Purpose of the Guide

This Guide summarises the responsibilities of landlords and agents (both letting and managing agents) towards tenants and prospective tenants under European Union Consumer Protection and allied Legislation as it applies in the United Kingdom. It is based on Guidance issued by the Competition and Markets Authority (CMA) who have taken over from the Office of Fair Trading. This Guide sets out the outcomes that need to be achieved to minimise the risk of enforcement action being taken. No guarantees are given but hopefully so long as you comply with this Guide you should keep within the law.

Landlord’s Role

CMA take the view that all private landlords as well as agents are to be treated as traders. Therefore, so far as tenants are concerned both landlords and agents are regarded as bound by the obligations referred to in this Guide.

Tenants as Consumers

Tenants are generally regarded as consumers but if they are not, e.g. a company, then different responsibilities operate instead (see next Section “Responsible for the tenant is in business”).

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Responsibilities where the tenant is in business

Where the tenant is in business (and not a consumer) you must not make representations, statements, advertise or market your service to tenants that may mislead them if this affects their economic behaviour or alternatively which may injure a competitor.

A representations, statement or advertisement can be misleading if –

- It is false.
- It conceals or leaves out important facts.
- It promises to do something when there is no intention of doing it.
- It creates a false impression.

There is also a breach if it makes unfair comparisons with competitors.

Agent’s responsibilities to landlords

As well as having responsibilities towards tenants, agents can also have responsibilities to landlords/their clients under the Regulations. The extent of these again depends on whether or not the landlord is a consumer or is in business.

IMPORTANT: Your attention is drawn to the RLA Guide to agent’s obligations to Landlords under Consumer Protection Legislation – Dos and Don’ts.

When must you take action in order to comply?

Material information (see box on page 6) must be given at the outset, i.e. as soon as the prospective tenant shows interest in renting a property and before a viewing. This information should be included in the property particulars or provided separately. For
those landlords who use the RLA standard tenancy agreements, to help with this, we provide a summary of the main terms of the agreement - Click here to obtain a copy. Additionally you should supply details of any of your own terms that you want to add in. A copy of the tenancy agreement should also be provided at the same time. Any fees or charges payable prior to the letting should be explained (See the box on page 8).

Any fees and charges which may arise during the course of the tenancy (e.g. if you have to send reminder letters) must be spelt out in the tenancy agreement itself.

If you undertake pre-tenancy checks (credit checks etc) you must give the tenant pre-tenancy check information (See the box on page 9 for further details). It should be noted that you need the tenant’s written agreement to make a credit check. Alternatively, use the RLA’s Tenant Application Form which includes the necessary consent.

If you require a guarantee then guarantee information must be given to the prospective tenant and guarantor (See the box on page 10). Tenants must be given information about deposits (security deposits) taken. This should be done before the deposit is paid (See the box on page 15 for details).

The RLA publishes information sheets to help those who let under the RLA Assured Shorthold Tenancy Agreement or use other RLA services. We have also published a Guide to Landlords/Agents marketing and advertising properties to let – information to be given to tenants.

Breach of requirements

If you breach these obligations you could be liable to criminal prosecution or other enforcement action. The regulations criminalise those who break the rules.
The remainder of this Guide sets out what you must do nor not do and it contains the following sections which take you through the life of the tenancy:

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Note: Expressions in italics are explained further in a related box.
Code of Conduct

Do not:-

- Advertise to tenants that you are a member of a code of conduct or redress scheme when in fact you are not

- Advertise to tenants that you are bound by a code of conduct, but then fail to comply with the requirements that such a code lays down.

Marketing the property

Do:-

- Ensure that advertising and property particulars are clear, accurate and are not misleading. They should provide all the information that a potential tenant needs in order to make an informed choice.
- Make information available so that a potential tenant can compare the full cost of renting one property against another.
- Make sure that all information about charges and deposits is presented together with information about the rent.
- Clearly flag up information which cannot be included due to restrictions on space and make it easily accessible, e.g. no more than one click away on the website.
- Have proper processes in place to obtain and check information.
- Keep marketing materials up-to-date while the property is being advertised for let.
- Promptly correct information if you discover that it is not correct

Do not:-

- Publish information which is inaccurate and take particular care to verify any attractive feature you want to rely on, e.g. parking lights or nearby amenities.
- Omit material information (see below).
- Use phrases such as fully furnished, unfurnished or partly furnished without being clear what is meant but give details of principal items and state that a detailed list will be included in the inventory.
- Make a mistake in an advertisement about how much it will cost a tenant to rent the property.
- Provide inaccurate information about the property in the property particulars.
- Provide misleading information over the telephone or in discussions with prospective tenants about when the property is likely to become available.
• Provide misleading information in answer to a specific enquiry raised by a prospective tenant especially if the information is important.
• Fail to inform a tenant that the property to let does not include the use of something that appears to be part of the property, e.g. the garden.
• Exploit a position of power to make it hard for someone to pull out of the process of agreeing a tenancy if they are not sure they want to proceed, e.g. by refusing to return a holding deposit unless there is good reason.
• Suggest to tenants inaccurate going rent for properties in order to persuade them to agree the asking rent.
• Tell potential tenants that a property is about to be rented by someone else so they need to decide immediately if they want to go ahead.

### Material information

Material information includes:

- The amount of the rent and when it is payable.
- Charges and costs associated with renting the property.
- Location of property and number and type of rooms.
- Type of energy supply and heating.
- Council tax banding or amount payable.
- Condition of the property including any significant features that are likely to put someone off, e.g. defects, serious damp or potentially unsafe gas or electrical wiring.
- When the property will be available.
- Terms of the tenancy agreement.
- Any particular restrictions on the use of the property, e.g. smoking or pets are permitted.
- Any unusual or onerous terms – these should be highlighted.
- Any requirement to use a particular provider, e.g. energy or communications supplier.
- Any restrictions on the type of the tenant, e.g. housing benefit claimants.
- Circumstances in which a guarantor may be required.
- The amount of any deposit.
- The identity and address of the landlord.

This information should be provided at the outset and before a viewing.
Information about the property

Do:-

- Ensure that material information is provided in all circumstances (whether or not it is asked for) it should be presented at the outset, i.e. before any viewing.

Do not:-

- Describe the property in a misleading way, e.g. as in a quiet area when it is close to a late night bar.
- Give misleading impressions about the property, e.g. showing something in a photograph which is not included without making this clear.
- Make broad statements about the property condition when this is misleading or only applies to part of the property, e.g. saying it has been recently decorated when only one room has been decorated.

Costs and charges

Do:-

- Provide information about all fees and charges upfront (changes need only be quoted if the rent is stated) – see below.
- Quote all charges inclusive of VAT (including if there is a percentage of something else).
- Describe the fees accurately stating what they are for.
- Comply with the Code of Advertising Practice Rules regarding advertising charges.
- Present fees up front.

Do not:-

- Fail to make clear the extent of what is being provided in return for a fee, e.g. any substantial fees charged with little or no work being done, (for instance if you do not make the extent of what you are doing clear).
- Impose a charge unless it is clearly set out in a contract.
- Charge fees that are prohibited.
**Fees that need to be stated**

- Fees that the tenant has to pay for a tenancy application to be processed, e.g. credit checks.
- Fees for the initial set up of the tenancy.
- Administration costs.
- Inventory costs (check in and check out).
- Charges payable in certain circumstances, e.g. for additional tenants, guarantors, pets.
- Any ongoing future fees, e.g. costs to extend, renew or terminate the tenancy. This extends to any fee that would be charged if the tenant wants to renew the tenancy once the current tenancy runs out.

**NB:** If you genuinely cannot state the amount of a specific fee then you must spell out how it will be calculated.

Charges that the tenant may become liable to pay once they have moved in need not be set out in marketing/advertising material but must be specified in the tenancy agreement. These include charges to compensate the landlord for damages to the property, or consents.

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**Viewings and negotiations**

**Do:-**

- Give prospective tenants clear information about what the process will involve before arranging a viewing (including any credit etc checks that will be undertaken).
- Where a prospective tenant views the property make sure all parts are made available for inspection, wherever possible. If this is not possible you must describe accurately the rooms/parts of the property not seen. If the tenant does not view the property it is important to make sure that anyone authorised to view the property on his/her behalf has received **material information (see above)** to help them decide whether or not to rent the property.
- Make clear what fixtures, fittings, furniture etc are included with the letting.
- Be in a position to answer reasonable questions asked by tenants.
- Ensure that prospective tenants are given an accurate impression of the property's characteristics and are able to view the property (if they wish to do so).

**Do not:-**

- Fail to mention that an item, e.g. white goods, which is present at the property when it is viewed, will not be included in the letting.
- Pressurize a potential tenant to rent a property, e.g. by misleading them that they have to decide early, or someone else is going to rent it, when this in fact is not occurring.
- Conceal defects or other factors which are likely to impact on a decision whether or not to rent.
- Fail to make prospective tenants aware of key terms of tenancies such as significant restrictions on the use of the property or information about costs or fees. Do not do this only once a viewing has taken place.
- Take any deposit or other money from the tenant until they have viewed the property (if they wish to do so), and had the chance to consider the terms of the tenancy agreement.

Pre-tenancy checks

Do:-

- Give clear and accurate information about *pre-tenancy checks* which must not be misleading. This should be done as soon as a tenant has expressed an interest in renting a particular property, i.e. before any viewing and before the prospective tenant is asked to pay any fees or any holding deposit (even if it is refundable). The prospective tenant should be able to assess any information they are given upfront before they are likely to pass the check.

**Pre-tenancy check information**

Information which a prospective tenant should be given includes:–

- The criteria which will assess, e.g. credit worthiness, unpaid judgment debts etc.
- What data sources it will use, e.g. a credit check.
- What the tenant will have to pay.
- What the potential outcomes could be, including whether other people are being checked so that someone else could be offered the property even if the prospective tenant passes the check.

- If a prospective tenant does not pass the check tell them the reasons, to give them the chance to provide more information so that they might then pass.

Do not:-

- Forget that information about a prospective tenant is personal data so there are rights and obligations around its collection for use under Data Protection Legislation.
- Give a prospective tenant the impression that a pre-tenancy check is more extensive than it actually is if they are being asked to pay for it.
Guarantor requirements

Do:-

- Provide both potential guarantors and the prospective tenant with accurate and full guarantee information about what is involved.

Do not:-

- Tell a guarantor that their role is a “mere formality’.
- Give the impression that being a guarantor does not carry significant risks and liabilities.

Guarantee information

Information which the tenant and guarantor may need includes:-

- The criteria the guarantor has to meet to be considered suitable, e.g. income level, house owner status etc.
- The liability of the guarantor including responsibility to pay for rent arrears, damage to property, breach of tenancy terms and information about what this could amount to.
- Clarity about guarantor responsibility whether tenants are jointly and severally liable under the tenancy agreement.
- The terms of the actual tenancy agreement that the guarantor will be a party to.
- If the property is in more than one occupation and if so, whether there is a risk that the guarantor could be asked to pay the cost of making good damage or pay any money over for a breach by anyone other than the tenant for which they are acting as guarantor.

Make sure that the terms of any guarantee are fair.

Fair terms in guarantees

Unfair terms will not be enforceable and these include –

- A requirement that the guarantor has to continue to receive income at a level that significantly exceeds the rent.
- Any terms included in the tenancy agreement that the guarantor has not seen.
- Terms requiring the guarantor to compensate for damage caused to common parts by occupants who are not joint tenants.
- Requirements for the guarantor to pay sums that cannot be recovered from the tenant’s deposit, e.g. because the tenancy deposit scheme was ruled against the landlord.
Pre-tenancy agreements and holding deposits/fees

Do:-

- Provide clear information about *pre-tenancy agreements fees and deposits* items and make clear the purpose of any pre-tenancy agreement/payment.

**Information about pre-tenancy agreements fees and deposits**

The information that should be provided includes:-

- Details about any cost to be taken out of the deposit and any costs that may be incurred.
- Whether or not payment of the holding deposit means that the property will be taken off the market. If not this must be made clear.
- Whether the holding deposit will be used towards payment of rent or the deposit if the tenancy goes ahead.
- Circumstances in which a deposit will not be refunded including whether a refund will be made if the tenant simply changes his/her mind.

- Explain why you require it. Is it to show the tenant is serious about renting or to protect the landlord from loss should the tenant pull out? Likewise, explain if its purpose is to cover specific expenses/losses. Terms must be agreed to by the prospective tenant.
- Ensure that the terms on which they are holding deposit should be *fair*.

**Fair terms for pre-tenancy agreements and holding deposits/fees**

- A term that makes it non refundable in all the circumstances is likely to be unfair and therefore unenforceable.
- Other circumstances in which a holding deposit/fee should be refundable include:-
  - The prospective tenant pulls out before any relevant cost is actually incurred by the landlord/agent.
  - The property continues to be marketed so the landlord has not suffered any loss by the property being taken off the market.
  - The loss suffered is small relative to the payment (the amount left over should be refunded).
  - The property is not ready on the date the tenant was told it would be and the tenant pulls out to rent somewhere else.
  - The property does not comply with its description or there is non compliance with the requirement of housing legislation.
CONT.

- Other circumstances in which a holding deposit/fee should be refundable include:-
  - When the tenant is due to move in but at that point the landlord decides not to let the property because the pre-tenancy checks are unsatisfactory even where the prospective tenant is being truthful.
  - The landlord decides not to let for any reason but the tenant is still prepared to go ahead.
  - The tenant discloses information showing that they are not suitable to rent but the landlord/agent goes ahead with a check before giving the prospective tenant the option not to proceed.
  - Pre-tenancy checks are carried out on several different tenants and the landlord selects one in particular (e.g. because he/she has a higher income) any term that prevents the unsuccessful tenants from getting their holding deposit could be unfair.

Do not:-

- Require a holding deposit from a prospective tenant before they have been given the opportunity of inspecting the property and seeing the tenancy agreement.
- Describe a pre-tenancy payment as a deposit if it is not refundable or if it is going to be used to cover costs.
- Take a holding deposit from more than one prospective tenant for the same property without making this clear.
- Delay or refuse to return a holding deposit which a prospective tenant is entitled to.
The tenancy agreement

Do:-

- Make sure that the terms of any tenancy agreement are fair.
- The tenancy is written in plain and intelligible language.
- Explain the nature of the agreement to prospective tenants before they sign.
- In particular, explain to prospective tenants how either party can end the tenancy including what steps/formalities are required.
- Highlight any terms that are likely to be surprising or unusually onerous. These should be brought specifically to the tenant’s attention before they sign the agreement.
- Give the tenants a copy of the tenancy agreement before they sign so that they have sufficient time to consider the agreement before signing it or paying any money.

Do not:-

- Fail to inform prospective tenants of any important obligation e.g. a requirement to undertake maintenance of common areas or gardens.

Fair terms in tenancy agreements

Examples of potentially unfair terms in a tenancy agreement (which will not be enforceable) include:

- Unusual or restrictive requirements.
- Unreasonably high charges for permissions/consents.
- Terms that require tenants to pay charges which can be set at a landlord’s discretion.
- Terms that require a tenant to use a particular supplier, e.g. for energy, communications etc.
- Charges for breaches of the agreement that do not reflect the landlord’s for loss.
- A requirement to require a longer notice period from the tenant than that the landlord has to give.
- Unusual charges, e.g. for rent collection or processing rental payments.
- A requirement to carry out repairs which are the landlord’s responsibility (e.g. in relation to the structure or exterior of the property)
When the tenant moves in

Do:-

- Ensure that the property is available on the date agreed or that the tenant is kept informed of any delays.
- Make sure that the property conforms with all agreements made and what is to be included, e.g. in relation to furniture and any works that have been agreed.
- Provide the tenant with all the information that is required by law, e.g. a gas safety certificate and energy performance certificate.
- Make sure that the deposit is properly protected and the tenant is given *material information* about which scheme it is with – see further below.
- Give required information about *energy suppliers* (see below)

Do not:-

- Mislead tenants about their rights if there is any failure or delay in making the property available or in carrying out agreed work.
- Refuse to let the tenant into the property unless they pay last minute fees that were not previously agreed with them or subject to a condition that was not previously agreed, e.g. the use of particular energy supplier.

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**Energy Suppliers**

- Make sure that the tenants have information they need which includes:
  - Circumstances in which the tenant can change his/her energy supplier (if the tenant is responsible for paying the bill).
  - Whether tenants need to get the landlord’s consent before changing the energy supplier.
  - If the tenant will need to return the account to the original supplier at the end of the tenancy

- Do not inform the tenant that the landlord’s preferred energy supplier is cheaper than a competitor, when this is not the case.
- Repeatedly contact tenants to try and persuade them to use a particular energy supplier or other provider.
Inventory

Do:-

- Make sure that, if there is an inventory for the property, it accurately records what is in the property and where applicable the property condition.
- Give the tenant sufficient opportunity to review the inventory, query any points of disagreement and agree a final version.
- Include gas and electricity meter readings in the inventory.
- Give the tenant a copy of the finalized inventory.

Do not:-

- Fail to record damage/defect, e.g. not recording stains on carpets or describing items as in good condition when there are in fact damaged, e.g. scratched.

Deposits (security deposits)

Do:-

- Protect the deposit in accordance with the statutory requirements, i.e. with one of the approved schemes and provide the prescribed information regarding deposits to tenants, and anyone else who has contributed towards the deposit.
- Comply with the scheme rules.
- Give tenants full clear and accurate material information about the deposit.
- If a deposit is not properly protected the tenant should be informed of this as soon as possible. This includes the tenant’s entitlement to recover the deposit and a penalty.

Do not:-

- Tell the tenant that the deposit is protected when you know that it is not or you have not specifically checked to confirm this.

Material information about deposits

Material information about the deposit includes:-

- An explanation of the purpose of the security deposit e.g. to protect the landlord from financial loss in certain situations.
- Details of what exactly the deposit protects and the nature of the protection (this should be covered specifically as a term of the tenancy agreement).
**Contact details**

**Do:**-

- Inform the tenant as to who he/she is to contact regarding any issues about the property or the tenancy agreement with sufficient information as to how to get in touch with them. This will include information about the circumstances in which contact with the landlord should be made.
- Update the tenant with any contact information.

**Managing the property/tenancy**

**Do:**-

- Carry out your responsibilities with reasonable care and skill and in a timely way.
- Act fairly in dealings with tenants.
- Give tenants clear information concerning who is responsible for what during the life of the tenancy.

**Do not:**-

- Enforce the terms of the contract which are *unfair* – see above.
- Require tenants to accept additional services for which the tenant must pay unless this is provided for in the tenancy agreement (and it is a fair term). The full extent of the tenant’s obligation should be set out in the tenancy agreement.

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**CONT.** Material information about the deposit includes:-

- If there is an agent involved confirmation as to whether it is the landlord or the agent who will be protecting the deposit.
- Details of exactly where and by whom the deposit will be held.
- Information about when the tenant will receive the statutorily prescribed information about the deposit.
Access to the property

Do:-

- Provide tenants with the notice as required in the tenancy agreement unless there is a genuine emergency.

Do not:-

- Use aggressive or deceptive means to gain access to the property.
- Let yourself into the property without the tenant’s permission to discuss matters such as late payment of rent.
- Prevent the tenant having access to the property or otherwise stop the tenant exercising rights until arrears of rent are paid.
- Make an unreasonable number of visits to the tenant or ignore requests to leave, e.g. when collecting rent or showing prospective tenants around.
- Rely on an unfair term in the tenancy agreement regarding access (e.g. to obtain access at an unreasonable time or without giving reasonable/required notice).

Repairs

Do:-

- Undertake repairs within a reasonable length of time.
- Carry out repairs with reasonable care and skill.
- Prioritize requests/notifications of repairs according to urgency and seriousness.
- Be prepared to replace items of furniture which fail/are broken as a result of reasonable wear and tear. You should replace the item with something of comparable quality, at least.
- If under the tenancy agreement a tenant is legally responsible for repairs you should inform tenants of circumstances where they are responsible.
- If you become aware of damage to the property that needs to be repaired if the tenant will be liable for the work/cost point this out as soon as possible. Otherwise, the damage may be made worse because the repair is not done quickly.
- If during the life of the tenancy work is carried out which is the tenant’s responsibility agree this with the tenant and the cost of doing the work. Any charge should be reasonable.

Do not:-

- Charge tenants for fair wear and tear.
- Tell tenants that more work is done to make good damage for which they are responsible than is necessary, e.g. major work but only minor redecoration will do.
Renewal/ending the tenancy

Do:-

- Make sure that the tenant has clear and accurate information about what they need to do to end the tenancy. Make it clear what form of notice you are willing to accept. If you require notice to be given in writing you should make it clear what you are willing to accept, e.g. whether or not you are prepared to accept notice by text message or email even though this may not be allowed for in the tenancy agreement.
- Make it clear to the tenant if notice is given in the wrong way, e.g. because it is not in writing when required, it is in the wrong format or it expires on the wrong day. If this is capable of being corrected then you should take steps to enable the tenant to correct it.
- Point out to the tenant where they have given the notice incorrectly that this is the case and advise them where to look to identify how to give notice correctly.

Do not:-

- Sit back where you know that the tenant has given an incorrect notice without alerting him/her to this.
- Give the tenant notice requiring possession if you are not allowed to, e.g. where you fail to protect the deposit properly.
- Give a shorter period of notice than is provided for in the tenancy agreement.

Charging fees for renewing/exiting a tenancy agreement

Do:-

- Act according to the requirements of the tenancy agreement and the information given regarding any fees for renewing or exiting a tenancy agreement.
- Make sure that any such fees have a clear contractual basis which should have been drawn to the tenant's attention before he/she committed to the tenancy originally, e.g. charges for checking the inventory or cleaning.

Do not:-

- Introduce any new charges or try to get tenants to agree to these.
- Charge an additional fee simply for holding over on a residential periodic tenancy.
- Give the impression that a tenant is obliged to agree to a new fixed term agreement.
- Charge a tenant to renew a tenancy where this fee was not set out in the original tenancy agreement and brought to the potential tenant’s attention in the pre-tenancy material.

**Returning the deposit**

**Do:-**

- Make sure that the process for checking out is transparent and fair.
- Tell the tenant about proposed deductions. This information must be accurate, clear and not misleading.

**Do not:-**

- Mislead the tenant about whether you are going to retain any money from the deposit or how much.
- Exaggerate the amount necessary to deal with damage or exaggerate the scale of work or cleaning required.
- Charge for damage which is not recoverable or which would not be allowed by the Courts or the tenancy deposit protection scheme (e.g. by claiming allowance for fair wear and tear). Avoid any claims for betterment and also ensure that you are able to prove any damage you allege.
- Make any deduction from the deposit if it has not been properly protected. Instead it should be returned immediately. You should not attempt to deduct any sums without also having informed the tenant, at the outset of a tenancy agreement, that the deposit is not protected, and that the tenant has legal rights to obtain a Court order to recover the deposit and a penalty.
- Where the tenant cleans the property before handing it back and the tenant has done so appropriately then employ a professional cleaner deducting the cost from the deposit (or charge the tenant) even though the tenancy agreement may allow for this. Instead you should inform the tenant that you intend to have the property cleaned professionally before the tenant takes steps to clean the property himself/herself.
- Claim for cleaning where you do not have agreed evidence about how clean the property was at the start of the letting or the landlord is going to carry out work which would mean that the property has to be cleaned afterwards in any case.
- Require the tenant to pay fixed fees for cleaning or repairing the property without reference to the actual work carried out.

**Retaliatory Eviction**

**NB:** Retaliatory eviction is evicting a tenant (or threatening to evict a tenant) because the tenant asserts his/her rights, e.g. by requesting that repairs be carried out.
• If the landlord serves a Section 21 notice in response to a tenant who raises legitimate complaints about the state of the property, including where a tenant asks for the landlord to repair it so that it complies with requirements of housing law.

• Threatening the tenant with eviction to dissuade them from exercising their rights if they wish to make a complaint to the local authority about the condition of the property or claim damages for disrepair.

IMPORTANT DISCLAIMER

• For a full explanation of the relevant legislation you must read the Competition and Markets Authority (CMA) Guidance.

• The Residential Landlords Association accepts no responsibility or liability for the contents of this Guide. Just because something is not covered in this Guide does not mean that it may not be a breach of the law. You must take your own professional legal advice and you cannot rely on this Guide. The purpose of the Guide is only to outline the effects of the relevant regulations and it cannot cover every situation or circumstance.