

SWLA had a meeting with Devon and Somerset Fire and Rescue Service recently. The following information was supplied at this meeting.

## SMOKE AND CARBON MONOXIDE ALARM KEY QUESTIONS

### **Q: What do the regulations require?**

The draft regulations are currently awaiting Parliamentary approval. If they are approved then, from 1st October 2015, private rented sector landlords will be required to have smoke alarms installed on every floor of their property and carbon monoxide alarms in rooms where solid fuel is used.

Landlords will be required to test all the alarms at the start of every new tenancy to make sure they are working.

### **Q: Do the regulations apply to existing tenancies?**

Yes, if approved, the regulations require private sector landlords to have installed all the alarms required from 1st October 2015.

### **Q: What types of tenancy will be affected?**

The regulations apply to any tenancies, lease or licence of residential premises in England that gives somebody the right to occupy all or part of the premises as their only or main residence in return for rent. There are some exemptions (such as long leases) – more information is given in the Schedule to the draft regulations:

<http://www.legislation.gov.uk/ukdsi/2015/9780111133439/contents>

### **Q: Are houses in multiple occupation (HMOs) exempt?**

Parts 1 to 5 of the regulations do not apply to landlords of

September 2015

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licensed HMOs. However, similar requirements will be imposed through the HMO licensing regime. The regulations, if approved, will change Schedule 4 to the Housing Act 2004 to require landlords of HMOs to have a smoke alarm installed on every floor of their property and a carbon monoxide alarm in rooms where solid fuel is used. The landlord must ensure that all the alarms are kept in proper working order.

**Q: What type of alarm should I install?**

The regulations do not stipulate the type of alarm (hard wired or battery powered) to be installed. Landlords should make an informed decision and choose the best alarm for their property and tenants. All smoke alarms on sale in the UK must have CE marking under the European Constructions Products Regulation.

**Q: Am I required to install a CO alarm in rooms with gas appliances?**

No, under the new proposals carbon monoxide alarms would only be required in rooms containing a solid fuel burning appliance (rooms containing a coal fire, log burning stove etc). However, as gas appliances do emit carbon monoxide, reputable landlords will install working carbon monoxide alarms in addition to obtaining the annual gas safety certificate for each appliance.

**Q: Do the regulations apply to social housing landlords?**

No, at present private rented sector properties have fewer alarms installed than other housing – these regulations are designed to remedy this position. Registered providers of social housing are therefore exempt from the regulations but reputable landlords will have installed at least the number of alarms specified in the regulations and probably more.

**Q: I will need a new alarm – how do I get one free?**

The Government has provided grant funding to local fire and rescue authorities to purchase around 445,000 smoke and 40,000 carbon monoxide alarms – keep a check on SWLA website for further details as they become available.

**Q: When will these provisions come into force?**

If Parliament approves the regulations, they will come into force on 1st October 2015.

**Q: How will the regulations be enforced?**

Your local housing authority is responsible for enforcing regulations. They can issue remedial notice requiring a landlord to fit the alarms. If the landlord fails to comply with the notice, the local authority can arrange for alarms to be fitted and can levy a civil penalty charge on the landlord of up to £5,000.

## Tenant Checks

Besure Screening are a growing company based in the South West of England. The company was established as professional Investigators and is headed by two directors, Andy Watkinson and Peter Smith. Through their thorough work in the security industry, referencing and performing deep background checks to staff, the directors, made the decision to open a further division, specialising in landlord/agent and tenant services.

### **Credit checks and full referencing for Tenant and Guarantor**

Besure offer a detailed credit report with information provided by Equifax. They analyse the individuals credit scores, search CCJ's and bankruptcy. Validate account numbers and ID, provide affordability calculations and credit to debt ratios to give the peace of mind that the prospective tenant is financially suitable. Besure provide in depth personal, employment and previous landlord references and validate the earnings stated by the prospective tenant. They offer the credit search for **£8.99+vat** on its own or **£12.99+vat** for the credit and reference service. They carry out the guarantor credit and referencing at no extra cost. Credit searches are completed within an hour and the full service within 24 hours.

### **Absconded 'Gone Away' Tenants**

Besure hold the latest software available and they offer a 'no find, no fee' service for locating anyone who has left a property, leaving damage or debts. They have a 100% success rate. They offer this service for **£75+vat**.

Besure Screening can be contacted through the link under the "Tenant Checks" tab on our web-site or by telephoning **0800 193 7858** .

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## Retaliatory Eviction Legislation Introduced

The Deregulation Act 2015 has introduced new provisions to protect tenants from retaliatory eviction. These provisions come into force on 1st October 2015. The Act requires landlords to give an "adequate response" to complaints from tenants about property conditions. If the local authority serves a "relevant notice" (Improvement Notice or Emergency Remedial Action) following a complaint from a tenant, then the landlord will be unable to serve a section 21 notice for a period of six months. The legislations will apply to all new Assured Shorthold Tenancies (ASTs) that commence on 1st October 2015 and ALL ASTs from October 2018.

## A Bad Path to Take?

A recent court case in the Court of Appeal was won by a tenant Samuel Edwards who made a disrepair claim under Section 11 of the Landlord and Tenant Act 1985 for injury he sustained from an uneven paving stone outside his block of flats. Mr Edwards was going to the communal dustbins in the car park outside his block of flats when he fell and hurt his knee. The landlord did not own the path and no complaint had been previously raised about the state of the path which was the essential means of access to the block. The landlord owned the leasehold of the second floor flat where the tenant lived and he claimed that he had no obligation to repair the path between the block and the bin area since he did not own it. The case *Edwards v Kumarasamy* highlights and further extends the repairing obligations of landlords. Prior to this case it was assumed that repairing obligations only apply to what the landlord actually rents out to the tenant and the landlord cannot be held liable if they have not been notified of the need for a repair.

This ruling will have consequences for the way landlords manage their properties – but particularly for landlords who own leasehold properties in block of flats. Landlords, as a result of this case can now be sued for disrepair to areas serving their property, irrespective of ownership. This means that landlords or their agents when doing property inspections should also look at areas over which the landlord has rights, such as paths and drives where there are easements to permit access. The case made it plain that there is no obligation on the tenant to report the disrepair, so it is up to the landlord or their agent to identify and resolve it. This case also raises the question, although not one dealt with by the Court of Appeal: what about paving stones that are merely uneven rather than being in a state of disrepair? Section 11 of the Landlord and Tenant Act 1985 states that the landlord “must keep in repair the structure and exterior of the dwelling house” and that this obligation extends to any part of the building in which the landlord has “an estate or interest”. Mr Edwards had the right to use the lift, the entrance hall, staircase, the right to use the access road and the right to use the bins. The courts have ruled that the landlord was liable for his tenant’s injuries. They ruled that the pathway formed part of the structure and exterior and that the landlord’s easement over the pathway was enough to constitute “interest”. That meant that the landlord had an obligation to keep it in repair. Many landlords who own leasehold flats may believe that the management company should be responsible for the upkeep of the common areas both inside and outside the building.

## A Bad Path to Take?

However, the Court of Appeal did not consider that the tenant might have a claim against the management company – although that may have been a possibility. In this case the owners of the block had covenanted to keep the communal areas in good repair and to maintain the footpaths and passageways, yet the landlord of the leasehold flat was found to be liable. The case means that landlords should check the small print of their insurance policy and if necessary contact their insurer to ask if such a claim would be covered. Landlords should also extend their inspections to beyond what they are actually renting out – including access roads and communal areas such as bin stores and gardens.

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## How Wear and Tear Tax Relief Will Work For Landlords

A major update to claiming wear and tear allowance has slipped by almost unnoticed in the last budget.

HMRC has announced a new consultation that has proposed to scrap the 10% wear and tear allowance. It will be replaced by a claim as you go allowance that will allow landlords to recoup the cost of replacing appliances and furnishings in a rented home. The big change is that the new relief will apply to all residential buy to let homes, whilst the old relief was only allowable for fully furnished properties. Furnished holiday lets and company lets are excluded, as they can claim replacement costs under the capital allowances regime. The new relief will cover the replacement of any furniture, furnishings, appliances and kitchenware provided for a tenant e.g

Televisions

Fridges and freezers

Carpets and other floor coverings

Curtains

Linen

Cutlery or crockery

Portable furniture or furnishings such as sofas and beds

Costs of fixtures not normally removed by the owner if the property is sold are not included under the new measure because any replacement cost is a repair. Fixtures will include such items as baths, showers, wash basins, toilets, boilers, fitted kitchen units.

Landlords will no longer need to be concerned with whether the item being replaced is a fixture and therefore a repair to the property or not. In either case, the cost can be deducted from their rental income to arrive at the profits of their property rental business. Landlords will not need to decide whether their properties are sufficiently furnished to claim the new replacement furniture relief, as they had to when claiming the wear and tear allowance. The new relief will apply to all landlords of residential dwelling houses, no matter what the level of furnishing.

If the replacement item is an improvement, only the replacement cost will be able to be claimed under the new wear and tear relief. The example given by HMRC was – a washer dryer costing £600 is purchased, but the cost of buying a new washing machine like the old one would have been £400, then the replacement furniture relief would be £400.

## Upcoming Landlord Training Courses

Thursday 22nd October -

First Session 9.30—12.30 Section 21s and Section 8s

Second Session 13.30—16.30 Repairing Obligations

Friday 6th November -

First Session 9.30—12.30 New Legislation affecting landlords and future plans of Government

Second Session 13.30—16.30 Understanding the Housing Health and Safety Rating System

If you are accredited these courses will count towards your CPD hours but the courses are open to all. Cost for SWLA Members —£35 per half day or £65 for both courses. Cost for non-SWLA Members —£40 for half day or £75 for both courses.

All courses will be held at Plymouth Guildhall, Royal Parade, Plymouth PL1 1HA

Please call the office on 01752 510913 for further information or to book your place.

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## Initiative to Improve Home Safety & the Traceability of Domestic Appliances

Nationally, only 1/3 of people register all their appliances with a manufacturer, leaving many owners untraceable if a product needs to be recalled\*.

To encourage more people to register, the Association of Manufacturers of Domestic Appliances (AMDEA) has created [www.registermyappliance.org.uk](http://www.registermyappliance.org.uk), which provides access to the registration pages of 53 leading brands of domestic appliances. Launched in January 2015, the website is designed to make it quicker and easier for the public to register all of their appliances - old and new. It provides up to date, accurate contact information for owners who have acquired specific models of appliances within the last 12 years so manufacturers can issue safety updates or repair notifications to the right homes.

Jo Swinson, Consumer Affairs Minister said,

"It is so important that we make sure that we register new appliances and don't risk missing out on key information that could save lives. This initiative will make it easier for consumers to register appliances both new and old, and will help to ensure that relevant owners get vital information on product recalls and safety notices."

AMDEA members have pledged that this is purely a safety initiative and the aim is to capture information for this purpose. The initiative is supported by the Department for Business, Innovation & Skills and the Royal Society for the Prevention of Accidents (RoSPA). AMDEA is also working in collaboration with Trading Standards Institute, Citizens Advice, Age UK and the Fire Services including the 46 fire and rescue authorities across England.

\*This figure is based on a survey carried out by YouGov for the Association of Manufacturers of Domestic Appliances (AMDEA) in December 2014

## Landlord fined £12K for doing own gas safe checks

Raymond Williams, a landlord from Torquay has been found guilty of carrying out annual gas safety checks at his properties despite not being a registered gas engineer. He carried out the checks between April 2013 and October 2014. He also fraudulently filled out landlord's gas safety documents using a fake Gas Safe Register number. The Health and Safety executive prosecuted Williams after one of his tenants made a complaint. The court heard that Williams carried out the checks at five properties in Torquay and one in Newton Abbot. Williams pleaded guilty to four breaches of gas safety legislation and was fined a total of £12,000 plus £418 in costs.

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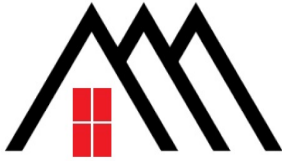
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THINK CAREFULLY BEFORE SECURING OTHER DEBTS AGAINST YOUR HOME. YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP PAYMENTS ON YOUR MORTGAGE.

## Controlling Pests and Vermin

Rats, mice and some insects are not welcome in domestic properties. Often houses in multiple occupation, student houses and properties that have been converted into flats have more problems with pests than homes occupied by single families. This may be due to poor structure of the building or occupiers moving in and out regularly.

Rats are often found in gardens under shed and decking and around waste containers. Mice can get into houses through holes as small as a biro in diameter and easily move between flats and terraced properties. Rats and mice can spread diseases, such as Weil's disease and E.coli. They can also damage structures and chew through electrical wiring causing a fire risk.

Insects such as fleas and bedbugs are common in properties where there is a transient population moving regularly into and out of houses. Insects such as cockroaches and flies can contaminate clean working areas and spread food poisoning bacteria. Others can cause extreme reactions in some people such as wasp stings and fleas bites.

Not only this, the presence of pests can exacerbate the symptoms of asthma and allergies. So keeping pests out of your properties will help to keep your tenants and visitors safe.

Local Authorities can treat for rats, mice, wasps/hornets, fleas, cockroaches, bedbugs, flies and other insects. They can also treat for cable bug static electricity. They may need to carry out a survey before the treatment is undertaken you will also be given a clear price on the cost of the treatment before they start.

For properties in Plymouth please see the website [www.plymouth.gov.uk/pestcontrol](http://www.plymouth.gov.uk/pestcontrol), e-mail [pestcontrol@plymouth.gov.uk](mailto:pestcontrol@plymouth.gov.uk) or phone on 01752 304147. For other areas please contact your Local Authority.

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## Challenging Agent's Fees

A landlord from London has recently challenged one of the UK's biggest letting agents, Foxtons over the level of fees charged to replace a light fitting. The landlord was charged £550 (plus £66 VAT). He discovered, however that the maintenance company allegedly charged Foxtons £412.50 and the agency is thought to have added a 33% commission fee to the contractor's bill.

If you use an agent to manage your properties, do you know how much "commission" you are being charged and how much the contractor is paid by the agent? The commission is often referred to as the Agent's Uplift.

## Mould and Condensation

Do your rental properties suffer from Mould or Condensation? Tenants drying clothes on the radiators? Why not see what the originators of the Positive Input Ventilation can do for you.

With over 750,000 units installed in the UK since 1972, Nuaire's Drimaster and Flatmaster ranges are the perfect solution for removing mould and condensation in your rental house or flat.

With legislation placing more and more responsibility on Landlords to find solutions to problems often caused by tenant lifestyles, now is the time to act. From as little as £225, you can continue to protect your investment, while your tenants are enjoying an improved indoor air quality. With the added benefit of removing pollen and allergies from the air, Nuaire's range of PIV units truly are the perfect solutions for poor air quality.

You do not need to open your windows; you do not need to leave your doors ajar. Landlords, you can install a fit-and-forget guaranteed solution that costs as little as 1 penny a day to operate.

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# **Stamp Duty Land Tax: Compensation windfall for property owners**

Thousands of property investors, businesses and private individuals could unknowingly be entitled to tens or even hundreds of thousands of pounds worth of compensation for negligent legal advice, relating to unclaimed tax relief on Stamp Duty Land Tax (SDLT).

## **Multiple dwelling relief (MDR):**

MDR, introduced in July 2011, is available to those purchasing more than one dwelling from the same seller (e.g. a building containing 10 flats, even if on one title), or a number of properties in a linked transaction.

For multiple acquisitions of properties bought prior to July 2011, SDLT was payable on the combined values of the properties purchased as specified by the old 'slab' SDLT system.

For example, someone buying four flats in a development worth £210,000 each would have paid 4% SDLT on the total price of £840,000, being the percentage that applied to properties valued between £500,000 and £1m. The SDLT payable would have been £33,600 rather than the 1% rate applicable to individual properties in the £125,000 to £250,000 band.

For qualifying applicants, MDR means that the SDLT rate payable on a combined value properties is based on their average value (the total value properties divided by the number purchased, subject to a minimum rate of 1%). So in the example above, the SDLT payable would be £2,100 for each flat, as the average value of £210,000 falls within the 1% rate. The total SDLT due would equal £8,400, a massive saving of £25,200.

## **Negligent legal advice:**

When purchasing property, investors, businesses and private individuals put their faith in solicitors, who are responsible for handling the conveyance. In many cases this includes calculating and arranging payment of SDLT. If solicitors fail to advise qualifying purchasers about MDR and do not take this into account when calculating SDLT, the purchaser could end up paying substantially more than necessary, leaving them unknowingly tens of thousands of pounds out of pocket. In these circumstances, solicitors could be guilty of professional negligence.

Negligent tax advice is surprisingly rife when it comes to real estate and affects millions each year. Poor advice is not necessarily negligent simply because it is poor. However, if advice is factually incorrect, based on out of date knowledge or simply does not have its limitations clearly defined it could be negligent.

Thankfully, solicitors can be held accountable for professional negligence. Investors, businesses and private individuals are entitled to seek financial compensation for the losses they have suffered by means of a professional negligence claim.

## **Why the urgency?**

Unfortunately, there are strict time limits on when a negligence case can be made. Extending this time period is possible, but with difficulty and only through the courts. Also, as time passes after the transaction date, finding or securing documents to prove what was or wasn't said or done as well as

## Stamp Duty Land Tax: Compensation windfall for property owners

the ability to accurately recollect events will generally become more difficult.

### How do I claim?

Bringing a negligence claim against solicitors is not straight forward. It is vital to take professional advice and seek a claims management company that specialises in tax. Any claims management company worth its salt will guide claimants through the process and undertake all actions possible on their behalf to avoid unnecessarily utilising their time. They should work on a strict 'no win no fee' basis and only charge once the case is settled.

It is well worth claiming. In one recent case an investor purchased a block of 37 flats for in excess of £1.5m. The investor's solicitor advised SDLT was payable at 5%.

A little over a year later the investor consulted our claims management company, and we advised the correct SDLT rate was 4% and that the investor could claim MDR to bring the rate down to 1%. We brought a negligence claim and secured £45,000 of compensation for the investor.

Andrew Stanley, MD, MDR Claims ([www.mdrclaims.com](http://www.mdrclaims.com))



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## Legionella

In late 2013 and early 2014, the HSE re-published part of the Legionella guidance, ACoP L8 and HSG274 pt.2 respectively to include specific paragraphs on the responsibilities of landlords who provide residential accommodation. The guidance states “if you are an employer, or someone in control of premises, including landlords you are required by law to manage the health risks associated with Legionella bacteria” As a landlord you are required to:

1.Hold a valid risk assessment for your rental properties, irrespective of the size of the water system. The risk assessment should be completed by someone who is competent to ensure that all potential risks are considered. This could be yourself or you could appoint a specialist.

2.Eliminate or control and manage the risks as defined by the risk assessment.

In most domestic settings the risk will be relatively low but if risks are identified it is important that you implement the recommendations which should be impartial and proportional to the risks.

SWLA ran a very successful and well attended ½ day training course in July on Legionella Health and Safety. Please contact the office if you would be interested in attending a future course on Legionella and once we have enough interest a course will be arranged.

SWLA have compiled a Legionella Risk Assessment Document and Tenants Guide which can be found on “Latest News” on our web-site. Alternatively, please contact Gillian or Sarah in the office 01752 510913 who will e-mail or post the documents to you.

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## Budget Changes for Buy to Let Investors

The recent Budget hit the buy-to-let investor in more than one way. Investors often finance the acquisition of a buy to let property with some borrowing. The annual interest paid on the loan is deducted, together with other qualifying expenses, in calculating the taxable rental profits for the year. A top rate taxpayer would therefore receive 45% tax relief on interest costs. By April 2020, only basic rate tax relief will be given at 20%. Between now and then, the reduction in relief will be phased in. Interest rates are at a historic low and an increase in the interest rate is generally anticipated sometime next year. For investors with significant levels of debt, the reduction in tax relief will result in an overall significant increase in costs.

## What the changes mean for tax liability

Let us consider below the net position for a top rate taxpayer owning a property portfolio worth £2m, financed by a loan of £1.2m with interest charged at 3% and which generates gross rental income of £80,000 per year. Until April 2017 all loan interest would normally have been deducted in the accounts, receiving 45% tax relief amounting to £16,200 ( $1.2m \times 3\% \times 45\%$ ). The restriction will now only allow tax relief of £7,200 ( $£36,000 \times 20\%$ ). This will increase the tax liability by £9,000. If the property were let furnished an investor would also have the benefit of reducing profits further by deducting the 10% wear and tear allowance. This allowance is generally calculated as 10% of the gross rents. In the example above, gross rental income of £80,000 would give a wear and tear deduction of £8,000 in the rental accounts. The wear and tear allowance will be abolished from April 2016 and investors will instead simply deduct the actual cost of replacing furnishings in the tax year of replacement. As replacements are unlikely to take place each year, this measure is likely to leave most investors with less tax deductions than otherwise and, therefore, an overall increase in cost to them. For a top rate taxpayer, these measures increase taxable profits by £44,000 and his tax bill by £12,600 as shown below.

	OLD	NEW	TAX INCREASE
INCOME	£80,000	£80,000	
WEAR AND TEAR	(£8,000)		
LESS LOAN INTEREST	(£36,000)		
TAXABLE PROFIT	£36,000	£80,000	
TAX AT 45%	£16,200	£36,000	
LESS INTEREST AT 20%		£7,200	
TOTAL TAX	£16,200	£28,800	£12,600

### **The future of buy-to-let**

A higher or top rate taxpayer who is looking to invest in residential property needs to consider all his ownership choices and whether there is a better overall structure than personal ownership. The solution will not be the same for everyone and will very much depend on individual circumstances. The most obvious alternative choice is to use a limited company. For further information call Bromhead Chartered Accountants 01752 697397.

# NOTICE

## SWLA stationery

SWLA stationery may change without notice so before using a document, make sure that you use the latest one on the SWLA website, by checking the issue date or check with the SWLA office at the email address or telephone number shown below. Don't forget our ability to advertise accommodation to let, property for sale in our office window

## Greg Yates Solicitor

Greg Yates is with Howard & Over on 01752 556606 and will continue to support our members.

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Richard Gore Solicitor  
Richard is with Greg Latchams on 0117 9069424 in Bristol and will support initial telephone calls to discuss your problems

Rory Smith is a highly experienced specialist in a wide range of disputes and their resolution. Rory can also recommend to you other law firms in Plymouth who will all offer free advice to SWLA members. Contact Rory on 01752 600567 or email [rls@enigmamalaw.com](mailto:rls@enigmamalaw.com) Enigma is located 5 minutes away from SWLA's office at Farrer Court, 77 North Hill PL4 8HB. The office is open 8:50 a.m. to 5:00 p.m. weekdays.

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Or visit our office in Dale Road, it is open week days from 10 to 3pm

The Association provides assistance and advice. However, the Association does not hold itself out as providing specialist legal advice and therefore whilst written and oral advice is given in good faith, no responsibility can be accepted by the association, its officers or members for the accuracy of its advice, or shall the association be held liable for the consequences of reliance upon such advice.