

LAWPACK

Taking in a Lodger

YOUR ESSENTIAL LEGAL GUIDE



This is an excerpt from Lawpack's book *Taking in a Lodger – An Essential Legal Guide*. To find out everything you need to rent a room to a lodger, [click here](#).

Lawpack Publishing Limited
76–89 Alscot Road
London SE1 3AW

www.lawpack.co.uk

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Printed in Great Britain
ISBN: 978-1-906971-19-9

The law is stated as at 1 February 2012.

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For convenience (and for no other reason) 'him', 'he' and 'his' have been used throughout and should be read to include 'her', 'she' and 'her'.

Contents

Introduction	iv
1. What is a lodger?	1
2. Legal and practical considerations	5
3. Houses in Multiple Occupation (HMOs)	19
4. Money and tax	27
5. Finding and vetting your lodger	33
6. Lodger Agreements	53
7. Living with lodgers	71
8. Problem lodgers	77
9. When your lodger leaves	91
Useful contacts	97
Index	99

CHAPTER 6

Lodger Agreements

Should you have a formal agreement?

Taking in a lodger is far less formal than renting out a property to a tenant. Many lodgers never sign any form of agreement and the arrangement works perfectly well. I have to say that when I took in student lodgers, I did not get them to sign anything; they just paid me cash on a Saturday! Also if you are taking in students on a course, you will often be paid by the college or university running the course, and will not therefore have a direct agreement with the student staying with you.

However, in most cases, although it is not absolutely necessary, there is no doubt that having a written agreement is a very good idea. If relations break down between you and your lodger, it can be important to have an agreed document to refer to which sets out your respective rights and obligations. Bear in mind that unlike tenancies, there are hardly any 'implied terms' in Lodger Agreements; there is only what you have actually agreed between you. And if this is not written down, it can be difficult to prove exactly what that was.

Note: 'implied term' is the phrase used when terms are included in a contract even though they are not written down and/or included in any written contract document. In particular, Acts of Parliament often provide that certain terms will be implied into all contracts of a certain type; for example, Section 11 of the Landlord and Tenant Act 1985 implies repairing obligations into tenancy agreements.

Using an agreement

If you decide that you would like to have a Lodger Agreement, you can either buy a commercially produced one, or write your own.

Many people prefer to buy an agreement such as the Lawpack *Lodger Agreement*, available at www.lawpack.co.uk (I also provide one with my www.lodgerlandlord.co.uk service), as they prefer to have something which has been professionally drafted, and which they can feel confident complies with all the relevant legislation. If you decide to prepare your own, this is fine, but make sure it includes all the relevant clauses. For more information see the list further down.

Unfair terms

Some of you may be aware of the Unfair Terms in Consumer Contracts Regulations 1999. These regulations, which are enforced by the Office of Fair Trading, say that all standard clauses in agreements made between a business and a consumer must be 'fair' or they will not be binding on the consumer. Most Lodger Agreements will fall outside the scope of these regulations – if you are just letting out a room in your house or flat, this will not be considered to be a business.

However, if you rent out rooms to several lodgers, particularly if this is your main income (and can therefore be considered to be a business), you could well be bound by the regulations. In this case you need to take care that your agreement is compliant. For this reason I set out below some brief guidance on the regulations and how they work.

Core terms

The regulations do not apply to terms that form the main

subject matter of the agreement. So in a lodger context, this will be the names of the parties, the address of the property, and the amount of rent and damage deposit (if any) payable.

The test of fairness

This applies to all terms that are not core terms. Basically the landlord must not take advantage of the fact that he is presenting the lodger with a set of pre-drafted clauses (which many will sign without reading properly) by including clauses that take away any rights the lodger might otherwise have had. Note also that when assessing fairness, clauses are interpreted widely. If there is a possible unfair interpretation, then the clause will be considered unfair even if the landlord may not have intended this and may not be using the clause in this way. This is often where people inexperienced in drafting go wrong: they fail to realise that the clause they have written has more than one interpretation.

Individually negotiated clauses

The regulations will not apply to these – it is only standard clauses that are at risk.

Transparency

The regulations also provide that the agreement must be understandable. This means that it must be written in clear language, and not use legal or other jargon that the ordinary person would find difficult to understand. It is also arguable that if the agreement is difficult to read (e.g. if it is printed in small text in a pale colour) this will also be unfair. Also any clauses which are unusual, particularly if they impose an unusual financial obligation on the consumer, must be made clear and not buried in the ordinary clauses of a long agreement where they will not be noticed.

Prohibitions and permissions

One important drafting point worth mentioning here is in relation to prohibitions in tenancy or Lodger Agreements. If you are prohibiting something (such as keeping pets), it is very important that the clause includes the words along the lines of, 'save with the written permission of the landlord, which will not be withheld unreasonably'.

Now in the case of pets, for example, many landlords will say that they do not want this wording in the agreement as they know that they will never want their lodger to keep a pet. However, the effect of this will be that the clause will be unfair and invalid (and the tenant/lodger will be able to keep a pet if he wants). We know this because of a Spanish case (which applies to all EU countries, as these regulations came from an EU Directive). This case said that an outright prohibition against pets would be unfair because it would prevent a tenant's keeping a goldfish in a bowl.

Therefore, in any clause including a prohibition, unless it is something the tenant should not do anyway (such as keep illegal drugs), it is important that the wording providing for the tenant/lodger to request the landlord's permission and the statement that permission will not be withheld unreasonably is included. It does not mean that the landlord has to grant permission if asked. If you don't want a tenant to do something, this will normally be for a reasonable reason anyway (e.g. that you are allergic to cats, or just don't like them – it is, after all, your home). So long as your reason for refusing consent is justifiable, that is fine.

In conclusion, you must remember that these regulations only apply if you are letting out rooms as a business. This will normally be the case if you have several lodgers and the income from lodgers forms all, or the main part, of your income (for more guidance speak to your accountant). If you only have one or two

lodgers to help you pay your rent or mortgage, you do not need to worry about them.

Essentials in a Lodger Agreement

This is a non-exclusive list of things that will need to be agreed between you and your lodger, and set out in your agreement (if you have one).

Particulars

Parties

You must know the full name of your lodger. If you use an agreement, your name and the name of the lodger must be clearly set out and spelled correctly. Put full names, and include Mr, Ms, Mrs, Dr, etc. as appropriate.

The property

Your address should be clearly set out in any agreement. You can specify the room if you wish, or just say the room agreed that the lodger will occupy.

If there are any parts of the property where you do not want the lodger to go, this must be made clear from the start. It may be a good idea to specifically set out in your agreement the parts of the property he will share with you and any other occupiers. Any other rooms in the property will be private.

The rent

You need to be very clear about the amount, whether it is to be paid weekly or monthly, and how it is to be paid, for example by cash, standing order, cheque.

The deposit

If taken, this is generally in the region of one month's rent. Note that as this is not an AST, the deposit is not covered by the tenancy deposit regulations and does not therefore need to be protected in one of the tenancy deposit schemes. See further on the deposit in chapter 4.

Any services

If you are going to provide any services such as clean sheets, towels or cleaning, this should be set out in the Lodger Agreement. If you provide meals, you need to be clear about whether these are included in the rent or not. Note that if the lodger is not going to share any living space with you, it is particularly important that you use an agreement and make it very clear that these services are provided. Otherwise he may acquire a tenancy with additional rights that you will not want him to have.

The period

Sometimes a Lodger Agreement will be for a specific period of time; sometimes it will just run from week to week or month to month until either party decides to end it. However, you will probably want your lodger to commit to a minimum period (otherwise you could spend your life advertising for and vetting prospective lodgers).

If your agreement gives a longish period such as six months or more, it is a good idea to have some sort of get-out clause, allowing either party to end the agreement early, say on 28 days' notice. Then if you find that you do not get on, the agreement will be easy to end.

The inventory

This is discussed in more detail below.

These are the main things which generally appear in the 'particulars' section of a professionally drafted agreement. Below are some other important points that you need to agree on:

Things to be agreed

House rules

Printed Lodger Agreements do not normally go into a lot of detail about domestic arrangements, as every situation will be different. However, they will be very important in your day-to-day life. It is a good idea to draw up a list of 'house rules' which can be agreed with your lodger and then included with the Lodger Agreement. If you do this, write something like 'see also house rules attached to this agreement' on your Lodger Agreement, and make sure that the house rules are also signed and dated by your lodger at the same time as the Lodger Agreement.

Remember that if you are letting out rooms as a business, the unfair terms regulations will apply to your house rules as well as to the main Lodger Agreement.

Bills

Some landlords include bills (such as electricity, gas, Council Tax) in the rent. Others, particularly where the lodger is staying a long time, will want the lodger to share these with them. In this case you will need to make it clear how the bills will be apportioned and get your lodger's agreement to this. Note that the details of this do not generally appear in a professionally drafted agreement; they will usually just have a paragraph stating that the lodger will contribute to these expenses, which you cross out

if the rent is all-inclusive. You can put extra information about how you will work out what your lodger will actually pay in your house rules.

Insurance

You may be able to get the lodger's possessions covered under your insurance (speak to your insurers about this). If not, you must make it clear to your lodger that he is responsible for insuring his own possessions.

Note that it is sometimes a good idea to provide the lodger with a copy of your insurance policy (or an extract of the relevant parts) so if he does something that affects your insurance or causes the premium to increase, you will be able to hold him responsible for this. However, this is only really relevant for 'professional' landlords, where the unfair terms regulations will apply. This is because the Office of Fair Trading, in its published guidance on unfair terms in tenancy (and by implication lodger) agreements, stated that a party to an agreement cannot be bound by rules, such as in an insurance policy, which he has not seen.

Visitors

Most purchased agreements will prohibit visitors staying in the property without your permission. You should have already discussed this with your lodger, and have an idea of whether he is going to regularly have a partner stay over or not. If you agree to allow this, you may perhaps want to limit the number of nights per week that he stays over. This can go in your house rules.

Pets

Most purchased agreements will prohibit pets apart from with your written permission, which cannot be refused unreasonably.

However, this applies only to landlords taking in lodgers as a business; see the section above on unfair terms to see why. Note that if you have agreed specifically with your lodger that he may keep, say, a West Highland Terrier called Jack, and put this in the agreement, the unfair terms regulations will not apply to this clause any more, even if you are running a business. This is because this clause has been specifically discussed and agreed with your lodger; it is no longer just a standard clause. Any specific arrangements, such as where the dog is allowed to go in the house, can go in your house rules.

Use of the shared parts

This can include things such as agreed times for using the kitchen (if you don't provide meals), use of the bathroom and shared cleaning duties (if you do not provide cleaning). These should go in your house rules.

Use of telephone

This is less important now than in the past, as most people will have their own mobile phone. However, if your lodger wants to use your landline phone, you need to agree how this will be paid for (this can be set out in your house rules). Long-term lodgers may want to have a landline phone installed in their room, which you may or may not agree to.

Television

If your lodger wants to have a TV in his room, this is a reasonable request that you will normally agree to. However, if you do not have a TV yourself and therefore do not have a licence, this could get you into trouble! In this situation you will need to discuss it with your lodger, who will be responsible for the cost of it. Otherwise all TVs in the property will be covered by your licence.

Smoking

Whether or not you permit smoking will probably be governed by whether or not you smoke yourself. However, if you take in a smoker it will be difficult to prohibit him from smoking in his own room, although people are now becoming more accustomed to smoking prohibitions. What you can do is say that if he does smoke in his room (or allow visitors to smoke), you will be deducting the cost of professional cleaning of all the curtains and soft furnishings from the deposit when he leaves.

If you think that your lodger either will smoke or will have visitors who will smoke, it is a good idea, if you have a garden, to provide a table and chairs outside, where they can smoke if they wish. You should also have smoke alarms installed and check them regularly (although really, you should do this anyway).

Note that under the Smoking Regulations, areas which are used in common with other properties, such as stairways and halls in blocks of flats, must be smoke free and you should ensure that your lodger abides by this.

Business use

All professionally drafted tenancy agreements will prohibit this, largely because a residential tenancy can change into a business tenancy if business use is allowed, which is inadvisable. As this is not a tenancy, this is less likely to happen; however, I would still advise that any business use of your room is prohibited.

If your lodger sells the occasional Star Trek figure on eBay as a hobby, this is fine. But if he starts keeping large stocks of figures in his room, there are constant deliveries by post or carrier, and people start visiting to collect their order, you should suggest that he rents his own business premises, rather than use your home.

One very good reason why business use should be prohibited is

that if he gets into financial difficulties, you will not want County Court Judgments registered against your home address, as this could affect your own credit rating.

Other legal clauses

There are a number of other clauses which generally appear in professionally drafted Lodger Agreements.

Licence statement

A professionally drafted Lodger Agreement should state that the agreement is a licence and not a tenancy, and say why (i.e. that the landlord shares living accommodation and/or provides services).

It is also a good idea to say that the licence is personal to the lodger signing the agreement and cannot be assigned to someone else, and also that it will end automatically if the lodger stops living at the property or if two or more months' rent are due and unpaid.

Costs and expenses

Most agreements will include a clause saying that interest should be paid on unpaid rent, for example 1% above bank base rate.

There is also often a general clause saying that the lodger will be responsible for the landlord's reasonable costs incurred as a result of the lodger not complying with the terms of the agreement. This clause, if properly drafted, will cover most things, as most bad behaviour which results in some sort of financial loss to the landlord will be in breach of one or more clauses in the Lodger Agreement.

Generally it is best not to include any other penalty clauses, particularly if you are taking in lodgers as a business, as this type

of clause can easily fall foul of the unfair contract terms regulations if not carefully drafted.

Using the room and the property

Most professional agreements will also have a number of clauses dealing with behaviour in the property; for example, clauses stating that they should keep the room neat and tidy; prohibitions against any alterations or redecoration; prohibitions against doing anything that will cause a nuisance to other occupiers or neighbours; and doing anything illegal.

It is also a good idea to specifically prohibit keeping any dangerous or flammable items in the room (other than household objects such as matches), and also to specifically state that they should not use any heating appliances other than those provided, assuming of course that there are suitable heating appliances provided in the room.

Ending the agreement

As mentioned above, it is a good idea to include a procedure for ending the agreement; this is generally 28 days' written notice by either party. You should also include the statement, referred to above, saying that the lodger's licence will end automatically if more than two months' rent is due and unpaid.

Professionally drafted agreements often include a clause saying that the agreement will come to an end if the property is destroyed or becomes uninhabitable (although this should perhaps be obvious!).

Other clauses generally included provide for the lodger to leave the room clean and tidy when he goes, remove all his personal belongings and rubbish, and provide a forwarding address and contact telephone number.

Signing the agreement

You should have two copies of the agreement, one for you and one for the lodger (together with two copies of any separate house rules, which should be attached to the main agreement). You should both sign one and then exchange them so that you end up with the copy signed by the lodger and he ends up with the copy signed by you. Or you can both sign both copies. It is not normally necessary to get the signatures witnessed but there is no harm if you do.

Inventories

Inventories are becoming far more common nowadays than they used to be, certainly for rented properties where they are more or less essential if a landlord is to have any chance of success in disputed deductions from deposit claims at arbitration.

The situation is slightly different with lodgers. As they will be living in your home and under your eye, you may feel that a formal inventory is superfluous. However, remember that memories fade over time, and an inventory is the best way to decide whether there was a blue lampshade in the lodger's room when he went in or whether the desk had a deep scratch on the bottom right drawer or not.

There is no point in doing an inventory unless you make it as detailed as possible. Include all items in the lodger's room and state their condition and, if possible, the manufacturer (e.g. 'Sony bedside radio alarm clock'). You should also include the condition of the doors, windows, light fittings, curtains and carpet.

You could also take some photographs showing the condition of the room and its contents (some professional inventory clerks even do videos of the property), particularly if any of the

furniture is valuable. Any photographs should be very clear and, if showing scratches or marks on furniture, include something to show the scale.

You should check the inventory over with the lodger before he moves in, and both of you should sign and date it. Keep your copy with your signed copy of the Lodger Agreement, together with any agreed photographs, which should be initialled and dated on the back by you both if used.

You can create your own inventory form, or you can buy one such as the Lawpack inventory form.

Other documents

When you deal with the Lodger Agreement and inventory, there will also be a number of other documents that are best dealt with at the same time:

A standing order form

If your lodger is to be a long-term lodger paying monthly, it is a good idea to get him to sign a standing order form with his bank. Keep a copy before you send it off to the bank. This will mean that the rent is paid regularly into your account. There is a template form opposite.

Rent book

If your lodger pays weekly, you should give him a rent book. Lawpack publishes a very good one, which is available from www.lawpack.co.uk.

Standing order form template

To _____

 [Tenant's bank name & address]

Please pay _____

 [Landlord's bank name & address]

To the credit of _____

 [Landlord's account name & account number]

□□ □□ □□
 [& sort code]

The sum of _____
 [Amount in figures & words]

Commencing _____
 [Date of first payment]

And thereafter every _____
 [Due date & frequency, e.g. '13th monthly']

Until _____
 [Date of last payment, you may write 'until further notice']

Quoting the reference _____

 [The address of the Property being let]

Account name to be debited _____
 [Tenant's name]

Account number to be debited _____
 [Tenant's account number]

Signed _____ Dated _____

[Tenant(s)]

A housing benefit letter of authority

If your lodger is on benefit or Local Housing Allowance (LHA), it is very important that you get him to sign a letter of authority, authorising the benefit office to speak to you about his benefit application. If you don't do this, the benefit office will refuse to tell you anything, under the Data Protection Act. You will find a form of letter you can use below.

As it is not unknown for local authorities to lose documents when sent to them, it might be an idea to get your lodger to sign two (or even three) letters, just in case.

Housing benefit letter of authority template

<p>To:</p> <p>The Housing Benefit Office</p> <p>[Name and address of office]</p> <p>Date:</p> <p>Dear Sirs</p> <p>Re: [Address of property]</p> <p>I am renting a room as a lodger at the above property.</p> <p>I hereby authorise and request you to provide to my landlord [name of landlord] at the above address any information he or she may request regarding my application for housing benefit/Local Housing Allowance (LHA), and any other information he or she may request regarding my housing benefit/LHA entitlement and payment of housing benefit/LHA to me after my application has been processed.</p> <p>If it takes longer than eight weeks to process my application, please can the initial payments be made direct to my landlord.</p> <p>Yours faithfully</p> <p>Signed: _____ Date: _____</p> <p>[Name of lodger]</p>
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