



## Septic Tank Upgrades

New rules have been introduced governing the use of septic tanks in England.



Many rural properties will be home to septic tanks

The new regulations require septic tanks which discharge directly to a watercourse or ditch to be upgraded to comply with the new regulations on the earlier of January 1, 2020 or when the property served by the septic tank is sold.

When properties with a septic tank that discharges directly to a watercourse or ditch are sold before January 1, 2020 the responsibility for upgrading the system is to be discussed and agreed between the buyer and the seller.

The fact that a septic tank requires upgrading is often only discovered as a result of the searches and enquiries carried out during the conveyancing process.

Often the requirement for the

upgrade comes as a surprise to both the buyer and the seller, which can lead to lengthy delays whilst the matter is addressed between the parties. The cost of the works required to bring the septic tank up to specification for the new regulations can be significant, potentially running into thousands of pounds.

### So what can be done?

If you are selling your property and it uses a septic tank, the first step is to identify what type of system you have and whether the system complies with the new regulations. If the system is found to be compliant with the new regulations,

then you can go into the sale armed with that knowledge.

If the system is found to be non-compliant then you have the chance to discuss the situation with the buyer. It is far better to raise this at the outset rather than a couple of weeks before you were hoping to complete on your sale and having the matter delayed whilst a resolution is found.

If you are buying you should ensure you know what system is in place and whether any upgrades are required so that you are not left with any unexpected costs.

See page 2 for a guest article from UKDP, highlighting some troubleshooting ideas for septic tanks.



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# Welcome



Andrew Holden

## Welcome to 2019's Summer edition of Rural Law.

In this edition we are focusing on residential tenancies. We have a vast number of clients who either let a farm workers dwelling or have bought an investment property in the local village and are renting the property out.

With various changes to legislation and added protection for tenants, we felt an update would be useful to ensure you are not caught out. It is now more important than ever to ensure that all tenancies are documented and updated on a regular basis.

In this newsletter we have only touched on the recent legal changes to the way septic tanks are used, but there are many other potential minefields if you do not ensure you are complying with the current legislation such as tenancy deposits, service of s21 notices, etc.

I hope you find our latest edition useful.

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# Meet the team: Stewart Croft

## Solicitor in the Blackburn office

Stewart joined Napthens in May 2019 and primarily works from our Blackburn office, offering advice to clients in Lancashire and beyond.

He is a solicitor in our Litigation and Dispute Resolution team with a particular interest in professional negligence cases and landlord and tenant work. Stewart enjoys the challenges that litigation brings and to help clients through what is sometimes a stressful process.

Stewart, of Darwen, has recently acted for landowning clients in common land disputes, boundary disputes and agricultural tenancy claims.

He spent four years in Newcastle at Northumbria University studying law and, following graduation, moved back to Lancashire to start his legal career at a firm in Accrington where he completed his training contract.



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# Septic tank troubleshooting

## A guest article from UKDP, the UK drainage professionals

Problems with a septic tank? With 10 years' experience, there is very little we haven't seen before.

If the septic tank has been quietly working away underground for years without bothering anyone, it can be a bit of a shock when things start to go awry. If you think you might have noticed problems brewing, here's our septic tank troubleshooting checklist to help you understand what's going on.

So what do septic tank troubles look like or smell like?

Trouble underground can show itself above ground in all sorts of unpleasant ways.

You might notice toilets taking longer to flush than usual or hear gurgling sounds in the pipes. You might notice puddles of dirty water pooling above where the drainage system is, or even wastewater spilling out of manhole covers.

You may also notice some unpleasant smells coming from the system - the odd whiff here and there usually isn't anything to be concerned about, but if it's persisting, you'll want to get it investigated.

1. Is it time for an empty? This

might sound like an obvious starting point, but if the resident has had family staying over, or anything that might increase the usage of your septic tank, it might be needing an empty sooner than usual. So, first things first, arrange for the septic tank to be emptied.

2. Check what's been flushed into the system. Septic tanks and other off mains drainage systems are sensitive, and there are plenty of things that could be flushed into them which would cause issues. Things such as antibacterial cleaning products, grease and oil and even cotton buds can wreak havoc with your septic tank.

3. Check that the covers for the septic tank and any other manholes are intact - any breaks or splits can let surface water into the tank, which might cause it to overflow.

4. Is any part of the drainage system outside of the boundary of the property? If so, you'll want to go and check whether anything's happened in the area that the system is - for example vehicle movement can cause the pipes to collapse.



A typical septic tank

5. Check where you think the problem might be occurring. If you've spotted water pooling above the ground where your soakaway system is, it might mean that the soakaway has stopped working properly, and wastewater is making its way to the surface instead of passing through the subsoils.

6. Get a specialist like us out to take a thorough look. Why? Because we'll be able to tell you what's causing the trouble.

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# Granting the correct residential tenancy

It should not be assumed that all tenancies granted to residential tenants are Assured Shorthold Tenancies (ASTs).



## Assured Agricultural Tenancies (AAT)

These are acquired by an agricultural worker, who works more than 35 hours a week, occupying a property either owned or arranged by their farmer employer.

Most landlords do not realise that the arranging of the tenancy by, for instance, a neighbouring farmer for his worker, can create an AAT. This type of tenancy again has security for the tenant and his spouse or relative (as long as the relative also resided in the property for two years prior to the date of the tenant's death).

This tenancy is not linked to the tenant's employment and will continue if they retire or change employment. The landlord can offer 'suitable alternative accommodation' as a means to regain possession of the dwelling, but this is not an easy task. Again, any end to the tenancy must be by agreement, otherwise an order of the court is required.

To avoid an AAT being created, notice can be served on the tenant prior to the tenancy commencing and this is all that is required to ensure the tenancy granted is an AST.

There are two other relevant tenancies for farmers and landowners letting residential properties: Rent Act Tenancies and Assured Tenancies. The type of tenancy you have, or require is important to consider when granting, changing or surrendering a tenancy.

## Rent Act Tenancies

Tenancies granted prior to January 15, 1989 when the Housing Act 1988 (HA 1988) Part I came into force will likely be regulated by the Rent Act 1977. In general, if this is the main home of the tenant, at the end of the term the tenancy will continue and be a protected tenancy. The landlord can only recover possession on certain grounds, and only by first obtaining a court order.

The tenancy can even be passed to a surviving spouse or

relative of the tenant in certain circumstances, much like an old style land tenancy. Rent under these tenancies is also governed and must be registered as a 'fair rent' by a rent officer. This can be lower than market value depending on the circumstances.

More recently, following the HA 1988, tenancies can either be Assured Tenancies or Assured Shorthold Tenancies. The most common assured tenancy we see are Assured Shorthold Tenancies.

## Assured Shorthold Tenancies (AST)

These are the most common type of tenancy and have been around since February 28, 1997. These give the landlord the right to terminate the tenancy and regain possession at the end of the agreed fixed term so long as two months notice has been given to the tenant.

These have been subject to the greatest changes in recent years and tenants are now offered much more security than they had previously. You will see in this edition of Rural Law that issues such as septic tanks and energy efficiencies are the latest

changes, but changes to the ability to serve notice requiring possession and requirements for protected deposits, have in the last few years led to more and more landlords struggling to regain possession of their property.

Please contact us for more information as we can review your tenancies as part of our Property Audit element of your Farm Future package.

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# Energy Performance Certificates and The Minimum Energy Efficiency Standards

Energy Performance Certificates (EPCs) are documents outlining how energy efficient a property is.

Properties are rated on a scale from A to G, with A being very energy efficient and G being not very energy efficient.

Since October 1, 2008 an EPC has been required on private rented property in England and Wales. There have been various updates to EPC regulations since then, with recent substantive updates on April 1, 2018 and March 15, 2019.

These updates have provided that, subject to certain exemptions, landlords of domestic private rented properties must not grant a tenancy to new or existing tenants if the property in question has an EPC rating of F or G.

From April 1, 2020 landlords will not be able to continue to let domestic private rented properties (even if it is already let to a tenant) if that property has an EPC rating of F or G. Where a rental property does have a rating of F or lower, landlords should take action as soon as possible to ensure that they meet the new minimum energy efficiency standard of an EPC E rating.

Where landlords continue to let properties that do not comply with the minimum E rating they will be liable to enforcement action by local authorities. Local authorities can check whether a property does comply with the minimum E rating and if it does not, a compliance notice can be issued on the landlord requesting further information.



Changes are coming for energy efficiency standards

If the local authority is satisfied that a property has been let without adhering to the minimum energy efficiency standards it may serve further notice on the landlord imposing a financial penalty.

Where a landlord has let a property that does not meet the minimum EPC rating of E for a period of up to three months, the local authority can impose a penalty of up to £2,000.

Where the property has been let for three months or more without meeting the minimum EPC rating of E the penalty can be up to £4,000. In both cases the local authority can impose a further penalty if the local authority takes

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## NFU Contract Checking / Healthcheck

Napthens is an NFU legal panel firm.

If you are an NFU member and subscribe to the Legal Assistance Scheme, you may currently benefit from a special contribution towards the cost of certain legal transactions (such as a property audit or partnership agreement amongst other things). This

contribution could equate up to £500 from the NFU for two sets of instructions at £250 each.

Please note, this a discretionary award and is therefore not guaranteed. Please contact your Group Secretary or CallFirst on

0370 845 8458 and check with them if you are eligible to claim your contribution to the Legal Health check service (which Napthens has branded Farm Future).

In the event that you are not a member and wish to join the NFU,

please let us know and we will provide you with the contact details of your nearest group office.

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