Southern Landlords Association

February 2018, Newsletter 33
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Government Proposes More Legislation & Taxation Of Private Landlords

2018 – Is This The Year When Landlords Need To Decide Whether Buy To Let / Investing In Residential Property Is Worthwhile?

Most members (hopefully all) will have now completed their tax returns, and for the first time will not be able to deduct, where appropriate, the 10% fair wear and tear allowance but only the actual amount spent on renewals. The new rules, as is usual with Government, are not straightforward and although the 10% fair wear and tear allowance was generous it was simple to apply, whereas the new arrangement is not. Government could have perhaps reduced it to, say, 8% but decided to make it more complicated and easier to challenge.

For those members who have buy to let mortgages, 2017/2018 tax year will be the year when the first of the new rules apply, eventually reducing the amount that can be claimed from mortgage interest to 20% for those landlords who operate as an activity as compared with a business.

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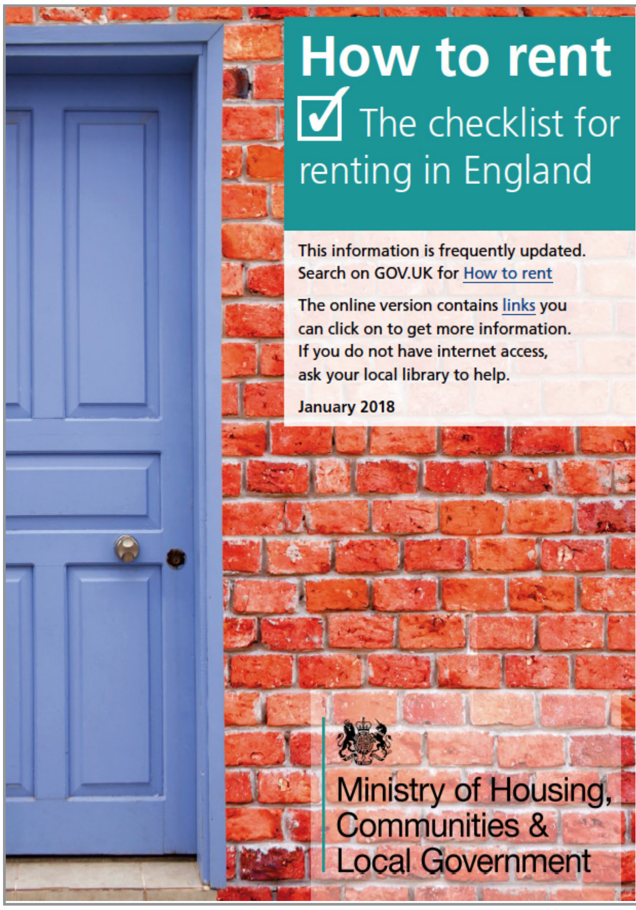


URGENT

New Version of 'How To Rent' Guide

Please note that the Government have released a new version of the How to Rent Guide. It removes reference to the now abandoned London Rental Standard.

It is important that you use this version for any new AST's after this date (January 18th) else any future Section 21 might be invalid at court.

Note that we have been advised that it is liable to change again in April because of the potential changes to the Section 21. We will keep you advised.

Further Government proposals include the banning of agents' fees, which means, in effect, that the income from letting agents will only be able to be obtained from landlords, which Government believes will reduce initial costs for tenants seeking accommodation but it forgets that landlords, having to then pay agents, will increase rents to cover those costs, and if a tenant remains in a property in the longer term, they will pay far higher sums than they would if paying one sum at the commencement of the tenancy. Government appears to believe that producing inventories, showing properties and dealing with the matters that are necessary at the commencement of a tenancy is simply something that a landlord should do without charging.

Government proposes to introduce significant fines that can be imposed on landlords by local authorities as an alternative to being prosecuted in certain circumstances.

Also being proposed is that all landlords will have to become a member of a Redress service that gives tenants who have disputes an avenue for complaint. It is right that tenants who have genuine complaints are protected from unscrupulous landlords but what Government has failed to act upon are those tenants, and there are many of them, who completely disregard tenancy obligations once being granted a tenancy.

It appears to be assumed that all potential tenants can produce references, employer's certification or, for that matter, bank accounts, and it is those tenants who cannot supply such information that often do not comply with the terms of their agreements.

Government has made it, and is still making it, more difficult to obtain possession under the Section 21 procedure, inasmuch as if a landlord has not served the correct documentation at the commencement of the tenancy and also regulated any deposit taken with even a minor mistake, the Section 21 cannot be proceeded with. On the other hand, if a tenant causes antisocial behaviour it falls very much on the landlord to prove such behaviour to the extent that a court will allow eviction. Similarly, if a tenant simply does not pay the rent, it takes between 4-6 months to evict that tenant via the County Court service and at cost to the landlord. Again, a tenant can often frustrate such proceedings without substantial justification.

If the Government requires landlords to act within codes of practice with substantial penalties if they fail to do so, then tenants who act in a similar manner should be able to be named and evicted quickly without the need for County Court procedures in view of the time delays. In other words, if Government expects landlords to act in a particular manner, then it must give those landlords the tools to be able to effectively carry out their business within the law and not simply be required to go through lengthy procedures which frustrate carrying out the requirements of Government.

With all the new regulation being imposed on private landlords, they should be given the right to operate as a business, with a substantial portion of their income as earned income and not simply (as now) classified as an 'activity' or in other words as an investor.

If Government expects private landlords to house the economically poor and the vulnerable, it must give them the tools to deal with those tenants who for one reason or another will not comply with the terms of any agreements entered into which, to date, Government has completely failed to do.

Our Association will continue to fight for fairness for private landlords, inasmuch as it will robustly support any actions by Government to rid the profession of rogue/criminal landlords. On the other hand, it expects Government to support the vast majority of good landlords in giving them the tools with which to carry out their business in a professional and effective manner.

Don't Stick Your Head In The Sand

There are things afoot that might spell a lot of problems for landlords, especially those who don't forward plan.

Mortgages

After the debacles of 2008 – that's right, 10 years ago – the banks and mortgage companies have been told to both retain more capital and to lend to less risky projects.

Lending (etc.) used to be overseen by the Financial Services Authority (FSA), but they were deemed to have taken their eye off the ball by allowing risky lending to take place. Consequently they were disbanded in 2013 and replaced by a number of agencies, including the Prudential Regulation Authority (PRA), a limited company wholly owned by the Bank of England.

The PRA is responsible for the prudential regulation and supervision of banks, building societies, credit unions, insurers and major investment firms. It sets standards and supervises financial institutions at the level of the individual firm. In an attempt to limit the likelihood of another crash like 2008/9 have set severe lending standards, which are getting even more stringent.

So buy-to-let purchaser/re-mortgagers have suddenly found that mortgages are difficult to get. One of the main changes is that any landlord who owns four or more mortgaged buy-to-let properties will have to submit income and mortgage details on all of them every time they refinance one, or purchase a new property.

EPC's

Additionally the mortgage company will check on the EPC ratings for all the properties, and if any have a rating less than E, will not lend. This is in response the Minimum Energy Efficiency Standards (MEES) reported separately in this newsletter, whereby any property with an EPC rating less than E will not be able to issue a new let after April 1st this year (note that this also applies to a Fixed Term going to Statutory Periodic).

So it might be that you have a reasonable portfolio with one suspect property. That property might result in not being able to borrow for any of them. This is a particular problem because many landlords took advantage of low interest rates, and re-mortgaged in 2016 just before a lot of the new regulations started; but they could only get 2 year fixed rates, so will be looking to re-mortgage this year, and suddenly find they can't.

Limited Companies

Many landlords have set up as limited companies. If it has not been done correctly there might be problems with HMRC, and it might not be possible to get mortgages if set up incorrectly.

Conclusion.

Easy, take expert advice, lots of it. And plan – don't ignore.

Tenant Fees Bill

Members will be aware that the Government is proposing to ban agents from charging upfront fees to tenants seeking accommodation. Although it is unlikely that the regulations will become law before the end of 2018, members who use managing agents should be aware that once those regulations become law, agents only means of providing income for themselves will be to charge fees to their landlords, which, in effect, means that landlords will have no option but to increase their rents in order to cover the additional costs.

What those landlords will do, however, is look critically at the charges agents make and compare them with other agents to see if they are getting good value for money. On the other side of the coin, if a landlord increases rents to cover these additional costs, then if a tenant stays in the property for a long period of time he/she will, no doubt, have paid far more in rent than they would have paid as a one-off payment to the agent.

Government legislation set out to do one thing often achieves an unforeseen result, as can be demonstrated in this particular case.
Cap on security deposits: Government is also proposing to cap security deposits at the level of 6 weeks rent. In addition, it is proposed that any holding deposit taken should be no more than one weeks rent.

Mike Stimpson comments: *There is little doubt that once this legislation has been imposed it will cause a number of letting agents to fail through lack of income.*

Longer Term Tenancies

Members may well be aware that tenant organisations are pushing Government for landlords to give longer term tenancies. This sounds fine until one looks at landlords' ability to obtain possession for tenants who act in an unsocial manner, particularly in cases of antisocial behaviour and drug/alcohol related antisocial behaviour.

It is most difficult, as pointed out in the leading article, to obtain possession for antisocial behaviour without the landlord having to prove that such behaviour is sufficient to give the courts ability to effect eviction. Most landlords use the Section 21 procedure to rid themselves of bad tenants. However, if a landlord gives a 3-year tenancy, that procedure is not available during the fixed term. That is the reason why most landlords give 6 or 12 month tenancies but will keep their tenants for many years, provided they comply with the terms of their tenancies.

Government needs to understand that significant numbers of tenants abuse their tenancies, and landlords have much difficulty in obtaining possession using Section 8 procedures, hence the use of Section 21 and the shorter term tenancy periods.

Meeting With The Housing Minister

Members may be aware that SLA representatives have, in the past, attended a meeting with Gavin Barwell, the previous Housing Minister. We have approached the new Housing Minister in order that such discussions could continue. However, the reply received from the Department for Communities and Local Government was, quote, "Unfortunately the Minister's busy schedule does not allow for a meeting at this present time". However, our representatives were invited to meet with senior civil servants, which has been arranged. Mike Stimpson comments:

> *" The Housing Minister, it seems, is too busy 'talking the talk' about how he's going to get more properties built under Build to Rent, etc. rather than listening, as well, to the concerns of (and opportunities through) the private rented sector. It is understood that at this particular time the Housing Minister will be very busy, but to ignore private landlords, many of whom give much time freely and without payment, is not acceptable.. "*

Another Hidden Benefit Removal

For many years, sales of investment properties have not been allowed indexation or tapering, and the original purchase price, less capital investment in the property, is the only deductible when capital gains are assessed. That is for properties purchased after 1971 when rebasing is permitted.

It has now come to our notice that businesses will not be allowed to claim indexation allowance from 1st January 2018, and although this seems unimportant, it means that companies will no longer be able to deduct that asset's inflationary growth gained over the period the asset was held from their overall capital gains bill. In effect, for an item purchased in 2001 for £2,000 sold before 1st January 2018, the company would be entitled to deduct £6,108, i.e. the inflationary gain between 2001 and 2017, from the overall capital gains tax bill. If the same sale took place in January 2018, the £6,108 quoted would not be deductible, thus increasing the capital gains bill.

We've changed

As you may know there have been lots of changes happening at MTM and we are very excited to officially introduce Coapt.

Coapt is much more than just a new name and logo. We are evolving with the ever-changing market and we have been working hard all year talking to our landlords, tenants and universities to implement new changes and procedures. We are now more customer focused and committed to you, your portfolio and helping it grow.

The new brand will enable us to build better relationships and create streamlined processes for maintenance management that help put everyone’s minds at ease.

With Coapt as our new trading name we’ll be working to cement our position as Brighton’s largest student letting agency, as well as continuing to grow our burgeoning sales department. We can also assure you that all of our current tenancy agreements and paperwork still stand and are enforceable as before.

We would be delighted to share more insights into this journey and the changes that will be happening over the coming months with you in person or on the phone, so feel free to call us on 01273 645797 or email us at belong@coapt.co.uk

Mike Stimpson's Column

Firstly, may I wish all members, old and new, good health and a prosperous 2018. As can be seen from a number of articles in this Newsletter, Government is intent on regulating the private rented sector to an extent that rogue/criminal landlords cannot operate within it and if they continue to do so, significant penalties are open to local authorities to impose. What all this additional regulation means, in effect, is that all decent, hardworking landlords are having to 'up their game' and comply with a significant number of new regulations, together with Government's additional, in effect, taxation of the private rented sector which may well lead to a number of landlords deciding that property investment is not what they expected or what it should be.

Government and those organisations representing tenants, particularly Shelter, seem to think that the majority of landlords are bad, unprofessional and uncaring, whilst most tenants comply with the terms of their tenancies, pay the rent, do not cause damage or antisocial behaviour, and Government appears to have accepted this situation. As a very long-serving landlord myself and particularly one who houses a number of economically poor and vulnerable people, I know perfectly well that some tenants do not comply with tenancy agreements and have no intention of paying rent or acting in a social manner. In such circumstances, landlords who accept these tenants need the ability and tools to evict quickly.

The main purpose of the Government's thrust in bringing in many of the new regulations is to give local authorities the tools to act against the worst landlords and leave the rest to get on with their businesses. In other words, blanket licensing will, hopefully, be a thing of the past. However, that is not the case in some areas and, in particular, we are seeing extensive licensing proposed in the city of Brighton and Hove.

As a landlord with most of my properties in Brighton and Hove, I object most strongly to my tenants being forced to pay extra rent in order that the Local Authority can tell me how best I can run my business. It should be well aware of any bad landlords/properties but seems to think that by licensing a further 27,000 properties it will be doing a necessary service to the tenants. The cost of £460 per unit when broken down is £1.77 per week for each individual property. That may not seem much to the councillors but often it is unaffordable to the tenants and could well result not in better housing but homelessness. No consideration has been given to this and I believe it's time for our members and landlords in the city to stand together and oppose such indiscriminate action by our elected councillors.

Brighton and Hove City councillors are encouraging landlords to let to vulnerable people at less than market rents. The Local Authority offers no benefits to those landlords who may be prepared to do so. In other words, the benefit to the tenant is a subsidy by the landlord and one wonders whether many landlords will be prepared to let at sub-market rents when the Local Authority itself is doing everything possible to ensure landlords' costs increase.

It is also noted that the Government is allowing local authorities to increase council tax by some 6% and, from what I hear, Brighton and Hove City Council will be one of those authorities to take full advantage of the offer. It follows therefore that the tenant who is working will be required to pay for a non self-contained room a 6% increase in council tax. Yet another cost to the most vulnerable in society.

Is it Always Better To Work Than To Have Benefits?

I had a self-contained, newly refurbished studio to let in Brighton. One applicant was working on a zero hours contract with no guarantee of 40+ hours per week. He applied for the accommodation and, for that matter, is already a tenant of mine in non self-contained to pay over £15 per week council tax, together with a proportion of the water rates for the property, he decided not to take the studio, solely on the basis that he could not guarantee that his wages would be sufficient in any one month to ensure that he could both have money for his living expenses and pay the rent. On the other hand, another applicant, on benefits, who is also a tenant of mine, could afford the property. The rent was under the Local Housing Allowance rate for self-contained accommodation and that tenant would not have to pay the £15+ council tax but only a small contribution. The hardworking tenant could not therefore afford even an affordable self-contained unit, whereas the non-working tenant could. In this case it certainly didn't pay to work.

Licensing In Brighton And Hove

Members should be well aware that the Council is introducing additional licensing throughout the entire city area. It also intends to renew additional licensing in the five wards where the current scheme expired in November 2017. In addition, it also proposes to introduce selective licensing in the 12 wards that are currently subject to additional licensing.

Members will be aware that our Association opposes such action by the Local Authority and considers it to be unlawful. As the main representative of landlords within Brighton and Hove, the SLA attempted to negotiate with the Council to obtain amendments to the scheme. In reality, our proposals were given lip service and the schemes, as proposed, were passed unanimously by the Housing & New Homes Committee.

We learnt from the Local Authority that there were some 800 replies to each of the selective and additional licensing consultations. However, 500 of the replies to each of the consultations were obtained by a door-knocking exercise and not by voluntary replies through the online consultation. We find that extraordinary, and had the 300 unsolicited answers been analysed, a very different result may have been achieved.

Your Association's committee has, since the decision by the local councillors, been in contact with barristers, with a view to bringing a judicial review against the Local Authority.

In addition, the Council has to submit their selective licensing proposals to the Department for Communities and Local Government (DCLG) for their approval before it can be implemented. Your Association's representatives are making a written submission to that department, giving reasons why selective licensing should not be allowed to be implemented, and further consideration, if permission was given by DCLG, to bringing a judicial review against the Local Authority.

Members will be aware that the cost of selective licensing is £460 per unit, that is, if one owned 10 units, £4,600 – not a small sum of money, but that is only for the application for a licence. The work then continues with the landlord having to give up time to attend the property to deal with the Council's comments, etc. and all in all could well cost a significant sum of money in addition to the initial licensing fee which has to be paid in full at the time of application.

To give reality to the situation: if your Association is advised that we have a good chance of winning a judicial review, then, if agreed by the Board, we have to make an application for such a review to the High Court which, in effect, means preparing all papers before a decision is made as to whether a judicial review can take place. If the High Court gives permission and then if we win, the costs, of course, are not significant but if we lose, the costs could well amount to between £50,000 and £60,000.

We have, over the last few Newsletters, asked for contributions. What we need is a fund of around £50,000 to ensure that we can go ahead with the judicial review. It is important to understand that we need to get this money by donations and that donations, if possible, are £100 or above to ensure that the money is available.

May I thank those members who have already donated.

Not only would a judicial review, if successful, be of great benefit to landlords in Brighton and Hove, it would send a clear message to other local authorities that simply introducing a blanket licensing scheme throughout their boroughs/cities is not acceptable and will be challenged.

Please send donations – as much as you can afford – (which, by the way, is tax deductible) to:

SOUTHERN LANDLORDS ASSOCIATION
Riverside Centre, River Lawn Road, Tonbridge, TN9 1EP
any cheques should be clearly marked 'Fighting Fund - ' *your membership number*'

Alternatively donations can be paid direct into our account 55149480, sort code '60-21-28 again clearly marked with the reference.

We will issue appropriate receipts.

New Housing Minister

In the recent Government reshuffle the 16th Housing Minister in 20 years was appointed. An extraordinary statistic. When everyone in this country seems to agree that Housing policy is one of the key challenges confronting society, how strange that governments of all persuasions seem to treat the Housing portfolio as merely a revolving door for aspiring junior politicians, often with no particular background or even interest in Housing. Only Watford Football Club seems to change its management more frequently than British governments change their Housing Departmental management.

Might it be too much to wish for at least a two year unbroken stint for the latest incumbent, Dominic Raab? If he does stay in post for a reasonable period of time, he could prove to be an interesting appointment. He is a former solicitor and some of his previous written articles have shown a real passion for reducing red tape and promoting efficient and effective policies. Well Mr Raab, landlords will tell you that you have come to the right place. Housing legislation is a mess, allowing irresponsible tenants and the minority of criminal landlords to sail almost with impunity through the system, while good landlords are deterred or forced out of business by the onerous, costly and to be frank, pointless administrative burden placed upon them.

At least he cannot do worse than his immediate predecessor, who refused to arrange meetings with the main regional landlords' association for the South of England, the region of the country deemed to be experiencing a housing crisis by many commentators. Let us hope we can return to the period of scheduled regular meetings between SLA and Housing Ministers, such as during Gavin Barwell's tenure (cut short by the latter's loss of his seat in last June's General Election). This work was providing some signs of legislative green shoots in meeting the housing policy challenges faced by the country and the Southern region in particular. We have written to Dominic Raab to welcome him to his new post and to suggest a meeting with him at his earliest convenience. Watch this space.

Data Protection

To remind all landlords that the rules regarding data protection change this May. If you keep sufficient information on a computer that could result in a person being recognised then you will have to be registered with the Information Commissioner's Office (ico.org.uk).

This will apply to most landlords. Be careful if you believe you don't keep information but have actually written letters to your tenants, and they are stored on a computer - that would probably mean you have to register. The only safe way is if you don't use a computer at all.

You can take a short self assessment to establish whether you need to register - ico.org.uk/for-organisations/register/self-assessment/.
If in doubt register, it's only £35 per annum.

Is Buy To Let Still a Good Investment?

By Paul Martins, Head of Buy to Let, Mortgages for Business.

Increased taxes and stricter regulation have increased the cost burden for landlords but rates continue at all-time lows, so is buy to let still a good investment? Paul thinks so…

Rates are as good a place as any to start. Borrowing in a personal capacity with a 40% deposit or more you can achieve prices under 1.5% on a two-year tracker or fixed rate (subject to lenders' criteria) for a traditional house/flat purchase or remortgage. There are also many rates sub 2% at 75% loan to value for the same type of product and property; however, some lenders have tightened their exposure for an individual owning more than 10 properties so do bear this in mind.

Specialist properties such as Houses in Multiple Occupation (HMO) or a block of flats owned on one freehold title (known as multi-units) will attract higher product rates and lender arrangement fees than vanilla properties; however, the overall rental income and yields for HMOs and multi-units is generally quite a bit higher making this type of investment more favourable to some.

One fall-out from the tax and regulation changes has been that we are continuing to see more investors setting up SPV Ltd Co's through which to make their buy to let purchases. Generally speaking, the lenders which accommodate landlords using limited companies will offer the same pricing as landlords borrowing in a personal capacity, Whilst the move towards incorporation is more efficient for many, we still recommend that you take professional advice first to check that it's the most appropriate route for your circumstances.

In general, lenders' overall criteria hasn't changed a great deal over the past 12 months. To qualify for the best deals, most lenders will still prefer landlords to be a residential homeowner with a clean credit history, living and working here in the UK for at least the past three years.

Lots of lenders also insist that borrowers earn more than £25K per year; however, if this isn't the case for you and there are some options, such as Keystone Property Finance, so don't panic.

Regulation has been a hot topic over the last few months. As of 30th September 2017 we have seen the introduction of specialist underwriting rules for portfolio landlords. This means that lenders are now required to consider a landlord's overall borrowing when assessing affordability. Please find below is a list of documentation that lenders may ask portfolio landlords for when applying for finance – even simply a remortgage:

- All lenders will want an up to date spreadsheet detailing all your buy to let properties and borrowings
- Some lenders will also want a business plan, an asset & liability statement and a 12-month cash flow forecast.

If you currently have fewer than four mortgaged buy to let properties then you should see no change in the way your application is underwritten and it should be business as usual.

In summary despite the recent changes brought in by the PRA the message from lenders is very loud and very clear. They are still very much open for business and looking to lend.

For more information call us today on 0345 345 6788

The End of 'No Fault' Evictions?

Jeremy Corbyn has pledged to include an end to the Section 21 evictions in the next Labour manifesto. The Labour leader believes the current rules can lead to the breakup of communities, children having to move schools or travel long distances to stay at the same school, and causes insecurity and anxiety for tenants across England.

Asked whether abolishing the "no fault" evictions would be part of the next Labour manifesto, he replied:

> ***"Absolutely. I am very committed to housing and dealing with homelessness. I think it's a moral litmus test for the country: do we just put up with so many rough sleepers or do we do something about it. "***

Shelter are very exercised about the use of the Section 21, citing it as a large reason for homelessness. Whilst it is true that many landlords do use the S21 it is frequently for rent arrears, and they seem to prefer to use this rather than the (correct) Section 8.

The SLA have urged landlords to use the Section 8 for some time. Not only does this help to set the record right that landlords are evicting due to arrears, but in fact is faster, if used correctly.

Note that Scotland has already abolished the No Fault Notice.

What is the Government Thinking on Housing?

As we have reported in the news section of our web site (southernlandlords.org/articles) we have a new Housing Minister in the Prime Ministers recent re-shuffle (January 2018). Dominc Raab takes from Alok Sharma – he departing for the Dept. of Works and Pensions (DWP) as Minister of Employment.

As well as the Prime Minister not allowing an incumbent to have sufficient time to get to grips with their portfolio (this being the 15th Housing Minister in 17 years!) neither Raab nor Sharma are housing experts. Raab is a well-qualified solicitor, specialising in international law and competition law; in fact he moved from the Ministry of Justice to housing. Sharma was an accountant. We've not actually had anyone who understands housing since Nick Raynsford in 1997! Raynsford had been a director of Shelter, and had held the position of Shadow Housing Minister for 3 years previously.

On the positive side Government seem to be giving housing a higher priority. The Dept. of Communities and Local Government has been rebranded the Ministry of Housing Communities & Local Government, and Sajid Javid is now referred to as the Housing Secretary rather than the Communities Secretary. Couple this with the fact that two previous Housing Ministers have senior positions could mean the Prime Minister is finally taking housing seriously.

The two senior positions are Brandon Lewis as Chairman of the Conservatives and Gavin Barwell as Chief of Staff to the PM. We managed to get a meeting with Gavin Barwell, and will now try to meet with Dominc Raab.

Extension of Mandatory HMO Licensing comes closer

Earlier in 2017 the Government consulted on extending HMO mandatory licensing, and also legislating on minimum room sizes.

At the end of the year (December 28th) they published their response to this consultation. Whilst not 100% definite it looks almost certain that they intend to make changes to come into force April this year.

In short, it is proposed in England – subject to parliamentary approval to:

- Extend mandatory licensing to all HMOs (other than section 257 HMOs and flats in larger purpose built blocks) that are
- Introduce mandatory conditions in all licensed HMOs concerning minimum sleeping room sizes and maximum number of occupants;
- Introduce a mandatory condition in all licensed HMOs concerning the provision of refuse storage facilities.

It is anticipated that this will become law April 2018, but has to find parliamentary time to allow this.

Under the new licensing regime, the government is introducing minimum space requirements, which mean rooms used for sleeping by a single adult will have to be no smaller than 6.51sqm, and those occupied by two adults will have to measure at least 10.22sqm. Rooms slept in by children of 10 years and younger will have to be at least 4.64sqm in size. The government has also unveiled details of criminal offences that will prevent those convicted from becoming landlords.

To help prevent overcrowding, fresh rules enforcing minimum size requirements for bedrooms in houses of multiple occupation (HMO) will be introduced, with those landlords letting properties occupied by at least five people from two or more separate households required to obtain a license by their local council.

Ban On Tenant Fees WILL Raise Rents

The DCLG Select Committee is hearing expert opinion on the proposed ban on agent fees.
The committee recently heard evidence from Shelter's Head of Policy Kate Webb, the University of York's Centre for Housing Policy Dr Julie Rugg and Professor Ian Loveland from the City Law School.

The debate discussed how legally binding this legislation might be; the likelihood of Local Authorities policing it and the perceived weakness in the proposed Housing Court/Tribunal (details yet to be seen). The feeling from the experts was that tenants would lose out, either by increased rent to cover the landlords extra costs; and/or decreased services.There is an on-line petition to sign complaining about this, which can be seen on the news section.

Over 11,000 homes have stood empty for at least 10 years, data shows. The Lib Dems have conducted research that shows just 1 in 13 councils have used their powers to take over empty properties and that that more than 11,000 homes have been empty for longer than 10 years.

The fact that so many councils are unable/unwilling to use the powers they already have* is an indicative of their problem of too many existing laws/rules and insufficient resources to allow them to uphold them. We have been urging Government not to introduce any more laws, but to encourage councils to use what they have, especially to stop criminal landlords/agents

Banning order consultation announced

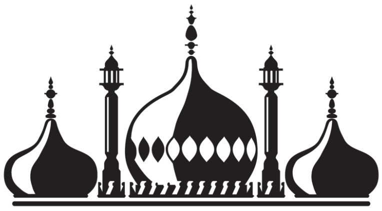
At the end of last year The Government announced the results of a consultation for Banning Orders. Banning Orders were introduced via the 2016 Housing Act, but have not as yet been enacted. It is intended that they will come into force April 6th 2018, and have suggested they will apply to the following:

- Illegally evicting or harassing a residential occupier in contravention of the Protection from Eviction Act 1977 or the Criminal Law Act 1977;
- An offence under the Health and Safety at Work etc. Act 1974 where a person contravenes section 36 of the Gas Safety (Installation and Use) Regulations 1998;
- Failure to comply with a Prohibition or Emergency Prohibition Order under sections 20, 21 and 43 of the Housing Act 2004;
- An offence under section 32 of the Regulatory Reform (Fire Safety) Order 2005;
- An offence under the Fraud Act 2006;
- Sentenced for possession of illegal drugs;
- Any offence under Schedule 15 of the Criminal Justice Act 2003 (specified violent and sexual offences);
- Anyone losing their Immigration Status;
- Any of the following offences under the Housing Act 2004:
    - Failure to comply with an Improvement Notice;
    - Offences in relation to licensing of Houses in Multiple Occupation (HMOs);
    - Offences in relation to licensing of houses under Part 3 of the Act;
    - Allowing a HMO that is not subject to licensing to become overcrowded; o Failure to comply with management regulations in respect of HMOs;

The full consultation can be seen in the News section.

* Empty Dwelling Management Orders, introduced in the 2004 Housing Act

Around The Branches



Gary Waller's News Update

Chairman of Brighton and Hove Branch

Your Investment, Their Home

It has been a busy time since the last newsletter, reviewing a deluge of Government "ideas", that they seem to float for comment and then might or might not make into law at some distant point in the future.

Christmas is always a busy time for me as it gives the opportunity to carry out work on the student houses without the students being present. Although as most of the students seem to be away until the end of January with exams, I am not sure why I rushed. However, I did manage to take the hardboard off a staircase, revealing the spindles, with a bit of work and time they looked as good as new and in addition made the house much lighter. It has been on my to-do list since I brought the house 30 years ago.

I have been helping a couple that were renting a large house in Brighton until recently. When the present owners brought the house 5 years ago they got £25K off the value of the property because the roof needed significant repair. Did they spend it on repairing the roof, no of course not; they spent it on taking down an internal wall, decorating, furniture and an expensive oak floor. They themselves occupied the house about a year then rented the house out whilst they moved half way round the world.

Roll forward 4 years the roof still has not been repaired, now has got tiles missing, water and squirrels getting in. We discovered apparently this was one of the reasons why after just one year the previous tenants to this young couple moved out. The family bathroom has leaked since July last year, the landlord's response is "well you have two other bathrooms use them instead" - not what you wanted to hear when paying good rent for the property. This bathroom has now leaked down into the hall and lounge and blown the plaster, it then has got so bad that fungus is growing in the lounge creating a health hazard. The tenants obviously contacted the Agent on many occasions to ask for repairs. The tenants even offered to stay in the property while some quite significant repairs were carried out, this was refused by both landlord & agent. With numerous conversations and photographic evidence the managing agent refused to come and see the problem and the consequence of the leak and associated problems, I think you would call that burying the head in the sand.

With numerous telephone conversations & emails on the tenants part to get some action, the managing agent thus informed them that the landlord will not pay for any repairs and also with that the landlords response was to give the tenants two months notice the week before Christmas. As you can appreciate that, this proved to be a very stressful time, one in trying to get the problem dealt with and two when given notice trying to find suitable accommodation just when everything shuts down for Christmas.

The conclusion is that the tenants have negotiated not to pay two months rent, at a cost of £5,000 to the landlord. The property is now likely to be empty for a further two months, costing a further £5,000, so the landlord has lost approx. £10K in rent, which is half the cost of replacing the roof, and as for the shower, well it is still not fixed.

The moral to be found here is to make sure that your property is fit to rent before it goes on the market and to find yourself a managing agent that is prepared to get in their car and see the problem for themselves. Finally be prepared to put your hand in your pocket and have the problem dealt with before renting out and additionally if any problems arise during the tenancy.

Brighton Licensing

Informed by the council that the application has been made to the Secretary of State for Housing asking permission for Brighton to implement licensing for over 20% of the housing stock.

Southampton Additional HMO Licensing

In the Southampton City Council area all HMOs are required to be licensed in the wards of Portswood, Swaythling, Bevois, Bargate, Bassett, Freemantle, Millbrook and Shirley. In contrast, in the six wards to the east of the River Itchen (Bitterne, Bitterne Park, Sholing, Peartree, Woolston and Harefield) plus the westernmost wards of Coxford and Redbridge, currently only HMOs with three or more storeys and five or more occupants are required to be licensed.

The Additional HMO Licensing Scheme (which covers smaller HMOs which have (i) one or two storeys or (ii) three or more storeys but less than five occupants) in the four wards of Portswood, Swaythling, Bevois and Bargate is due to end on 30 June 2018. Council Officers have indicated that, subject to the usual consultation process, it is minded to re-designate these four wards for a further five year period. This means that landlords of HMOs in these areas will need to apply for a new licence in respect of each of their HMOs later this year. Local SLA representatives are currently involved with negotiating the details of this re-designated scheme. It is expected that the amenity standards and fee structure will remain broadly the same, we will aim to provide full details in the next newsletter.

SLA negotiator Chris Brown said "I believe that the Southampton HMO Licensing Schemes are now probably the most efficient in the country. Many other councils have treated these schemes as a cash cow to supplement dwindling Council Tax income while producing nothing of benefit to tenants, the majority of good landlords or the wider community. Meanwhile non-compliant and criminal landlords are often easily able to evade their responsibilities and costs. In Southampton, we recognise Council Officers' willingness to work with the SLA to set-up, monitor and adjust their HMO Licensing Schemes so that non-compliant and criminal landlords are targeted both with a much higher fee and ultimately with enforcement action and court fines where necessary. The vast majority of the city's landlords, the good landlords, benefit from a low fee, fair amenity standards and a new straightforward online application process, plus of course the opportunity to use either a Council Officer or an independent RICS or CIEH inspector to inspect their property".

You Might Neve Be Able To Use a Section 21

It is a legal requirement to have a valid Gas Safety Inspection Report (CP12) before a tenancy commences; it is then a requirement to ensure it is kept valid, i.e. renewed when necessary.

As a mechanism of policing that, the new Section 21 (form 6a) has to have a valid CP12 to be allowed at court. It has never been clear when that CP12 has to have been served on the tenant in respect of the service of a S21, but has always been accepted that as long as it was served before the S21 it should be OK.

That opinion has now found to be wanting. In a recent court case (Assured Property Services Limited v Ooo) the company had not served a CP12 on Ms Ooo at the commencement of the ASAT, but served one at the time of the S21.

Following convention, the original judge (District Judge Cohen) made a possession order under the accelerated procedure without a hearing. Ms Ooo subsequently made an application to set aside the order on the basis that no gas certificate had been provided at the outset of the tenancy (or subsequently). The landlord accepted that it had not supplied a gas certificate at the outset, but contested the claim that one was never served.

At appeal District Judge Lethem held that where a landlord had accepted that no gas safety certificate had been served prior to occupation of the premises by the tenant, it had contravened Gas Safety (Installation and Use) Regulations 1998 SI No 2451 reg 36(6). In view of Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 SI No 1646 reg 2(1)(b), that omission invalidated the s21 notice. The judge set aside the possession order and dismissed the claim for possession with an award of costs to the tenant.
In other words, unless this case is appealed and overturned it will never be possible to use a S21 (form 6a) unless the CP12 was correctly served at the outset.

Although not mentioned, it is likely that this would apply to an EPC (also legally required at the outset of the tenancy). It is not sure if this would apply to the 'How to Rent Guide' as it wasn't a legal requirement for the earlier AST's.

It is still possible to use the old Section 21 on an AST commencing prior to Oct 2015 – but after this October 1st it will only be possible to use the new one.

So please ensure you serve all the correct documents at the commencement of the AST. See our checklist for help.

Social Meetings

London Social

First **Tuesday** of every month, commencing 6.30 pm. To be held upstairs at the Constitution 42 Churton Street, SW1V 2LP. Tel: 020 7834 365.
Note the change from the first Monday of the month – the venue remains the same.

Thanet Social

First Thursday of every month. 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

Brighton & Hove

Meetings are held at The Ralli Hall, 6:30pm for 7pm start
81 Denmark Villas, Hove, BN3 3HT (Easy Parking in Hove Station)

Southampton

Meetings are at Highfield House Hotel, 6pm for 6:30pm start
Highfield Lane (corner of Shaftesbury Avenue), Portswood, Southampton, SO17 1AQ
Note that Highfield House Hotel have informed us they are to carry out a refurbishment during 2018, and that we will probably have to find another venue for the meetings

Meetings/Exhibitions 2018

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

- Monday February 19th - Brighton Branch Meeting
- Tuesday March 1st - Thanet Social
- Thursday March 15th - Landlord and Investor Show (Olympia)
- Saturday March 17th - Ideal Home Commences
- Tuesday April 2nd - London Social
- Thursday April 5th - Thanet Social
- Fri/Sat April 20/21st - Property Investor Show, Excel
- Tuesday May 1st - London Social
- Thursday May 3rd - Thanet Social
- Monday May 14th - Brighton Branch Meeting
- Monday May 21st - Southampton Branch Meeting

Monthly News Updates

We are now sending members monthly news updates by email, in addition to this printed newsletter. If you didn't get yours please email us at info@southernlandlords.org and we will ensure you get them.

Note that you can always keep up to date with our regularly updated news section on the home page of the web site.

Brighton Landlord Gary is not sure why he bothered to buy a van, when a recent trip to Vietnam showed him that a Moped would be fine for moving wardrobes, beds, toilet rolls and beer. All the student essentials....

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