The housing advice bulletin from Shelter for the National Homelessness Advice Service

Housing matters

Issue 137 August 2020

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Housing matters

Housing matters is produced by Shelter for the NHAS and aims to provide a source of up-to-date housing and homelessness news, focus on important case law, cover key legal issues, and produce information for public use.

Published by:
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Housing matters welcomes contributions from NHAS users. If you would like to provide an article or update for *Housing matters* please email Ewa_Brem@shelter.org.uk

National Homelessness Advice Service

The National Homelessness Advice Service (NHAS) is funded by the Ministry for Housing, Communities and Local Government.

The service aims to prevent homelessness and remedy other housing problems through increasing access to high-quality housing advice in England, including online information on the NHAS website at www.nhas.org.uk

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What's new?

Covid-19: Updates to the Homelessness Code of Guidance

Paragraphs 8.44 and 8.45 of the Homelessness Code of Guidance for local authorities state that local authorities should consider the vulnerability of homeless applicants classed as either clinically extremely vulnerable or clinically vulnerable for the purposes of priority need. Authorities should also consider whether people with a history of rough sleeping should be considered vulnerable.

Covid-19: stay to possession proceedings extended until 23 August 2020

The Civil Procedure (Amendment No. 2) (Coronavirus) Rules 2020 SI 2020/582 and CPR 55.29 extend the stay to possession proceedings under CPR Part 55 from 25 June to 23 August 2020. From 23 August the Civil Procedure (Amendment No. 4) (Coronavirus) Rules 2020 SI 2020/751 will insert Practice Direction 55C into the Civil Procedure Rules, which will govern possession claims until 28 March 2021.

Covid-19: support for rough sleepers

In letters to local authorities, the MHCLG and the Minister for Rough Sleeping and Housing outlined the options for local authorities when planning the next steps for supporting people in emergency accommodation and confirmed that the UK government had temporarily derogated from Article 24(2) of the EU Directive 2004/38/EC, so as to enable local authorities to provide support to EEA jobseekers and those with an initial right to reside for up to 12 weeks.

Interim duty to accommodate

In R (Mitchell) v Islington LBC [2020] EWHC 1478 (Admin), the High Court held that where a homeless applicant in interim accommodation provided under section 188(1) of the Housing Act 1996 had received a non-priority need decision but no notification that no further duties would be owed after the end of the relief duty, the interim accommodation duty had not ended. Under section 188(1ZA) of the 1996 Act, where the relief duty is owed, a notification that after the end of the relief duty no further accommodation duties will be owed is required.

Eligibility for homelessness assistance and social housing

On 24 August 2020, the Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2020 SI 2020/667 will introduce two new categories of persons eligible for assistance under Parts 6 and 7 of the Housing Act 1996: (1) family members of 'persons of Northern Ireland' who have been granted limited leave to enter or remain in the United Kingdom under Appendix EU to the Immigration Rules; (2) habitually resident applicants granted leave to remain as a stateless person. The MHCLG has published a letter to local authorities explaining the changes.

Ending a flexible tenancy

In Croydon LBC v Kalonga [2020] EWHC 1353 (QB), the High Court held that where a flexible tenant defaulted on rent, the local authority could not end the tenancy in the fixed term other than by relying on a forfeiture clause.

Section 21 notice - restrictions

In Trecarrell House Ltd v Rouncefield [2020] EWCA Civ 760, the Court of Appeal held that where a landlord had carried out a gas safety check prior to the tenancy start date but had failed to provide a copy of the gas safety certificate to an assured shorthold tenant before the tenant took up occupation of the premises, the landlord could provide the certificate at a later date and serve a valid section 21 notice.

Access to social housing for members of the Armed Forces

The purpose of the new statutory guidance is to complement the Code of Guidance on allocations and to assist local authorities when dealing with applications for social housing from members of the Armed Forces and their families.

'No DSS' ruled unlawful

In an unreported case at York County Court, a blanket policy of excluding prospective tenants in receipt of social security benefits when advertising properties to let has been declared unlawfully indirectly discriminatory on the grounds of sex and disability. Shelter has been campaigning to end the automatic exclusion of applicants in receipt of social security benefits by landlords and letting agents and supported their client in bringing the challenge.

Building Safety Bill

On 20 July 2020, MHCLG published the draft Building Safety Bill aimed at reforming the building and fire safety system.

The Ombudsman resumes service

The LGSCO resumed accepting new complaints on 29 June 2020.

Advising guarantors

In this article, Alexa Walker explains the legal position of guarantors for tenancy agreements and what remedies may be available if a private landlord takes action against a guarantor.

Alexa Walker is a Specialist Debt Adviser and a Senior Legal Writer at Shelter.

This article will consider the legal position of guarantors who are asked to pay rent or other costs arising from an assured shorthold tenancy agreement. The information in this article does not relate to guarantees given for money or other forms of consideration. Guarantees provided for financial reward may constitute insurance, which is an FCA regulated activity.

Initial considerations

Guarantee agreements provide additional security for certain debts and liabilities. If the principal debtor or tenant is unable to pay, the guarantor can be pursued for payment. This action may be in addition to or instead of pursuing the tenant.

It is increasingly common for landlords and agents to require a guarantee, particularly in cases where the prospective tenant is a student, has a poor credit rating, or is in receipt of means tested benefits. Prior to agreeing, potential guarantors should consider the possible extent of their liability, in case it extends to:

- other people who live in the property
- damage to the property
- variations to the tenancy
- tenancies beyond the initial term.

Caution should be exercised if the guarantee extends to tenants other than the family member or friend of the guarantor, or if it purports to be 'open-ended' or unlimited. The guarantor has no right to end the tenancy agreement, so it will normally be in their interest to ensure the guarantee is limited to the initial fixed term. Guarantors should always be given a copy of the tenancy agreement, which can be checked for rent review clauses.

It may be possible to negotiate a payment of rent in advance instead of a guarantee. If this is affordable, it may be a better option.

The guarantor could agree to be liable for a proportion of the rent if it relates to a joint tenancy.

Enforceability of the guarantee

Getting answers to the following questions will help to determine whether the guarantee is enforceable, and if so, to what extent.

Is the guarantee in writing and signed?

All guarantees must be in writing[1] and signed by the guarantor. Electronic signing is permitted.[2]

Does the tenancy pre-date the guarantee?

Where the tenancy pre-dates the guarantee, the guarantee must be drawn up and executed as a deed. This applies whether or not the tenant has moved in.

The valid execution of a deed imposes the following formal requirements:[3]

- the document must make it clear that it is intended to be a deed
- it must be signed by the guarantor
- the guarantor's signature must be witnessed at the point of signing.

The absence of a date will not invalidate a deed.[4]

Are there joint guarantors, and have they all signed?

If the guarantee names more than one person as the guarantor, they must all sign it. Failure to do so means it is not binding on any of the named[5] individuals, including any who have signed.

If all the joint guarantors have signed, they may be pursued individually or jointly.

What does the guarantee cover?

Most guarantees for tenancy agreements cover unpaid rent and damage to the property. The guarantee will only cover liabilities specified in the guarantee agreement, so if the agreement only mentions rent arrears, it will not cover damage to the property.

Does the guarantee allow for variations in the tenancy?

Unless expressly stated, the guarantee liability will normally be confined to that in the tenancy agreement. If the tenancy is for a 12-month fixed term, with no express provision in the contract for it to continue afterwards, the guarantee liability will also end. This is the case even where the tenancy does continue after the fixed term.

Any variation to the guarantee must be agreed by the guarantor. Otherwise, the guarantee will only be enforceable if the variation is 'self-evidently insubstantial or non-prejudicial'.[6]

It is common for tenants to remain in their homes beyond the fixed term when there is no contractual provision for the tenancy to continue. In these cases, the tenancy is 'statutory periodic'.[7] This constitutes a new

tenancy, and the guarantee will cease to be enforceable for any arrears or other liability arising after the variation.[8]

Where the tenancy agreement allows for a contractual periodic phase, the wording of the guarantee will have to be carefully checked to determine whether the liability continues.

Increases in rent may be enforceable if the tenancy contains a rent review clause and the guarantee specifies rent due 'under the tenancy' (or similar[9]).

If the guarantee does allow variations, including rent increases or a new periodic tenancy, the court may release the guarantor from any additional liability if it substantially exceeds the amount they initially agreed to.[10]

If the guarantee purports to cover 'any extension or variation' to the tenancy, this may be an unfair contract term, and unenforceable.

How much is really owed by the tenant?

The guarantor's liability cannot exceed that of the tenant, so it is always useful to check whether the tenant has a defence or a claim against the landlord. Specialist advice may be needed to deal with issues such as disrepair at the property.

If a court claim has been issued against the guarantor, it is possible to ask for an adjournment to allow the tenant to bring a claim or counterclaim to challenge the amount of the debt.

Was the deposit protected?

If the landlord has not taken the correct steps to protect the tenancy deposit, the tenant can bring a claim for up to three times the amount of the deposit.[11]

A guarantor cannot bring the claim unless they have paid the deposit on the tenant's behalf.[12] If the tenant brings a successful claim it can be set off against arrears and reduce the guarantor's liability.

Was the guarantor misled, coerced or unduly influenced?

A guarantor can seek to set aside a guarantee on the basis of fraud, misrepresentation or undue influence, but this will require specialist advice.

In contract law, if one party wants to be relieved of their responsibilities due to the undue influence or misrepresentation of a third party, it is necessary to show that the other party knew, or should have known, that this was the case. Guarantor agreements are not subject to this test.

A landlord accepting a guarantee is already on notice of these issues, and should take steps to ensure the guarantor is aware of their responsibilities and is not giving the guarantee as a result of undue influence.[13] This is referred to as a 'rebuttable presumption' of undue influence.

To rebut the presumption of undue influence, a landlord should consider:

- speaking to the guarantor personally and explaining the full extent of the liability
- recommending the guarantor seeks legal advice about their responsibilities and allowing time for this to take place.

Are there unfair terms in the guarantee or tenancy agreement?

Consumer contracts include tenancy agreements, and by extension guarantor agreements for tenancies. This means rules about unfair terms apply.[14]

The Consumer Rights Act 2015 came in to force on 1 October 2015 and applies to contracts entered into on or after that date. There are a number of examples of unfair terms in Schedule 2 to the Act, including terms which allow the landlord to:

- extend the tenancy without giving the tenant enough chance to end it[15]
- alter the terms of the contract without a valid reason which is specified in the contract[16]
- claim large default sums if the tenancy is breached.[17]

Guarantees which allow the landlord and tenant to extend the liability of the guarantor, such as a term in the guarantee allowing 'any variation or extension', may be an unfair term.

For agreements executed before 1 October 2015, similar provisions are contained in the Unfair Terms in Consumer Contracts Regulations.[18] The examples of unfair terms above are also contained in Schedule 2 to the regulations. If the court finds that a term in a tenancy agreement or a guarantee is unfair, that term is not binding on the guarantor. The agreement is still enforceable as if the unfair term did not exist.[19]

The Tenant Fees Act 2019 applies to guarantors for tenancy agreements.[20] This limits the rate of interest on unpaid rent to 3 per cent above the Bank of England base rate.[21]

Footnotes

[1] s.4 Statute of Frauds 1677.

[2] s.7(3) Electronic Communications Act 2000.

[3] s.1 Law of Property (Miscellaneous Provisions) Act 1989.

[4] Morrell v Studd & Millington [1911-13] All ER Rep Ext 1426.

[5] Harvey v Dunbar Assets plc [2003] EWCA Civ 952.

[6] Holme v Brunskill [1878] 3 QBD 495.

[7] s.5 Housing Act 1988.

[8] Junction Estates v Cope (1974) 27 P & CR.

[9] Torminster Properties Ltd v Green [1983] 1 WLR 676 (CA).

[10] Triodos Bank NV v Dobbs [2005] EWCA Civ 630.

[11] s.214 Housing Act 2004.

[12] s.213(10) Housing Act 2004.

[13] Royal Bank of Scotland v Etridge [2001] UKHL 44.

[14] Brusse and Garabito v Jahani BV [2013] EUECJ C-488/11.

[15] Para 9, Part 1, Schedule 2 CRA 2015.

[16] Para 11, Part 1, Schedule 2 CRA 2015.

[17] Para 11, Part 1, Schedule 2 CRA 2015; see also Schedule 1 Tenant Fees Act 2019.

[18] SI 1999/2083.

[19] s.67 CRA 2015 & Reg 8 UTCCR 1999/2083.

[18] SI 1999/2083.

[19] s.67 CRA 2015 & Reg 8 UTCCR 1999/2083.

[20] s.1(9)(b) Tenant Fees Act 2019.

[21] Para 4(5), Schedule 1 Tenant Fees Act 2019.

Time limits for enforcing a guarantee

There are statutory limitation periods for bringing claims under contract, and under a guarantee. The time limit for enforcing a guarantee for rent is normally 6 years from the cause of action.[22]

Liabilities under a guarantee are limited to those under the principal agreement, even if the guarantee has been executed as a deed. The time limit for bringing a claim for rent arrears or damage to a property is 6 years from the cause of action.[23]

Where the guarantee is given for a tenancy agreement, the cause of action is the date the rent fell due unless the guarantee stipulates otherwise. The debt must still be enforceable against the tenant for it to be enforceable against the guarantor, so if the rent has become statute barred, this will also prevent enforcement of the guarantee.[24]

Obtaining relief

The courts have the power to set aside a guarantee that has been obtained by fraud, misrepresentation or undue influence. The guarantor could issue a claim for a declaration of this from the courts. The claim is made under Part 8 Civil Procedure Rules, which means the rules of procedure are complex and costs can be substantial. Specialist advice is always required, and representation may also be necessary. The risk of costs may be lower when defending a claim.

If the debt remains unpaid, the guarantor is likely to face a money claim to enforce the guarantee. The guarantor may file a defence at this stage. If the claim is for less than £10,000, it will be allocated to the small claims track and the costs will not be substantial.[25] If the claim is for more, the costs may be higher and the losing party is frequently ordered to pay the winning side's costs.

Advising guarantors is often complex, and because they are chosen as a result of their assets and/or income, they frequently have a lot to lose. A debt adviser may be able to offer advice about the extent of the liability, possible challenges and risks of litigation. A solicitor may be necessary if the guarantor would like to challenge the validity of the guarantee.

Shelter's **Specialist Debt Advice Service** can provide second tier advice about guarantor liability and assist with responding to court claims.

Footnotes

[22] s.19 Limitation Act 1980.

[23] Romain and Wolfson v Scuba [1996] 2 All ER 377.

[24] Lakeman v Mountstephen (1874) LR 7 HL 17.

[25] CPR 26.6.

Advising guarantors - case study

Ben is seeking advice after signing a guarantee agreement for his friend Richard's assured shorthold tenancy. The guarantee agreement states Ben is liable for 'rent and other costs arising from the tenancy agreement, including any extension, renewal or variation'. Richard assured him that he had only signed up for a six-month fixed term. The six-month term is now over and Richard remains in the property. Ben would like to know whether his liability under the guarantee has ended. Ben has had no contact with the landlord or their agent.

Unfair term

It is common for a guarantee agreement to state it extends to renewals and variations. If it is a standard term in the agreement that was presented for signing, rather than individually negotiated by parties with the benefit of legal advice, the court may decide it is an unfair term.

Lack of information

Paragraph 6.16 of the Competition and Markets Authority **guidance for lettings professionals** states that guarantors should be provided with 'clear, accurate and full information', including the terms of the tenancy agreement.

Neither the landlord nor the agent has explained Ben's potential liability to him. Richard may not have understood the extent of the guarantor's obligations. If Ben was not given a copy of the tenancy agreement, he had no way of knowing what the terms were.

Practical steps

An adviser could help Ben with drafting a letter to the landlord and their agent to make the following points:

- the terms of the tenancy were not provided
- the standard term suggesting Ben's liability is unlimited is likely to be an unfair term
- the landlord took no steps to protect Ben from being pressured to sign the agreement
- the landlord did not explain the extent of Ben's liability to him to allow him to make an informed decision.

If the landlord issues a money claim against Ben, specialist advice should be sought. Completing the acknowledgment of service (included in the claim pack) gives Ben 14 days to file a defence.

Ben's adviser can help him with:

- getting all the facts and evidence together
- preparing a witness statement by writing down everything that happened in Ben's own words and in chronological order.

Article

Electrical safety in the PRS

In this article, Ewa Brem provides an overview of selected legal provisions governing electrical safety in rented homes, with a particular emphasis on the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 SI 2020/312 that apply from 1 July 2020.

Ewa Brem is a Senior Legal Writer at Shelter and the editor of 'Housing matters'.

Electrical faults can result in a serious injury or death. In the year 2018-2019, there were 61 deaths in fires caused by electrical appliances and electrical installation.[1]

Historically, when enforcing their rights in relation to electrical safety, tenants relied mainly on contractual remedies for disrepair[2] and the local authority's involvement under the Housing Health and Safety Rating System (HHSRH),[3] with the Environmental Protection Act 1990 providing additional framework in cases of statutory nuisance.

Gradually, the legal remedies have been expanded to include the Homes (Fitness for Human Habitation) Act 2018 and the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 ('the Electrical Safety Standards').

This article offers an overview of selected legal provisions governing electrical safety in rented homes, with a particular emphasis on the Electrical Safety Standards that apply from 1 July 2020.

Implied contractual rights

In the context of electrical safety, the two most relevant implied obligations for landlords are:

- disrepair: keeping installations in repair and good working order[4]
- fitness for habitation: ensuring that the dwelling is free of electrical hazards at the beginning and throughout the tenancy.[5]

Contractual rights can be written into a tenancy agreement or implied. A term is implied if an Act of Parliament specifies that certain rights and obligations are binding on the landlord and tenant, irrespective of whether they are written into the individual tenancy agreement.

The two implied rights summarised below are provided for in the Landlord and Tenant Act 1985 and apply to tenancies only. They are not implied in licence agreements. Shelter Legal provides further information on how to distinguish between a tenancy and a licence.

Disrepair

Section 11 of the Landlord and Tenant Act requires the landlord to keep in repair and good working order:[6]

- the electrical installation, for example faulty wiring
- any installation for space heating and heating water.

If the installation was in disrepair when the tenancy started, the landlord will have to remedy any faults.[7]

Fixtures, fittings and white goods are generally excluded, unless they are part of an installation.

Fitness for human habitation

On 20 March 2019, the Homes (Fitness for Human Habitation) Act 2018 introduced this remedy, initially for tenancies that started or were renewed on or after this date. Periodic tenancies in existence before 20 March 2019 are protected from 20 March 2020.[8]

Fitness for habitation is a broader term than disrepair. In relation to electrical safety, a property is unfit for habitation if it is 'not reasonably suitable for occupation in that condition'[9] because of:

- disrepair to the electrical installation
- hazards under the Housing Health and Safety Rating System

How to take action

Unless the fault occurs in common parts of the building the landlord is in control of,[10] the tenant must:[11]

- put the landlord on notice
- allow reasonable time to carry out the works.

The notice should be in writing and it is advisable to retain proof of it being served on the landlord or the landlord's agent. Shelter provides a sample letter private tenants can use to report the problem to their landlord.

If the landlord fails to take action within a reasonable time, the tenant can apply to the County Court for:

- an injunction ordering the landlord to carry out the necessary repairs [12]
- damages.

The tenant should follow the pre-action protocol for housing conditions before starting court proceedings. Claims should be made on the N1 form. The claim may be allocated to the multi-track or the fast-track which increases the risk of the tenant being liable for significant costs. It is advisable to seek specialist advice

before taking court action. Legal aid may be available in cases where the health and safety of anyone in the household is at risk.

Claims for damages are out of scope for legal aid unless they are part of the tenant's defence in possession proceedings.

Housing Health and Safety Rating System

Tenants concerned about electrical safety can contact their local council. There are a number of enforcement options. The Housing Health and Safety Rating System (HHSRS) is one of the most commonly used. The HHSRS was introduced by the Housing Act 2004.

Unlike the implied contractual terms mentioned above, HHSRS is not restricted to tenancies. The overriding principle of the HHSRS is that 'any residential premises should provide a safe and healthy environment for any potential occupier or visitor'.[13]

Local authorities use it to assess and enforce housing standards by:[14]

- inspecting the premises
- identifying hazards
- categorising hazards according to likelihood of harm.[15]

Local authorities use a formula to calculate the risk score and divide hazards into two categories depending on the potential risk of harm:[16]

- category 1 hazards (bands A to C): most serious hazards the presence of which renders the authority under a duty to take action
- category 2 hazards (bands D to J): less serious hazards where the authority has discretion whether to take action.

The regulations specify 29 'matters and circumstances' that may result in a hazard. In relation to electrical safety, these are:[17]

- electrical hazards, defined as exposure to electricity
- flames, hot surfaces
- fire
- explosions.

The scope of HHSRS extends beyond the scope of implied contractual rights and includes inherent defects, hazards and safety risks in the dwelling house, as well as any shared parts or outbuildings.[18]

For example, an old electrical installation which is not faulty but cannot withstand the pressure of modern household appliances is unlikely to constitute disrepair under section 11 of the 1985 Act but is likely to be considered a hazard under the HHSRS due to the risk of fire and an electrical shock.

How to take action?

An occupier concerned about electrical safety should contact their local council's private rented sector team or the environmental health department and state that they:

- are concerned about a potential electrical hazard in the property
- would like to request an inspection by the local authority's environmental health officer.

Where the local authority refuses to carry out an inspection, it may be necessary to contact the local justice of the peace (magistrate) to make an officiant complaint. Where such a complaint is made and the magistrate acts on it, a local authority has a duty to inspect the premises.[19]

As part of the enforcement action, the local authority may:

- serve a hazard awareness notice or an improvement notice on the landlord
- where the risk to health is imminent, take emergency action to remedy the fault
- serve a prohibition order banning anyone from entering or living at the premises
- make a compulsory purchase order.

Defence to a section 21 notice

Unlike any other legal remedy, if a landlord retaliates with a section 21 notice following the tenant's complaint to the local authority, the notice may be invalid. This is commonly referred to as retaliatory eviction and depends on whether the local authority has served an improvement notice.[20] For this reason, assured shorthold tenants may be particularly inclined to use the HHSRS remedy when dealing with poor housing conditions.

The new law: Electrical Safety Standards

The scope of the Electrical Safety Standards is broader than the protection offered by the implied contractual terms and the HHSRS.

Landlord's obligations are extended to taking preventative steps to ensure good standards of electrical safety are maintained throughout the tenancy.

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 SI 2020/312 (The Electrical Safety Standards) came into force on 1 June 2020.

Shelter Legal

Electrical safety

Footnotes

[1] Source: https://www.gov.uk/government/statistical-data-sets/fire-statistics-data-tables#cause-of-fire

[2] s. 11 Landlord and Tenant Act 1985.

[3] Part 1 Housing Act 2004.

[4] s.11(1)(b)-(c) Landlord and Tenant Act 1985.

[5] s.9A Landlord and Tenant Act 1985, as inserted by s.1(3) Homes (Fitness for Human Habitation) Act 2018.

[6] s.11(1)(b)-(c) Landlord and Tenant Act 1985.

[7] Proudfoot v Hart [1890] 25 QBD 40; Luxmore v Robson [1818] B & Ald 584; Saner v Bilton [1878] 7 Ch 815.

[8] s.9B Landlord and Tenant Act 1985, as inserted by s.1(3) Homes (Fitness for Human Habitation) Act 2018.

[9] s.10(1) Landlord and Tenant Act 1985, as amended by s.1(4) Homes (Fitness for Human Habitation) Act 2018.

[10] Edwards v Kumarasamy [2016] UKSC 40.

[11] Makin v Watkinson [1870] LR 6 Ex 25; O'Brien v Robinson [1973] AC 912; Calabar Properties v Sticher [1983] 3 All ER 759 ; Morris v Liverpool (1987) 20 HLR 498; Earle v Charalambous [2006] EWCA Civ 1090. Any reference in this article to notifying the landlord includes notifications made to the landlord's agent.

[12] s. 9A(5) Landlord and Tenant Act 1985, as inserted by s.1(3) Homes (Fitness for Human Habitation) Act 2018.

[13] para 1.12 HHSRS Operating Guidance - Housing Act 2004: Guidance about inspections and assessment of hazards given under Section 9, February 2006.

[14] Part 1 Housing Act 2004; HHSRS Operating Guidance - Housing Act 2004: Guidance about inspections and assessment of hazards given under Section 9, February 2006; Housing Health and Safety Rating System: Enforcement Guidance; February 2006.

The Electrical Safety Standards apply from 1 July 2020 to tenancies in the private rented sector that started on or after 1 June 2020.

The current version of the non-statutory guidance states that for the tenant to be protected from 1 July 2020, the tenancy start date must be on or after 1 July 2020.

However:[21]

- regulation 1(3) states that the rules apply to all 'new specified tenancies' from 1 July 2020
- regulation 2 defines a 'new specified tenancy' as a tenancy that started on or after the date when the Electrical Safety Standards came into force
- regulation 1(2) states that the Electrical Safety Standards come into force on 1 June 2020

Tenancies that started before 1 June 2020 and have not been renewed since will be covered from 1 April 2021.[22]

Which tenancy types are covered?

The new Electrical Safety Standards apply to all tenancies in the private rented sector.

The Regulations apply to 'specified tenancies' defined by a reference to section 122(6) of the Housing and Planning Act 2016 which extends the definition of a tenancy to include a licence to occupy.[23]

The government guidance for tenants states that statutory periodic tenancies are to be treated as 'new tenancies'.

Landlords' obligations

From 1 July 2020 private landlords must:[24]

- arrange for a qualified person to carry out an electrical safety check before the tenancy commences
- ensure that the electrical safety standards are met throughout the tenancy
- carry out electrical safety checks on every electrical installation every 5 years, unless the most recent report indicates a shorter interval
- retain a copy of the report until the next test is due and supply it to the person carrying out the next check.

Electrical installation is defined as 'fixed electrical cables or fixed electrical equipment located on the consumer's side of the electricity supply meter'. [25]

Exclusions

The Electrical Safety Regulations do not apply to the following:[26]

- tenancies where the landlord is a Private Registered Provider of Social Housing, even if the landlord is not acting in the capacity of a public body
- tenancies where the tenant shares facilities, such as a toilet, bathroom, kitchen or living room, with a resident landlord or a member of the resident landlord's family
- long leases and tenancies for a fixed term of 7 years or more
- student halls of residence
- hostels and refuges
- care homes, hospices and other accommodation relating to healthcare provision.

Checks and reports

As part of their duties under the new regulations, landlords must arrange for an electrical safety check:

- before the tenancy commences
- throughout the tenancy.

The checks must be carried out every 5 years, unless the latest report recommends a shorter interval.[27]

Where a tenancy started on or after 1 June 2020, a pre-tenancy check should have been arranged before the new law came into force. Landlords who failed to do so may be able to argue against a financial penalty on the basis that the legislation does not allow for any lead-in period. Until there is a binding case, the situation remains unclear.

There is no requirement to carry out a new check each time before a new tenant moves in, as long as the previous electrical safety report is valid. For example, a report obtained on 15 June 2020 will be normally valid for up to 5 years and can be shown to prospective tenants during this period to satisfy the pre-tenancy check requirement.

All electrical safety checks must be carried out by a qualified person, such as a qualified electrical engineer. The guidance for landlords provides detailed information on how landlords can ensure the contractor is sufficiently qualified.

A report will be produced after each check.

The landlord must give a copy of the most recent electrical safety report to:[28]

- any existing tenant – within 28 days from when the safety check is carried out
- any prospective tenant – within 28 days from receiving a written request from them

Footnotes

[15] reg 6(2) Table 1 Housing Health and Safety Rating System (England) Regulations 2005 SI 2005/3208.

[16] regs 7-8 Housing Health and Safety Rating System (England) Regulations 2005, SI 2005 No.3208; para 3.23-31 Housing Health and Safety Rating System Operating Guidance, February 2006.

[17] reg 3(1) and Sch.1 Housing Health and Safety Rating System (England) Regulations 2005 SI 2005/3208.

[18] para 2.1-2.31 HHSRS Operating Guidance - Housing Act 2004: Guidance about inspections and assessment of hazards given under Section 9, February 2006.

[19] s.4(2) and s.4(3) Housing Act 2004.

[20] s.33(1) Deregulation Act 2015.

[21] The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 SI 2020/312.

[22] reg 1(3)(b) The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 SI 2020/312.

[23] reg 2 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 SI 2020/312.

[24] regs 1(2), 1(3)(b) and 3(1) The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 SI 2020/312. The 2020/321 Regulations are made under s.122 Housing and Planning Act 2016.

[25] reg 2 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 SI 2020/312; reg 2(1) Building Regulations 2020 SI 2010/2214.

[26] Schedule 1 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 SI 2020/312.

[27] reg 3(2) The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 SI 2020/312.

[28] reg 3 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 SI 2020/312.

- any new tenant before the tenant moves in
- the local authority if the authority requests a copy.

If the electrical report indicates the electrical installation is unsafe, the landlord must arrange for an investigation or carry out repairs within:[29]

- 28 days from when the inspection or test took place
- earlier, if the electrical report indicates a shorter timescale.

The landlord must:[30]

- obtain a written confirmation that the repairs or further investigative work have been completed
- provide a copy of the confirmation to the tenant and the local authority within 28 days, together with the original report indicating that repairs or further investigative work were required.

Landlord's non-compliance – how to take action

Where the landlord has not carried out the necessary checks or refused to remedy an electrical fault, tenants should contact the local authority's private rented sector unit or the environmental health department.

The authority must take action if it has reasonable grounds to suspect that the landlord has not complied with their obligations under the Electrical Safety Standards. The level of the authority's involvement will depend on the seriousness of the breach.

For non-urgent works, the authority must serve a remedial notice on the landlord and specify what action must be taken.[31] If the landlord fails to comply and the notice is not withdrawn, the local authority may, with the tenants' consent:[32]

- arrange for the works to be carried out
- pass the cost of the works to the landlord.

The landlord will not be penalised for non-compliance with the remedial notice if they:[33]

- can show that they have taken all reasonable steps to comply
- are prevented from entering the premises by the tenant.

If urgent remedial action is required, the authority may, with the tenant's consent, arrange for the works to be carried out straight away.[34]

Before the works commence, the authority must serve a notice on the landlord and the occupiers.

The notice must state:[35]

- what urgent remedial action is required
- the location of the premises
- the power under which urgent remedial action is taken
- when the remedial action is to take place
- appeal procedure and time limits
- the maximum financial penalty for non-compliance.

Tenants' right to information

Where the authority has arranged for works to be carried out:[36]

- tenants have the right to request proof of identification and authority from any engineer attending the premises
- at least 48 hours' notice must be given.

Financial penalties

Where the authority is satisfied beyond reasonable doubt that a landlord is in breach of their duties in relation to electrical safety, it may impose a fine of up to £30,000.[37]

Legal loopholes

Below is an overview of areas where the impact of the Electrical Safety Standards appears unclear at the moment and which may pose a challenge to advisers and local authorities.

Changes to the HMO regime

Parts 6 and 7 of The Electrical Safety Standards amend both mandatory licensing and management of houses in multiple occupation (HMO) in the following way:

(1) Regulation 14 removes the requirement for an HMO manager to arrange for the electrical installation to be tested and inspected every five years.[38]

(2) Regulation 13 adds the following to the mandatory HMO licensing conditions:[39]

- ensuring that every electrical installation in the house is in proper working order and safe for continued use
- supplying the authority with a declaration confirming that the installation is safe, if the local authority requests one.

Footnotes

[29] reg 3(4) The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 SI 2020/312.

[30] reg 3(5) The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 SI 2020/312.

[31] reg 4 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 SI 2020/312.

[32] regs 6 and 8(1)(a) The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 SI 2020/312.

[33] regs 5(2)-(3) The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 SI 2020/312.

[34] reg 10 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 SI 2020/312.

[35] reg 10(4) The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 SI 2020/312.

[36] regs 6(4) and 10(5) The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 SI 2020/312.

[37] reg 11 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 SI 2020/312.

[38] reg 14 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 SI 2020/312.

[39] para 1(3)(c) Schedule 4 Housing Act 2004, as inserted by regulation 13 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020/312.

[40] see reg 2(1) Building Regulations 2010 SI 2010/2214.

Not all HMOs are subject to mandatory licensing. For more information about how to identify a HMO subject to mandatory licensing, see the relevant section on Shelter Legal and the factsheet 'Is your home a HMO?' in the 'Repairs & safety' section of the NHAS web site.

The Electrical Safety Standards came into force on 1 June 2020 and apply from 1 July 2020 to all tenancies that started or were renewed on or after 1 June 2020.

This means that:

- from 1 July 2020, HMO managers are no longer responsible for arranging electrical safety checks under the HMO Management Regulations
- electrical safety checks will now be part of the mandatory HMO licensing conditions.

However, it is unlikely that landlords in possession of a valid HMO licence will have to apply for a new one purely on the basis that the current one does not deal with the requirements to ensure electrical safety.

As HMO licences can be granted for a period of up to 5 years, some HMO landlords may not find this requirement as a condition of renewing their licence for some time.

It does not, however, mean that landlords of HMOs are not subject to the Electrical Safety Standards. The Standards impose new duties on all landlords in the private rented sector, including landlords of HMOs, where a new tenancy is granted on or after 1 June 2020. A non-compliant HMO landlord will face sanctions under the Electrical Safety Standards regime, even if they are not in breach of their current HMO licence.

The new regulations distinguish between obligations to arrange for electrical safety checks and maintain electrical safety that apply to all landlords in the private rented sector and mandatory HMO licence conditions.

Shared accommodation

Regulation 2 of the Electrical Safety Standards specifies that the term 'electrical installation' is to be understood as 'fixed electrical cables or fixed electrical equipment located on the consumer's side of the electricity supply meter'.[40]

It is extremely unlikely that each room in a shared property would have its own electricity meter. Where bedrooms are let on individual tenancies, it appears likely that it would be enough for a tenancy of one room to either start or be renewed on or after 1 June 2020 for the landlord to have to arrange for an electrical safety check in respect of the whole property.

Even where a new tenancy is not entered into on or after 1 June 2020, landlords may choose to have an electrical safety check carried out anyway, since they will have to arrange for a first check before 1 April 2021 in every case.

Are licences included?

The Electrical Safety Standards do not expressly define a tenancy to include a licence. However, the definition of a 'specified tenancy' in regulation 2 refers to section 122(6) of the Housing and Planning Act 2016 which provides that 'tenancy' includes a licence to occupy, and 'landlord' is to be read accordingly. Therefore, whenever the regulations mention the terms 'tenant' or 'tenancy', they are to be read as including 'licensee' and 'licence'.

Summary

While the Electrical Safety Standards do not contain regulations that could invalidate a section 21 notice, they provide an additional remedy for tenants concerned about electrical safety in their home.

The possibility of the local authority's involvement and financial sanctions may persuade the landlord to remedy a fault or take preventative steps if recommended in the electrical safety report.

Unlike previous legal remedies, the Electrical Safety Standards focus on proactive measures in the form of regular safety checks. This reduces the risk of a serious hazard remaining undetected until it leads to an incident.

Electrical safety for private tenants

This factsheet looks at electrical safety if you rent your home from a private landlord.

Your private landlord is responsible for electrical safety in your home.

Electrical installations

Electrical installations include wiring, plug sockets, light fittings and the consumer unit (sometimes called a fuse box).

Your landlord must inspect and carry out repairs within a reasonable time if you tell them that:

- any of the electrical installations in your home is unsafe, for example, loose wiring, exposed cables or a faulty plug socket
- there is a problem with electrics in your home that is making the property unfit to live in, for example you have an old fuse box that isn't broken but is not suitable to use with modern appliances.

How long it is reasonable for your landlord to take to do a repair depends on the seriousness of the problem and the nature of the work needed. For example, less time is needed to repair a broken socket than to rewire a house.

It's always good to notify your landlord in writing and retain proof of how and when you told your landlord about the problem, including keeping emails and texts. If you're unsure how to tell your landlord, you can use Shelter's sample letter.

If your landlord doesn't do the necessary repairs, you can take action yourself or contact the council. Ask for the private rented sector team or environmental health department.

Check the NHAS factsheets about repairs & safety and section 21 notice for more information on how to take action on repairs and what protection you may have if the landlord retaliates with a section 21 notice.

Electrical appliances

Your landlord is only responsible for fixing or replacing electrical appliances they have provided, unless your tenancy agreement says they must do more. Some landlords may arrange for portable appliance testing (PAT) of the appliances in your home This is not a legal requirement unless your landlord has been told to do so by the local council. This normally happens if the property you live in is a house in multiple occupation (HMO) subject to licensing by the council.

If you are concerned about an appliance in your home, tell your landlord. Don't use it if it's unsafe and don't attempt repairs yourself.

Electrical safety checks

If your tenancy started or was renewed on or after 1 June 2020, your landlord must:

- have arranged an electrical safety check and obtain an electrical safety report for the property before you moved in
- arrange follow up checks
- act on any recommendations in the electrical safety report
- ensure the electrics are safe throughout the tenancy
- show the report to tenants and prospective tenants.

After the first check, your landlord must carry out checks every five years, unless the latest report says the next one must be carried out before then.

If the report highlights a fault, your landlord must arrange for further inspection or repairs within 28 days, unless the report says they must do it sooner.

If you have been a tenant since before 1 June 2020 and have not renewed your contract:

- the rules on electrical safety checks will apply from 1 April 2021
- your landlord has until 1 April 2021 to carry out the first check

These rules apply to all tenancies in the private rented sector. They don't apply if you are a lodger.

Next steps

If your landlord doesn't arrange for a check or ignores the engineer's recommendations, contact the council.

The council can:

- serve a notice on the landlord ordering them to comply with the rules
- fine the landlord
- carry out the necessary works and pass the cost to your landlord

Further advice

You can get further advice from england.shelter.org.uk/housing_advice, your local Shelter advice service or local Citizens Advice. If you have nowhere to sleep tonight, are at risk of harm or losing your home within the next 2 months, call Shelter Helpline on **0808 800 4444** for advice and information on your options.*

*Calls are free from UK landlines and main mobile networks.

Note
Information contained in this factsheet is correct at the time of publication. Please check details before use.