

LETTING A MANSE

Introduction

There are occasions when a church may decide to let its manse to a tenant - perhaps because the church is currently without a pastor or because the pastor owns his own house. Advice should always be sought from the manse trustees in this situation because the church members may wish to do something that, although commendable, actually contravenes the law. The fact is that church officers do not have complete freedom to act as they please when using a manse for anything other than its intended purpose of serving as the home of the minister. The Manse Trust Deed may specify certain terms and conditions that must be complied with, and that may govern the use to which the rental income is put. Additionally, charity law compels the church officers to charge a market rent.

As a consequence of this, it may, for example, be a breach of trust, or even an illegal act, to allow a missionary who is home on furlough to live in the property at less than the market rent. Having said that, if the church's constitution specifically permits the church officers to make benevolent grants it would be possible to make a benevolent grant to the missionary by way of compensation. Whilst this may seem to be unnecessarily bureaucratic, it is important to deal with the issue correctly to avoid a breach of trust or, indeed, a breach of the law.

Assured Shorthold Tenancies

A properly drawn up legal document must be completed before tenants are allowed to move into the manse and the safest form of let is an "Assured Shorthold Tenancy" which may be completed in the names of the deacons acting as managing trustees of the church, even if the property is held in the name of the property trustees. Assured Shorthold Tenancies may be furnished or unfurnished and may be for any period. They enable the church members to let their manse in the knowledge that they will be able to regain possession at the end of the agreed term.

To bring the tenancy to an end it is necessary to serve a notice on the tenants, in the prescribed form, two calendar months before the end of the term. If the notice is not served, the tenants will continue to have the benefit of the tenancy until a notice, as previously described, is served. If the tenants refuse to leave it will be necessary to obtain a court order enforcing eviction and the Courts will not issue an Eviction Order earlier than six months from the start of the tenancy.

Letting Agents

As there are a number of technical regulations that must be complied with (see below) church officers are strongly advised to use a letting agent in selecting a tenant and completing the legal paperwork. The agents will ensure that all of the legal requirements have been complied with and that all of the certificates that are legally required are in place.

Right to Rent Checks

'Right to Rent' was introduced in the Immigration Act 2014. From **1st February 2016** all landlords in *England* must check a prospective tenant's right to be in the UK before renting property to them. This includes churches who rent out their manses because, legally speaking, they are acting as landlords. Landlords who fail to check a potential tenant's 'Right to Rent' - or rent to someone they knew did not have the right to do so in the UK - could be sent to prison for 5 years or get an unlimited fine. More information on this subject and the Immigration Act 2014 can be found at: www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice

Before the start of a new tenancy, landlords will need to:

- Check which adult (s) will live in the property as their only or main home, (all tenants aged 18 and over must be checked even if they are not named on the tenancy agreement);
- Ask the tenant(s) for the original document(s) showing their right to be in the UK (tenants may use a range of documents as their evidence - for list see link on next page);

- If the tenant(s) is only allowed to stay in the UK for a limited time, the check must be done in the 28 days before the start of the tenancy;
- Check the document(s) are valid with the tenant(s) present;
- Make and keep copies of the document(s) and record the date the check was made.

In addition, if there is a time limit on the tenant(s) permission to stay, a **follow-up check** must be done to confirm that the tenant(s) can still rent property in the UK. Do the follow-up check just before the date that's the later of:

- The end of the tenant(s) permission to stay in the UK;
- 12 months after the previous check.

If the tenant(s) fails a follow-up check and can no longer legally rent property in the UK, the Home Office must be advised. Landlords could be fined or sent to prison for up to 5 years if their tenant fails a follow-up check and it is not reported to the Home Office.

For a list of documents that can be used by prospective tenants as proof see:

www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice

Setting the Rent & Deposits

The church is subject to the requirements of charity law which requires the church officers to obtain advice from a person who is suitably qualified to advise them on the terms and conditions of the tenancy, and this will include the amount of the rent that should be charged. The law lays down certain regulations governing the administration of tenants' deposits. The following website may be useful: <https://landlordlaw.co.uk/>

Inventory

If the letting is furnished an inventory needs to be prepared detailing the items at the property. A copy of the inventory must be attached to the Tenancy Agreement and signed by the persons signing the agreement. Upholstered furniture and bedding must satisfy modern safety standards.

Outgoings

The church officers will remain responsible for external repairs and maintenance and for insurance (and should therefore ensure that the insurance policy gives the appropriate cover). The tenant should be held responsible for all other outgoing.

Gas Safety

You have duties under the Gas Safety (Installation and Use) Regulations 1998 to arrange maintenance by a Gas Safe Registered engineer for all pipe work, appliances and flues, which you own and have provided for your tenants use. You must also arrange for an annual gas safety check to be carried out every 12 months by a Gas Safe Registered engineer. You must keep a record of the safety check for 2 years and issue a copy to each existing tenant within 28 days of the check being completed and issue a copy to any new tenants before they move in. See: www.hse.gov.uk/gas/domestic or ring 0800 300 363.

Energy Performance Certificates (EPC's)

All homes being let are required to have an Energy Performance Certificate (EPC), which is valid for 10 years. An EPC tells you how energy efficient a home is and about the impact the property has on the environment on a scale of A - G. The most efficient homes - which should have the lowest fuel bills - are in band A. Better-rated homes should have less impact through carbon dioxide (CO2) emissions.

See www.evergreenenergy.co.uk/sustainable-home/what-is-an-epc-rating/

From **April 2018**, to comply with the 2018 Minimum Level of Energy Efficiency standard, landlords in England or Wales must have ensured that their properties reach at least an EPC rating of E before arranging a new tenancy with new or existing tenants. Where a landlord believes that an EPC F or G rated property qualifies for an exemption, they must register the exemption on the National PRS Exemption Register. See: www.gov.uk/government/publications/private-rented-sector-minimum-energy-efficiency-standard-exemptions/guidance-on-prs-exemptions-and-exemptions-register-evidence-requirements#new-landlord-exemption

In respect of EPC's and **listed buildings**, the following is reproduced with the kind permission of the Churches' Legislative Advisory Service (CLAS) from their circular no. 2017/25:

“There is a common misunderstanding relating to listed buildings and whether they are exempt from the requirement to obtain an EPC. Listed properties, and buildings within a conservation area, will not necessarily be exempt from the requirement to have a valid EPC and it will be up to the owner of a listed building to understand whether or not their property is required to have an EPC. Where a listed privately rented non-domestic property, or a property within a conservation area, is required to have an EPC, that property will be within scope of the minimum energy efficiency standards.

An EPC is not currently required for a listed property or building within a conservation area when it is sold or rented inasmuch as compliance with minimum energy performance requirements would unacceptably alter its character or appearance. Examples of energy performance measures which may alter character or appearance (or as a minimum are likely to require local authority planning permission to install on a listed building) include external solid wall insulation, replacement glazing, solar panels, or an external wall mounted air source heat pump. Where character or appearance would not be altered by compliance with energy performance requirements, an EPC may be legally required.

If an owner or occupier of a listed building is unsure about whether a particular property is or is not required to have an EPC, appropriate advice should be sought at the earliest opportunity.

[Source: BEIS – 9 October]”

Electrical Regulations

Electrical Equipment: You are required by law to ensure the equipment you supply as part of the tenancy is safe. The Electrical Equipment (Safety) Regulations 1994 requires that all mains electrical equipment (cookers, washing machines, kettles, etc), new or second-hand, supplied with the accommodation must be safe. You therefore need to maintain regularly the electrical equipment supplied to ensure it is safe. It is strongly advisable to have the equipment checked before the start of each let. It would be good practice to have the equipment checked at regular intervals thereafter. You should obtain and retain test reports detailing the equipment, the tests carried out and the results. See www.pat-testing-training.net or ring 01487 773777.

Electrical Installations: You will also need to be aware that BS 7671:2008 (2011) Requirements for electrical installations British Standards Institution 2011 ISBN 978 1 84919 269 9 (also known as IEE Wiring Regulations 17th edition) requires that all electrical installations should be tested and inspected periodically, as well as when alterations are carried out. The Institution of Engineering and Technology (IET) also publishes Guidance Note 3 Inspection and Testing which says: *“The IET recommends that periodic inspection and testing is carried out at least every 5 years or on the change of tenancy - Periodic Inspection Report (PIR).”*

Where a change of tenancy occurs after a short period (for example less than 6 months) of letting, a full periodic inspection and test may not always be required. However, it is imperative that the landlord or a person acting on their behalf carries out an electrical safety inspection, prior to the property being re-let. This inspection should include checks to ensure there are no broken or missing accessories, no accessible live parts, no signs of burning at accessories or electrical equipment, and a manual test of any residual current devices.

For rented accommodation the Electrical Safety Council (ESC) also recommends that periodic inspection and testing is carried out at least every 5 years or on the change of tenancy.

You should also do regular **basic visual safety checks** to ensure that there are none of the following hazards:

- broken accessories (such as sockets and light switches);
- signs of scorching around sockets due to overloading;
- overheating of electrical equipment – usually detected by a strong, often fishlike smell (such as lamp holders fitted with the wrong lamps), and;
- damaged cables to portable equipment or trailing cables/flexes.

For further information, the ESC has the following useful resources: ‘*Best Practice Guide 4*’ and ‘*Landlords’ Guide to Electricity Safety*’. To order free copies visit www.electricalsafetyfirst.org.uk or email enquiries@electricalsafetyfirst.org.uk

Smoke & Carbon Monoxide Regulations

The **Regulations** affect all rental tenancies in *England*, and apply to churches irrespective of whether their manse is provided rent-free to their pastor or let to the public.

The full **Smoke and Carbon Monoxide Alarm (Amendment) Regulations 2022** can be read at the following link: www.legislation.gov.uk/ukxi/2022/707/contents/made

From 1st October 2022, all relevant landlords must ensure:

- At least one smoke alarm is installed on each storey of their rental property where there is a room used as living accommodation;
- A carbon monoxide alarm is installed in any room used as living accommodation which contains a fixed combustion appliance (excluding gas cookers);
- Smoke alarms and carbon monoxide alarms are repaired or replaced once informed and found that they are faulty, and;
- Each prescribed alarm is in working order on the day a tenancy begins if it is a new tenancy.

Local authorities can fine up to £5,000 where there is failure to comply with a remedial notice. A useful Q&A guidance by the **Department for Levelling UP, Housing and Communities (DLUHC)** can be found at: www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-landlords

Equality Issues

Most churches will be concerned to ensure that their manse is not occupied by persons holding to a different set of morals from those held by the church members. Whilst the Sexual Orientation Regulations have made it unlawful to discriminate on the grounds of sexual orientation, there is an exemption for churches so long as the reasons for the discrimination are: firstly, to comply with the doctrinal position of the church, and secondly, to avoid a conflict with the strongly held religious convictions of a significant number of the church members.

Please note - Churches that do not have internet access may obtain the additional information referred to by contacting the Grace Baptist Trust Corporation.

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