

# HOW TO LET

## A GUIDE FOR CURRENT AND PROSPECTIVE PRIVATE RESIDENTIAL LANDLORDS IN ENGLAND



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# ASSURED SHORTHOLD TENANCY (AST)

This guide is focused on landlords letting to tenants on an assured shorthold tenancy. An AST is the main type of tenancy arrangement between landlords and tenants. By setting up an AST, you enter a contractual arrangement to let your property to a tenant.

## Who is this guide for?

This guide is for people who are considering letting a house or flat in England to tenants in the private rented sector while living in another property. This guide does not cover leasehold, holiday lets or 'resident landlords' who let to lodgers. This guide will help you to understand what responsibilities you have as a landlord, which will help you create a positive relationship with your tenant.

## Key legal responsibilities

This guide will help you to understand your key legal responsibilities as a landlord. This includes:

- abiding by the provisions in the Tenant Fees Act 2019 which bans charging most fees in connection with a tenancy and caps tenancy – and holding – deposits
- protecting tenancy deposits in a government-approved scheme
- providing your tenants with a copy of the How to Rent guide
- keeping the property free of hazards from the start of and throughout the tenancy
- carrying out gas safety checks and giving a copy of the certificate to the tenant(s) before the start of the tenancy
- ensuring electrical installations and appliances are safe
- installing smoke and carbon monoxide alarms



# BEFORE LETTING YOUR PROPERTY

It is illegal for landlords or letting agents to charge certain fees to tenants on new or renewed tenancy agreements that were signed on or after 1 June 2019. You should check what fees (if any) the agent will charge and ensure they are complying with the Tenant Fees Act 2019 before agreeing to allow them to let out your property.

Any landlords or letting agents found to be in breach of the Act are liable for a fine of up to £5,000 in the first instance and if a further breach is committed within five years, they are liable for a fine of up to £30,000 or prosecution. Government guidance for landlords and letting agents on the Tenant Fees Act 2019 is available [here](#). You may find it helpful to engage an agent to let and/ or manage your property, particularly if you do not have the time to manage the property yourself.

Make sure you have a written agreement with the agent that sets out exactly what they will do on your behalf. If this is not clear, this might cause problems for you and your tenants.

## Letting with a mortgage

Usually, Buy-to-Let mortgages are used to fund the purchase of the property which is intended to be let. If you wish to let a property with an existing owner-occupier mortgage, you must seek consent from your mortgage lender and insurance provider.

## Property licensing and Houses in Multiple Occupation (HMOs)

HMOs are usually properties occupied by three or more unrelated people who share facilities such as the kitchen or bathroom. If you operate an HMO you must comply with the HMO Management Regulations.

There are additional responsibilities for the management of HMO properties, which are not covered in this guide. You should contact your local authority to find out more about your responsibilities if you manage a licensable property.

HMOs occupied by 5 or more people in 2 or more households must be licensed by the local authority under mandatory national licensing.

In some areas, local authorities require landlords to hold a licence to let out a property under an additional licensing scheme (covering HMOs not subject to the mandatory scheme) or selective licensing requiring all rented properties in the area to be licensed. Check with your local authority if your property must be licensed.

Failure to licence a property is a criminal offence.

## Tax obligations

Letting a property can increase your income and you may be taxed. It may also affect any benefits that you receive.

## Accreditation schemes

You should consider joining a landlord accreditation scheme. Membership of an accreditation scheme can provide various benefits, including signalling to your tenants that as a landlord you meet a set of professional standards. Your local authority can advise you on accreditation schemes operating in your area. There are also national schemes that can provide you with advice and keep you up-to-date with the latest news.

## CHECKLIST



- You must ensure that you have an appropriate mortgage or permission from your mortgage lender in place
- You must obtain a property licence (where necessary)
- You should check your tax obligations as a landlord
- You should consider joining a landlord accreditation scheme

## CHECKLIST



- You should check if the agent is a member of a redress scheme and client money protection scheme
- You should check whether the agent has complied with the ban on letting fees in the Tenant Fees Act 2019
- You should have a written agreement outlining the services your agent will provide and when

# LETTING AGENT RULES AND REGULATIONS

Letting agents must comply with the relevant legislation. They must abide by business rules and regulations, plus those specific to their industry.

## Membership of a redress scheme

All letting agents and property managers in England must be a member of a government-approved redress scheme. This ensures both landlords and tenants can make complaints to an independent, expert body. By law, information on the name of the redress scheme an agent is a member of must be displayed at each premises of the letting agent or property manager, or published on the website.

## Client money protection scheme membership

In England, letting agents and property managers who operate in the private rented sector and hold client money are required to belong to a government-approved client money protection scheme. They must provide the name of the approved scheme and display their certificate of membership in their offices and on their website.

## Transparent fees

All letting agents must publicise the fees they charge so landlords and tenants are aware of the cost of renting through that agent. Please note that most fees to tenants are banned under the Tenant Fees Act 2019.

# GETTING YOUR PROPERTY READY

## Gas and electric appliances

You must provide a gas safety certificate at the start of the tenancy and within 28 days of each annual gas safety check, if there is a gas installation. If you do not, you will not be able to evict a tenant using a section 21 notice.

Electrical installations and fixed appliances must be safe. It is recommended that checks are carried out at least every 5 years and this will soon become law for electrical installation checks. For HMOs, it is mandatory to carry out checks every 5 years.

It is also recommended that you regularly carry out portable appliance testing (PAT) on any electrical appliances you provide and supply the tenant with a record of any electrical inspections carried out.

You should ensure that anybody carrying out electrical work on the property is competent to do so.

## Smoke and carbon monoxide alarms

Working smoke alarms must be installed on every storey of living accommodation. If your property has any rooms that contain a solid fuel appliance, such as a wood burning stove, working open fire etc., you must also install carbon monoxide alarms in those rooms.



You must carry out a check on the first day of a new tenancy to ensure that smoke and carbon monoxide alarms are in working order and notify your tenant. Failure to comply can lead to a civil penalty of up to £5,000.

Enforcement officers in your local authority can advise those managing HMOs of the fire safety requirements, as these may differ.

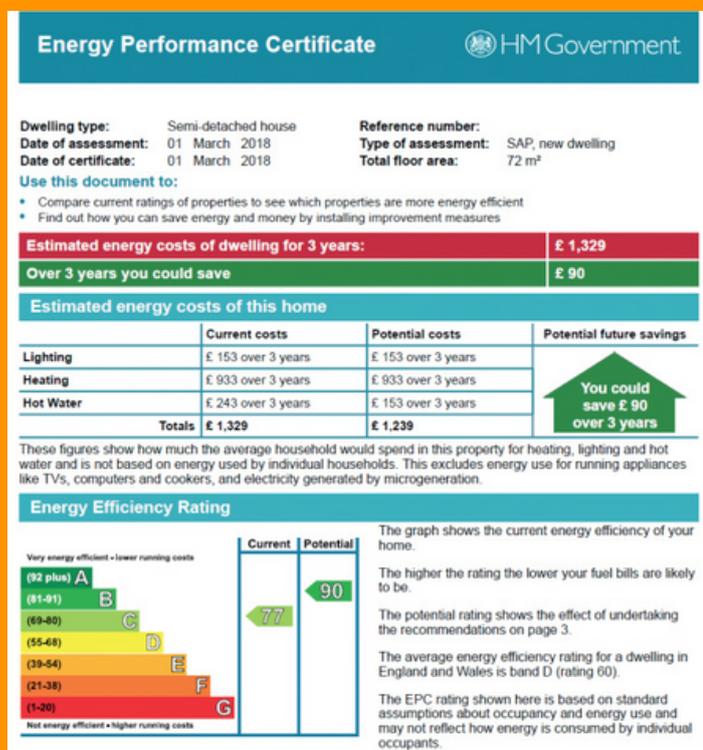
## Energy efficiency

You must provide tenants with an Energy Performance Certificate (EPC) (except some HMOs for example, bedsits or where you let out individual rooms) at the earliest opportunity.

From April 2018, privately rented properties must have a minimum EPC rating of E for new lets and renewals of tenancies (by April 2020 for existing tenancies). Where a property qualifies for an exemption, this must be registered on the National PRS Exemptions Register. If upgrades are necessary for a property to meet the minimum EPC rating, a landlord must contribute their own funding where third party funding is not available, up to a cost cap of £3,500.

Local authorities can impose penalties of up to £5,000 for breaches. Tenants can also ask permission to carry out energy performance improvements and you cannot unreasonably refuse consent.

If the tenant is responsible for paying the energy bills, they can choose to have a smart meter installed.



## Furniture

You must ensure that any furniture supplied has the required labels and fireproofing.

## Water safety

You must ensure the water supply is in working order and carry out a risk assessment to assess the risk from exposure to Legionella.

### CHECKLIST



- You must install working smoke alarms and possibly carbon monoxide alarms on the first day of the tenancy
- You must have a valid annual gas safety certificate
- You must have an EPC for your property (rated E or above from April 2018)
- You must ensure that furniture supplied has the required labels and fireproofing
- You must carry out a risk assessment to assess the risk from exposure to Legionella to ensure the safety of your tenants
- You should make certain that there are no serious health and safety hazards in the property.

Make sure you keep records to ensure you have proof that you are following the necessary legal requirements.

# SETTING UP YOUR TENANCY

## The tenancy agreement

It is best practice to provide your tenant with a written tenancy agreement.

The terms of your agreement must be fair and if your agreement conflicts with the duties imposed on landlords by legislation, then the legislation overrides your tenancy agreement.

The Government has published a model tenancy agreement which can be downloaded for free.

You may decide to draw up your own agreement. If so, it is recommended that you seek professional legal advice.

Prospective tenants should be given every opportunity to read and understand the terms of the tenancy, before agreeing to sign the tenancy agreement.

## Things to consider before making the agreement

How long is the tenancy initially for?

A tenancy can be periodic (e.g. month to month) or for a fixed term. There is no maximum fixed term for a tenancy, although one granted for longer than three years must be executed as a deed. If the tenancy is for more than 7 years special rules apply and you will normally need to use a solicitor to draft it.

## Other things to consider

### You may want to request a rent guarantor

Some landlords ask someone to guarantee the tenant's rental payments. If you do this, bear in mind that for sharers, you may need to make it clear which tenant they are providing the guarantee for.

## Who is responsible for bills such as electricity, gas, water and council tax? You or the tenant?

Usually the tenant pays for these and they must have a choice over the provider for utilities. This should be made clear in the tenancy agreement. In some HMOs, landlords are responsible for the bills and council tax.

It is best practice to:

### Carry out reference checks

You may wish to obtain references from your tenants' former landlords/agents to ensure they are reliable.

You may also want to conduct a credit check to confirm their financial responsibility. A letting agent might provide this service, or there are specialist referencing companies. You must not charge tenants for any reference checks. You may also want to carry out reference checks yourself, for example by asking to see your tenant's bank statements or payslips.

### Prepare and agree an inventory

We recommend you clear the property of any sentimental possessions, have the property cleaned to a professional standard and agree and sign a full inventory with the tenants, including photos (time and date stamped).

### Provide your contact details

Make sure that your tenant has the correct contact details for you or your agent, including a telephone number they can use in case of an emergency.

## Tenants in receipt of benefits

Tenants who are entitled to housing benefit or Universal Credit may get help to pay all or part of their rent (up to the Local Housing Allowance (LHA) rate for tenants in the private rented sector).

## Legal requirements

You are legally required to:

### Carry out right to rent checks

As the landlord, you must check whether a tenant is aged 18 or over and can legally rent in England. You may need to cross-check tenants' documents with the Home Office.

### Protect tenancy deposits

You may ask the tenant to pay a deposit before moving into your property in case of any damage or unpaid bills at the end of the tenancy. It's important to remember that the deposit is the tenant's money. For Assured Shorthold Tenancies created since 6 April 2007 the deposit must be protected by a government approved deposit protection scheme.

Since 1 June 2019, there is a limit to the amount that you can ask for a tenancy deposit. The tenancy deposit for new tenancies is capped at five weeks' rent, where the annual rent is below £50,000. For properties with an annual rent of £50,000 or higher the tenancy deposit is capped at six weeks' rent. For more information, please read the Government's guidance on the Tenant Fees Act for landlords and letting agents,

The landlord (or agent if they are acting on the landlord's behalf) must protect the deposit in one of the schemes within 30 calendar days from the day the deposit is received and must provide the tenant with details (Prescribed Information) of how their deposit has been protected within the same 30-day period.

Failure to do so means the tenant can take you to court and you will be liable to pay them between 1 and 3 times the amount of the deposit. You will not be able to evict them using a section 21 eviction notice unless you refund the deposit first.

Provide a copy of the How to Rent guide, Energy Performance Certificate and a copy of the gas safety certificate.

You must provide your tenants with a copy of the latest version of the How to Rent guide at the start of a tenancy, either as a hard copy or, if agreed with the tenant, via email as a PDF attachment.

You cannot evict a tenant with a section 21 notice if you have not provided these documents.

## CHECKLIST



- You should provide your tenant with a written tenancy agreement
- You should read the government guidance and consider legal advice on writing a tenancy agreement
- You must carry out right to rent checks
- You must not take a tenancy deposit in excess of the relevant cap for that tenancy
- You must protect your tenant's deposit in a deposit protection scheme
- You must provide your tenant with a copy of the How to Rent guide
- You must provide your tenant with the property's Energy Performance Certificate
- You must provide your tenant with a copy of the gas safety certificate at the start of the tenancy, before the tenant moves in

You must not unlawfully discriminate against a tenant or prospective tenant on the basis of their disability, sex, gender reassignment, pregnancy or maternity, race, religion or belief or sexual orientation.

# DURING A TENANCY

## As a landlord, you must:

- Keep in repair and proper working order the supply of water, gas, electricity and heating.
- Keep the property fit for habitation at the outset and for the duration of the tenancy, as required by the Homes (Fitness for Human Habitation) Act 2018. Guidance for landlords can be found [here](#).
- Maintain the structure and exterior of the property.
- Carry out most repairs. If something is not working, ask your tenant to report it to you (or your agent) as soon as they can.
- Maintain any appliances and furniture you have supplied.
- Fit smoke alarms on every floor and carbon monoxide alarms in rooms with appliances using solid fuels – such as coal and wood – and make sure they are working at the start of a tenancy.
- Arrange an annual gas safety check by a Gas Safe engineer (where there are any gas appliances).
- Get a licence for the property, if it is licensable.

## You should also:

- Consider getting landlords' insurance.
- Insure the building to cover the costs of any damage from flood or fire.
- Make sure your tenant(s) know how to operate the boiler and other key appliances.

## A tenant must:

- Pay the rent on time.
- Pay any other bills that they are responsible for on time, such as council tax, gas, electricity and water bills. If a tenant pays the gas or electricity bills, they can choose their own energy supplier.
- Look after the property. A tenant must get your permission before attempting repairs or decorating.
- Be considerate to the neighbours. A tenant could be evicted for anti-social behaviour if they aren't.
- Not take in a lodger or sub-let without checking whether they need permission from you.

The How to Rent guide has further details on the tenants' responsibilities.

**REMEMBER** – It is the tenant's home. You must permit the tenant rights of quiet enjoyment. You cannot access the property whenever you like, unless it is an emergency, and must give at least 24 hours' notice of visits for things like repairs.



# AT THE END OF A TENANCY

If the tenant wants to stay, you will need to consider the following:

**Do you want them to sign up for a new fixed term?**

If you are using an agent to manage the property, the landlord and/or tenants may have to pay renewal fees.

The deposit cap introduced by the Tenant Fees Act 2019 means your tenant may be entitled to a partial refund of their tenancy deposit. The Government's guidance on the Act explains how this affects you.

**Or would you rather they have a 'rolling periodic tenancy'?**

This means you carry on as before but with no fixed term – the tenant can leave at any time by giving notice (normally one month). You can ask the tenant to vacate by giving two months' notice. This option offers flexibility but less security.

**Do you want to increase your rent?**

You can increase your rent by agreement or as set out in your tenancy agreement, or by following a procedure set out in law.

If you or the tenant wants to end the tenancy, there are things both of you must do at the end of the tenancy.

**Give notice**

You must give proper notice if you want the tenant to leave. Normally, the landlord must give at least 2 months' notice and the tenant cannot be required to leave before any fixed period of the tenancy has come to end, unless there is a break clause in the tenancy agreement or you have grounds for eviction under section 8 of the Housing Act 1988.

**Return the deposit**

If the tenant has met the terms of their tenancy agreement, then they should get all of their deposit back at the end of their tenancy.

You can withhold part of their deposit to compensate for any damage caused to your property or furnishing or cleaning costs, but not for reasonable wear and tear. You must provide appropriate evidence for any claim you make. Inventories are a good way to do this.

You should initiate the return of the tenancy deposit to the tenant as soon as possible and if the deposit is required to be protected in a government-backed tenancy deposit scheme you must return it within 10 days of you and the tenant agreeing how much you'll retain. If the tenant disagrees with the amount that you decide to withhold from their deposit, they may raise a dispute with your deposit protection scheme. You should check the process of raising a dispute with your relevant scheme.

**Make sure the rent payments are up to date**

Your tenant cannot withhold rent because they think that it will be taken out of the deposit.

**Check that the tenant has not left bills unpaid**

Ask your tenant if they have paid the bills they are due to pay.



# IF THINGS GO WRONG

It is a landlord's responsibility to keep the property they rent out in good repair.

If your tenant raises concerns about the condition of the property it is your responsibility to assess the condition and make necessary repairs. If you don't, your tenant can ask the local authority to carry out an inspection. The local authority has a duty to take action if it considers there is a serious risk to health and safety. If they decide to serve an improvement notice, you cannot evict your tenant with a section 21 notice for 6 months. If you fail to comply with a statutory notice, local authorities may prosecute or issue a civil penalty of up to £30,000.

The Homes (Fitness for Human Habitation) Act 2018 came into force on 20 March 2019. Under the Act tenants have the right to take action in the courts on the grounds that their property is unfit for human habitation. The court can award damages to the tenant and/or require the landlord to take action to improve the property. If your tenant is having financial troubles or falling into arrears encourage your tenant to speak to you. Try to be helpful and sympathetic.

If you want the tenant to leave the property, you must notify them in writing, with the right amount of notice. Tenants can only be legally removed from the property with a court order.

If you are evicting a tenant who may potentially become homeless, advise them to contact the housing department of your local authority straight away.

## Banning orders and the database of rogue landlords

Local authorities have powers to apply for banning orders which ban landlords or property agents from letting housing in England, engaging in English letting agency work and/or property management work if they have been convicted of a banning order offence. Offences include failing to comply with a formal notice issued by the local authority requiring safety improvements and illegal evictions.

Landlords or agents will be added to the database of rogue landlords and property agents if they receive a banning order. They can also be added to the database if they are convicted of a banning order offence or receive 2 or more civil penalties within a 12 month period.



If you have a complaint about a letting agent's service and they don't resolve your complaint, you can complain to their independent redress scheme. If they fail to comply with legal requirements, you should contact your local Trading Standards.

# EVICTING A TENANT

There are two notices a landlord can serve to begin the eviction process:

- section 21 notice – if you want your property back at the end of the fixed term or after it ends
- section 8 notice – if your tenants have broken the terms of the tenancy

You can either give your tenants a section 21 notice or a section 8 notice, or both.

Speak to a solicitor or a landlord advisory body if you don't know which notice to give.

Landlords usually use the section 21 procedure to evict tenants, giving the tenant at least 2 months to vacate the property.

Landlords can use the section 8 procedure if the tenant has rent arrears, has broken the terms of the tenancy agreement, or one of the other grounds in Schedule 2 of the Housing Act 1988 applies.

If the tenant has failed to vacate after either notice has run out, you must apply for a court order. If the tenant still won't leave, you can request bailiffs to remove the tenant from your property.

## Circumstances where you cannot serve a section 21 notice

The London County Court has held that a section 21 notice could not be used to evict tenants if a valid gas safety certificate had not been issued at the start of the tenancy. The ruling confirmed that issuing the certificate after the tenancy commenced would not remedy this. While this ruling is not binding it is likely to be followed by other courts. This ruling does not prevent a landlord from using a section 8 notice to evict tenants under the specified grounds.

You cannot use a section 21 notice if any of the following apply:

- it's less than 6 months since the tenancy started
- the fixed term has not ended, unless there's a clause in the contract which allows you to do this
- the property is categorised as a House in Multiple Occupation (HMO) and does not have an HMO licence from the council (NB if application for a licence has been made or a temporary exemption from licensing has been given this does not apply)
- the property requires a licence under a selective licensing scheme from the council and does not have a licence from the council (NB if an application for a licence has been made or a temporary exemption from licensing has been given this does not apply).
- the council has served an improvement notice on the property in the last 6 months
- the council has served a notice in the last 6 months that says it will do emergency works on the property
- the tenancy started after April 2007 and you have not put the tenants' deposit in a deposit protection scheme
- you do not have a landlord licence - if you live in Wales
- there are outstanding prohibited payments or a holding deposit which is required to be refunded under the Tenant Fees Act 2019 that you have not returned

You also cannot use a section 21 notice if you haven't given the tenants copies of:

- the property's Energy Performance Certificate
- a current gas safety certificate for the property at the outset of the tenancy
- the Government's How to Rent guide

# STOP BY AND SAY HELLO

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Pop into our office. We are located opposite the O2 Centre in Finchley Road. Even if you're not sure if you are ready to sell, buy or let property yet, we're happy to have a chat and answer your questions



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