

Note:- One of ARMA's key roles is to provide its members with technical support. However, from time to time, technical or other issues arise where guidance for lessees as well as their property manager is deemed appropriate. Such guidance is contained in these Lessee Advisory Notes (LANs) which ARMA members can copy and distribute to their clients and lessees as appropriate.

The Flow of New Regulations

It is a common response in all forms of business to bemoan the constant flow of regulations from Government. Regulations flow not just from the UK Parliament but also from European Commission Directives and government agencies in particular the Health and Safety Executive.

Residential managing agents have felt that the impact of regulations on their businesses in the last six years has been unusually large. The Commonhold and Leasehold Reform Act 2002 (the 2002 Act) was a major landmark in leasehold law but many other regulations have impacted on agents perhaps unintentionally because the Government failed to assess the impact on lessees. As well as the pressure of a continual flow of new regulations there is a problem of perception; many lessees simply do not believe that their landlords and agents have to do the things that they are required to do by the regulations. Lessees are often unaware that there could be civil and sometimes criminal prosecutions, fines and potential imprisonment in the worst health and safety failures. The directors of resident management companies as well as agents may be prosecuted for failures to comply with the law.

Below is a checklist of the main regulations that landlords, resident management and right to manage companies and their agents have to respond to regarding the management of property plus those that we know now will impact in 2009. This checklist does not include the regulations which apply to agents as employers of their staff.

<u>Change</u>	<u>Impact</u>
1. Ground rent notices The Landlord and Tenant (Notice of Rent) (England) Regulations 2004. No. 3096	<ul style="list-style-type: none"> • A prescribed notice has to be issued with all ground rent demands that require input of dates and sums by hand or alteration of computer software.
2. Changes to consultation procedures for major works The Service Charges (Consultation Requirements) (England) Regulations 2003 No. 1987	<ul style="list-style-type: none"> • Two or three notices to every lessee are now required not one. • Lessees can nominate contractors which the agent has to vet before use. • Major works can take a minimum of three months to consult over rather than one month as before.
3. Consultation on long term agreements The Service Charges (Consultation Requirements) (England) Regulations 2003 No. 1987	<ul style="list-style-type: none"> • Full consultation in the same form as for major works is required for a whole new range of service contracts that exceed one year in duration.
4. Service Charge Demands The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007/1257.	<ul style="list-style-type: none"> • Agents have to send a prescribed summary of rights and obligations with every demand for service charges due from lessees.
5. Administration charges The Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007/1258	<ul style="list-style-type: none"> • Agents have to send a prescribed summary of rights and obligations with every demand for administration charges due from lessees.
6. Forfeiture The Rights of Re-entry and Forfeiture (Prescribed Sum and Period) (England) Regulations 2004. Statutory Instrument 2004/3086.	<ul style="list-style-type: none"> • The use of forfeiture to recover arrears of service charge has become almost impossible. If used as a last resort it takes much longer, with a requirement to go to an LVT before going to court. Costs of forfeiture action are increased.

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| <p>7. Breaches of Covenant
Sections 168 & 170 of Commonhold and Leasehold Reform Act 2002.</p> | <ul style="list-style-type: none"> • Action to challenge a lessee who breaches other covenants in a lease requires an LVT case before the matter can be taken to court. Costs of any action are increased. |
| <p>8. Asbestos
The Control of Asbestos Regulations 2006</p> | <ul style="list-style-type: none"> • All agents are required to have a written policy and procedures. • All blocks need to be assessed for the presence of asbestos; some require expensive surveys. • Agents must keep records of the whereabouts of asbestos in blocks that they manage. • All contractors must be advised of possible asbestos before starting work on a block. • The condition of any asbestos has to be reviewed at regular intervals. |
| <p>9. Working at height
The Work at Height Regulations 2005</p> | <ul style="list-style-type: none"> • All work at height (at any height) has to be assessed for risk. • Any porters or concierges using stepladders or ladders require risk assessments and equipment has to be inspected and a record sheet kept. |
| <p>10. Risk Assessments
Health and Safety at Work Act 1974 as amended</p> | <ul style="list-style-type: none"> • Risk assessments of the common areas should be in place and reviewed regularly at each managed block for the general health and safety of staff, residents and the public. |
| <p>11. Regulation of insurance by the Financial Services Authority (FSA)
S19 The Financial Services and Markets Act 2000 (commenced 2005)</p> | <ul style="list-style-type: none"> • All agents are required to register with the FSA, become an appointed representative of a broker or join the RICS scheme if handling insurance activities. • A joining fee has to be paid. • An annual fee is then payable. • Detailed six monthly returns have to be made. |
| <p>12. Taxation of Trusts for Service Charge Monies
HMRC budget briefing April 2007</p> | <ul style="list-style-type: none"> • The rate of tax on interest earned from trust funds has been altered in three of the last four tax years. 20% from 5 April 2007 • Agents have to review the tax returns on every block to ensure the correct return. • Complex apportionments are required if the financial year of the block is not the same as the tax year. • Agents have to check if a NIL return is required by the relevant tax office. |
| <p>13. Digital Switchover
Announced in a speech by the Culture Secretary 15 September 2005</p> | <ul style="list-style-type: none"> • Government has announced a timetable programme to end analogue signals from 2008 - 2012. • Agents have to review TV reception in every block, commence a programme to upgrade or install new communal aerials where required. |
| <p>14. Licensing of wheel clamping and other security staff
Private Security Industry Act 2001 commenced March 2006</p> | <ul style="list-style-type: none"> • Any staff or companies used for wheel clamping or other security activities have to be licensed. • Agents have to train any of their staff used for wheel clamping and pay a licence fee. • Agents have to check any companies they use are licensed or face a fine or a criminal offence. |
| <p>15. Separate bank accounts for each scheme
S156 Commonhold and Leasehold Reform Act 2002</p> | <ul style="list-style-type: none"> • In the 2002 Act and expected to be implemented from October 2009. • Will require many agents to set up separate bank accounts for each property. • Will probably require changes to or upgrading of the computer systems/software used by agents for service charge collection and the holding of service charge funds. |

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| <p>16. Prescribed statements of account for service changes
S152 Commonhold and Leasehold Reform Act 2002</p> | <ul style="list-style-type: none"> • In the 2002 Act and expected to be implemented from October 2009. • Will require all agents to change the content of their accounting statements for service charges. • Will require changes to accounts of RMCos • Will incur costs of changing computer software and procedures. |
| <p>17. Independent certification of all scheme accounts
S152 Commonhold and Leasehold Reform Act 2002</p> | <ul style="list-style-type: none"> • In the 2002 Act and expected to be implemented from October 2009. • The cost of a new form of accountant's report will have to be added to the service charge. |
| <p>18. Licensing of houses in multiple occupation (HMOs)
S257 Housing Act 2004</p> | <ul style="list-style-type: none"> • Some blocks that are HMOs will require a licence from the local authority. • Agents need to check their portfolios and ensure compliance where relevant. |
| <p>19. Home Information Packs
Part 5 of Housing Act 2004</p> | <ul style="list-style-type: none"> • Agents to review and amend the way they handle enquiries from sellers. |
| <p>20. Fire safety
The Regulatory Reform (Fire Safety) Order 2005</p> | <ul style="list-style-type: none"> • All blocks require fire risk assessments and action plans. • The agent must use a 'competent' person to carry out the assessment. • Assessments must be reviewed regularly; it is recommended annually. • Agents must keep records of maintenance of all fire related equipment. |
| <p>21. Disability Discrimination
Disability Discrimination Acts 1995 and 2005</p> | <ul style="list-style-type: none"> • Duties on all landlords and agents re handling consents to alterations from disabled persons. • Duty to consider reasonable adjustments to policies and procedures and auxiliary aids to assist disabled persons. |
| <p>22. Electrical Safety Testing
IEE Wiring regulations 17th edition January 2008</p> | <ul style="list-style-type: none"> • Agents must arrange for fixed and portable electrical equipment to be tested at the recommended intervals. |
| <p>23. Water testing and legionella
The Control of legionella bacteria in water systems – Approved Code of Practice & Guidance</p> | <ul style="list-style-type: none"> • Agents must monitor the quality of communal water supplies or any communal water tanks. |
| <p>24. Gas Safety
The Gas Safety(Installation and Use) Regulations 1998</p> | <ul style="list-style-type: none"> • Agents must have any communal gas equipment maintained and tested. |
| <p>25. Hazardous Substances
The Control of Substances Hazardous to Health Regulations 2002</p> | <ul style="list-style-type: none"> • Agents must check on and make arrangements for the safekeeping and safe handling of any hazardous substances including cleaning and gardening materials. |
| <p>26. Rules for appointment of contractors
HMRC CIS340 'CIS-Guide for contractors and sub contractors. January 2006.</p> | <ul style="list-style-type: none"> • Agents must conform to the rules for payment and taxation of any contractors used for maintenance work. |
| <p>27. Lifts, elevators
The Lifting Operations and Lifting Equipment Regulations 1998(LOLER)
Safety Assessment Federation (SAFed)
Guidelines on the supplementary tests of in-service lifts – SAFed 2006.</p> | <ul style="list-style-type: none"> • Agents must have thorough examinations carried out by competent persons on lifts in their charge. This is in addition to the regular maintenance of those lifts. |

28. **Health and safety planning for all maintenance work**
The Construction (Design & Management) Regulations 2007 (CDM)
- If an agent places an order for repairs for a client and oversees that work (whether a consultant is employed or not) the agent has responsibilities under CDM 2007.
 - CDM 2007 applies to most construction work, not just larger notifiable projects.
29. **Data Protection**
The Data Protection Act 1998
- All agents must register and pay an annual fee to the Information Commissioners Office
 - Any data held must be processed according to the Act.
30. **Money Laundering**
S330 The Proceeds of Crime Act 2002
The Money Laundering Regulations 2007
- Agents must be aware of and report to the authorities any suspicions of money laundering of anyone connected to their business.
 - Agents must carry out due diligence on any potential new client to establish that they are not involved with money laundering.
 - Agents providing company secretarial services must register with a supervising authority.
31. **No smoking rules**
The Smoke-free (Premises and Enforcement) Regulations 2006 SI 3368.
- Agents must put up no smoking signs in common parts
 - Agents must monitor and prevent smoking in designated no smoking areas.
32. **Disposal of electrical items**
The Waste Electronic and Electrical Equipment Regulations 2006
Hazardous Waste (England and Wales) Regulations 2005
- Any electrical equipment must be disposed of in a safe manner.
 - Low energy light bulbs are classed as hazardous waste and must be disposed of through a licensed waste disposer.
34. **Health and Safety Offences Act 2008**
- Makes many offences that were breaches of regulations possible criminal offences
 - Raises the maximum fine for offences in lower courts from £5000 to £20000
35. **Administration of resident management companies**
Companies Act 2006
- New model articles introduced for companies from October 2009.

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