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# Regulatory Changes Affecting Letting Agents and Landlords in 2021

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Second Edition



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## Introduction

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2020 was a year of great change, and many of the temporary measures enacted due to the COVID-19 pandemic continue into 2021. On top of this, the ending of the transition period for the UK's exit from the EU has affected measures such as immigration and data protection. Though some adjustments slated for 2021 have been pushed back due to the pandemic, there are still a number of key regulatory changes which letting agents and landlords should look out for this year. This guide will provide an overview of what we can expect from the next 12 months as well as what else, though unconfirmed, could be on the agenda.

*DISCLAIMER: This ebook is intended for information only and does not constitute legal advice. If you have any questions related to issues in this ebook, we strongly advise contacting a legal professional.*



# Regulatory Changes Affecting Letting Agents and Landlords in 2021

Second Edition

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## Key legal changes at a glance

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### JANUARY

- Data protection regulations change after the UK left the EU

### FEBRUARY

- Renting Homes (Amendment) (Wales) Bill

### MARCH

- Eviction ban due to end (England)
- Extended notice periods for Section 8 and Section 21 possession claims end (England and Wales)
- Land and Building Transaction Tax (LBTT) threshold lowers (Scotland)
- Land Transaction Tax (LTT) threshold lowers (Wales)



# Regulatory Changes Affecting Letting Agents and Landlords in 2021

Second Edition

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## APRIL

- Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 apply to all tenancies
- Stamp duty changes for non-UK residents
- Client money protection regulation deadline (England)
- New rules for off-payroll working

## MAY

- Government Debt Respite Scheme comes into force (England and Wales)

## JULY

- Stamp duty holiday threshold changes (England and Northern Ireland)
- Right to rent checks for nationals from EU, EEA and Switzerland change (England)

## SEPTEMBER

- Coronavirus Job Retention Scheme set to end



# Regulatory Changes Affecting Letting Agents and Landlords in 2021

Second Edition

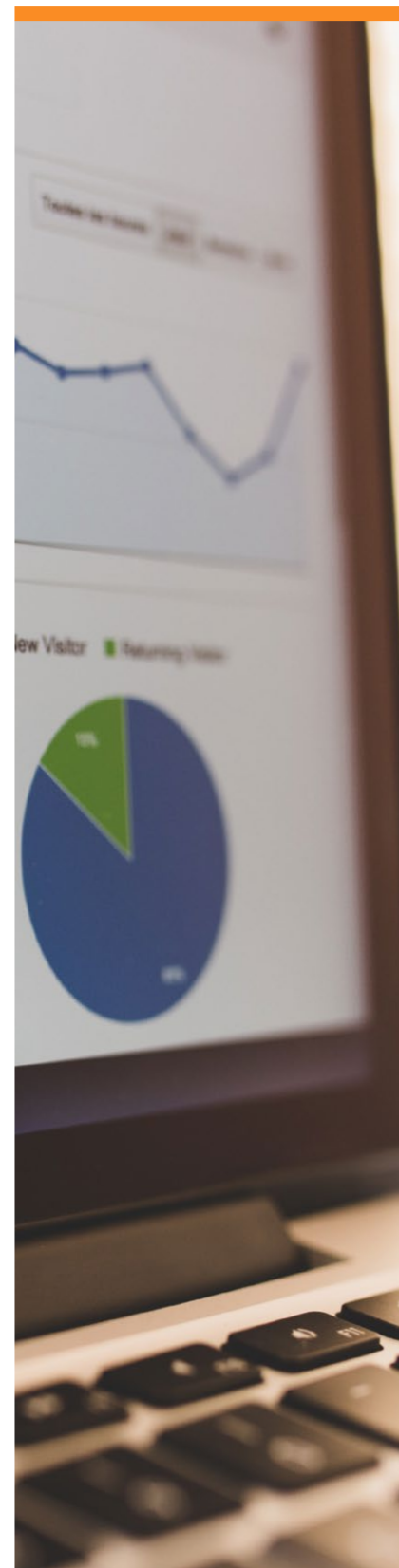
## January

1 JANUARY 2021

### Data protection regulations change after the UK left the EU

As the UK left the EU at the beginning of this year, EU GDPR (General Data Protection Regulation) has been replaced by UK GDPR, an amended version of EU GDPR to ensure compatibility with UK laws. UK GDPR, which retains the main principles, obligations and rights codified in EU GDPR, came into force on 31 December 2020 at 11 PM, keeping UK's data protection laws aligned with the EU. On matters of data protection in the UK, UK GDPR should be read alongside the Data Protection Act 2018; EU GDPR continues to apply to countries in the European Economic Area (EEA). Under UK GDPR and DPA 2018, the maximum penalty for infringement is £17.5 million or 4% of annual global turnover - whichever is greater.

UK-based businesses which process the data of EU residents, such as letting agencies serving overseas landlords, will have to be especially careful. The UK's agreement with the EU allows for a four-to-six-month 'bridge' since leaving on 1 January during which personal data can continue to be transferred freely from the EU to the UK. This is to allow the European Commission time to make an adequacy decision on whether the UK offers an acceptable level of data protection. An adequacy decision for the UK would allow the continued free flow of data from the EU.



# Regulatory Changes Affecting Letting Agents and Landlords in 2021

Second Edition

---

To prepare for the event of interruption or a less favourable decision, the Government recommends that during this period, organisations have additional safeguards in place to ensure the free flow of data, such as Standard Contractual Clauses (SCCs).<sup>1</sup> If you are a UK-based business offering goods or services to EEA residents, and you don't have an establishment within the EEA, you may need to appoint an EU representative, depending on your data processing activities. The UK's data protection regulator, the [Information Commissioner's Office](#) (ICO) has some useful guidance on this.

## February

23 FEBRUARY 2021

### Renting Homes (Amendment) (Wales) Bill

This [amendment](#) was passed in February. It makes a number of changes to the Renting Homes (Wales) Act 2016 to provide greater security for occupiers. The main changes include:

- Extending the minimum notice period for issuing a section 173 possession claim (the equivalent of a current section 21 notice) from two months to six months
- Increasing the period at the start of a new let during which a notice cannot be issued to six months

Although the amendment has been passed, it does not come into effect until spring 2022.<sup>2</sup>

<sup>1</sup> Gov.uk, "[Using personal data in your business or other organisation](#)" (accessed 8 February 2021)

<sup>2</sup> Gov.wales, "[New law passed giving more protection for tenants in Wales](#)" (accessed 3 March 2021)

# Regulatory Changes Affecting Letting Agents and Landlords in 2021

Second Edition

## March

31 MARCH 2021

### Eviction ban due to end (England)

The UK Government has banned possession claims in England from being enforced by bailiffs outside of exceptional circumstances such as anti-social behaviour or 'substantial' levels of rent arrears.

The most recent extension of the ban was announced on 14 February and is expected to last until 31 March, giving it the same potential end date as similar bans in England and Wales. The latest version of the Public Health (Coronavirus) (Protection from Eviction) (England) Regulations 2021, released in January, modifies the definition of 'substantial' arrears from nine months' rent to six months'.<sup>3</sup>

Landlords can only base their possession claim on this modified rent arrears exception if their original claim was based on rent arrears. A further application to the court is also required. The Government has updated its [guidance](#) for the possession action process in England and Wales. Readers should monitor official announcements to see if the ban in England will be extended further and seek advice from legal professionals when engaging in possession proceedings.

<sup>3</sup> [The Public Health \(Coronavirus\) \(Protection from Eviction\) \(England\) Regulations 2021, SI 2021/15](#). (accessed 20 January 2021)



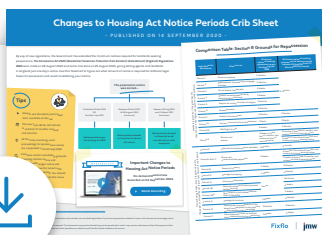
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Second Edition

31 MARCH 2021

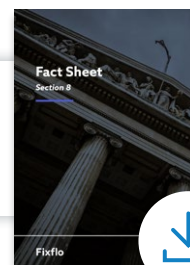
## Extended notice periods for Section 8 and Section 21 possession claims end (England and Wales)

The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations 2020, which extended the minimum notice period for most possession claims to six months, were made on 28 August 2020 and came into effect the following day. The last-minute amendment excluded a number of grounds for possession under Section 8 of the Housing Act 1988, namely those based on the occupier's antisocial behaviour, domestic violence and other unlawful actions. The temporary measure will expire on 31 March, after which the minimum notice periods for possession claims under Section 8 and Section 21 of the Housing Act will revert to those legislated in the statute.



To learn more about the extended notice periods for Section 8 and Section 21 notices, please download our [Changes to Housing Act Notice Periods Crib Sheet](#) which was produced in partnership with JMW Solicitors LLP.

For more information on Section 8, how the grounds for possession differ and when to use them, please access our [Section 8 Fact Sheet](#).





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Second Edition

31 MARCH 2021

## Land and Building Transaction Tax (LBTT) threshold lowers (Scotland)

Scotland's version of stamp duty, Land and Building Transaction Tax (LBTT), reverts back to its original threshold of £145,000 on this date. The threshold has been £250,000 since 15 July 2020.<sup>4</sup>

31 MARCH 2021

## Land Transaction Tax (LTT) threshold lowers (Wales)

The minimum residential property value on which tax must be paid in Wales goes from the temporary threshold of £250,000 back to the original £180,000 at the end of March.<sup>5</sup> This follows an increase in higher residential rates in December 2020, costing buyers more to acquire residential properties outside of their main residence.

<sup>4</sup> Gov.scot, "[Land and Buildings Transaction Tax](#)" (accessed 26 January 2021)

<sup>5</sup> Gov.wales, "[Land Transaction Tax rates and bands](#)" (accessed 21 January 2021)



# Regulatory Changes Affecting Letting Agents and Landlords in 2021

Second Edition

## April

1 APRIL 2021

### Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 apply to all tenancies

1 April is the deadline for landlords to ensure that all their private rented properties, both new and existing tenancies adhere to electrical safety regulations. The regulations require landlords to have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at least every five years.<sup>6</sup> Inspections should produce an electrical inspection condition report (EICR) which must be made available to occupiers. Local authorities can order remedial works to be carried out and impose a fine of up to £30,000 to landlords for non-adherence.



For more details on the new electrical safety requirements, [download this flowchart](#) produced in partnership with JMW Solicitors LLP.

<sup>6</sup> [The Electrical Safety Standards in the Private Rented Sector \(England\) Regulations 2020, SI 2020/312](#) (accessed 26 January 2021)



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Second Edition

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1 APRIL 2021

## Stamp duty changes for non-UK residents

From 1 April, non-UK residents purchasing property will have to pay an additional two per cent on top of usual stamp duty tax rates. They are eligible for a refund on this amount if they become a UK citizen within two years of purchase.<sup>7</sup>

1 APRIL 2021

## Client money protection regulation deadline (England)

1 April 2021 is the deadline for agents to comply with client money protection regulation. This makes it mandatory in England for letting and property agents to sign up to a government-authorized money protection scheme and display a scheme certificate confirming membership in their office and on their website.<sup>8</sup>

This law has been in effect since 1 April 2019, but a two-year grace period was introduced following reports of some agents having difficulty opening an account for client money.<sup>9</sup> Once outside this period, penalties can apply in cases of non-compliance: a maximum of £30,000 for failing to become a scheme member and £5,000 for failing to display a scheme certificate properly.

<sup>7</sup> Gov.uk, "[Policy paper: New rates of Stamp Duty Land Tax for non-UK residents from 1 April 2021](#)" (accessed 15 February 2021)

<sup>8</sup> [The Client Money Protection Schemes for Property Agents \(Requirement to Belong to a Scheme etc.\) Regulations 2019, SI 2019/386](#) (accessed 26 January 2021)

<sup>9</sup> ARLA Propertymark, "[Banks must know about and consider AML and CMP requirements](#)", 12 June 2020, (accessed 21 January 2021)





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Second Edition

6 APRIL 2021

## New rules for off-payroll working

Changes to the Government's rules for off-payroll working, known as IR35, come into force in April. Guidance for the new rules can be found [here](#). The changes affect companies which receive services from workers through an intermediary or agency. From this date, all public authorities and medium and large-sized companies will be responsible for deciding whether, ignoring the existence of the intermediary or agency, these workers would count as direct employees. If so, they must deduct income tax and National Insurance contributions from those workers' fees accordingly.

The rules apply to all public and private sector organisations that meet two or more of the following conditions:

- An annual turnover of more than £10.2 million
- A balance sheet total of more than £5.1 million
- More than 50 employees

Companies which meet these conditions must apply the rules from 6 April.



# Regulatory Changes Affecting Letting Agents and Landlords in 2021

Second Edition

## May

4 MAY 2021

### Government Debt Respite Scheme comes into force (England and Wales)

The Government's recently announced Debt Respite Scheme, also known as Breathing Space, gives those in debt, such as occupiers in arrears, the right to not be pursued by creditors for a temporary period of time. Two types of breathing space will be available.

Standard Breathing Space is for any individual and provides protection for up to 60 days by freezing most interest and pausing most enforcement action. It must be accessed through an approved debt adviser registered with the Financial Conduct Authority, or via a local authority which is approved to offer debt advice.

Mental Health Crisis Breathing Space provides protection for individuals receiving mental health crisis treatment from an approved mental health professional for the duration of their treatment plus up to 30 days after.

Under the scheme, a landlord who is notified that an occupier with debt has entered into breathing space must stop all action related to that debt until the period ends. If it applies to a debt they have sold on, they must advise the creditor the breathing space has started and give the creditor's details to a debt advisor. Not complying can make a creditor liable for a debtor's costs and any actions they take null and void.

Read the full [Debt Respite Scheme](#) guidelines for creditors.



# Regulatory Changes Affecting Letting Agents and Landlords in 2021

Second Edition

---

## July

1 JULY 2021

### Stamp duty holiday threshold changes (England and Northern Ireland)

Residential property purchases since 8 July 2020 have been subject to a stamp duty holiday where no Stamp Duty Land Tax (SDLT) is paid on any property worth £500,000 or less.<sup>10</sup> This holiday has been extended from 31 March to 30 June. From 1 July, the exemption will only apply to property worth £250,000 or less. On 1 October, stamp duty tax will revert back to previous rules and apply to all property purchases over £125,000, or £300,000 for first-time buyers.

1 JULY 2021

### New right to rent check process for nationals from EU, EEA and Switzerland applies (England)

After 30 June 2021, EU, EEA, and Swiss citizens will be subject to a new right to rent check process which will be announced by the UK Government in advance. In the [Government's right to rent checks guidance](#), landlords are advised to continue accepting current proofs of ID when conducting right to rent checks until the end of June and that Irish citizens will continue to be able to prove their right to rent by using their passport.

<sup>10</sup> Gov.uk, "[Stamp Duty Land Tax](#)" (accessed 21 January 2021)

# Regulatory Changes Affecting Letting Agents and Landlords in 2021

Second Edition

---

*“EEA and Swiss Citizens can continue to use their passport and national identity cards to evidence their right to rent until 30 June 2021, or if they have status under the EU Settlement Scheme or status under the points-based immigration system they can choose to evidence their right to rent using the Home Office online service. You cannot insist that they use the online service or discriminate against those who wish to use their passport or national identity card.”*

There is no requirement for a retrospective check to be undertaken on EEA or Swiss Citizens who entered into a tenancy agreement on or before 30 June 2021. According to government guidance, “you will maintain a continuous statutory excuse against a penalty if the initial checks were undertaken in line with this guidance.”





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Second Edition

## September

30 SEPTEMBER 2021

### Coronavirus Job Retention Scheme set to end

The Government's [Coronavirus Job Retention Scheme](#) has allowed companies to furlough employees and apply for a grant to cover 80% of the cost of their salaries for hours they have not worked, up to a maximum of £2,500 a month. The scheme has currently been extended until the end of September, however with some changes. From 1 July, employers will be required to cover 10% of the cost with the Government contributing 70%." From 1 August until the end of the scheme on 30 September, they will need to cover 20% of the cost with the Government contributing 60%.

Whether the Government extends this further will depend on the state of the economy and the level of restrictions in place across the country.



<sup>11</sup> Gov.uk, "[Policy paper: Changes to the Coronavirus Job Retention Scheme from July 2021](#)", (accessed 3 March 2021)

# Regulatory Changes Affecting Letting Agents and Landlords in 2021

Second Edition

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## More changes on the horizon

Due to the Government's focus on the pandemic, major changes which some may have expected to see progress on in 2020 such as those around the Regulation of Property Agents (RoPA) and Section 21 have been delayed. Here we explore some of the possible changes that could come up in 2021 and their effects.

### I Temporary right to rent adjustments end

#### Temporary changes to the right to rent checking process

during COVID-19 have allowed occupiers to show their original documents over a video call and to send scanned copies or photos of these documents instead of the originals. Once this period ends, retrospective checks will need to be carried out on every occupier who was unable to produce original documents. These checks will need to be carried out within eight weeks of the temporary measures ending. Feedback from the industry means the Government is currently reviewing its process, so these details might change and there is currently no confirmed end date for this temporary measure.



# Regulatory Changes Affecting Letting Agents and Landlords in 2021

Second Edition

## Dogs and Domestic Animals (Accommodation and Protection) Bill

This bill was introduced in October 2020 to ban landlords from rejecting occupiers who wish to live with their pets, provided they can prove they are ‘responsible and caring’. The bill is scheduled to have a second reading, allowing MPs to debate it.

In January, Housing Minister Christopher Pincher announced changes to the Government’s recommended tenancy contract, the Model Tenancy Agreement, to prohibit landlords from offering blanket bans on pets. Under the updated agreement, landlords with objections to having a pet must put their concerns in writing within 28 days, citing a good reason, such as a large pet in a small property. Landlords’ use of this tenancy agreement is not mandatory.

The UK’s leading pet care provider and retailer group reported a staggering profit of 17.6% year-on-year, crediting soaring trends in pet ownership during lockdown.<sup>12</sup> The rise of remote working has allowed renters to prioritise outdoor space over urban locations, making it possible for many to become pet owners. This means agents and landlords will likely encounter more prospective renters with pets in the future.

<sup>12</sup> Damian Shepherd, [“Pets at Home sales surge as animal ownership soars”](#), CityAM, 21 January 2021 (accessed 21 January 2021)



# Regulatory Changes Affecting Letting Agents and Landlords in 2021

Second Edition

## Proposals to extend regulations on domestic smoke and carbon monoxide alarms in England

After the Grenfell fire, the Government recognised that there is a marked disparity in safety measures and protection between the private rented sector and social rented sector. One key objective of the proposed changes is to reduce the gap in fire safety standards in both rental sectors.

[Government statistics](#) show that you are around eight times more likely to die in a fire if you do not have any working smoke alarms in your home.

In January, the UK Government closed the [consultation](#) it opened in November 2020. This consultation suggests a number of changes:

- Amending the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 to require social landlords to ensure at least one smoke alarm is installed on each storey of the premises that has a room used as living accommodation
- Requiring that carbon monoxide alarms are fitted alongside the installation of fixed combustion appliances of any fuel type (excluding gas cookers)
- Requiring private and social landlords to install a carbon monoxide alarm in any room used as living accommodation where a fixed combustion appliance is used (excluding gas cookers)





# Regulatory Changes Affecting Letting Agents and Landlords in 2021

Second Edition

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## I The end of Section 21 possession notices?

The Renters' Reform Bill has been on the government's to-do list for a long time. Its last update saw it delayed due to the COVID-19 pandemic, but it is likely to be brought up again this year.

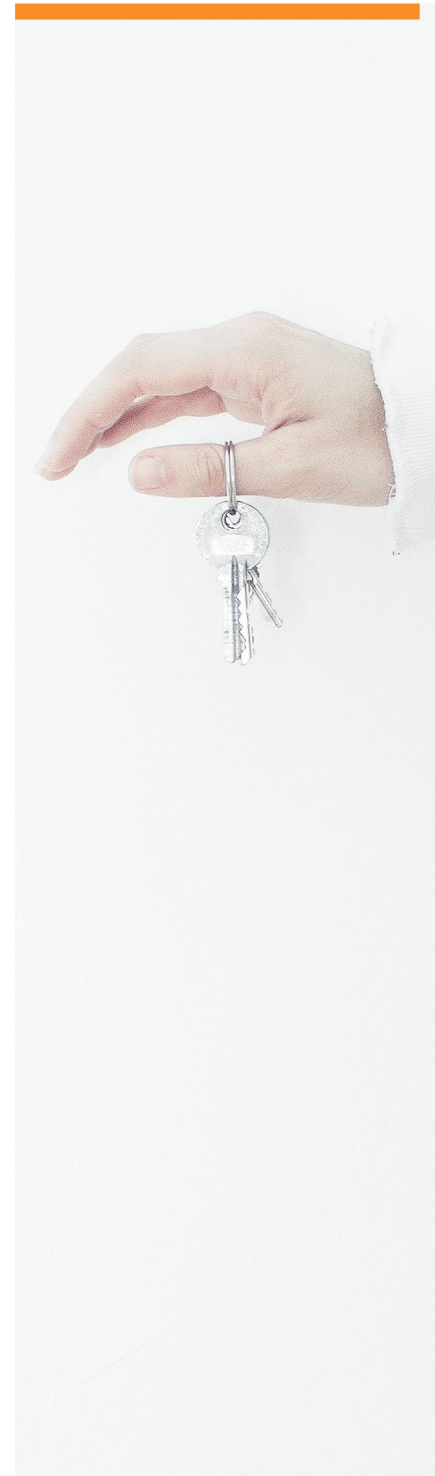
In a parliamentary debate on 11 January, Parliamentary Under-Secretary of State at the Ministry of Housing, Communities and Local Government Kelly Tolhurst said a bill would be introduced "very soon".<sup>13</sup>

[Briefing papers](#) for the bill have proposed the following changes:

- The removal of Section 21 of the Housing Act 1988, which allows for an occupier to be evicted during a tenancy with no fixed end-date or after a fixed-term tenancy ends without giving a reason
- The strengthening of Section 8 of the Housing Act, allowing for improved and clearer grounds for possession
- Improved deposit protection for occupiers, the closing of avoidance loopholes and a reduction of the time it takes to resolve disputes

The bill's proposals have been a hotly-debated topic. The [National Residential Landlords Association](#) (NRLA) emphasises that there must be clear grounds for possession under Section 8 to account for when landlords wish to regain possession when there has been a 'fault', or for business decisions. Housing and Homelessness charity [Shelter](#), meanwhile, thinks the bill should be used to strengthen renters' rights and tackle discrimination.

<sup>13</sup> [Hansard HC Deb. \(11 January 2021\), vol. 687, col. 6](#) (accessed 21 January 2021)



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## Regulation of Property Agents (RoPA)

The Regulation of Property Agents working group announced its findings in July 2019. It advised qualifications for the industry, a licensing scheme and a mandatory code of practice. While no date has been set for its implementation, agents would do well to look at the group's [findings](#) and prepare ahead of time.

## Changes to EPC regulations

The Government opened a consultation on improving the energy performance of privately rented homes in September 2020. This ended on 8 January 2021, meaning we can expect to see the results of feedback in the year.

We discuss the Government's proposals and how they may affect the sector in our guide [The Future of EPC Rules](#).



## Prospective capital gains tax changes

The Government has expressed an interest in raising the capital gains tax rate to combat the financial effects of the pandemic. A [report](#) in November 2020 proposed lifting the current top rate of 28% to be more in line with income tax rates, where the highest rates in England and Wales are 40% and 45%.

As this will affect the selling of second homes and buy-to-lets, this could have a substantial impact on the property market as landlords face much higher tax bills when they sell properties.

# Regulatory Changes Affecting Letting Agents and Landlords in 2021

Second Edition

## Conclusion

With a wide number of changing laws and new statutory requirements expected in 2021, agents will need effective tools to be able to stay on top of their duties and avoid penalties for noncompliance. Compliance automation can give letting agents the assurance that mandatory tasks will not slip through the cracks and a specialist repairs & maintenance management system can keep an audit trail evidencing the completion and progress of such requirements. The ongoing effects of COVID-19 require the digitisation of property management processes with a focus on accurate diagnosis and efficient triage of property maintenance issues.

Growing needs to adapt to remote working amid the pandemic have also made the use of cloud-based systems a necessity for many property management teams.

As teams transition to different home working arrangements to allow for childcare and curb transmission of the disease, there is a growing need to maintain service levels for occupiers, contractors and landlords. The details and progress of repair issues and planned safety checks must be available, in real-time, to staff working anywhere and anytime.



For more information on how tech solutions can help, please take a look at our guide to [Mitigating COVID-19 Risks When Handling Repairs & Maintenance](#).

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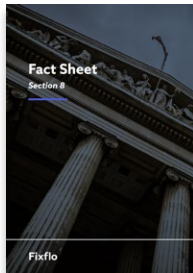
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- [The Public Health \(Coronavirus\) \(Protection from Eviction\) \(England\) Regulations 2021](#)
- [Gov.uk, “Stamp Duty Land Tax”](#)
- [Gov.wales, “Land Transaction Tax rates and bands”](#)
- [Gov.scot, “Land and Buildings Transaction Tax”](#)
- [Gov.uk, “COVID-19 and renting: guidance for landlords and tenants”](#)
- [The Electrical Safety Standards in the Private Rented Sector \(England\) Regulations 2020](#)
- [Gov.uk, “Policy paper: New rates of Stamp Duty Land Tax for non-UK residents from 1 April 2021”](#)
- [The Client Money Protection Schemes for Property Agents \(Requirement to Belong to a Scheme etc.\) Regulations 2019](#)
- [ARLA Propertymark, “Banks must know about and consider AML and CMP requirements”](#)
- [Gov.uk, “Debt Respite Scheme \(Breathing Space\) guidance for creditors”](#)
- [Gov.uk, “Protecting clients’ money if you’re a property agent”](#)
- [Gov.uk, “April 2021 changes to off-payroll working for clients”](#)
- [Gov.uk, “Coronavirus \(COVID-19\): landlord right to rent checks”](#)
- [Gov.uk, “Policy paper: Changes to the Coronavirus Job Retention Scheme from July 2021”](#)
- [CityAM, “Pets at Home sales surge as animal ownership soars”](#)
- [Gov.uk, “Domestic smoke and carbon monoxide alarms: proposals to extend regulations”](#)
- [Hansard HC Deb. \(11 January 2021\), vol. 687, col. 6](#)



# Regulatory Changes Affecting Letting Agents and Landlords in 2021

Second Edition

## Suggested Resources



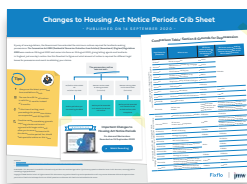
Fact Sheet: Section 8

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Trecarrell House v Rouncefield and Its Implications for Section 21 Possession Claims

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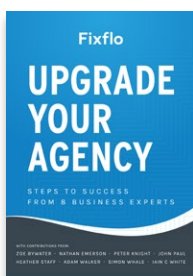
Changes to Housing Act Notice Periods Crib Sheet

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Electrical Safety Standard Regulations 2020 Flowchart

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