

Consumer protection

In the rush up to the General Election one piece of legislation to find its way through onto the statute book was the Consumer Rights Act. This legislation is quite wide reaching and certainly not only focused on the private rented sector, even though it does include specific provisions that apply in the private rented sector.

Following on from decisions by the Advertising Standards Authority (ASA) last year, this legislation makes it a specific requirement that agents' fees are clearly displayed on web sites and within their own offices.

This change will make the 'guidance' of the ASA into clear law. Part 3 Chapter 3 covers the requirements to display fees and allows local Trading Standards to enforce the legislation with penalties of up to £5,000.

The requirement to display fees does not include a requirement to display rent and deposit amounts.

There was another recent case with the ASA where an agent was found to be wrong in using the words 'fees may apply' in respect of charges that were always made but would be of variable amounts. As a new requirement, there will need to be a number of these cases to find the limits of this legislation but the ASA cases are useful guides.

The Consumer Rights Act 2015 (Commencement) (England) Order 2015, states that this part of the Consumer Rights Act came into force in England on the 27 May 2015.

We have had unfair terms in consumer contract legislation for some years now. Formerly these were contained in the Unfair Terms in Consumer Contracts Regulations 1999. The Consumer Rights Act contains replacement provisions that largely take the concepts and rules from the regulations and put them into the act.

One significant difference under the new legislation is that courts are required to proactively consider the fairness of a contract, even if neither party raises a concern on this point. This will inevitably lead to greater scrutiny of landlords' contracts by the courts.

The rules requiring contracts to be in plain language, legible and fair remain. The core terms, for example how much rent is paid, remain outside the test of fairness, though only provided it is transparent to a tenant before they are effectively committed.

The effect of having a contract with unfair terms included is that the clause which is unfair is not enforceable. This could become a more common defence in, for example, where possession is sought for damage to the property.

Part 2, which contains the new rules around unfair terms awaits a commencement order to bring it into force.

Deregulation starts

Following the Deregulation Act 2015 receiving Royal Assent on the 26 March 2015, the provisions relating to deposit protection commenced with immediate effect.

Most significantly, this gave 90 days in which to correct 'Superstrike' deposits. Superstrike deposits are limited to those where the initial deposit was received before April 2007 and the tenancy went statutory periodic after April 2007. Provided compliance with the deposit rules is achieved within 90 days of the commencement of the Deregulation Act (late June) then no offence will have been committed. If the case is subject to court action the deposit compliance must be before the court action.

This new legislation also clarifies that there is no requirement to comply with deposit rules for renewals, provided it was done correctly in the first place. This should make it easier for landlords and the subject of less litigation. Unusually these provisions are backdated to 2007 giving some interesting transitional rules.

The legislation contains other provisions, including changing the rules around section 21 notice service and 'retaliatory evictions' (where a tenant asks for a repair and the landlord 'retaliates' by evicting the tenant) but these await a commencement order before they will take effect.

With a new government in power, and with a different political balance, it remains to be seen if there is the will to actually commence all of these provisions.

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