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LandlordZONE

RENTAL PROPERTY KNOWLEDGE

Welcome—October 2008

We're living through some unprecedented and scary times: if you are a landlord or running a business it's now about survival.

Regardless of whether your properties are in negative equity, and it only really matters if you are forced to sell, it's about reducing your costs and keeping the rental income flowing.

Just like the stock market, property prices are depressed and still falling, but they will return. When they do, opportunities will abound for those with the resources, but I would recommend the adventurous investors sit on their hands for now. In the meantime, routes to survival:

- Consider managing your property yourself and save on agent's fees. If you do use agents make sure you know exactly what you sign up to and negotiate hard on fees and renewals costs.

- Know your local market and the demand / supply balance and price your rents conservatively to avoid the voids and retain your tenants longer.

- Select your tenants very carefully and avoid panic lettings—a bad tenant can be far more ex-

pensive than a void—do tenant checks and follow a good [screening system](#)

- Treat your tenants well and deal with them in a professional manner as you would want to be dealt with yourself—remember you are providing a consumer service.

- Don't delay or penny-pinch on repairs—tenants rent to avoid the worry of repair bills—don't disappoint them.

- Go through hell and high water to get the best mortgage deals—research and consult brokers and finance companies—there are deals out there.

- Make sure your landlord insurance is adequate—accident claims can be horrendous - and consider rent guarantee and legal cover, especially if you are highly geared.

- Make sure you meet all your legal obligations, especially the new ones such as Licensing, Deposit Protection and EPCs—fines can be high.

- If you do find yourself in financial difficulties, hanging on in there, if you can, is preferable to crystallising losses

October 2008 Newsletter Topic—Fire Risk Assessments

The Regulatory Reform (Fire Safety) Order 2005 may not mean a lot to most landlords, and indeed most landlords will not be directly affected by it.

However, if you are involved with HMOs, multi-occupied residential buildings such as some types of student accommodation or commercial lettings such as shops, offices or workshops in multi-unit buildings, then you need to be aware of this.

The new Regulatory Reform (Fire Safety) Order came into force October 2006, and any business or affected domestic premises owners failing to com-

ply face serious legal consequences including hefty fines or, in the event of a fire-related fatality, imprisonment.

However, despite this threat a surveys show that around 35 percent of businesses in England and Wales are still unaware of how the new reform will affect them, whilst nearly 50 percent of those surveyed have admitted they are uncertain as to how they go about making sure they are compliant.

Content for this month's newsletter has been supplied by **Darren Baird DMS, MI-**



now. Always keep your lender informed and get help and advice. Consider a second job, taking in lodgers, and cut spending to the bone—short-term pain is preferable to long-term debt.

Two reports on the **Private Rental Sector (PRS)** have been published recently: The Law Commission's long awaited: [Encouraging Responsible Letting](#), and The DCLG commissioned report from the University of York—[Review of the Private Rental Sector](#).

Despite press comments to the contrary, I see these reports as being positive for landlords: they confirm the basic efficacy of the current legal regime, they call for voluntary as opposed to more statutory regulation and they acknowledge the importance of the PRS.

A small proportion of rogue landlords cause problems, but the resources to tackle these are and will remain in short supply. Tom Entwistle

FireE, MIFSM of [Total Fire Service \(Services\) Limited](#).

All their fire safety consultants are from extensive fire service backgrounds with industry recognised qualifications.

Initial TFS consultations and on-site advice about meeting your legal requirements under the FSO are totally free.

Despite the fact that in theory landlords and business owners can do their own risk assessments, a professional service such as TFS takes care of a lot of the time consuming paperwork and uncertainty of DIY.

What is the New Fire Safety Law?

On the 1st of October 2006 the Regulatory Reform (Fire Safety) Order 2005 (FSO) became law in England and Wales (similar legislation, the Fire Scotland Act 2005 is in force in Scotland)

It has replaced over 100 existing areas of fire safety legislation.

Nearly all fire safety related laws are now contained within this one single Order.

The FSO applies to virtually all premises apart from private dwellings such as your own home

and single residential rental properties plus certain other special premises, though multi-occupied residential rentals do apply.

If you have some control over a premises e.g. employer, owner, managing agent, landlord or occupier you may be designated as a "responsible person" under the FSO for fire safety matters within and in the vicinity of the premises.

Your control as landlord may be confined to common areas, but in commercial lettings this may in-

volve some element of shared control / responsibility with the responsible persons from individual let units.

Generally, commercial tenants are responsible for their own units and the landlord for any common areas, but there may be overlaps where systems such as fire alarms, gas systems and fire-fighting equipment are involved.

In these situations the landlord must co-ordinate all the tenants' activities to ensure that the building as a whole is safe.

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Implications for Property Landlords

The Fire Safety Order (FSO) applies to the common areas of residential blocks of flats or apartments and also Houses in Multiple Occupation, where the Landlord would be deemed as the responsible person.

This is where they have "control" over any common areas.

Landlord responsibilities would also apply to common areas of multi-occupied commercial premises such as office blocks and retail premises.

The common area would include any fire alarm, emergency lighting or fire-fighting equipment provided in the premises.

The Landlord has a legal re-

sponsibility under Article 9 of the FSO to conduct a suitable and sufficient fire risk assessment of the common areas.

Likewise, individual commercial tenants have a responsibility to carry out risk assessments for their own units.

The significant findings of the assessment must be recorded if five or more persons are employed, however it is recommended that the findings are recorded in all cases so that in the event of a fire, due diligence can be demonstrated under the FSO.

Under Article 17 the Order states the responsible person has a duty to ensure that "the prem-

ises and facilities, equipment and devices provided are subject to a suitable system of maintenance, in an efficient state, in efficient working order and in good repair"

Landlords must ensure that suitable annual maintenance contracts and reporting/actioning of defects are in place for any fire alarm, emergency lighting systems and fire fighting equipment within their control.

A suitable system for the weekly testing and recording of the operation of fire alarm systems should be in place.



What is a Fire Risk Assessment?

A fire risk assessment is a systematic evaluation of the premises identifying hazards, or potential hazards and determining the likelihood (risk) that such hazards will cause harm.

The assessment must be constantly reviewed and adjusted if necessary to meet any changing circumstances; it is not a one off procedure.

It must be reviewed on a regular basis, however no specific time scale is given within the Order.

It states that the assessment should be "reviewed regularly and kept up to date...particularly if there is reason to suspect that it is no longer valid or there have been significant changes in the matters to which it relates" (Article 9 (3) of the Order)

We would normally recommend that a review is conducted at least every 12 months in most premises.

Competence

Under the Order any Landlord essentially has three options,

- (1) conduct the fire risk assessment themselves,
- (2) instruct an employee to do it on their behalf or
- (3) employ the services of an external fire safety consultant.

The FSO states that a competent person, who has had suitable training and possess sufficient knowledge to perform this function, must conduct the Fire Risk Assessment.

It is the responsible person's duty to ensure that the fire risk assessment is conducted by a competent person.

The Fire Service will not conduct your fire risk assessment for you.

What is involved in doing a Fire Risk Assessment:

The main aspects are to identify:

Hazards—anything that can start a fire, things which will burn and any substances which will intensify a fire.

Secondly to identify people

at risk.

Thirdly, to evaluate, remove or reduce this risk.

Fourthly, recording, reviewing and revising fire safety plans.

For practical purposes the responsible person in a building will carry out (or arrange to be carried out) an annual Fire Risk Assessment including:

- Identification of all possible sources of ignition and combustion
- Appraisal and regular testing of existing fire detection and warning systems
- Appraisal of escape routes and evacuation procedures
- Appraisal of fire signage and emergency lights
- Appraisal of staff fire training
- Appraisal of the emergency plan
- Appraisal of servicing routines on fire safety equipment and the keeping of adequate records.



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Competence and Duties of the Responsible Person

The FSO states that a competent person (not necessarily an expert but someone with an understanding of best practice and an awareness of their limitations), must conduct the Fire Risk Assessment.

However, it is always preferable to use the services of an experienced professional in this field whenever possible.

It is the responsible person's duty to ensure that the fire risk assessment is conducted by a competent person.

The "responsible person" is someone who has control, or some degree of control, over premises or fire-prevention systems within premises.

If you are the responsible person, you must make sure that everyone who uses your premises, including visitors, can escape if there is a fire.

The people you should think about include anyone who might be on your premises at

any one time, including employees, visitors or members of the public.

You should pay particular attention to those who may need special help to get out, such as elderly or disabled people or children.

You must:

- carry out a fire-risk assessment and identify possible dangers and risks.

- think about who might be at particular risk - you may have disabled employees, or people who work with hazardous materials such as chemicals or volatile fluids.

- remove the risk from fire, as far as reasonably possible

- put in place fire precautions and routines to deal with any risks that remain

- make sure there is protection if you use or store flammable or explosive materials
- produce a plan to deal with emergencies and ensure that

this is incorporated into training and fire drills.

- record your findings and review them regularly.

The responsible person can appoint some other competent person to do the actual fire risk assessment, but he or she is still responsible in law.

In many premises and situations achieving fire safety is likely to be a matter of common sense providing the responsible person makes enough time available to go through all the necessary steps.

The enforcing authority, which is usually the local fire authority, must be satisfied with your safety measures and plans.

If not, they will tell you what you need to do. If they find major problems they can restrict the use of your premises or close them down altogether until you have dealt with the potential problems.



The Consequence of Non-Compliance

The local **Fire and Rescue Authority** are the enforcing authority for the Fire Safety Order for most premises.

In other words your local fire station will be responsible for monitoring and ensuring that all local businesses and affected premises carry out the necessary procedures and they will eventually get around to auditing all these premises.

The fire safety officer will expect to see a copy of your Fire Risk Assessment when they audit your premises.

They will also expect to see records showing that regular fire system checks and servicing has been carried out and that regular fire drills take place.

Failure to comply with any re-

quirement of the FSO could result in an enforcement notice being served, personal prosecution of the responsible person or even, in extreme cases, imprisonment.

Most Fire Authorities will maintain a register of premises that they have served enforcement notices on or taken prosecution action against.

This register will be maintained for up to three years and be publicly available which may impact on your reputation or business.

Non compliance with the Order may also invalidate your building insurance.

The FSO is still only two years old but already offences under the Order are being referred to higher courts with fines in excess of £250,000 for serious offences.

It is interesting to note that in nearly all prosecution cases so far no fire risk assessment had been conducted on the premises.

Ignorance of the Order will be no defence and it is still estimated that **80% of business are unaware of the change in legislation** and the requirement to conduct a fire risk assessment.

Employers and responsible persons have an unconditional responsibility for the safety of employees, visitors and fire safety precautions within their premises.

In the event of a fire, claim or intended prosecution, the responsible person must demonstrate that he took all reasonable precautions to avoid the offence.



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Landlords and the Fire Safety Order

Through this legislation landlords of certain premises will find themselves with more responsibilities than was previously the case.

As has been explained already, the [Regulatory Reform \(Fire Safety\) Order 2005](#) (FSO) consolidates existing fire safety legislation relating to commercial premises into this one piece of legislation.

The FSO also covers domestic properties, HMOs, flats, hostels etc where there are common parts shared between different dwellings. For example, common hallways and stairwells of blocks of self-contained flats.

The FSO places duties on the person having control of the property to have fire precautions in place, to make sure the property is safe and to regularly carry out fire risk assessments.

When a property is a licensed HMO the fire risk assessment needs to be recorded in writing.

There is a cross-over with fire safety requirements under the Housing Act 2004.

Local authorities (Environmental Health and Building Control Departments) will usually agree some sort of [protocol](#) with the Fire and Rescue Service.

This will set-out who takes the lead in relation to fire safety in a particular property, be this commercial or residential.

Often the local authority will take the lead in all residential properties, except commercial premises such as offices, shops and industrial premises, hostels, bed & breakfast accommodation, hotels and residential accommodation that shares an entrance with commercial business— here the Fire and Rescue Service will usually take the lead.

It is helpful for occupiers and responsible persons where the Fire and Rescue Service and the local authority can agree common fire precautions that will act as a guide for the majority of properties.

There are some guidance documents available at present from CLG. These are:

- [A short guide to making your premises safe from fire](#), and

- [Fire Safety Risk Assessment sleeping accommodation](#)

Landlords of multi-occupied commercial premises, depending on the lease agreements, may find themselves jointly responsible for the management of the building.

Here, tenants will be responsible for fire safety and risk assessments for their own individual units and staff.

But the landlord, (or the managing agent) is responsible for the common areas and the common fire alarm system, plus annual servicing of fire fighting equipment and gas systems etc.

In his co-ordinating role with the responsible persons therefore, the landlord should set-out procedures such as regular tests, checks and servicing of equipment and the documentation of these, plus the co-ordination and monitoring of all the individual risk assessments.

Where tenants fail to complete a satisfactory risk assessment the landlord may be faced with bringing in a professional and charging the cost back to the tenant—after all the safety of the whole building may otherwise be compromised.

Useful Links:

[Regulatory Reform \(Fire Safety\) Order 2005](#)

[Fire Gateway—Government Site](#)

[Fire Safety—Sleeping Accommodation](#)

[A Short Guide to Making your Premises safe from Fire](#)

[Fire Safety Protocol issued jointly by LACORS](#)

[Prevention and Detection—Fire Safety in Business Premises—Norfolk Fire Service](#)



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Review: The Apprentice Property Master—Paul Torrisi—[How to Books](#)

The Apprentice Property Master—Paul Torrisi—published by [How to Books](#)

I admit to being sceptical when I received this book — after all what can one of Alan Sugar's apprentices know about letting property? — presumptuously calling himself a "Property Master"

Well I was pleasantly surprised, finding myself reading it from cover to cover. The book reads more like a story than the average how to book. And an interesting story it is.

Paul obviously has had quite a lot of experience in business and as a landlord, in the traditional sense, not just as an armchair speculative investor.

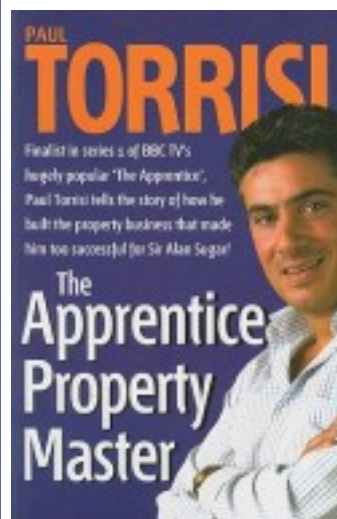
He started like a lot of us long suffering landlords, rolling up his sleeves and diving in at the bottom end of the market—buying low cost housing and providing essential accommodation for Housing Benefit and working people.

He eventually explains how he moves up into the more speculative end of property

investment, but for me the latter section lacks the interest and thoroughness of the earlier ones. Being in the market early he builds up his experience and collateral in a progressive way over a period of time and incrementally takes advantage of the rising prices—the safe way to do it.

A worthwhile read, especially for newbies who want to learn how it's done the safe way. Particularly useful in this current climate.

Tom Entwistle, Editor



Forthcoming Reviews

November 2008—How to Avoid Tax on Foreign Property—Book—Carl Bayley—published by [Tax Café](#)

December 2008—Property Makeover Price Guide 2nd Ed—Organising and Budgeting for home improvers and developers based on the professional price guides used by chartered surveyors—published by [BCIS / RICS](#)

January 2009—The Buy To Let Manual—Book—Tony Booth—3rd Edition—A clear and concise guide for the landlord written by an experienced letting agent—[How to Books](#)

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Forthcoming Issues—LandlordZONE Newsletter...

November 2008—Energy Performance Certificates (EPC) As the EPC became a legal requirement for all residential lettings from October 2008 this is a topical issue. In addition we will provide information about grants and incentives available to landlords to improve the Energy Performance ratings of their properties.

December 2008—Successful

Strategy & Goal Setting for 2009—Develop a successful investment strategy—set some powerful goals for success with the help of this experience motivational coach - [Yvonne Emery Coaching](#)

January 2008—Kate Faulkner of [Designs on Property](#) on Using Letting Agents for Belvoir. Landlords can benefit considerably from the professional expertise of agents,

but there are many trips and traps to look out for.

February 2008—Training for Landlords and Letting Agents—The [Guild of Letting and Management](#) have long been associated with running quality training and recognized courses and property management qualifications for letting agents and landlords.



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Fire Safety—in Domestic Rental Premises & HMOs

National Guidance on Fire Safety in domestic premises has been developed by LACORS in conjunction with the Chartered Institute of Environmental Health (CIEH) and the Chief Fire Officers Association (CFOA). Officials in Communities and Local Government (CLG) have also provided considerable technical support and the guidance contains a foreword from the Fire and Housing Ministers in CLG.

The guidance will apply nationally and covers certain existing residential accommodation including single family dwellings, shared houses, bedsits and flats. It is not aimed at new housing built to modern Building Regulations.

The guidance adopts a risk based approach to fire safety that will satisfy both the Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005. It includes guidance to landlords on how to carry out a fire risk assessment.

The guidance will be equally relevant to landlords, managing agents, local councils and fire and rescue authorities. The guidance will apply to both the private and social housing sectors moving away from the prescriptive approach sometimes taken in the past. The guidance will underpin the **Fire Safety Protocol** ([click here](#)) issued jointly by LACORS, CFOA, CIEH, NLA and the National HMO Network in May 2007, which is already providing a framework for partnership working between councils and fire and rescue authorities.

A major independent **Review of the Private Rental Sector (PRS)** funded by HM Government has been published. The PRS Review included detailed secondary analysis of data on private renting, and an extended series of stakeholder meetings that took place between January and April 2008. The Review covered buy-to-let, institutional investment, professionalism, property quality, the legal structure for tenancies, homeless households, and 'problem' private renting. The [report](#) concludes with a series of recommended 'policy directions of travel'.



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Darren Baird DMS, MI-FireE, MIFSM of Total Fire Service (Services) Limited.

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