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SOUTHERN LANDLORDS ASSOCIATION

This edition's featured Corporate Member

LANDLORDISM – A BUSINESS OR AN ACTIVITY?

There are two types of landlord. On the one hand, there are those that buy properties as an investment and give the responsibility for the day to day running to an agent. Although those landlords are ultimately responsible for the conduct of the tenancy and maintenance of the property, they are, in essence, investors. The other type of landlord is the one that purchases a property and does the letting, management and most of the maintenance his or herself. In official terms this is called an 'activity', whereas in reality it is, no doubt, a business and should be recognised as such. To give an example to support this contention – all letting agents are regarded as businesses and are treated as such.

Assuming Government recognised, as it should, the difference between an investor landlord whose profits should be treated as unearned income and an active landlord who manages the whole aspect of letting, a substantial part of the income derived should be treated as earned income. This, of course, would have a substantial number of benefits. For example, in capital allowances, in rollover relief, in interest on loans, but would also have the disadvantage of that landlord being recognised as a business and having to pay National Insurance Contributions on the earned income element. Nevertheless, it is quite wrong for Government to describe the landlord activity for those landlords operating what is a proper business as an activity and not a business.

The SLA has campaigned for many years for landlords to be recognised as businesses. It is more important than ever today that landlords have the opportunity to be recognised as proper businesses. A number of articles within the Newsletter give even more reasons why that needs to happen, in view of the Government's, what can only be described as, anti-landlord legislation that is being proposed.

More and more regulations requiring landlords to undertake onerous tasks are being brought into being and there is no doubt that most local authorities regard landlords as businesses and certainly not as investors.

In France a landlord has the choice of whether to be classified as a business or as an investor. Obviously those landlords who engage letting agents to let and manage their properties could not opt to be businesses but those landlords who operate what is, in effect, a full letting, management and repair service should be given the opportunity of remaining an investor or opting for a business.

With regard to income from property, there will always be (or should be) an element of income that represents investment income, with the remainder being earned income. It should not be difficult for HMRC to provide a formula for calculation of the investment element. As already mentioned, a number of articles within this Newsletter highlight the need for this change, especially the removal of the fair wear and tear allowance and introduction between 2017 and 2020 of the restriction on claiming income tax relief on interest payments above the 20% lower tax level.

It is reported that there are over two million landlords in the British Isles. However, few belong to landlords' associations and many that do consider that any fee above, say, £75 per year is unrealistic and, as a result, landlords can easily be regulated against, as they are fragmented as a cottage industry and do not have the strength of voice politically that is needed to stop Government riding roughshod over them, as is happening at this time.

The whole situation needs to change and landlords' voices will only be heard if they are represented in numbers, and landlords must understand that that will only happen if together we belong to a powerful landlords' organisation whose voice can be heard in Government and whose votes make a difference. Sitting on the fence and believing that all will be OK, providing somebody else pays and somebody else does the representation, is simply not good enough and landlords' disinterest in belonging to associations and joining in to get the best regulation for landlords will result in disaster. Things must change and must change quickly. It is for landlords themselves to understand that the professional services needed cannot be provided without landlords contributing towards those services and in doing so bringing a body of political strength to the arguments.

FAIR WEAR AND TEAR ALLOWANCE

Members should by now be well aware that if they let a fully furnished property, they can claim a 10% tax free deduction from their rents, with certain minor deductions. As from 6th April 2016 this allowance is being discontinued and landlords after that date will only be able to claim for actual replacements of like for like. The Government has said that the new arrangements will be easier for landlords than the present arrangements, which have been in existence for very many years. It may well have been a generous allowance but it was extremely easy for landlords to make the deductions and no records of purchases, etc were required.

Under the proposals, HMRC has not only made life more difficult for landlords, it has gone into such detail that one wonders where it is coming from. For example, if a landlord fits out a newly purchased property, that landlord cannot claim the cost of the fitting out, i.e. carpets, white goods, furniture, etc as a revenue item but has to claim it as a capital item when the property is sold. Similarly, if a landlord replaces a washing machine with a washer/dryer, HMRC contends that there is betterment and that the betterment cost, i.e. the difference between a washing machine and a washer/dryer, is capital and can only be claimed when the property is sold.

HMRC has also indicated that it will require evidence of the disposal of items, as it is probable (HMRC alleges) that goods that are being exchanged will be sold and that the value of the sale should be deducted from the cost of the replacement. HMRC has made no mention whatsoever that it is not unusual for landlords to have to pay to dispose of the goods that are being replaced, i.e. refrigerators, washing machines, televisions, etc. In summary, HMRC's proposals are nitpicking and will give rise to arguments if an investigation of a landlord's accounts is carried out.

The SLA has made the strongest representations, via the British Property Federation, to HMRC that contrary to its assertion that compliance will be easier, it will be just the opposite, and has suggested that a straight 8% deduction each year be allowed, with the option to claim actual costs if higher. If landlords were considered to be businesses, then capital allowances would apply and the fitting out of a newly purchased property would give 100% claimable allowance for the entire cost in year one. This is an example of the difference of landlords being classified as an activity rather than a business.

Members may be interest to know that Government sees the removal of the 10% wear and tear allowance as a substantial earner for Government from increased income as a result of the proposed changes. It is certainly not the change to make it easier for landlords – just the opposite.

LOSS OF INCOME TAX RELIEF

Members may be aware, but in any event will wish to know, that between 2017 and 2020 the Government intends, in stages, to restrict the amount of interest that can be claimed against property income from the landlord's personal rate to a maximum of 20%.

It is alleged by Government that the success of buy to let is distorting the residential market in favour of buy to let landlords by increasing property values to the detriment of first time buyers. Government alleges that the proposal is to readdress this situation to give a more balanced market.

Buy to let landlords represent a very small proportion of the overall property market and Government appears to be using its political strength in this matter. It appears not to have recognised that many buy to let landlords pay cash and therefore will be unaffected by the proposed restriction in income tax relief.

This measure, if implemented, is retrospective and will affect all those landlords who have purchased properties on the basis that they are higher tax rate payers and will benefit from tax relief at their marginal rate of tax and some of course are not only substantial landlords but also have substantial borrowings. It could well be that a landlord may well find his or herself in a position whereby, after interest payments, they are making a loss, yet are still required to pay income tax on that loss as a result of this proposal. The SLA is of the opinion that a significant number of landlords may opt to sell their properties and get out of landlordism, directly as a result of this proposal, if it is implemented.

It is unheard of for any government to expect any taxpayer to pay income tax on what is, in effect, a loss. If, however, a landlord operates under a limited company, these regulations will not apply. If Government was serious and could produce real evidence that the market has been distorted in favour of buy to let landlords, then it should deal with the matter in this manner, as recommended by SLA during the consultation with HMRC: firstly, the Government needs to substantiate what it is saying by evidence and not simply by assumption. It is unmoral for Government to make any changes retrospective, as landlords who have purchased properties knowing that they can claim relief against interest at a marginal tax rate have been deceived; secondly, the Government has not accounted for those landlords who purchased by cash.

If Government was simply dealing with a real problem, it could have dealt with it by having two rates of stamp duty, namely one for home owner purchases and a second rate for buy to let purchases, in order to readdress the alleged favourable terms for buy to let landlords. By this method it would effectively catch all buy to let landlords and would not be retrospective.

Those are the recommendations that have been made to HMRC by the SLA. Again, this seems to be not a measure to rebalance the market for homeowners but an income producing situation for Government.

SLA is also of the opinion that Government will alter the way in which such interest relief can be claimed to the extent that payment on full net income will be required to be paid and interest relief up to 20% claimed after income tax is paid. This is yet another example of Government using its majority to push through unreasonable legislation which it would not be able to do if landlords were considered businesses and not simply an activity.

SCOTTISH GOVERNMENT PUBLISHES SECOND PRS CONSULTATION

The Scottish Government has published its second consultation on the private rented sector following feedback given to the previous consultation carried out in 2014. The Government proposes a raft of changes to the sector in Scotland, and members will be interested to know that it includes the removal of 'no fault' possession and the introduction of eleven grounds for possession, as well as proposals to give tenants the power to challenge rental increases if they deem them to be disproportionate.

The consultation also suggests the creation of a single tenancy regime to replace assured shorthold tenancies and assured tenancies with a single Scottish PRS tenancy.

Members considering purchasing property to let in Scotland need to be aware of this consultation and the effect on the PRS regime in Scotland.

THE MIRROR HOUSING BENEFIT TOOL

Members may wish to know that there is a website that allows the public to search their local area to identify private landlords and the amount they receive in housing benefit per annum. This may lead to the media telephoning landlords and questioning them about their housing benefit income. The relative site is:
http://www.mirror.co.uk/news/ampp3d/interactive-housing-benefit-millionaires-your-5569676.

TAKING DEPOSITS FROM TENANTS IN INSTALMENTS

Members often raise this question on the Helpline, so to save others who may be unsure of how to register deposits that have been taken in instalments, we can give the following advice.

If a tenant cannot pay the full deposit when taking up the tenancy and it is agreed by the landlord to take the deposit in instalments, that agreement should be entered on the tenancy agreement, with the dates that the deposit instalments, and the amounts, are to be paid. However, when registering the deposit, the full amount of the deposit must be registered upon receipt of the first instalment. If, however, the tenant fails to pay an instalment, then the deposit provider should be contacted and an amended amount be inserted as appropriate.

SLA trusts that this information is useful for our members.

WITHHOLDING RENT

Tenants should normally pay rent on the day that it is due and only in exceptional circumstances do they have any right to withhold rent. Members will be aware that it is a fundamental duty of the landlord to undertake repairs to the interior and exterior structure when required, as stated in Section 11 of the Landlord and Tenant Act 1985. If, however, you, as the landlord, fail to attend to required repairs within a reasonable time after the tenant has reported the problems, then you may be in breach of your repairing obligations.

By delaying or refusing to get work done, your tenant has a **'common law'** right to carry out the repairs themselves. The tenant can then deduct the cost of those repairs from the rent.

The rules for this action are strict and can only be used in specific circumstances. It is known as the **Rule of 'Set Off'** and the procedure is as follows.

If the tenant wishes to withhold rent for repairs, they will be able to do so under the following circumstances, and they must follow the steps below (in order) to legally set off the cost of repairs against the rent.

- The tenant must write to you, the landlord, or your agent, making you aware of the required repair and giving you a reasonable time to remedy it.

- Once this time has passed, if you have not responded, the tenant should inform you (again in writing) that they will arrange for the repairs to be undertaken unless you comply with your repairing obligations, allowing you a further reasonable period to do the work.

- The tenant must then obtain a minimum of two estimates for the cost of the work from reputable contractors.

- The tenant must then write to you again, enclosing copies of the estimates and reminding you of your obligation and giving a further reasonable period to carry out the work. The letter will act as a warning that, unless the work is carried out, the tenant will organise it and deduct the cost from the rent.

- Then if you still do not respond, the tenant can arrange for the contractor (giving the best value for money to do the work) to carry out the work, and obtain (and send to you) the invoice/receipt(s), with a request for payment.

- If you still refuse to settle this account, the tenant may then deduct the costs from the rent and send you a breakdown of the amounts and period of the rent to be withheld.

The tenant may also be able to claim damages if they do not use the 'Set Off' arrangement.

COURT FEES

In January the coalition Government (as it then was) held a consultation on increasing a range of court fees, including increases to fees for possession. The new Conservative Government has now published a response to the consultation, in which it confirms that the court fee for possession matters will rise to £355, an increase of 26%. There is a matching increase when using the online service, where the fee will rise to £325.

It is not known when these new fees will be applied but it is quite clear that this Government is making sure that landlords, in particular, pay the true cost for the court services they receive. It makes one wonder where all this is going, with such high increases being applied and yet demand that landlords keep rents at a reasonable level. Landlords should ensure that they hold sufficient monies to cover the eventuality of court procedures where tenants are likely to disappear once a court order is given without any forwarding address.

In addition there is a consultation on yet more fee increases, which will include increases in the First-tier Tribunal (Property Chamber). Currently fees in this chamber are £155 for an application but will rise to £100 for an application, with a further £200 for a hearing. Fees relating to leasehold enfranchisement matters will be higher still.

Whilst it is accepted that the court system must be funded and fees are a key element to this, it is unacceptable to have continual rounds of increasing fees. The Ministry of Justice has also chosen to ignore the fact that court fees in possession matters almost inevitably get passed on to the person being evicted in court possession orders so they ultimately end up creating greater debt for tenants.

NEW LEGISLATION FOR PRIVATE LANDLORDS ON PROVISION OF SMOKE ALARMS AND CARBON MONOXIDE ALARMS IN RENTED DWELLINGS

Summary
The Regulations place duties on landlords in the private rented sector in England to ensure that smoke alarms and carbon monoxide alarms are appropriately installed in occupied rented dwellings, and to make sure that such alarms are in proper working order at the start of a new tenancy.

What is required?

- A working smoke alarm must be installed on each storey of a dwelling.
- A working carbon monoxide alarm must be installed in every room containing a solid fuel burning appliance. Note: this requirement does not apply where the solid fuel appliance was installed prior to October 2010. Building Regulations applies to any new or replacement solid fuel appliance installed after October 2010. See information below.

When is it required?

- The new legislation comes into force on 1 October 2015.
- The alarms must be in working order at the start of each new tenancy.

Who does it affect?

- All dwelling houses let by private landlords in England only.
- The requirements do not apply to an HMO or other dwelling licensed by a local authority as the requirements under the terms of the existing licence will already exceed the minimum requirements detailed above.

What will happen if I ignore the Regulations?

- Your local authority can issue an enforcement notice giving you 28 days to conform.
- If you do not comply with the enforcement notice you can be fined up to £5,000.

Which standards should you conform to?

- The DCLG have stated that they do not propose to publish new guidance for landlords on how you can meet the new legislation. It is therefore assumed that guidance already in existence in Building Regulations Approved Documents, BS 5839-6 and BS EN 50292, provide sufficient information for you to meet the requirements.

<u>Existing guidance by dwelling type: new build, some extensions and conversions</u>

In this type of property, Building Regulations will apply. There are different Approved Documents for smoke alarms and carbon monoxide alarms. The details are below:

Smoke alarms
If the property is new, has been converted from another use, or has had specified extensions, Building Regulations Approved Document B will apply.

The requirements are as follows:
Mains powered smoke alarms with a back-up supply must be installed in the escape routes of the property – typically hallways and landings. Where the kitchen area is not separated from the stairway or escape route by a door, there is an additional requirement for a compatible heat alarm in the kitchen area interlinked with the smoke alarms. Installation of the system should be in accordance with BS 5839-6.

Carbon monoxide alarms
Where a new installation or replacement of a solid fuel appliance takes place after October 2010, Building Regulations Approved Document J will apply.

The requirements are as follows:
A CO alarm with a battery designed to last the life of the alarm and that complies with BS EN 50291 should be fitted in the room where the solid fuel appliance is installed. Alternatively, a mains powered Type A alarm can be installed. Installation and siting should be in accordance with BS EN 50292.

<u>Existing properties where Building Regulations do not apply</u>

Smoke alarms
BS 5839-6 Fire detection and fire alarm systems for buildings – Part 6: Code of practice for the design, installation, commissioning and maintenance of fire detection and fire alarm systems in domestic premises, applies to both new build and existing dwellings but is more commonly applied to the latter.

It is recommended that a fire risk assessment is carried out to determine the most appropriate fire alarm system to install. Should this not be practicable, Table 1 in the document can be consulted for the minimum recommended system for a range of different property types. The most common types are as follows:

Single family dwelling and shared houses of 1, 2 and 3 storeys with no floor greater than 200sqm in area.

Mains powered smoke alarms with a back-up supply should be installed in the escape routes of the property – typically hallways and landings. The alarms should be interlinked.

Installation and siting should be in accordance with the recommendations of BS 5839-6:2013.

BS 5839-6 should be consulted for additional information on other property types.

Carbon monoxide alarms
Where a solid fuel appliance in a dwelling was installed prior to 2010 there is no requirement under the legislation to fit a CO alarm. However, the installation of a CO alarm should be considered as good practice wherever a fuel burning appliance of any description – solid fuel, gas, oil, etc – is present in a dwelling. Installation and siting should be in accordance with BS EN 50292.

The Department for Communities and Local Government is providing funding to Fire and Rescue Services for the procurement of sealed for life 10 year battery smoke and CO alarms to be issued to private landlords wishing to meet the minimum requirement under the new legislation.

DOES A TENANT HAVE THE RIGHT TO LOCAL AUTHORITY ACCOMMODATION IF EVICTED USING THE SECTION 21 PROCEDURE?

Members will be interested to know that a number of local authorities are contacting landlords, seeking information concerning the use of Section 21 when a landlord is seeking possession under the Section 21 (no grounds) procedure. Many tenants are under the impression that if they are evicted by a landlord on the 'no grounds' possession procedure, they are entitled to council accommodation.

Members will be well aware that local authorities often tell tenants to stay in the property until a court order has been obtained by the landlord. It was usual in such circumstances in the past for local authorities to provide accommodation to such evicted tenants. Today, many local authorities are contacting landlords, seeking the reasons why possession procedures have been proceeded with. If the reasons given relate to rent arrears, antisocial behaviour or something similar, the local authority will often tell the tenant that they are not entitled to social housing and that they have, in fact, made themselves intentionally homeless. This does not mean of course that local authorities do not have the responsibility for children, etc.

In one particular case brought to the attention of SLA, the tenant, who had been on local housing allowance (LHA) for a number of years, obtained work and thereby did not have her full rent paid via LHA and considered that she could obtain a council property and keep more of the money that she was earning. She asked the landlord to serve her with a Section 21 notice, which he complied with. She then applied for council accommodation and was told that the accommodation she had was perfectly affordable and that if she was evicted the local authority would not take responsibility for her but would take into care her 14 year old daughter. Needless to say, the tenant withdrew her request to be evicted.

It seems that a number of tenants in receipt of LHA are quite content to live in private landlords' properties if their rent is paid, but when they commence work they expect to keep their earnings and not pay 'top-up' or rent to the landlord. Members should be aware of this situation.

MIKE STIMPSON'S COLUMN

Members will read throughout this Newsletter various new regulations and other matters which will put up costs or, alternatively, increase members' tax liability. There are some two million landlords in this country, but few belong to landlords' associations, and even fewer are prepared to give their time to pursue the real interests of private landlords. Many landlords consider that a fee of £75 a year is sufficient (or at least should be) to run a professional organisation with the ability to challenge government and provide an effective opposition to some of the proposed changes in regulation. Government, on the other hand, with its small majority, is well aware that being a landlord is a cottage industry, with most landlords acting independently of each other.

Many consider that somebody else should protect their interests and that they need not belong to a landlords' organisation for that to happen. In the past, landlords have themselves given much time on a volunteer basis to provide both the knowledge and the staff to fight unfair government practice. Today it seems that many landlords are quite happy to invest in property, have a managing agent manage those properties and simply draw the rewards of being a landlord. As can clearly be seen from the regulations being proposed by Government, it is being ruthless in its quest to either save money or to milk more money from landlords under the guise of fairness. On the one hand, Government professes to support private landlords whilst, on the other, it expects private landlords to let at affordable rents, when Government itself thinks nothing of increasing legal fees by 26% or more, year on year, and also imposes much other regulation, all at a cost to landlords, without regard to the consequences.

With regard to the new smoke / carbon monoxide detectors, the Bill was defeated in the Lords, not because the Lords considered it unreasonable but because they decided that Government had not given sufficient time for landlords to implement the new regulations. It appears that Parliament will ignore the Lords' opposition and simply implement them in any event.

I believe that landlords have enjoyed reasonable profits from their investments in property but, have no doubt, the pressure is now on and if it continues, in some areas some landlords will find it difficult to make any sort of profit and will be faced with even more regulations in respect of tenancy agreements and the ability to obtain possession at the end of a fixed term. Rents charged will also be under scrutiny.

For very many years, I have argued that we need a professional landlords' organisation that has a membership reflecting the number of landlords and can put substantial political pressure on any government that chooses to introduce unfair/unreasonable legislation. To date, after over 40 years of representing private landlords, I have come to the conclusion that, in the main, as individuals private landlords have no interest in anything except their own situation and do not understand the need for an effective body representing them to ensure fairness. Most landlords joining landlords' associations do so to get something out of it, rather than to put anything in. That is why Government can treat landlords with disdain and introduce unfair legislation without any effective challenge. Consultations are one thing, effective representation is quite another.

The same situation applies with local authorities, many of whom see private landlords as a source of income. Many introduce discretionary licensing schemes for no better reason than to keep staff in jobs who otherwise could well be unemployed. Local authorities in many areas have reduced the period when no Council Tax is payable, when a property is unoccupied, from six months to nil and charge landlords the very day a property becomes vacant, and in the case of single rooms where Council Tax liability is imposed, they charge 100% of the tax, whereas the property cannot even be occupied by two people and the maximum chargeable when occupied is 75%.

If landlords wish to dispose of items left in a property by the tenants and they try taking them to a recycling depot operated by the local authority, it is most likely that after interrogation, the landlord, especially one using a commercial vehicle, will not be allowed to dispose of the rubbish but will be advised to go to a commercially operated recycling depot. It seems that, on the one hand, landlords are forced to pay Council Tax and on the other, are not even allowed to use the facilities in respect of which Council Tax payments are part.

In the past, landlords have provided accommodation to students in shared houses which, had they not done so, could have curtailed expansion of universities. There is no doubt today that the most profitable area of letting is shared housing, the majority of which, but certainly not all, is let to students. Many local authorities at the present time welcome the building of purpose built student accommodation by specialist providers. The same local authorities believe that private landlords should only be letting family houses to families and are, in many areas, restricting the use of family houses for student lets by implementing Article 4 restrictions. The only reason that we see purpose built blocks for students being built is because they are the most profitable and there is not usually any requirement to provide social housing, car parking or Section 106 payments. On the other hand, private landlords are looked upon as social housing providers and it is implied that should not have the ability to choose to whom they let their properties.

What I believe is happening now is that the party for landlords is over and Government is targeting landlords not because it doesn't need them but simply to increase its income stream and balance the market between buyers and investors. It is no good landlords grumbling. Landlords need to understand that whether they use agents or run their operation entirely themselves, they are ultimately responsible for their properties and the regulations appertaining to them.

If landlords do not join together as members of recognised landlords' associations, then government, whatever its shade, will listen to organisations such as Shelter and regulate further against landlords. In this respect, I believe that our association needs to be reorganised into two distinctly different sections, the first being the membership section, where members pay a fee, receive Newsletters, have access to documentation and have use of our Helpline. The other section should be a professionally run organisation that offers support to any landlords in respect of unfair legislation and legal action, etc. Your committee is formulating proposals of how such an organisation will operate. It may well be that the minimum fee for a member to belong to this section, and we would expect all professional landlords to do so, would be around £250 per annum minimum.

Only in this way, and only if sufficient professional landlords join, can we begin to provide both the professional advice and challenges to Government / local authorities that it seems today is vitally necessary. For example, since discretionary licensing was introduced with the 2004 Housing Act, our association, in isolation, has been the only organisation to bring judicial reviews and to threaten judicial reviews against local authorities. We have not, to date, succeeded in winning a judicial review, but the threat has given us the ability to negotiate exceptional terms, even if we consider the licensing to be unlawful.

Over the past five or more years, the SLA has gained a very substantial amount of knowledge indeed, with regard to the evidence required to be successful in a judicial review, and landlords who are concerned about what their local authority is doing should be able to consult a professional organisation, such as ours, for a fee, to examine what they need to do when they believe a local authority is acting unlawfully. None of this can be done in the long term by volunteers. Neither can it be done if landlords expect a range of services but only pay a small fee annually, such as that paid by members of clubs, where, in the main, work is done by volunteers.

I hope that our committee will agree to the proposals being made and I trust that members will also understand the need for a professional backup service. Any members wishing to make comments on what I am proposing should send them to Mike Stimpson at stimpsondirect@gmail.com.

AROUND THE BRANCHES

Thanet

The Local Authority has commenced consultation for a selective licensing scheme, which, with minor exceptions, covers the same area in which the current selective licensing scheme is running. That scheme ends in April 2016, and the last report issued by the Local Authority has indicated that it has been a great success, with approximately 700 landlords licensed, with all licensed properties anticipated to be inspected by the end of the licensing scheme.

In view of the comments by the Local Authority, one wonders why it expects, subject to the result of the consultation, to do the same exercise for another five years in the same area, when the objective of selective licensing is that the Government expects local authorities within the five-year period to deal with antisocial behaviour, etc and not simply make such areas a permanent licensing situation. One wonders why the Council considers it necessary to re-consult in the very same area and charge similar fees and collect another approximately £700,000 from local landlords, when the Local Authority itself says it has done a good job. One also wonders whether, as mentioned in this Newsletter already, the Local Authority sees a loss of jobs and needs landlords' licence fees to keep the staff in post. There is seemingly no other reason why the scheme needs to be re-consulted and implemented.

Your committee are looking to meet with the political representatives at Thanet, together with the officers, later this month and will threaten a judicial review if we are not given justified reasons for this situation.

LEGAL EXPENSES INSURANCE FOR LANDLORDS

Rules and regulations are there to protect the tenant and landlord, however the more rules and regulations there are the more confusing it gets to fully understand your requirements and the implications if you do not meet them.
At Alan Boswell Group we provide legal expenses insurance either stand alone or in conjunction with rent guarantee insurance. This insurance provides you with 24/7 legal advice via a hotline and also provides financial assistance and support when pursuing possession and other property matters through the courts. To find out more call us on 01603 218000

New Section 21

A new Section 21 came into place on October 1st.
The Section 21 is the Holy Grail for landlords, the notice that allows you to get tenants to leave for no reason – provided issued correctly.

Whilst much easier to use than the old one, especially the 21(4)(a) for a Contractual Periodic, it has a sting in the tail, in fact many stings.

In summary:-

- the actual form is now 'prescribed', which means it must in the format prescribed by the Government – the new form is on the web site, along with explanatory notes.
  Note that new form is quite easy to use;
- only the new form can be used on an AST commencing on/after October 1st;
- however, if you wish, the new form can be used on any AST, regardless of when it commenced, and MUST be used on <u>all</u> AST's from October 1st 2018 (i.e. three years after the new S21 started).
  Note that if you have issued a Fixed Term AST before Oct 1st going to Statutory Periodic (sometimes called a Rolling Contract) on/after October 1st you don't have to use the new form ;

Now for the stings:-

- the new S21 cannot be served in the first 4 months of AST;
- must be used within 6 months of issue;
- tenants have statutory right to claim back any overpayment of rent resulting from the issue of a S21;
- the rented property must have valid:-
  - EPC;
  - gas safety inspection report (CP12).
    It is not clear if these have to be from the beginning of the let, or just from the issue of the S21. Note however that, by law both of these should have been available at the commencement of the AST;
- cannot be used:-
  - If deposit not protected;
  - property not licensed where one was required.
    These two are the same as the old S21;
- must issue DCLG booklet '*How to Rent – the checklist for renting in England*'. Details of this are in the notes accompanying the new S21 on our web site.
  Unfortunately it is not clear if this has to be issued at the commencement of the AST, or with the serving of the S21.
  As long as your tenant is happy with receiving emails it can be sent electronically, else it has to be printed. Note that you do not have to re-issue it to your tenant(s) if the booklet is updated subsequently to the original issue.
  It is actually a good little booklet.

Now for the real sting in the tail:-
Retaliatory eviction (only for tenancies >Oct 1st 2015):-

- Where a tenant makes a complaint about the condition of a property in writing, the landlord will have to respond within 14 days in writing setting out what he intends to do about it and what the timeline for doing this is.
- If the landlord
  a) fails to reply or

b) replies by serving a section 21 notice or
c) gives a reply that is inadequate, then the tenant may complain to the local authority who must inspect the property.

- If the local authority then serves an improvement notice or carries out emergency remedial action, any section 21 notice already served will be rendered ineffective and <u>no further notice can then be served for six months</u>.

So it is <u>**vital**</u> not to ignore any complaints about disrepair, no matter how received – even though it is supposed to be in writing, if a tenant can prove they complained a zealous Environmental Health Officer (EHO) could deem the complaint to have been made.

Will the new Labour leadership affect you?

Quite honestly it is too early to say. On the face of it Jeremy Corbyn is far too left wing to let 'super rich landlords' continue to make vast amounts of money at the expense of the down trodden tenants. However, he has proved to be ineffective at pushing his far left views often being over-ruled by his own Shadow Cabinet, and even at the Labour Conference. Hence, too early to say.

However, his Shadow Housing Minister, John Healey has a genuine interest in housing. Even after being moved to Shadow Health by Ed Milliband he retained an interest in housing, starting '*The Social Housing Under Threat (SHOUT)*'. That coupled with his boss, the Shadow Communities Secretary, Jon Trickett, an ex builder; plumber; and landlord might turn up an interesting manifesto.

And could Labour form the next Government? They certainly could, the voters of this land are a fickle lot, and even if we were to have an economic boom for the next 4 years, we would only have to have a turndown in the few months leading up to the election and the electorate would forget the good times and try an experiment of a far left Government.

As the Sun's headlines in April 1992 on the eve of an anticipated Kinnock victory put it – 'Will the last person to leave Britain please turn the lights out'.

Stop Press

<u>Immigration Checks</u>

The Government has recently announced a national roll-out of the need for landlords to check the immigration status of prospective tenants.

Entitled 'Right to Rent', it takes landlords through the multitude of documents that need to be checked.

We will be putting a full explanation of this in the next newsletter due out just before Christmas.

<u>Green Deal</u>

The Government recently announced that the ill-fated Green Deal was to be scrapped.

There has been no announcement of a replacement, but it is anticipated that something will have to be put in place as the Energy Act is due to be enacted next April, under which it will become illegal to let a property with a low EPC rating, unless it has work carried out under the Green Deal!

<u>The Housing and Planning Bill 2015</u>

This Bill is currently making its way through Parliament, and will have far reaching effects for landlords.

More details in the next newsletter.

MTM Property

sla
southerlandlordsassociation




MTM Sales and Lettings are delighted to have joined the SLA this month. For some time we have attended meetings and got to know several members. As a prominent agent covering the whole of Brighton & Hove, we feel the SLA delivers a great platform for landlords and serves as a proactive voice for the industry, actively lobbying both for and against key issues that affect us all.

We are delighted to become members and look forward to getting to know you all. We work with a large number of professional landlords and investors, managing in excess of 450 rental properties, covering the whole of the city and also out as far as Shoreham-by-Sea and Saltdean in each direction.

Our team are available to assist with any queries you as a landlord may have, as well as of course offering our services for both residential lettings and property sales. In addition, all members of the SLA will be entitled to a 10% discount on both our letting and sales rates.

Tel: 01273 645797 Web: mtmproperty.co.uk Email: info@mtmproperty.co.uk

Social meetings

The regular London and Thanet socials will be:-

- London, the first Monday of every month (bar August) commencing February. To be held upstairs at the Constitution - 42 Churton Street, SW1V 2LP. 020 7834 3651. Commencing 6.30 pm

- Thanet, the first Thursday of every month (bar August) commencing February. To be held in the newly re-furbished, and renamed Botany Bay Hotel (formerly the Fayreness), Marine Drive, Kingsgate, Broadstairs, Kent CT10 3LG. 01843 868 641. Commencing 7.00 pm If using Sat Nav put CT10 3LH.

<u>Meetings/exhibitions for next quarter.</u>

Make a note in your diary, details on the web:-

- Mon Nov 19th - Landlord Investment Show – Olympia
- Thurs Dec 3rd - Thanet Social
- Mon Dec 7th - Southampton branch meeting
- Mon Dec 7th – London Social

A full list for next year will be in the Christmas newsletter

We would like to apologise for this Autumn issue of the newsletter being late.
Note that the normal Christmas edition will still come out mid December.

Please support our corporate members

Alan Boswell Insurance Brokers Ltd

Moore Blatch LLP

Trade Point (B&Q)

Upad Ltd

Hospital and Medical Care Association

Thistle Ledge, Letting Agents Southampton

Palgrave Properties

MTM Property Services Ltd

Houseen Letting and Property Services

Riverside Centre, River Lawn Road, Tonbridge, TN9 1EP
Tel: 0845 475 3583 / 0845 475 3283 (fax)
0845 475 2483 (help-line)
0845 475 5583(accounts)
0845 475 1383 (insurance)
0845 475 2383 (Private Health Insurance)
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www.SouthernLandlords.Org