

LANDLORD COMPLIANCE - WHAT TO CHECK THIS MONTH... DEALING WITH WASTE

By Tessa Shepperson of Landlord Law

Much of the content of this magazine is about the business of investing and developing property to rent. However, sometimes people overlook the legal rules and regulations that landlords need to comply with.

Every month we look at one issue where failing to comply could cause you financial loss. This month:

Dealing with waste

Many landlords may not realise that there are special obligations they need to comply with when dealing with rubbish and waste. Things will either be put in the bins to be collected by the council, or they might get someone off Facebook to come and collect anything else.

However, there are very strict rules about dealing with waste, and landlords can be prosecuted and fined if they breach them. So, let's take a look at what the rules are.

(Note: We are discussing here the rules in England. Separate rules apply in Wales. HMO landlords will also be subject to HMO management rules relating to waste, which are not discussed here.)

The difference between 'householder' and 'commercial' duty of care

- Householders are the people living at the property. So, these will be your tenants.
- As you are not living at the property, you will have to comply with the commercial duty of care rules.

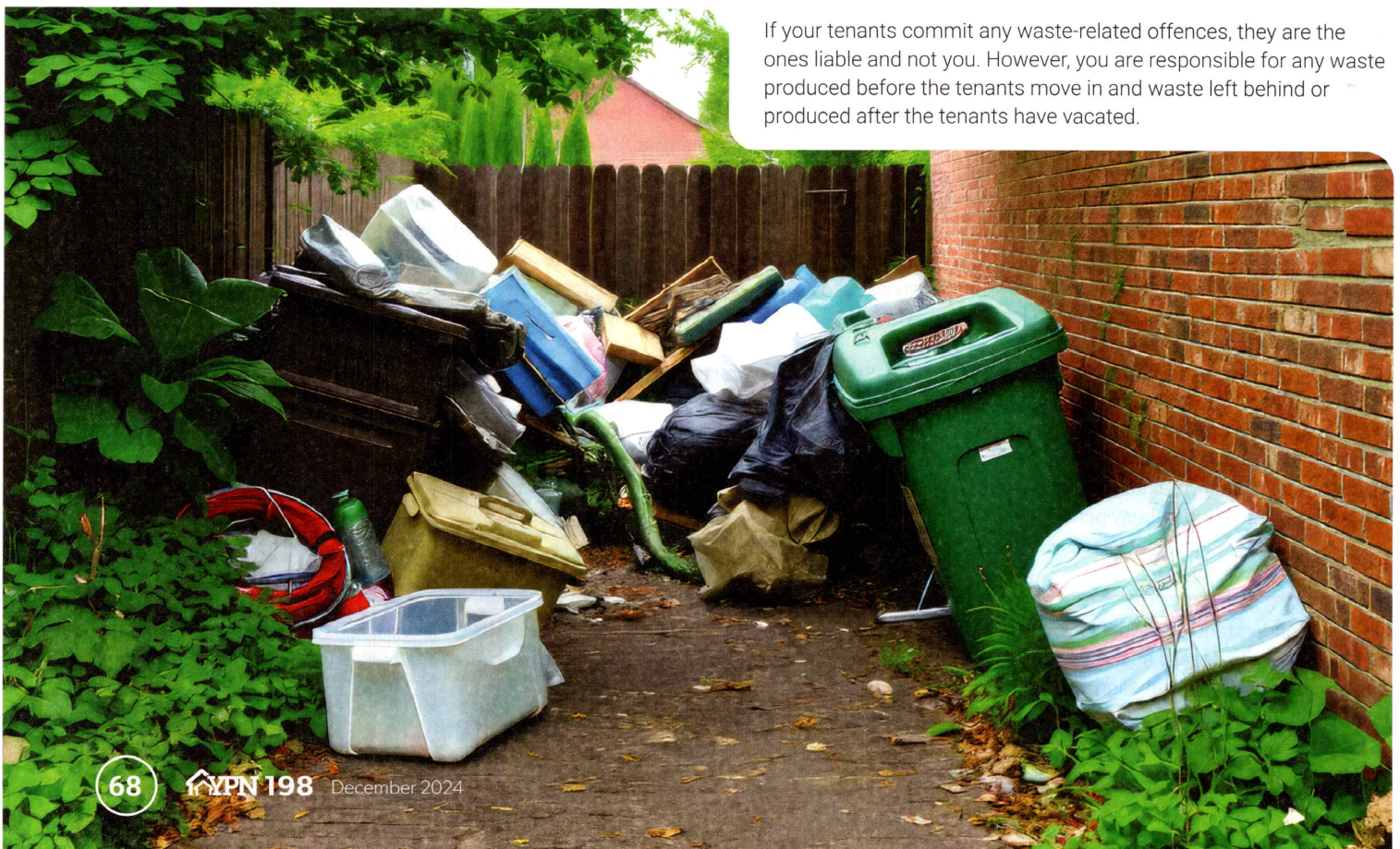
YOUR TENANT'S OBLIGATIONS

Under the Environmental Protection Act, they will have a duty to ensure that their waste is transferred to an 'authorised person'.

This will normally mean the local authority rubbish collection service. They will need to ensure that their rubbish is put in the correct bin and put outside for collection on the correct days.

They are also under a duty to ensure that any other rubbish is dealt with properly and also to take care that rubbish (and indeed anything else) is not left out on the pavement.

If your tenants commit any waste-related offences, they are the ones liable and not you. However, you are responsible for any waste produced before the tenants move in and waste left behind or produced after the tenants have vacated.





LANDLORD'S OBLIGATIONS

You, as the landlord, are not living at the property so you will be subject to the commercial duty of care rules. This will apply to dealing with any waste left behind by your tenants and waste produced by you or any contractors working at the property.

This means that you must take all reasonable steps to:

- Prevent fly-tipping
- Prevent the escape of waste
- If waste is transferred it must be to an authorised person, and you must get a written description of the transfer

You also have an obligation to ensure that the waste is transported to a properly licensed waste transfer station and is not fly-tipped by the carrier.

Failure to comply with any of these obligations is a criminal offence punishable by an unlimited fine.

Things to consider as a landlord

Any waste being moved must go to a licensed waste transfer station and be transported there by a licensed waste carrier. Note that you cannot take waste to household recycling centres as you are not the householder.

You have a responsibility to ensure that the person you use is properly licensed. Otherwise, you can be prosecuted and fined. You should be particularly careful about choosing people who advertise cheap rubbish removal, for example, on Facebook. These people are often not authorised and may be fly tipping.

You can check whether someone is a licensed carrier on the online register at <https://environment.data.gov.uk/public-register/view/search-waste-carriers-brokers>.

If you want to move the items yourself, you can obtain a license to do this from the Environment Agency at <https://www.gov.uk/register-renew-waste-carrier-broker-dealer-england>. This is free of charge.

Whether you move the waste yourself or use a carrier, you will need to get a waste transfer note / waste information note. This will demonstrate that you have taken proper steps to comply with your

obligations. If you are the carrier, you will find a template you can use at <https://www.gov.uk/government/publications/duty-of-care-waste-transfer-note-template>. Otherwise, you will need to obtain this from the carrier you use.

It should be kept for a minimum of two years, but it is best to keep it for longer, I would suggest seven years.

Ideally, you should also get your waste carrier to confirm where they left the waste. This note will be your evidence that you are compliant with the law.

If you are having work done you also need to take steps to ensure that waste will not 'escape' by being blown away and that skips and bins are not overflowing.

And finally...

It is important that you comply with these obligations as local authorities are becoming increasingly proactive in dealing with waste crime.

If you want further information (I have only set out the basic rules here), note that we have a Dealing with Waste Kit for our Landlord Law members, which you can read about at <https://landlordlaw.co.uk/landlords-do-you-know-your-legal-obligations-regarding-waste-disposal/>.

You can also obtain advice from the Environment Agency: <https://www.gov.uk/government/organisations/environment-agency>.

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Tessa's Landlord Law service contains tenancy agreements and other documents, a property audit kit, detailed checklists on renting out and managing property, our Kits (including the Dealing with Waste Kit), a number of step-by-step guides (including an eviction guide), and a members' forum where you can ask 'quick questions'. Find out more at landlordlaw.co.uk/membership.