



Monthly Law Update |
Social Housing
May 2019

Introduction

As part of our commitment to help you keep up with the law and comply with registered provider standards, this monthly law update covers the current legal issues affecting the social housing sector.

It includes the main legislative and case law developments and statutory guidance issued in connection with the Social Housing sector from the last month (April 2019) together with links to the relevant sources where you can obtain further information.

It is not intended to be exhaustive and is designed to give you an overview of important recent developments.

If you have any concerns about any of the developments outlined in this update, or if you require any advice on the effect of the developments or on how to respond appropriately, please contact:



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...the ad was misleading because it did not make clear that the advertised service was a Shared Ownership scheme.

Commercial

ASA Ruling on Notting Hill Genesis

(Advertising Standards Authority| 20 February 2019)

The Advertising Standards Agency (ASA) upheld a complaint against one of Notting Hill Genesis' London Underground adverts claiming that it was inaccurate to suggest that living in a shared ownership property constituted being a homeowner. The Advertising Standards Authority held that the ad was misleading because it did not make clear that the advertised service was a Shared Ownership scheme.

Data protection

Direct marketing and consent FAQs | GDPR Periscope series

(TLT Legal Insight | 18 April 2019)

Direct marketing questions continue to befuddle marketers and data practitioners alike. Whilst marketing success and GDPR compliance are not mutually exclusive, the interplay between different pieces of legislation can make this a confusing area. A year after marketing consents were refreshed, we answer four of our most commonly received marketing consent questions. Together with our handy marketing regulatory outline, these should help you untangle any remaining marketing knots.



Energy

Committee on Climate Change publishes advice to government on a net zero carbon target

(Committee on Climate Change | 2 May 2019)

The Committee on Climate Change (CCC) published a report, Net Zero - The UK's contribution to stopping global warming, which advises the government on a net zero carbon target. The Committee recommends a new emissions target for the UK: net-zero greenhouse gases by 2050.

The Employment Rights (Miscellaneous Amendments) Regulations 2019 will bring into force various commitments set out in the Good Work Plan.

Employment and incentives

Employment Rights (Miscellaneous Amendments) Regulations 2019

(Legislation.gov.uk | 28 March 2019)

The Employment Rights (Miscellaneous Amendments) Regulations 2019 (SI 2019/731) (the Regulations) were made on 28 March 2019 and will bring into force various commitments set out in the Good Work Plan.

IR35 reform in April 2020 - are you ready?

(TLT Legal Insight | 29 April 2019)

From April 2020, the reforms to IR35 (the rules governing off-payroll working through an intermediary) that were introduced for the public sector in April 2019 will be extended to large and medium sized businesses in the private sector.

Health and Safety

Government to fund and speed up vital cladding replacement

(Ministry of Housing, Communities & Local Government | 9 May 2019)

Around £200 million will be made available to remove and replace unsafe cladding from around 170 privately owned high-rise buildings. The government will fully fund the replacement of unsafe aluminium composite material (ACM) cladding on high-rise private residential properties where building owners have failed to do so. Building owners will be able to register for the fund by early July.

Draft bill to deliver post-Grenfell Hackitt reforms due 'by end of May'

(Health & Safety at Work | 30 April 2019)

The Ministry of Housing, Communities and Local Government (MHCLG) is preparing to publish a draft bill implementing the key legal changes required under the post-Grenfell Hackitt reforms as early as end of May. Graham Watts, chief executive of the Construction Industry Council and chair of the Steering Group on Competencies of the Industry Response Group, suggested that the draft would be published "before the end of May" for consultation.

Welsh Government to promote retro-fitting of sprinklers in high-rise buildings

(Welsh Government | 2 April 2019)

The Welsh Government will promote the retro-fitting of sprinklers in high-rise buildings, Housing and Local Government Minister Julie James announced today.

Housing

Court of Appeal agrees to hear case on housing allocation policy and religion

(Case Tracker for Civil Appeals | 29 April 2019)

The Court of Appeal has agreed to hear the appeal in *R. (on the application of Z) v Hackney LBC* where the Divisional Court ruled that a housing association letting houses on the basis of religion was lawful.

Independent Review of Affordable Housing Supply launches

(Welsh Government | 1 May 2019)

A new approach to grant funding, improvements to housing quality standards, a 5 year rent policy and new affordable homes to be near zero carbon are some of the recommendations of the Independent Review of Affordable Housing Supply has been published by the Welsh Government.

Government announces end to unfair evictions

(Ministry of Housing, Communities & Local Government | 15 April 2019)

Private landlords will no longer be able to evict tenants from their homes at short notice and without good reason. As part of a complete overhaul of the sector, the government has outlined plans to consult on new legislation to abolish Section 21 evictions – so called ‘no-fault’ evictions. This will bring an end to private landlords uprooting tenants from their homes with as little as 8 weeks’ notice after the fixed-term contract has come to an end.

Allocation of housing and homelessness (Eligibility)(England)(Amendment)(EU Exit) Regulations 2019

(Legislation.gov.uk | 11 April 2019)

These Regulations amend the provisions of the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (S.I. 2006/1294) (“the Eligibility Regulations”) which determine which persons from abroad, other than persons subject to immigration control, are ineligible for an allocation of housing accommodation under Part 6 of the Housing Act 1996 (c. 52) or for housing assistance under Part 7 of that Act.

Right to Buy: Guides

(Ministry of Housing, Communities & Local Government | 8 April 2019)

The government has published four guides to the Right to Buy process. Two guides explain how the process operates, qualifying conditions, operation of the statutory discount, etc. A third guide explains the service charge obligations that are likely to arise. The fourth gives a short overview of the powers of local authorities to offer loans towards service charge costs. The guides can be found [here](#).

The tenant fees ban - what fees can landlords and letting agents charge?

(TLT Legal Insight | 24 April 2019)

The ban on tenant fees in the Tenant Fees Act 2019 (the Act) will come into force on 1 June 2019. The Act limits the fees which residential landlords and letting agents in England can charge to tenants and their guarantors. Breach of the Act could result in substantial civil penalties and criminal sanctions.

Private Rented Sector: Written statement - HCWS1514

(Ministry of Housing, Communities and Local Government | 23 April 2019)

The Communities Secretary James Brokenshire issued a written statement to the House of Commons relating to the government’s announcement that it would reform the legislative framework governing how private tenancies can be ended in England.

Triplerose Ltd v Stride [2019] UKUT 99 (LC)

(BAILII | 14 March 2019)

Flat tenant successfully resists application to vary the service charge provisions in its lease under section 35 of the Landlord and Tenant Act 1988.



Housing (continued)

County lines: posters for social housing staff

(Home Office | 11 April 2019)

Guidance for frontline professionals on dealing with county lines, part of the government's approach to ending gang violence and exploitation. New posters to support the government's work to deal with county lines – this is where urban drug dealers expand their activity into small town markets.

Law to ban letting fees to come into force on September 1

(Welsh Government | 9 April 2019)

A new law to ban unnecessary letting fees in Wales will come into force on September 1 2019, if it receives Royal Assent.

Housing Minister unveils new guidance for local authorities to crack down on rogue landlords

(Ministry of Housing, Communities & Local Government | 9 April 2019)

New online support as part of government's commitment to give greater protection to tenants, and reform the private rented sector for the better.

Curo Places Ltd v Pimlett [2019] UKUT 130 (LC)

(BAILII | 10 April 2019)

This is an appeal from a decision dated 19 March 2018 made by the First-Tier Tribunal Property Chamber (Residential Property) (FTT) whereby the FTT decided that the appellant as landlord was not entitled to recover from the respondent as tenant certain expenses which had been claimed to be recoverable as service charges.

Tenant Fees Act 2019 (Commencement No 3) Regulations 2019

(Legislation.gov.uk | 11 April 2019)

These Regulations bring into force certain provisions of the Tenant Fees Act 2019 (the Act) in so far as they are not already in force on 15 April 2019. The Act is brought fully into force on 1 June 2019.

Lease-based providers of specialised supported housing

(Regulator of Social Housing | 4 April 2019)

The Regulator of Social Housing (RSH) has published an addendum to its October 2018 'Sector risk profile' outlining its views on the sustainability of some registered providers of specialised supported housing who tend to lease most of their property portfolio from property funds and other private investors.

Social Housing Rents (Exceptions and Miscellaneous Provisions) (Amendment) Regulations 2019

(Legislation.gov.uk | 1 April 2019)

These Regulations, which come into force on 23 April 2019, amend the Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016 which, amongst other things, define affordable rent housing for the purposes of the Welfare Reform and Work Act 2016.

Housing Minister unveils new guidance for local authorities to crack down on rogue landlords...

Planning and environment

Waste left on your land - who is liable?

(TLT Legal Insight | 2 May 2019)

A recent planning appeal decision in England highlights the liability risks for landowners from waste unlawfully deposited on their land. In April 2019, a Planning Inspector decided that a site owner must comply with an Enforcement Notice to remove waste materials from its site, despite the waste being deposited by a third party "trespasser."

Real estate

UK Green Building Council presents industry framework for net zero carbon buildings

(UK Green Building Council | 30 April 2019)

The UK Green Building Council (UKGBC) has unveiled a framework for the UK construction and property industry to transition new and existing buildings to become net zero carbon by 2050, in line with the ambitions of the Paris Climate Agreement. The new framework offers guidance for developers, owners and occupiers targeting net zero carbon buildings, setting out key principles to follow and outlining how such a claim should be measured and evidenced.

Tax

Draft legislation: VAT (Reduced Rate) (Energy-Saving Materials) Order 2019

(HM Revenue & Customs | 8 April 2019)

A consultation on draft legislation that amends the scope of the reduced VAT rate of 5% for energy-saving materials to ensure consistency with EU law. The consultation runs until 3 May 2019. The proposed amendments will: maintain the reduced rate on installations of ESMs in residential accommodation for recipients who are aged 60 or over or receiving certain benefits, and for housing associations.

Protect birds when building, says James Brokenshire

(Ministry of Housing, Communities & Local Government | 8 April 2019)

Developers have been reminded of their legal obligation to consider the impact of a project on local wildlife.

European Medicines Agency granted permission to appeal Brexit frustration decision

(Court of Appeal case tracker | 18 April 2019)

In *Canary Wharf (BP4) T1 Ltd v European Medicines Agency* [2019] EWHC 921 (Ch), the High Court has granted the European Medicines Agency permission to appeal against the decision that the UK's departure from the EU will not have the effect of frustrating a commercial lease.

If you have any concerns or require any advice on the implications of any of the developments reported in this update, please contact **David Isaacson** at:

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