEALTH AND SAFETY RATING SYSTEM (HHSRS) IS DESIGNED TO IMPROVE THE STANDARD OF RESIDENTIAL PROPERTY IN ENGLAND & WALES. THE SYSTEM WORKS BY A QUALIFIED OFFICER CARRYING OUT AN ASSESSMENT TO WORK OUT THE CHANCES OF AN ACCIDENT IN THE PROPERTY AND THE LEVEL OF INJURY.

IT IS A LEGAL REQUIREMENT TO PROVIDE ANY PROSPECTIVE APPLICANT FOR A TENANCY OF YOUR PROPERTY WITH AN ENERGY PERFORMANCE CERTIFICATE (EPC) PRODUCED BY AN APPROVED DOMESTIC ENERGY INSPECTOR.

in licensing plans. If we believe or become aware that your property needs a licence to be let as an HMO, and if you cannot show us a licence or valid application to the Local Authority, we will only let your property to a single-family group.

Selective Licensing

Some local authorities require all landlords in specific areas to hold a licence. It is your responsibility to check with the property's Local Authority whether it requires a licence, and to keep abreast of any changes in licensing plans. If we believe or become aware that your property needs a licence, and if you cannot show us a licence or valid application to the Local Authority, we will not let your property.

Planning Consent

HMOs fall within a separate planning category from property occupied by single families. Some planning authorities require you to seek planning permission to change the use of a property from family occupation to HMO use. It is your responsibility to check with the planning authority governing your property whether it requires planning permission for its intended use.

10 Energy Performance Certificates

Under the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Order 2007, it has been a legal requirement since 1 October 2008 to provide any prospective applicant for a tenancy with an Energy Performance Certificate (EPC). This must be produced by an approved Domestic Energy Inspector. Failure to supply one is a criminal offence punishable by a fine. We must provide any prospective applicant with an EPC when we provide them with written details of your property or when they first view it, whichever occurs first. If you already have an EPC (for example because you recently purchased the property) you should supply us with a copy. Otherwise it will be necessary to produce one. You can source one yourself or we can instruct an inspector on your behalf. We charge £75.00 + VAT £90 (inc VAT) for this service which includes the fee for the Domestic Energy Inspector. PLEASE NOTE THAT WE WILL BE UNABLE TO MARKET YOUR PROPERTY UNTIL WE HAVE ITS EPC.

From April 1st 2018 there will be a requirement for all rented properties to have a minimum energy performance rating of E on an Energy Performance Certificate. From 1st April 2016 the Regulations state that a tenant will have the right to ask for energy efficiency improvements in privately rented properties, which cannot be unreasonably refused by the Landlord. This is subject to any amendments that may be made before the Regulations are enforced.

11 Legionella

Legionella bacteria are commonly found in the environment. However, they breed rapidly in warm stagnant water and if they reach a sufficient concentration can cause the respiratory illness Legionnaires' Disease, which can be fatal. These bacteria breed especially well in poorly maintained hot water tanks and other hot water and air conditioning systems. It is now a legal requirement for all landlords to carry out a written risk assessment of their property for legionella. This is a relatively simple process which requires consideration of the condition, state of repair, efficiency and insulation condition of systems. More guidance on the assessment process can be obtained from the Health and Safety Executive at: www.hse.gov.uk/legionnaires/index.htm.

12. Flood and Water Management

Under this act an obligation is placed on the landlord to provide the tenant's contact details to the relevant water company at the end of the tenancy or they will become jointly and severally liable for any unpaid water charged during the tenancy.

13. Immigration Act 2014

It is a legal requirement under the above Act for a landlord to meet and check necessary documents for all adult occupants residing at the property to ensure that they have the Right to Rent in the UK. The Landlord must meet each person with their original documents and keep a record of this. Follow up checks may also be required should the person have a time-limited right to stay in the UK. There is an unlimited financial penalty for the Landlord or up to five years' imprisonment, if they are found not to have the Right to Rent in the UK.

14. Retaliatory Evictions

Under the Deregulation Act 2015, measures were brought in to stop landlords evicting tenants who reported issues with the property, rather than fixings them. Under an AST, if a poor state of repair is reported to a landlord and a reasonable outcome isn't established within 14 days, the tenant may inform the council who could then stop the landlord serving a section 21 notice (to end the tenancy) for six months, as well as issuing an improvement notice.

15. Consumer protection from unfair trading regulations 2008

Whilst marketing the property, Aylesford International is legally obliged to ensure that all information is accurate, not misleading and does not omit material information. You must make us aware of any matter which may be material to a tenant.

