Landlord Handbook

Guild of Residential Landlords

Private Rented Sector Accreditation Scheme

Training for Professionals

England Edition

(Wales edition available separately)

Revision of the ANUK landlord handbook by Guild of Residential Landlords, PRS Accreditation Scheme and Training for Professionals

Introduction

Landlord Handbook - Revised for Private Rented Sector Accreditation Scheme and Guild of Residential Landlords

Revision and application

This revision was made June 2018. This manual applies to England only. There is a separate handbook for Wales.

About this handbook

This manual is a guide for landlords and agents with some experience. Although it will also be useful for the inexperienced, every reader should be aware that the laws and procedures applicable to housing are complex and this guide is not a substitute for taking professional advice from a suitably experienced person before making important decisions.

This manual is designed to assist all landlords, but particularly the typical smaller landlord. More than three quarters (78%) of all landlords own a single dwelling for rent, with only 8% of landlords being full time landlords. (Footnote: according to The Private Landlord Survey 2010 (published in October 2011 by the Department for Communities & Local Government)

Use of this handbook

Acknowledgements

This revision is based on the earlier Landlord Handbook, undertaken by ANUK, Unipol Student Homes and the Local Government Association (LGA) .

That earlier revision has involved work by:

Hilary Crook of Hatch Legal, solicitors , David d'Orton Gibson, Training for Professionals, Victoria Loverseed, Unipol, Neil Marsden, Jim McLaughlin, Settled Housing Solutions, Bob Mayho, Chartered Institute of Environmental Health, Dave Princep, ANUK/RLA, Anne Rowland, Landlord Accreditation Wales, Martin Rushall, editorial consultant, and Tom Toumazou. The second revision was co-ordinated and edited by Martin Blakey - ANUK/Unipol.

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Liability and disclaimer

How To Use This Content

This content forms the basis of the training for the Private Rented Sector Accreditation Scheme (PRSAS) and other accreditation schemes throughout England. This part concentrates on landlords. However, where an agent is going through this content, a reference to a landlord includes a reference to an agent unless it states otherwise. For example, as shown later, it is a requirement that a landlord display the asset rating of an energy performance certificate in any advertisement letting a property. The same duty therefore applies to an agent. This principle applies throughout the content.

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1 - Pre-tenancy

There are a number of considerations for landlords or prospective landlords to consider before talking on a property or granting a tenancy.

1.1 Accreditation Schemes

Membership of accreditation schemes is voluntary. They enable landlords to demonstrate that their properties comply with legal standards and good management practice through the accreditation status.

Local and central Government, professional housing organisations and landlord associations recommend membership.

Some form of accreditation operates across two thirds of the geographical areas covered by the 350 local authorities in England and Wales. Schemes are operated by both landlord organisations and local authorities with some student-based schemes operated by educational establishments or related agencies.

The Private Rented Sector Accreditation Scheme (PRSAS) http://prsaccreditation.com is a scheme which operates in England.

The Accreditation Network UK (ANUK) is the national body that publicises, promotes and shares good practice in accreditation. Detailed information about accreditation is available from: http://www.anuk.org.

1.1.1 How Accreditation Schemes Operate

Schemes work either by inspecting properties and accrediting a property or a landlord. Or, by training the landlord to ensure they have a certain set of skills regarding their legal and management obligations and duties. Skills and training-based schemes often involve a training day or an interactive web test and are gaining in popularity because of the expense of undertaking verification procedures by visiting properties.

When properties are visited, sometimes schemes accredit either the landlord or the property. These require compliance with a set of reasonable physical and management standards. Schemes relating to students are more likely to involve the physical inspection of a sample of properties but there are also some skills-based schemes that have an element of physical inspection.

Operational details vary according to, and to suit, a range of regional or local factors.

All proper accreditation schemes meet with ANUK's four core values which are:

The Declaration Accreditation is about accountability: to be accountable there must be a voluntary declaration by the supplier or manager of the housing to a set of processes or standards (normally both). The declaration should be regular and normally should take place once every three to five years.

Verification A scheme must verify that those who sign up to meet standards are doing so. Time has shown that to maintain both consumer and landlord confidence there must be a regular and transparent process that checks on the standards being met, issues some form of report and where any shortcomings are identified, a landlord must agree to an improvement package. Whatever the verification process is, it must be public, realistic and achievable. A complaints system alone is not sufficient to ensure verification.

Continuing Improvement Verification should not be simply about standards being met. The notion of continuing improvement sets the mental tone for accreditation: it is about doing better from a base standard and accepting that there is always room for improvement in management outputs.

Complaints There must be a proper complaints process that should be simple, inclusive, transparent, rapid and known.

1.1.2 Membership Benefits

In addition to this, scheme operators may provide a range of further benefits to encourage membership, the numbers and extent of which may be determined by available resources.

Benefits can be categorised into information provision, financial e.g. discounted products and services, and a supportive approach and 'light touch' regulation by local authorities, often accompanied by discounts on licensing fees.

Access to some property letting services by local authorities, educational establishments and related agencies may be conditional on membership of an accreditation scheme.

1.1.3 ANUK/Unipol Codes Of Standards For Larger Student Developments

These two Government-approved national schemes are administered by Unipol Student Homes.

One scheme is for student developments that are operated and managed by educational establishments and the second is for private sector developments.

HMOs that are owned by educational establishments and are members of the Educational Establishment Code and would ordinarily be licensable are exempt from HMO licensing. Licensable HMOs that are members of the private sector Code are not exempt from HMO licensing but the Government's Department of Communities & Local Government advise local authorities to discount their HMO licence fee for Code members.

Further details are available from: http://www.nationalcode.org/

1.1.4 UUK Code of Practice

Universities UK (UUK) administers one Government-approved national scheme for buildings controlled and managed by educational establishments. This Code has the same purpose as the Codes mentioned above. Further details are available from: http://www.universitiesuk.ac.uk/aboutus/whatwedo/PolicyAnalysis/StudentsTeachingSociety/Pages/default.aspx.

1.2 Investing In A Property

Investing in a private rented property can be achieved in a variety of ways. Sometimes landlords inherit a property that they then turn over to renting. Sometimes owners of properties become unintentional landlords because they are unable or unwilling to sell a property at the value the market currently dictates.

This guide is not a financial guide to housing investment but there are a few key points worth highlighting.

It is important that an investor (and all landlords must see themselves as investors), before investing in a property, undertakes a proper business plan that takes into account:

- the value of the property and the loan to asset ratio of any loan finance obtained
- the cost of any loan finance and over what period that loan finance has to be repaid
- the level of interest being paid on the loan, taking into account that interest rates are likely to fluctuate over the duration of the loan
- the level of investment needed to renovate the property and meet with statutory standards
- the cost of any management or specialist services to get the property up to standard and into the lettings market, letting expenses, advertising and professional fees
- the level of rent to be charged
- the cost of ongoing services to keep the property in good condition: repairs, gas and electrical servicing, annual maintenance, cleaning, garden maintenance and so on
- the ongoing investment that will be required to maintain the fixtures, fittings, decor and services (boiler, white goods, grey goods and furnishings - if let furnished) in good condition
- who will be responsible for the property while the landlord is away on holiday, business or is unavailable because of illness.

Whilst property investment thrives on optimism, it is also important to be realistic about the level of rent that can be charged and to allow for some period when the property might be unoccupied between lets (voids) and to make some allowance for any bad debts. Every landlord should allow not less than about a 7% void rate for vacancies and turnaround times between occupants.

Landlords basing their business plans on low interest rates, short and risky variable loan rates, charging high rents and not allowing enough funding to keep the property in tip-top condition, frequently come unstuck.

It is also important to consider cash flow. Just like buying a house for owner-occupation, most expenditure takes place at the beginning and, as the loan progresses, repayments become less onerous. Consider what might happen if outgoings continue but rent is not forthcoming or it is necessary to fund an unexpectedly large repair. Is the cash available to keep the business or investment running?

Investors thinking about purchasing a property to let, should consider the financial and management implications very carefully. Some other matters to be considered are:

- the demand for rented accommodation in the area in which the house is located. In many areas, including popular inner city locations, there may already be an oversupply of rented accommodation and it could be difficult to find suitable tenants.
- the sort of market that the property is intended to serve. Each has its own characteristics, benefits and problems.
- the potential investment return. It is important to be realistic about the returns that can be achieved. When investing in property, it is more realistic to expect lower short-term gains and higher long-term profits.
- remember that although over time the capital value of property tends to rise, in the shorter term property prices can go down as well as up and that capital gains made over time on a property that has appreciated in value are taxable.
- the level of experience in managing property and tenancies required. The knowledge and skills needed to be a landlord are considerable and the penalties for getting it wrong can be serious.

1.2.1 Private Rented Sector Markets And The Relevant Standards

Private renting is increasingly popular and of growing importance as part of the country's housing stock.

When deciding to let a property it is important to consider what market that property is entering. Broadly speaking there are five private rented sector markets:

- renting to those on benefits
- renting to students
- renting to working tenants
- renting to professionals
- luxury lets or corporate lets at the higher end market.

If the property is already in ownership its type and location may already determine the market to be aimed for. If a potential landlord is looking to invest in a property, that decision may be influenced by the location and type of property that can be afforded. Different markets will command different rent levels and will require different standards and types of letting and management. Some of the issues to be considered are:

- professionals will insist on high standards and will expect showers and sometimes ensuite facilities
- housing benefit renters, whilst commanding a lower rent, are likely to be more stable tenants
- young professionals tend to be more mobile and this may lead to higher voids and increased re-letting expenses
- renting to sharers or students results in higher occupancy rates which can maximise rental income. However, the wear and tear on a property will be substantially higher with a greater density of occupation. Many students may be living away from home for the first time and may not fully understand their responsibilities towards their property. Renting to sharers and students is also likely to bring with it the need to meet regulatory standards that have been set by the Government in respect of Houses in Multiple Occupation (HMO) and property licensing. These additional regulatory standards acknowledge and seek to address the high risks associated with HMOs
- student lets may not extend to a full year
- all tenants will expect a high level of customer care from landlords and expectations generally rise in line with the amount of rent paid.

If a mortgaged property, or a room within it, is to be let then it is necessary to obtain permission from the mortgage lender. If the property is subject to a long lease, permission may also be required from the freeholder before renting, and there may be a cost associated with this. This will be determined by the terms of the lease. Where these are not clear it is advisable to seek assistance from a lawyer or the local housing advice service.

1.3 Letting Options - Means Of Managing Property

There are a number of options that can be considered for managing a property, depending on the owner's own experience, skills and the amount of time that is available to be spent on the management process. Each of the options given below has advantages and disadvantages but careful consideration should be given to ascertain which option is best to meet any particular circumstances:

1.3.1 Self-managing Landlords

This option is for landlords who are confident that they know their responsibilities and what constitutes best practice in managing properties. This option saves the cost of an agent, but can require considerable investment in time. Self-management may not be suitable for landlords who do not live close to their properties or who are away from home for significant periods of time.

If problems arise, self-managing landlords might require advice from a professional adviser such as a lawyer or accountant, which will come at a cost. Landlord associations are a good source of advice and assistance and can provide much of the information that a self-managing landlord requires.

Self-managing landlords also have to promote their own properties and this may entail paying a fee for advertising properties.

1.3.2 Use Of Letting And Managing Agents

If help is required to manage the property, there are at least three options:

a) Letting only

This is where an agent markets the property, advises on rent levels, finds a tenant, undertakes reference checks (if required), provides a tenancy agreement and moves the tenant in. The agent charges the landlord a one-off fee for this, often equivalent to one month's rent. The agent may also charge the tenant an administration fee.

Landlords using a letting agent need to agree if they wish to charge a deposit, what it is for, how much the deposit is to be and if the agent is to collect it. Any deposit taken for an assured shorthold tenancy (AST) must be protected in one of the three Government-approved tenancy deposit protection (TDP) schemes. In addition, tenants must have received the prescribed information, including the relevant scheme's terms and conditions. which shows that the deposit is protected by that scheme.

Once the tenancy has started, the letting agent's job is done and the landlord then undertakes the ongoing management of the property.

b) Letting and Rent Collection

This is where the agent finds a tenant (as in a) above) but also collects the rent on behalf of the landlord during the tenancy. Other management functions such as repairs (and arranging to get possession of the property at the end of a tenancy if needed) are dealt with by the landlord.

The agent is likely to charge a one-off letting fee and then a monthly fee (often a percentage of the rent - perhaps 5%) for collecting the rent. With this type of arrangement, it is important to avoid confusion and to make sure that the tenant is absolutely clear about who is responsible for which areas of management.

c) Full Management

This is where the agent acts as a full letting and managing agent. The agent deals with all management issues: letting and starting the tenancy, rent collection and repairs.

The managing agent will also take some steps towards ending the tenancy, for example, they may serve notice but not take court action. This service is obviously more expensive than the previous options (perhaps costing between 10-15% of the rent), but it is probably worthwhile if the property owner either does not have the time to manage the property or lacks the expertise. It is important that the owner agrees with the agent what type and cost of repairs they are authorised to carry out without seeking further authorisation, and what the division of repair responsibilities will be between the owner and the manager: making it clear who is supposed to do what.

The agent will usually agree to use the rent they collect to pay for repairs, but if repair costs exceed income, then the agent is not a bank and the owner will have to pay any shortfall at that time.

1.3.3 The Relationship Between The Landlord And Agent

The term 'agency' is used in law to describe the relationship between the principal (in housing this is the landlord) and the agent. The principal agrees that the agent should act on their behalf in legal relations with third parties (in housing this is the tenant and any other party that the agent needs to deal with in managing a property, for example workers undertaking repairs). The agent also agrees to act on the landlord's behalf. The agreement of the agent and principal may be set out explicitly in a document, or may be inferred from the way they do business together.

1.3.4 Guaranteed Rent 'Agents'

In recent years there has been an increase in the availability of companies offering a guaranteed rent to landlords, irrespective of whether the property is rented out or not. In many cases these are not normal landlord-agent relationships. The landlord assigns (transfers) the property and all the rights over the property, subject to the terms of the contract, to a company or individual who pays an agreed fee for the duration of the agreement. Any tenant renting the property is the tenant of the company and not of the 'landlord' who becomes the superior leaseholder. There is normally no legal relationship between the original landlord and any tenant. Because of the variety of schemes it is very important that landlords carefully read the contract with the 'agent' - expert advice may be needed. In this section we have used the word 'agent' in inverted commas as in law the 'agent' is not actually an agent, as they are working for their own benefit and not the benefit of the landlord.

1.3.5 The Liability Of The Landlord Where An Agent Is Used

Where an agent is used, actions carried out by the agent on the landlord's behalf are generally treated in law as if they had been done by the landlord. Landlords are bound by any agreement or contract made by their agent on their behalf with a third party (i.e. a tenant), providing the agent is acting within the authority they have been given.

If the agent agrees to something which the landlord has not authorised, the agent will be liable to the landlord and tenant for any losses. The landlord may not be bound by the agent's action, and the tenant might therefore seek compensation from the agent.

If the agent is acting as managing agent for the property and fails to carry out a statutory duty, such as ensuring that an annual gas safety inspection is carried out, the landlord may be held liable for the failure as well. Such responsibilities should be clearly defined in the Terms of Business between landlord and agent.

A landlord will also be ultimately liable to the tenant for the return of the deposit, whether it is a deposit taken before 6 April 2007 or where the deposit is protected using an insurance-based scheme.

In view of this, landlords should be very careful when choosing an agent, making sure they choose one who will carry out their responsibilities properly. The landlord should also be very clear when giving agents any special instructions (such as 'no pets') to ensure that these are put in writing. Landlords should consider whether an agent's standard Terms of Business protect their interests as well as the agent's and should take care to consider any clauses that exclude or limit an agent's liability for negligence.

1.3.6 The Liability Of The Agent In Agency Agreements

If the agent has acted properly and in accordance with the agreement with the landlord, an agent will not be liable for a contract entered into on behalf of his landlord.

If the agent has acted contrary to instructions (for example allowing pets where the landlord specifically said 'no pets') it is likely that the agent will be liable to the landlord and/or the tenant for any losses which may flow from this. Liability may depend, amongst other things, on the precise instructions from the landlord and subsequent correspondence or conversations. The agent is presumed to be authorised to do things that agents ordinarily do, unless the landlord instructs the agent otherwise.

Agents and Possession Notices

Agents can validly serve possession and other notices on behalf of their landlords. [See Chapter 5 for more detail on possession notices.] Also a notice of intention to seek possession served on a tenant by a landlord's agent will normally be considered validly served if service to the agent is stipulated in the tenancy agreement.

Agents and Court Claims

Although agents can deal with the notice element of recovering possession, agents are not legally entitled to initiate legal proceedings on behalf of landlords [see Chapter 5]. Only claimants or their solicitors are able to sign the statement of truth on the court forms. The fact that a claim form for possession is signed by a letting agent is a common reason for the rejection of possession claims by the County Court.

Frequently, agents will offer landlords the opportunity to take out legal expenses insurance. If a decision is made not to buy this or this option is not offered, then it is generally best for the landlord themselves to deal with any court proceedings which may arise, instructing solicitors directly, if needed. Although the agent may assist by recommending and liaising with suitable solicitors, and even if much of the work related to any claim is delegated to the agent to deal with, it is prudent, as the landlord, to keep involved and remain aware of what is happening.

1.3.7 Defining Responsibilities In The Contract

When a landlord enters into an agreement with an agent, a written contract should be drawn up indicating what level of service the agent is offering, and the agent's agreed fees. It is important to read the whole contract and discuss any points that are unclear or where there is disagreement before signing, so it can either be varied or an alternative agent sought. The contract should also state how it can be terminated and for what reasons, including what happens if the landlords wants to take over the management of the property themselves.

As in many businesses, a small proportion of agents can go out of business owing both the landlord and tenant money. As the agent may be acting in the landlord's name, it is important to know that the agent is reliable and experienced. Investigate the agent: it is worth trying to get a personal recommendation (the local landlord association may be helpful

here). Check how long the agent has been in business, how many premises they manage, what training their staff have received, and whether they are a member of a professional or trade organisation such as:

- Private Rented Sector Professionals (PRSP)
- The Association of Residential Letting Agents (ARLA)
- UK Association of Letting Agents (UKALA)
- The National Association of Estate Agents (NAEA)
- Royal Institute of Chartered Surveyors (RICS)
- National Approved Lettings Scheme (NALS).

For student lets, the local college, university or their students' union may also run a lettings or management service.

Some associations require funds belonging to the landlord and tenant to be protected in the event that the agent's business fails. Check the associations' requirements when considering which agent to use. It is expected that during 2019 Client Money Protection will become mandatory for all agents.

Fees and costs for services will vary and the cheapest is not always best if the agent is not an expert in good management practice and housing law. If the agent does not do the job well, this will reflect on the landlord, and it can have potentially serious implications.

It is also important to choose an agent who is familiar with the type of property (and that section of the market) that is being let or managed, so take a look at the other properties the agent has on their books. A friend could be pressed into service to contact them and make enquiries about renting a property from them to see how the agent treats a potential tenant.

1.3.8 Redress Schemes

All letting and managing agents in England must be a member of a redress scheme. There are currently 3 schemes available for agents to join:

- Property Redress Scheme - http://www.theprs.co.uk/
- The Property Ombudsman - http://www.tpos.co.uk/index.htm
- Ombudsman Services – Property - http://www.ombudsman-services.org/property.html

The schemes offer a complaints procedure for both landlord clients and tenants about the behaviour of their member agent. The schemes have powers to order the agent to rectify any wrongdoing, pay compensation or make apologies (among other powers).

A failure to join a scheme is an offence and liable to a fine of up to £5,000.

1.3.9 Agent Fees

All letting and managing agents must display their fees at each of the agent's premises where the agent deals face-to-face with landlords or tenants. The list must be in a position where the it's likely to be seen.

The list of fees must also be displayed on any website if the agent has one.

The list must describe each fee so that the service and cost can be easily understood and must include *all the fees, charges or penalties (however expressed) payable to the agent by a landlord or tenant*.

Where the agent holds money on behalf of clients such as a managing agent who collects rent on behalf of landlords, the list of fees must also include a statement as to whether the agent is a member of a client money protection scheme.

If the agent is *required* to be a member of a redress scheme (currently England only), the list of fees must also indicate that the agent is a member of such a scheme and the name of the scheme.

1.4 Permissions To Let Property

Any property owner who has a mortgage or is not a freeholder may need to secure the necessary permissions before they let the property.

If the owner is a leaseholder then the lease may contain a clause which states either that sub-letting is not permitted or that the freeholder's permission must be obtained prior to sub-letting. It is very important that this permission is obtained, because if the property is let to tenants without it (even if permission is sought later) then the conditions of the lease will already have been breached and the freeholder can take legal proceedings against the leaseholder.

The freeholder's permission will generally be a formality and this permission cannot be unreasonably withheld, but the freeholder may make a number of enquiries, for instance, if there have been complaints about noise from former tenants this might be discussed and the leaseholder might be required to satisfy the freeholder that they have addressed this issue this time around. It is usual for the freeholder to make a small charge for granting their permission. If the freeholder does refuse permission then read the lease carefully to find out what the lease says about granting permission and then seek the freeholder's reasons for their refusal. It may be possible to address and satisfy any misgivings before there is a need to take further advice or make the threat of legal proceedings.

If there is a mortgage on the property, one of the terms of that agreement may be that the owner obtain the lender's permission before the property is let, even if only one room is being let This is because the mortgage lender will be concerned to make sure that nothing is done that may affect the value of the investment and the lender's ability to recover the loan that was made when the property was purchased.

It is important to check the terms of any mortgage. For many buy-to-let mortgages permission to rent the property may be automatic, but even in buy-to-let mortgages there may be conditions on the type of let permissible e.g. 'assured shorthold tenancies only' (see chapter 3 for the types of tenancy) or a restriction on welfare benefit tenants. If, as an owner, these requirements are not fully understood then seek advice from a solicitor - the one who assisted with the

purchase should be able to help. If it is proposed to let the property as 'rooms' or bedsits which will create a House in Multiple Occupation (HMO) (see chapter 2) this must be made clear as special permission may need to be sought for this and conditions may be imposed that will need to be met.

If the property was purchased for an owner-occupier on a standard mortgage for home owners, then permission will need to be obtained to let the property to tenants. The lender may increase the cost of the mortgage or change its terms if permission to let the property to tenants is given. Usually a lender will not object to one room in an owner-occupier's home being let to a lodger.

1.5 Energy Performance Certificates

Landlords are required to make available to prospective tenants an Energy Performance Certificate (EPC) when a property is being let. The purpose of the EPC is to show prospective tenants the energy performance of the dwelling they are considering renting.

The certificates show the energy efficiency rating and compares the home's energy performance related features with the average ratings and draw specific attention to the 'Green Deal' (see later).

An energy performance certificate and accompanying recommendation report lasts for 10 years, unless another EPC has been produced within that time, in which case only the latest one is valid.

A landlord must use all reasonable efforts to ensure that an energy performance certificate is obtained within 7 days of marketing. If it was simply not possible to obtain the EPC within 7 days then, a further 21 days is allowed but this further 21 days is only allowed if all reasonable efforts were made to obtain the EPC in the first 7 days.

The energy performance indicator as shown in the energy performance certificate must be displayed in any advertisement such as on the internet, in newspapers, magazines, written particulars or any other advertisement. As a minimum, the advertisement should include the numerical score and letter representing the energy usage as shown on the EPC.

The EPC must be available to prospective tenants, free of charge, before they are given written details, arrange a viewing or agree a letting. The EPC does not have to be given at this stage, just available if they ask. A copy of the EPC is acceptable.

The actual tenant who takes the property must have been given a full copy of the EPC including the assessor's recommendation report.

It is a requirement to provide an EPC when the property is to be let as a separate (or self-contained) dwelling. This also applies if a whole house or flat is being let to a group of sharers on only one contract. It is not a requirement to provide an EPC if only a single room in a house is being let or if a house is let room by room on separate contracts.

Breaking the EPC rules can result in a £200 fixed penalty notice from Trading Standards.

EPC's are completed by registered Domestic Energy Assessors (DEAs). An assessor can be found at https://www.epcregister.com/ or seek recommendations from friends and contacts.

The following guides are available on the CLG website:

- Energy performance certificates for dwellings in the social and private rented sectors: A guide for landlords: http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/documents/planningandbuilding/pdf/957171.pdf
- Energy Performance Certificates (EPCs) and renting homes: A tenant's guide: http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/publications/planningandbuilding/epcsrentingtenants

Although the EPC may suggest a number of improvements that could be made there is no legal obligation to undertake any of these works but it is advisable to discuss with prospective tenants which (if any) of the energy-saving recommendations might be carried out or might already have been carried out. By being transparent about this and managing the tenant's expectation a potential complaint may be avoided.

1.5.1 Section 21 Notices

A section 21 notice is the 2 months "no fault" notice that a landlord can serve where there is an assured shorthold tenancy. The notice is discussed in detail in chapter 5.

For assured shorthold tenancies granted on or after 1 October 2015 (including renewals) no section 21 notice may be served unless the tenant has been first provided with an EPC, where an EPC is legally required.

1.6 Energy Efficiency Improvements

1.6.1 Tenant's Energy Efficiency Improvements

A tenant is allowed to reasonably ask for a relevant energy efficiency improvement. A relevant improvement will only be reasonable if it-

- can be wholly financed, at no cost to the landlord, by means of funding provided by central government, a local authority or any other person,
- can be wholly funded by the tenant, or
- can be financed by a combination of those two arrangements

A request must be in writing and may be given by post.

When a landlord receives a request, a landlord will only be able to refuse consent on limited grounds. But, because a request is only "relevant" if it is of no cost to the landlord this shouldn't be too much of an issue. A landlord may fund improvements if they prefer.

A landlord needs to provide an "initial response" within one month of service of the tenant's request and there are provisions available where consent is required from a superior landlord. It is possible for a landlord to also serve a "counter proposal" which specifies an alternative (or multiple alternatives).

There will be a few exemptions from having to carry out improvements such as if the works would reduce the market value of the property by more than 5% or consent from a third party has been refused.

An application to the First-tier Tribunal can be made to determine any disputes that may arise.

1.6.2 Minimum Level Of Energy Efficiency

From 1 April 2018, all rented property let on assured shorthold tenancies, regulated tenancies under the Rent Act 1977 and four types of agricultural tenancy, which is to have a new tenancy must have an EPC rating of at least "E".

This requirement also applies to all renewal tenancies to the same tenant for the same property on or after 1 April 2018. The duty is also triggered by "an extension".

From 1 April 2020, all domestic property (including existing tenancies) of the types listed above, must have the minimum E rating. Non-domestic properties have until 1 April 2023 (including existing tenancies) to ensure they meet the E rating.

There are a number of exemptions for the minimum standard where-

- the property is unable to be brought up to the standard
- the tenant refuses consent
- the landlord is unable to obtain consent from a third party
- works required to bring the property up to the "E" level would devalue the property by more than 5% of market value

Where a domestic property has been let which does not meet the minimum standard, the tenancy remains valid between the landlord and tenant but a fine will be payable by the landlord of up to £5,000. Fines can be much greater for non-domestic properties depending on their size.

The Department for Business, Energy & Industrial Strategy has published useful guidance about the minimum energy requirements available at: https://www.gov.uk/government/publications/the-private-rented-property-minimum-standard-landlord-guidance-documents

The Exemptions Register can be found here: https://prsregister.beis.gov.uk/NdsBeisUi/used-service-before

1.6.3 Green Deal

The Green Deal allows for energy efficiency improvements to be made and the cost of those improvements are offset by savings made by the energy improvements.

The Green Deal has a "golden rule" which says that any cost of improvement must not exceed the savings being made by the improvements. This effectively means the improvements are free of charge and once paid for, the savings would begin. There are other factors to be considered under the golden rule such as the expected life of any energy efficiency improvement made.

For more information and to find a Green Deal provider, please see here: https://www.gov.uk/green-deal-energy-saving-measures

1.6.4 Energy Improvement Grants

A number of grants may be available for making energy improvements to a residential home.

The Affordable Warmth Obligation is probably the most familiar and is universally available. It is available on rented property as well as owner occupied and may cover all or part of the cost of insulation or replacing a boiler. In order to be able to obtain the work, the occupier must be on one of the following benefits:

- Pension Credit
- Child Tax Credit
- Working Tax Credit
- Income Support
- income-based Jobseeker's Allowance
- income-related Employment and Support Allowance
- Universal Credit

There are a number of extra conditions including certain limits on the amount of income received and other benefits are paid in certain circumstances.

More information and how to apply is available at https://www.gov.uk/energy-company-obligation.

From time to time, Government, private organisations or local authorities provide other grants or incentives. You can find eligibility by using the service on GOV.UK here: https://www.gov.uk/energy-grants-calculator.

1.7 Insurance

Buildings insurance covers the risk of damage to the structure and permanent fixtures and fittings of a building, for example, as a result of fire. If the property is leasehold, then the freeholder will normally arrange the buildings insurance and re-charge the cost to lessees.

Tenants are usually responsible for providing their own contents insurance to cover their personal belongings. This is a matter for the tenants. It is not possible to require them to do this. The landlord should take out contents insurance to cover loss or damage to household goods that have been supplied by them, e.g. white and grey goods, carpets, curtains and, in the case of furnished lets, other furniture and fittings.

Insurance for rented property is usually more expensive than for owner-occupied accommodation and insurance aimed at owner-occupiers will not necessarily be suitable for rented property. The Association of British Insurers produces guidance for owners which explains how insurers assess risks and what can be done to secure cover. If the insurance company is not informed that a property is occupied by tenants (instead of being owner-occupied) this is likely to invalidate the insurance, and any claim made will either be refused or any pay out will be reduced. Remember, that insurance cover, like the mortgage, may come with conditions attached governing the type of tenant that the property is let to.

There are special policies for landlords that provide cover for additional risks such as the loss of rental income and the cost of temporary accommodation where a property has been made uninhabitable as a result of one of the insurable risks. Insurance can also provide additional cover for the landlord in case the tenant is injured as a result of an accident in the property together with other elements not necessarily covered by normal householder insurance.

The insurance market is extremely competitive and it is worth shopping around to find the best value for money. Landlord organisations often offer lower-cost insurance to members.

The tenancy agreement should take account of any implications of the type of insurance cover there is: for example, if the insurance places an upper limit on the cost of temporary accommodation it may be worth, within the tenancy, limiting liability to the insured amount.

1.8 Tax

Tax is an aspect of residential property investment which is often overlooked. There are many twists and turns to consider at all levels, whether it be for income tax, capital gains tax or inheritance tax, and it is important to get the structure of ownership right and to make sure that all tax relief, allowances and claims are made.

This section summarises some of the main aspects of the principal areas of property tax. There are many detailed aspects to consider at each stage, and it is very important to obtain good professional advice if there are any doubts as to the applicability of any rule. Tax decisions can be influenced by what other income and assets the tax payer has and will not necessarily be the same for every property investor.

All areas of tax require the practice of good record-keeping (this is equally applicable when a property is sold). It is essential that full and accurate records are kept of all income and expenditure, perhaps maintaining a separate bank account for these, so that all of the information is readily available to allow the tax payer to claim the maximum deductions and pay the minimum amount of tax. Failure to keep adequate records can result in penalties.

1.8.1 Income Tax

If the landlord is a new property investor HM Revenue & Customs (HMRC) should be notified immediately of the new source of income which the landlord is now receiving. The tax is computed through an annual tax return sent to HMRC.

Income tax is payable on profits made from the property-renting business by computing the total of rents receivable less expenses. Tenants' deposits do not count as income. Typical expenses which can be deducted include:

- repairs and maintenance (though not initial expenditure needed to bring the property up to a letting standard, or improvements)
- gardening
- cleaning
- ground rents
- service charges
- contents and building insurance
- managing agent's fees
- legal fees for tenancy agreements
- advertising
- HMO licence costs
- water rates
- Council Tax
- heating
- lighting
- security
- accountancy fees
- subscription to a landlord association;
- certain motor and travelling expenses

This list is not exhaustive and can vary in individual circumstances.

Mortgage interest is no longer allowable as a deductible expense, meaning the landlord got the benefit at the highest rate of tax they paid. The new scheme, in transition between 2017 and 2020, will add the rent net of allowable expenses to the other income of the landlord and then it will be taxed. There will then be a 20% allowance for mortgage interest. This has two effects. Firstly, landlords who pay tax at higher rates will only get tax deduction at the basic rate. Secondly some

people who were not higher rate tax payers may find they now do pay tax at the higher rate as the rent (before deduction of mortgage interest) will be added to their other income. Landlords should seek specialist advice on tax to ensure the right amount is paid.

On the question of repairs and maintenance, it is important to distinguish between items of repair and items of improvement. Redecorating rooms, changing windows from single to double-glazing, or replacing a defective roof are examples of repairs which will be allowable. The addition of another floor to the building, or a new conservatory would not qualify and tax relief would only be received on the eventual sale of the property, being set against the eventual capital gain.

1.8.2 Structure

Where properties are owned in joint names, then the profits can be shared between the joint owners or, in certain circumstances, can be wholly attributable to one or other of the joint owners.

Where a husband and wife own a property jointly, the income is automatically assessed equally, even if the actual ownership proportion is not equal, unless they elect otherwise.

For Capital Gains Tax purposes, the proportionate ownership is important, and any capital gain would be shared between the joint owners in their respective proportions giving rise to multiple tax-free allowances.

In certain circumstances, it may be worthwhile for a limited company to be brought into the structure. It is normally sensible for the properties themselves to be held in individual or joint names, but these can be sub-let to a company which then lets the properties to tenants. Professional advice should be sought to look at the best structure for any given landlord to use to own investment properties.

1.8.3 Capital Gains Tax

Capital Gains Tax (CGT) is a tax on the gain or profit made when shares or property are sold, given away or otherwise disposed of. There is a tax-free allowance and some additional reliefs that can reduce a Capital Gains Tax bill.

Capital Gains Tax is one of the most important taxes to consider as property prices will usually rise over the long term. As the amounts at stake are potentially significant, it is important to make sure that all of the available tax relief and allowances are taken advantage of. Many of these offer scope for substantial reductions in the ultimate amount of tax to be paid.

The basic concept is quite simple: the final price received for the property when it is sold (after deducting legal costs and agent's fees) is compared with what the property cost initially (including any legal fees and Stamp Duty), and the profit or 'gain' is calculated on which tax is levied. There are then potential deductions and tax relief available, the most important of which are as follows:

- the cost of any improvements to the property whilst under ownership can be deducted (but not the cost of repairs which has previously been set off against Income Tax)
- if the property has been occupied by the owner as an owner-occupier at any time, then there are two additional very valuable reliefs: * lettings relief whereby up to a certain amount of any gain per owner can be tax free * a proportionate principal private residence relief
- if the property was owned at March 1982 its value at that date is substituted for the original cost of the property in calculating the ultimate gain
- set value of any capital gains in a single tax year is tax-free per individual (not per property), tax only being charged on any gain above that value
- if there are two properties which have been used as a residence (e.g. one in London and one in the country), it is worthwhile making a principal private residence election on one of those properties to maximise capital gains relief. This will also reduce the potential CGT payable if one of the properties is let at any time in its ownership.

1.8.4 Inheritance Tax

Where a property is owned at the date of death, the value of that property forms part of the estate and is potentially liable to Inheritance Tax (IHT). If the property is left to a spouse in a will, then no IHT will be payable until the death of the spouse.

There are ways of reducing the Inheritance Tax liability. A tax-efficient will should be drawn up to ensure maximum use of IHT allowances. Wills and trusts are specialist areas where it is important to obtain professional advice. Advice will vary depending on the individual's circumstances.

1.8.5 Stamp Duty

Stamp Duty Land Tax (SDLT) is payable by the purchaser within 30 days of the purchase, so this should be taken into account when budgeting for a purchase. No Stamp Duty is payable below the prevailing threshold, but above the nil-rate threshold the applicable rate of SDLT will depend upon the price paid. There are reliefs available in 'disadvantaged areas' - but these only apply to the lower-value properties in those areas. The list of disadvantaged areas is much longer than one would imagine, so it is always worth checking to see whether relief is available. Go to www.hmrc.gov.uk and search on 'Postcode Search Tool' to see if a property could qualify. The value of any fixtures, fittings or furniture included in the purchase can be excluded from the purchase price in calculating the Stamp Duty payable, though the Stamp Duty Office will look at any obvious overloading.

Stamp duty for seconds homes attracts an additional premium of 3% over and above the normal rate. This means most landlords will have to pay this premium, as will home owners buying a second home.

At the time of writing, SDLT is being reviewed and a tax specialist should be consulted.

1.8.6 Value Added Tax

Under normal circumstances, landlords cannot register for Value Added Tax (VAT) in relation to their residential properties, as residential rental income is exempt from VAT. This means that any VAT incurred cannot be reclaimed. However, landlords who are VAT-registered in their own self-employed businesses may be able to claim some VAT incurred.

A special VAT rate of 5% is available on the renovation or alteration of a single household dwelling that has not been lived in for three years or more, so that this is a useful saving over the normal 20% rate.

More information on tax can be obtained from a local tax office or visit HM Revenue & Customs website at www.hmrc.gov.uk. Copies of leaflets on taxation of rents and other tax matters can be downloaded from HMRC's website, or can be requested by phoning the Order Line on 08459 000 404.

1.9 Council Tax

In self-contained flats or houses, the tenant is normally liable for Council Tax. Landlords should inform the Council Tax section of the local authority in writing whenever someone moves in or out of their property, or if it is empty.

If the property is empty, the landlord will normally be liable for Council Tax, but local authorities can offer discounted periods where the property is unoccupied and unfurnished. These discounts (if any) vary between local authorities. For example, some offer one week at 100% discount followed by six months at 40% before the full amount becomes payable. Others offer longer 100% discount periods such as one or three months but on the other hand, some don't offer any period of discount whatsoever.

Where a property is unoccupied but a tenancy is still ongoing for example as a result of abandonment or, during the period whilst a tenant moves to a new property after giving notice, whether the landlord or tenant remains liable depends on the status of the tenancy whilst the property was unoccupied. Advice should be sought but as a minimum, there must be a tenancy in place which was granted for at least six months and (where the tenancy is beyond the fixed term) has *continued* as a *contractual periodic tenancy* for the tenant to be liable in these circumstances.

1.9.1 Students

Where a property is fully occupied by students undertaking full-time education courses, the property becomes exempt from Council Tax, but students have to apply for exemption. Their education institution will be able, on request from the student/s, to provide them with a notice that they are a full-time student and liable for exemption. If their tenancy agreement extends over the summer vacation, the exemption usually covers that period.

Students should be asked to provide proof of study to the landlord, where the landlord is liable for Council Tax. The landlord can then apply to the council for their exemption.

1.9.2 Council Tax HMO

If there is more than one tenancy agreement for the property (e.g. if it is divided into bedsits), the property will be known as a HMO but this should not be confused with the HMO rules landlords are more commonly familiar with (for which see later). Council Tax has separate and entirely different definitions for what is a HMO for Council Tax purposes.

Where the property is regarded as a HMO (for Council Tax purposes) the rules are more complex and will vary depending upon the policy of the council in that area and the layout of the property. Traditionally in a bedsit type property the landlord was responsible for payment of Council Tax and collected this through the rent charged to tenants. Valuation Tribunal rulings have stated that the liability for Council Tax depends upon the location and number of kitchens and not whether it is self-contained. A bedsit with its own kitchen, but sharing a bathroom and WC, may still be rated as an individual unit for Council Tax purposes making the tenant liable for the Council Tax. Whereas a bedsit with an ensuite bathroom, but sharing a kitchen, the liability would lie with the landlord. A bedsit type house with two shared kitchens may be rated for Council Tax purposes as two separate units, three kitchens - three units etc. Some councils still take the traditional view, but more areas are issuing Council Tax demands based on the availability of kitchens and it is important to seek advice from the local Council Tax team.

A property can also be regarded as a HMO for Council Tax purposes even if only 'part of the building' is let. For example if a conservatory or loft is excluded from the tenancy. It is also possible for a property to be regarded as a HMO *where the dwelling was originally constructed or subsequently adapted for occupation by persons who do not constitute a single household.* Therefore, it is even possible that adaptations alone define the property as a HMO for Council Tax. Whether these situations would be defined as a HMO will depend on the individual circumstances.

Where the property is a regarded as a HMO (for Council Tax purposes) the landlord will always be liable to pay the Council Tax.

1.9.3 Single Person Discount

A tenant over 18, living alone in a property will qualify for a 25% discount from their Council Tax bill.

1.9.4 Long Term Empty Property

Local authorities may set a Council Tax rate for long-term empty properties of up to 150% of the normal liability. A 'long-term empty property' is a property which has been unoccupied and substantially unfurnished for at least two years. This is often called the 'empty homes premium'.

The empty homes premium cannot apply to homes that are empty due to the occupant living in armed forces accommodation for job-related purposes (Class E); or to annexes being used as part of a main property (Class F).

1.10 Record keeping

It is essential that landlords have a good system of record keeping.

A file should be kept for a property and then each time a new tenancy is given to a new tenant, a new file should be placed into the property file. The same structure could be kept for computer storage.

Under the General Data Protection Regulations, landlords will, in almost every occasion, be required to register with the Information Commissioner's Office (ICO). Registration is required if personal information is *processed* on an electronic device which includes mobile phones, tablets and computers. Processing includes: storing, using and deleting information.. Registration is straightforward and inexpensive.

To complete registration, visit the ICO website where there is a quick and simple *self-assessment* tool which establishes in a few easy steps if a fee is payable - https://ico.org.uk/for-organisations/data-protection-fee/self-assessment/

The General Data Protection Regulations significantly alter the way data controllers must operate. Firstly, if processing is based on consent, consent to process data must be "opt in", not "opt out". This means they have to undertake some specific action to choose to allow their data to be processed. Secondly, consent is not the only lawful basis upon which data can be processed. There are four relevant lawful basis that are likely to affect lettings: consent, fulfilment of a contract, compliance with the law and legitimate interests of the data controller. The new rules give more rights to the individual about whom you have data, including the right to be informed what you will do with data, the right to access their information (no fee can now be charged), the right to have errors corrected, the right to have their data erased (in some circumstances) and the right to restrict the reasons their data can be processed. The first step in compliance is to understand what data you hold and on what basis you process it. Arranging a plumber for a repair may fall under the lawful basis of processing of contract fulfilment, and may not therefore need the consent of the tenant. However, if you want to send a surveyor in to value the property, this is not likely to be "contractual" and so giving out the tenant's information would have to be based on another basis of processing, perhaps either legitimate interest of the landlord or consent. Note that if the data controller provides the data to a third party then a record must be made of this so that if the data is later updated you know to whom the data was given and pass on the correct updated data. You should also make sure any third party will be handling the data in accordance with GDPR and what they are and are not allowed to do with the data, this is referred to as a data processing agreement.

Nowadays many people store copies of tenancy agreements on their computer or in the 'cloud'. Ensure any format they are being stored in will still exist in many years time (think 20 years plus). Although average lets are around 18 months, it is not too unusual to see a tenant stay in a property for 10 - 20 years. If you needed the tenancy agreement for possession in 15 years time, could you still open it? Is the cloud provider you were using still going to be in business then? It is always best to have a paper copy of important things such as tenancy agreements.

Although there are no guarantees, suitable formats that should survive include PDF or JPEG (or JPG).

A good rent accounting system should be used. There is nothing wrong with a simple spreadsheet such as Excel or Google Docs Spreadsheet.

There are other specialist software also available, but again ensure there is longevity.

1.11 Sources Of Advice

If a letting or managing agent is being used, they should be able to provide some free basic advice about housing law as part of their services.

The local authority or local Citizens Advice Bureau can also provide simple information on housing law.

Some excellent leaflets are available from the GOV.UK website https://www.gov.uk/government/topics/housing.

Landlord associations usually offer members free basic legal advice. If more detailed legal advice, representation or advocacy is needed then it may be necessary to consult a solicitor. Make sure the solicitor used is experienced in landlord and tenant law. It is best to go by personal recommendation. The local landlord association will be able to suggest suitable firms. Firms specialising in work for landlords often advertise on landlord-related websites on the internet. Remember to keep receipts for any legal costs incurred because it may be possible to obtain tax relief against these payments.

Be careful when reading blogs: there is a lot of urban myth out there and other landlords are not always a reliable source of information.

1.11.1 Useful Contacts

Many of the most useful contacts are on the internet. For those without access to the internet, most libraries offer free internet access. Alternatively, the library can provide telephone contact numbers for different services within a local area.

1.12 Membership Of A Landlord Association

There are a number of landlord associations and it is worth considering paying to join and become a member. Membership normally includes:

- a regular newsletter giving advice
- updates on housing law or policy as they change
- the chance to make representations on proposed changes to regulations, the law or tax
- discounts for services such as insurance
- individual advice if there is a problem.

Landlord associations normally hold periodic meetings where there is an opportunity to meet other landlords and discuss issues and problems. Through the network of other members ideas and procedures can be obtained to resolve problems on how to manage more successfully.

A landlords association that operates nationally is the Guild of Residential Landlords - http://www.landlordsguild.com

1.13 Advertising A Property For Rent

When advertising a property, the Energy Performance indicator of the EPC must be displayed. In addition, any fees charged for the letting must be clearly displayed. These might include administration, referencing, tenancy production and renewal fees.

An advert must not mislead a prospective tenant and must not omit any information that would lead to the prospective tenant making a different decision (such as omitting from the advert that the property is within 100 yards from an electricity power plant).

According to the Competition and Markets Authority (CMA) guidance for Lettings Professionals, adverts and property particulars must include all 'material information'. In general the CMA consider that material information is likely to include:

- charges and costs associated with renting the property
- property characteristics such as the location, number and size of rooms, the type of energy supply and heating, sufficient information about Council Tax, for example, the amount payable or band
- the condition of the property, including any significant features that are likely to put a person off entering into a tenancy (such as defects, serious damp or potentially unsafe gas or electrical wiring)
- when the property will be available
- the terms of the tenancy agreement, and in particular any restrictions on the use of the property (such as whether smoking or pets are permitted), or any other unusual or onerous terms
- any requirement to use a particular third party trader (such as an energy or communications supplier)
- any restrictions on the type of tenant (such as housing benefit claimants), or circumstances in which a guarantor may be required (for example if required for student tenants, or tenants earning below a certain income level).

In respect of fees in adverts, the CMA guidance provides:

- information about charges provided in advertising and other promotional material should be full, accurate, clear, and not misleading
- rent and other charges should be presented inclusive of VAT, including where the charge is a percentage of something else
- fees should be accurately described, and clear information should be given about the nature and extent of the service being provided in return

Details of fees that should be included in marketing materials, advertising and property particulars include:

- fees that the tenant has to pay for his application to be processed, such as the cost of any reference and/or credit checks
- fees for the initial setting up of the tenancy, including inventory costs or other administration fees
- fees which must be paid in certain circumstances, such as charges for additional tenants, the use of a guarantor, or pets
- any ongoing or future fees or charges likely to be incurred by the tenant, for example, costs to extend, renew or terminate the tenancy and inventory check out fees.

The guidance is quite extensive and can be viewed in full here: https://www.gov.uk/government/publications/consumer-protection-law-for-lettings-professionals.

The best place to advertise nowadays is on the internet. There are a number of companies that will even enable a private landlord to advertise on large sites such as Rightmove or Zoopla. These companies become a letting agent and will pass details of any prospective tenants to the landlord so the landlord can conduct viewings themselves.

The most important thing about internet advertising is having good photographs. A landlord with a small number of properties would be advised to consider having professional photographs produced. A landlord with multiple properties might consider a professional digital camera (with the quality of a Digital Single Lens Reflex) with a quality lens making photographing in tight rooms produce a wider image. Tenants are less likely to respond to an advert on the internet that does not contain good pictures.

Check out other adverts for wording suggestions. Some companies will say that you need lots of words when advertising on the internet but this is not necessarily true. The most important factors to gain a good response are having good photographs and advertising the property at a fair and reasonable rent.

When wording, focus on selling points such as:

- energy efficiency including gas central heating, double glazing and LED lighting
- locality features such as schools and shops
- parking
- quality or modern features such as real wood flooring
- has the property been recently refurbished, modernised or decorated (but do not use terms such as "recently decorated" if it was decorated several months ago).

1.14 Conducting Viewings

When arranging viewings, you can either arrange a mutual time with individual prospective tenants as they make an enquiry or conduct block viewings at set times (for example 5.30pm Monday, Wednesday and Friday).

If the property is already occupied, the existing occupier will require at least 24 hours notice (or whatever has been agreed in the tenancy agreement). If the occupier refuses entry after giving the notice, the landlord will not be able to enter without obtaining agreement or a court order. A refusal would however be a breach of the tenancy in most cases and the occupier may be liable to pay the landlord compensation.

More than one person should conduct the viewings together where that is possible.

The Energy Performance Certificate must be available at the viewing (if it has not been given sooner).

If the landlord has a procedure to follow and guidelines for granting a tenancy, a sheet could be given at the time of viewing explaining those procedures and guidelines. In addition, marketing material such as property particulars should be given at the viewing to ensure all ‘material information’ (such as administration fees etc.) have been provided to the prospective tenant.

2 - The Responsibilities And Liabilities Of The Landlord / Letting Agent

In this chapter we look at general responsibilities and liabilities of landlords including-

- repairing obligations
- implied and terms in tenancy agreements
- housing health and safety rating system
- gas safety
- electrical safety
- houses in multiple occupation
- planning permission

2.1 Landlords' Responsibilities For Repair And Maintenance

In addition to any repair responsibilities explicitly set out in the tenancy agreement, common law and statute will imply terms to the agreement between landlord and tenant. These terms form part of the contract, even though they have not been specifically agreed between the two parties.

Specific obligations to repair are set out in detail in the sections below. As a general rule the building itself and the immediate surroundings should be able to withstand normal weather conditions, and normal use by tenants and their visitors.

The property should be in a reasonable state of repair both internally and externally and fit for human habitation at the start of the tenancy. There should be no dampness, either in the form of rising or penetrating damp, from the outside. Condensation may be as a result of the tenant's behaviour but it may also have implications for the landlord if the ventilation is inadequate or some structural problem is causing it. An investigation of the cause will be needed to be able to decide responsibility.

Statutory and common law requires that there should be no unacceptable level of risk to the health or safety of the occupiers or their visitors.

Remember that if the tenant or visitors have an accident or suffer injury due to the poor condition of the property (for example a fall caused by a broken handrail or respiratory diseases caused by damp conditions), the landlord may be liable to them for damages for personal injury.

2.2 Implied Terms In Tenancy Agreements

Implied terms are those that are considered to be part of a legal lease, tenancy agreement and/or licence even though they are not actually written down in that document. Implied terms can arise from common law and/or statute.

Note: any attempts to evade statutory or common law rights and responsibilities by way of any standard term in the tenancy agreement, may result in the relevant term being found void under the Unfair Terms part of the Consumer Rights Act 2015. Examples might include a clause requiring rent to be paid without set-off (as this would be an attempt to exclude the tenant's common law right to set off against the rent any debt owed to the tenant by the landlord) or a clause term requiring the tenant to be responsible for repairs to the gas appliances (as this is the landlord's statutory responsibility).

2.3 Common Law Implied Terms

The main terms implied by common law are detailed below:

2.3.1 The Right Of A Tenant To Quiet Enjoyment Of A Rented Property Without Intrusion Or Disturbance By A Landlord

This right is implied into all tenancies which entitles the tenant to live in the property without disturbance from the landlord or people acting on the landlord's behalf. Despite the name, the right to quiet enjoyment does not have anything to do with noisy neighbours! Generally a landlord does not have the right to turn up unannounced to check on a property or tenant. It must be agreed mutually beforehand, where the landlord wishes to enter for a specific purpose, such as repairing a window. It has been held that breach of the repairing covenants can also be considered to be breach of the covenant of quiet enjoyment. A right of quiet enjoyment is often written into the tenancy agreement because then the landlord can limit or widen the scope of the implied obligation, or even make the covenant for quiet enjoyment conditional on the tenant complying with their own obligations. Where there is a covenant for quiet enjoyment written into the tenancy agreement, the tenant will be entitled to have the landlord comply with that covenant.

2.3.2 Tenant Must Use The Property In A Tenant-Like Manner

This has been defined in case law as 'to do the little jobs about the place which a reasonable tenant would do' such as unblocking sinks when blocked by the tenant's waste, keeping toilets and drains clear, regular cleaning including windows, putting refuse out for collection and gardening if applicable. The tenant must not wilfully or negligently damage the house (nor allow others to do so).

2.3.3 The Tenant Shall Not Permit Waste

The tenant has the responsibility to ensure the property is not damaged deliberately and is kept clean and free from rubbish during the course of the tenancy.

2.3.4 Fair Wear And Tear

The tenant will be entitled to an element of fair wear and tear.

Fair wear and tear has been defined as “reasonable use of the premises by the tenant and the ordinary operation of natural forces”. The word ‘reasonable’ can be interpreted differently, depending on the type of property and who occupies it. In addition, a landlord is not entitled to charge his tenants the full cost for having any part of his property, or any fixture or fitting put back to the condition it was at the start of the tenancy.

A landlord should not end up, either financially or materially, in a better position than he was at start of the tenancy, or than he would have otherwise been at the end of the tenancy after having allowed for fair wear and tear.

When considering repayment of a deposit, landlords should keep in mind that the tenant’s deposit is not to be used like an insurance policy where you might get ’full replacement value’ or ’new for old’.

The three tenancy deposit schemes (for which see later) have jointly produced a useful leaflet which includes information about fair wear and tear: http://www.depositprotection.com/documents/guide-to-deposits-disputes-damages-2013.pdf.

2.3.5 The Tenant Must Not Use The Rent To Pay For Repairs, Except In Very Limited Circumstances

Repairs must be reported to the landlord/agent. Using rent for any other reason could result in eviction from the property.

2.4 Statutory Implied Terms

2.4.1 Landlord And Tenant Act 1985

Section 11 of the Landlord and Tenant Act 1985 implies a term into tenancy agreements for less than seven years that the landlord shall keep in repair:

- the structure and exterior of the dwelling
- the installations for the supply of water, gas, electricity and sanitation
- the installations for the supply of space heating and water heating and
- the communal areas and installations associated with the dwelling (section 11 as amended by section 116 of the Housing Act 1988), where these are controlled by the landlord.

The Act also provides that the standard of repair necessary will vary depending on the ‘age, character, and prospective life of the property and its location’.

The structure and exterior of the property includes physical exterior walls, windows and doors but not paths to access the property and fences.

Further, a landlord’s obligation not only extends to parts s/he may physically own but also may include parts where there is a right of way. For example if a landlord owns a flat within a block on a long lease and has a right of way along the hallway leading to the front door, the landlord will have a duty to repair the hallway even though s/he only has a right of way and does not actually own it (it will be owned by the freeholder in this example).

2.4.2 Notice Of The Defect

As a general rule, where a defect appears within the boundaries of a tenancy (within the demise), a tenant is under a duty to notify the landlord of any defect.

The landlord will not be in breach of the repairing obligation until s/he has received notice of the defect and if works are then completed with 'reasonable expedition'.

This general rule does not apply where the defect is not within the demise such as a shared roof or shared path for example. A landlord is advised to regularly inspect these parts to check for the need to repair.

It might be possible for a term in a tenancy agreement to require the tenant to provide notice where the defect is not within the demise.

2.4.3 Access To Property

Section 11 — sub-section (6) implies a term into the tenancy agreement that landlords with section 11 repairing responsibilities (or people authorised by them) have the right to access the property for the purpose of viewing its condition and state of repair. Access can only be at reasonable times of the day and after giving the tenant not less than 24 hours’ notice in writing. This section does not extend to actually carrying out the repairs. Section 16 Housing Act 1988 implies a term into all assured and assured shorthold tenancies that the tenant will afford access for carrying out repairs and reasonable facilities for executing those repairs (such as electricity for drills for example). In other types of tenancy, it will be an implied term that a landlord may enter to carry out repairs. However, the right to enter to do repairs (subject to notice being given) is generally included in tenancy agreements and if the tenant refuses to allow the landlord access to carry out the repairs, the tenant will not be in a position to complain about the property or to claim for damages for disrepair or for personal injury caused by the disrepair.

Indeed if the tenant’s failure to allow the landlord access to do the works results in further deterioration or damage to the property, the tenant may be liable to the landlord (entitling the landlord, for example, to deduct the additional costs incurred from the deposit).

Note that although section 11(6) gives the landlord the right to enter the property (after having given notice), this does not mean that the landlord is entitled to enter the property at that time, irrespective of whether the tenant asks the landlord not to. However, if the particular appointment time is inconvenient, the tenant will be expected to consent to an appointment at another time.

If the tenant refuses to allow the landlord access at all, the tenant will be in breach of their tenancy agreement. In some circumstances (for example if the property is clearly in disrepair) this may entitle the landlord to apply for an order for possession.

Generally, landlords should be wary about entering the property when the tenant is not there. Where a tenant has given permission, but has advised they will not be at the property themselves, it is recommended that landlords/agents are accompanied by a witness.

2.4.4 Breach Of Repair Obligations

The landlord will be able to pass on the cost of works or repairs to the tenant if work is needed because of the tenant's breach of their obligations under the tenancy.

Action can be taken by the tenant in the County Court for breaches of the landlord's repairing obligation. This is a civil action and tenants can claim compensation for damage and inconvenience resulting from the breach.

The landlord should receive notice of this in advance of any claim being brought, as tenants are now obliged to comply with the 'Pre-action Protocol for Housing Disrepair'. This protocol provides that tenants must inform their landlord in writing (an 'early notification letter' followed by a 'letter of claim') of all relevant matters before issuing legal proceedings. The protocol gives full details of the information to be provided and specimen letters. If the tenant does not comply with the protocol, the landlord can ask the court to stay the claim until the provisions of the protocol have been complied with. A copy of the protocol can be downloaded from the Justice website at http://www.justice.gov.uk/about/hmcts/. The protocol does not apply if the tenant is counterclaiming against a landlord's claim (for rent arrears for example).

Section 17 of the Landlord and Tenant Act 1985 requires specific performance (saying the landlord will have to do the repair) where there has been a breach, i.e. the payment of compensation may not be sufficient remedy.

This means that the County Court can make an order requiring the landlord to fulfil the express or implied repairing terms of the tenancy agreement. The County Court can make an injunction requiring the landlord to do repair work which may or may not be within the terms of the contract. If the landlord fails to carry out the works required by the court order, the landlord, or his agent, can in very extreme situations be committed to prison for contempt. The County Court can alternatively direct that the repairs be undertaken by, or on behalf of, the tenant at the landlord's expense.

Damages (compensation) can still be claimed even if the works have been carried out by the time the case reaches court.

In practice it is rare for these extreme measures to be used. However, it is important to be aware that these penalties exist, and every care should be made to respond promptly to repairing obligations when they arise. It is, after all, protecting any financial investment. If the property is properly insured some work may be covered by the insurance policy.

2.4.5 Defective Premises Act 1972

Section 4 of the Defective Premises Act 1972 places a duty of care on the landlord in relation to any person who might be affected by a defect, 'to take such care as is reasonable in all the circumstances to see that they are reasonably safe from personal injury or from damage to their property caused by a relevant defect'.

This is civil redress. A defect is relevant if the landlord knew about it or should have known about it - the fact that a defect has not been reported or there has been a failure to inspect (e.g. rotten floorboards or joists) does not remove liability. It is for this reason that it is important that landlords (or their agents) carry out regular checks on the property.

In this case the premises include the whole of the letting - i.e. including gardens, patios, walls, etc - and can be applied to the communal areas of estates or multi-occupancy buildings, including lifts, rubbish chutes, stairs and corridors. Section 4 provides tenants or other affected persons with the right to seek compensation for personal injury or damage to property.

2.4.6 Occupiers' Duty Of Care

Section 2 of the Occupiers' Liability Act 1957 provides that the occupier of a property has a duty of care to all visitors who come onto their premises. This applies to landlords where they are the legal occupier of some parts of their rented stock, e.g. shared-use areas such as lifts, staircases and entrance lobbies - in some cases even grounds and car parks.

The duty means taking such care as would be reasonable in all circumstances to see that the visitor is reasonably safe in using the premises for its purpose. The landlord is liable for any injury caused to a visitor as a result of defects in the part of the building occupied by the landlord.

2.5 Housing Health And Safety Rating System

The Law and Landlords' Obligations

The Housing Act 2004 places a statutory duty on local authorities to identify hazards and to assess risks to tenants' health and safety. Local authorities are required to use a system called the Housing, Health and Safety Rating System (HHSRS) to identify and assess risks. Section 3(1) of the Act states:

> 'A local housing authority must keep the housing conditions in their area under review with a view to identifying any action that may need to be taken by them under any of the provisions mentioned in sub-section (2).'

The underlying principle of the HHSRS is that any residential premises should provide a reasonably safe and healthy environment for any potential occupier or visitor. Some hazards, however, are necessary or unavoidable, and others are considered desirable or expected because the perceived benefits outweigh the risks. For example, electricity is hazardous but considered necessary; stairs (however well designed) are hazardous but necessary in any multi-storey dwelling. For such hazards, the design, construction and maintenance should be such as to reduce to a minimum the probability of an occurrence which could result in harm and of the potential harm that could result.

Depending on the seriousness of risk, local authorities assess hazards as either category 1 or category 2 hazards. Where a category 1 hazard is found, the local authority *must* take some action (see later). Where a category 2 hazard is found, the local authority *may* take some action.

In practice, how local authorities discharge their duty under section 3(1) varies. In some cases local authorities are proactive in carrying out an assessment of the private rented sector stock in their areas but others are now only able to offer a reactive service, responding to requests for assistance from both tenants and landlords.

Where a local authority decide to inspect after a complaint, the assessor will not just look at the particular hazard complained of but will look for all potential hazards under the HHSRS both internally and externally.

Although not a general legal obligation, it is useful for landlords to be able to identify and risk-assess health and safety hazards at their properties and take remedial action where necessary. Most local authorities are keen to work with landlord groups in their area to make sure landlords are aware of the local authority's responsibilities, powers and duties under the Act and a prudent landlord will be proactive in seeking to ensure that their properties are of a standard that does not attract the interest of the local housing authority.

The HHSRS lists 29 hazards that landlords need to be aware of.

2.5.1 Hazards

Physiological:

- damp and mould growth
- excess cold
- excess heat
- asbestos and manufactured mineral fibre
- biocides (e.g. damp and timber treatment products)
- carbon monoxide and fuel combustion products
- lead
- radiation
- uncombusted fuel gas
- volatile organic compounds.

Psychological:

- crowding and space
- entry by intruders
- lighting
- noise

Infection:

- domestic hygiene, pests and refuse
- food safety
- personal hygiene, sanitation and drainage
- water supply for domestic purpose

Accidents:

- falls associated with baths
- falling on level surfaces
- falling associated with stairs and steps
- falling between levels
- electrical hazards
- fire
- flames and hot surfaces
- collision and entrapment
- explosions
- position and operability of amenities
- structural collapse and failing elements

2.5.2 Risk Assessment

The HHSRS is a technical system and is best used by persons with a technical health and safety or building construction background.

The HHSRS statutory guidance is available at:

http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/documents/housing/pdf/142631.pdf.

There are a number of landlord guides to the HHSRS available through the internet that provide an understanding of HHSRS without going into its full details.

One such guide provided by the Government, is entitled *Housing Health and Safety Rating System – Guidance for Landlords and Property-related Professionals* available at https://www.gov.uk/government/publications/housing-health-and-safety-rating-system-guidance-for-landlords-and-property-related-professionals.

In practice it is very challenging for landlords to acquire the skills necessary to use the HHSRS to accurately risk-assess hazards as category 1 or 2.

To help landlords to identify potential category 1 hazards and prioritise them for action a simple guide to risk-assessing hazards is provided below:

The risk from a hazard is a combination of:

- the likelihood of a hazard, over a 12-month period, causing harm sufficient to require some medical attention and
- the potential seriousness of harm from that hazard, should harm occur.

A risk assessment of a hazard that indicates high likelihood of harm, and high potential seriousness of that harm, means that the hazard may potentially be high risk and therefore in need of remedial action to reduce the risk to a more acceptable level.

Step 1 Familiarise yourself with the 29 HHSRS hazards, especially the most commonly occurring.

Step 2 Ask yourself whether the likelihood of harm occurring over a 12-month period from an identified hazard is high.

Step 3 Ask yourself whether the potential seriousness of that harm would be high.

If the answers to steps 2 and 3 are YES, then the hazard is a high-risk hazard.

Example

Assessing the risk of falling down a stair.

If a stair is long, steep, in disrepair, has a loose worn covering, has varying sizes of treads and risers, does not have a handrail or adequate artificial lighting along its length, then the likelihood over a 12-month period of someone falling will be high.

If at the bottom of the stair there is a hard floor surface, a wall mounted radiator with sharp corners and a non-safety glazed door, then the seriousness of a fall is likely to be high.

The combination of high likelihood of an accident and high potential seriousness of harm means that the risk of the hazard of falling down the stair is high, liable to be a category 1 hazard and in need of high priority remedial action.

2.5.3 Vulnerable Groups

Young and elderly persons are more at risk from the following hazards in particular than young able bodied adults: cold, falls, fire, hot surfaces, dampness, food safety and entry by intruders.

Landlords letting properties to elderly persons or families with young children should be particularly mindful of these hazards when carrying out risk assessments and should provide additional protective means where necessary.

2.5.4 Property Inspection Form

Although not a legal requirement it is recommended that an inspection form is completed for each property and a copy kept on file.

In the event that a property is inspected by a housing standards enforcement officer, then providing the officer with a copy of the property inspection form will provide a strong indication that the landlord takes their health and safety responsibilities seriously.

The form provides, room by room, a list of potential defects and deficiencies that can give rise to hazards.

The seriousness of the defects and deficiencies can be scored as:

1. not satisfactory
2. defective
3. seriously defective

Before inspecting a property, landlords need to copy the appropriate number of pages of the inspection form that will be needed.

For example if the property has two bathrooms then two copies of the page covering bathrooms need to be printed off. It is a good idea to carry spares.

There is a Summary of Property Inspection at the end of the form to provide a summary of any hazards identified as needing remedial action.

The remedial action can be prioritised as low, medium or high.

The final page of the form is to complete as an action plan with timescales.

2.5.5 HHSRS Enforcement

Local authorities have statutory duties and powers to take enforcement action to deal with properties containing hazards identified under the HHSRS. Under the HHSRS local authorities have a duty to take appropriate enforcement action in relation to category 1 hazards, and discretion to act in relation to category 2 hazards.

If a hazard presents a severe threat to health or safety it is known as a category 1 hazard.

If a local housing authority considers that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard.

Less severe threats to health and safety are known as category 2 hazards and a local authority may take appropriate enforcement action to reduce the hazard to an acceptable level. The circumstances in which local authorities will take action over category 2 hazards will vary and will depend on the individual local authority's enforcement policy.

Although statutory action is mandatory for category 1 hazards and discretionary for category 2 hazards, the choice of what course of action is appropriate is also a matter for the local authority and it will depend on the individual local authority's enforcement policy.

The authority must, however, take into account the statutory enforcement guidance and the options available include:

- serving an improvement notice requiring remedial works
- making a prohibition order, which closes the whole or part of a dwelling or restricts the number of permitted occupants
- suspending the above types of notice for a period of time
- taking emergency action itself
- serving a hazard awareness notice, which merely advises that a hazard exists, but does not demand works are carried out
- demolition
- designating a clearance area.

A failure to comply with a notice or order is a criminal offence and liable to an unlimited fine.

In relation to a failure to comply with an improvement notice or overcrowding notice, as an alternative to prosecution, from 6 April 2017, the local authority may offer the landlord the option of a financial penalty. The maximum offer is £30,000 which, given the fines for a prosecution are *unlimited*, may be an attractive alternative.

In addition, if a landlord fails to comply with an improvement notice or prohibition order on or after 6 April 2017, in addition to any penalties that may arise from a prosecution, a rent repayment order of up to 12 months rent is available upon application to the First-tier Tribunal by a local authority or tenant. The order is available whether or not the landlord has been convicted of the failure to comply but the tribunal must be satisfied *beyond reasonable doubt* that there has been a failure.

2.5.6 Appeal Against Notice Or Order

If a local authority takes some enforcement action for example an improvement notice requiring a landlord to complete certain works, the recipient of the notice has a right of appeal. There is one exception and no appeal is available against a hazard awareness notice because such a notice cannot require any of the suggested works be done, it is only making a person aware of possible hazards.

An appeal must be made to the First-tier Tribunal (Property Chamber).

Certain time limits apply for an appeal depending on the enforcement action being taken but commonly, an appeal must be made within 21 or 28 days depending on the circumstances.

2.6 Standards

2.6.1 London Rental Standard

(applicable to London only)

The London Rental Standard (LRS) is a voluntary set of minimum standards that the Mayor of London expects from landlords, managing agents and letting agents that operate in London's private rented sector. The aim of the London Rental Standard is to raise professional standards in the capital's private rented sector by providing a consistent standard of accreditation to consumers and a vehicle for increasing the number of accredited landlords and agents.

A landlord or letting agent will need to first complete accreditation through a licensed provider. Successful completion will involve the passing of a development course which can be completed online or by attending a day course (depending on the provider).

Once completed and the landlord or agent has agreed to the terms and minimum standards, they will be able to display the London Rental Standard badge.

See the LRS website page at: http://www.london.gov.uk/priorities/housing-land/renting-home/london-rental-standard.

2.7 Gas Safety

It is vital that landlords clearly understand their responsibilities and obligations in relation to gas supply and appliances and the duties and responsibilities placed on them by the gas safety regulations.

Obligations between landlords and agents need to be specific in relation to the gas safety regulations and neither party can seek to evade or exclude themselves from those obligations. Any clause in the tenancy agreement which attempts to evade the regulations will be invalid. A breach of the regulations is a criminal offence, enforced by the Health & Safety Executive.

2.7.1 Gas Safety (Installation and Use) Regulations 1998

The Gas Safety (Installation and Use) Regulations 1998 make it mandatory that gas appliances are maintained in a safe condition at all times.

Landlords are required by the regulations to ensure that all gas appliances are adequately maintained and that an annual safety check is carried out by a registered tradesperson.

The “deadline date” is the date by which the next annual gas safety record is due to be completed. If a gas safety record is done no more than 2 months before the 12 months deadline date, it’s treated as though it were done on the deadline date (although both dates should be recorded so an audit trail can be shown).

Gas Safe Register is the official industry stamp for gas safety. For further information visit www.gassaferegister.co.uk.

All gas installers should carry identification cards which will state the type of work they are authorised to carry out. For further information about registered gas installers and to locate a service that is local, see the Gas Safe Register website at http://www.gassaferegister.co.uk. Once the inspection has been carried out, the installer will provide a gas safety record. A gas safety record must be provided to tenants of properties which contain gas appliances before they first occupy the property, and annually thereafter. Failure to do this is a criminal offence.

Any necessary repair or remedial work identified should be carried out straightaway by the landlord who cannot place responsibility for this onto the tenant. If the need for any work is caused by the tenant’s behaviour, then the tenant can be charged for the cost of the repair work afterwards. For further information about responsibilities and obligations, contact the Health & Safety Executive (HSE) for advice. Additional information and details of the local HSE office can be obtained from the HSE website at http://www.hse.gov.uk.

It is very important that the gas regulations are complied with and all necessary repairs carried out as soon as possible. Defective gas appliances are very dangerous and some tenants have died as a result. Culpable landlords could be subject to legal action.

A landlord must:

- have gas appliances provided by them checked for safety by a registered gas installer within 12 months of their installation and then ensure further checks at least once every 12 months after that
- ensure a gas safety check has been carried out on each appliance and flue every 12 months, except where the appliance was installed less than 12 months ago. Gas pipe work should also be inspected to ensure it is not leaking. The registered gas installer must take action to leave the appliance safe, if it fails a safety check. This could be remedial action, disconnection and/or a warning notice attached
- give a copy of the gas safety record to any new tenant when they move in (before occupation) and to an existing tenant(s) within 28 days of the check
- keep a record of at least the last two gas safety records made for each appliance
- ensure that gas appliances, fittings, and flues are maintained in a safe condition.

2.7.2 Section 21 Notices

A section 21 notice is the 2 months "no fault" notice that a landlord can serve where there is an assured shorthold tenancy. The notice is discussed in detail in chapter 5.

Where an assured shorthold tenancy is granted on or after 1 October 2015 (including renewals), no section 21 notice can be served at a time when the prescribed legal requirements of providing a gas safety record and an EPC have not been complied with.

Government guidance suggests that a gas safety record could be given late as long as the section 21 notice is served "at a time" after the gas record has been provided. However, the actual wording of the legislation suggests that a failure to give the gas safety record "before occupation" could prevent service of a section 21 altogether. It is important to ensure the gas safety record has been given within the appropriate time-scales.

2.7.3 Exceptions To The Regulations

The regulations do not apply to gas appliances which are owned by the tenant.

The regulations do not apply to leases for terms of more than seven years unless the landlord has a break clause which entitles the landlord to end the lease during the first seven years.

The regulations allow a defence for some specified regulations where a person can show that they took all reasonable steps to prevent the contravention of the regulations.

Portable or mobile gas appliances supplied from a cylinder must be included in maintenance and the annual check; however they are excluded from other parts of the regulations.

2.7.4 Room-sealed Appliances

The regulations require that:

- a gas appliance installed in a bathroom or a shower room must be a room-sealed appliance (i.e. sealed from the room in which it is located and obtaining the air for combustion from the open air outside the building, discharging the products of combustion direct into the open air)

- a gas fire, other gas space-heater or a gas water-heater of 14 kilowatt heat output or less in a room used or intended to be used as sleeping accommodation must either:

  * be a room-sealed appliance or

  * incorporate a safety control designed to shut down the appliance before there is a

build-up of a dangerous quantity of the products of combustion in the room concerned.

2.7.5 Indications That An Appliance Is Faulty Or Dangerous

Danger signs to look for are:

- stains, soot or discolouration around a gas appliance indicating that the flue or chimney is blocked, in which case carbon monoxide can build up in the room
- a yellow or orange flame on a gas fire or water heater
- The most effective indication of a combustion problem would be the activation of a properly installed carbon monoxide detector.

2.7.6 Tenants' Duties

Tenants also have responsibilities imposed upon them by the Gas Safety (Installation and Use) Regulations 1998.

They must report any defect that they become aware of and must not use an appliance that is not safe. Tenants should be informed of this in writing and a clause explaining their duties should be included in their tenancy agreement: this would include reporting any defect and not using an appliance that is not safe.

2.8 Electrical Safety And Electrical Goods

Again, landlords should have a clear understanding of their responsibilities in relation to electrical installations and appliances and the duties and responsibilities placed on a landlord includes the following legislation:

- Landlord and Tenant Act 1985
- Consumer Protection Act 1987
- Electrical Equipment (Safety) Regulations 1994
- Electrical Equipment (Safety) Regulations 2016
- Building Regulations 2000

2.8.1 Landlords' Duties And Responsibilities

Legislation places obligations on landlords to ensure that all electrical appliances supplied by the landlord are safe at the date of supply (each time the property is rented).

Electrical equipment

Electrical equipment is anything that makes use of or operates by electricity.

Landlords need to ensure that all electrical equipment including appliances are 'safe' with little risk of injury or death to humans, or risk of damage to property. This includes all mains voltage household electric goods supplied by the landlord such as cookers, kettles, toasters, electric blankets, washing machines etc. Any equipment supplied must also be marked with the appropriate CE marking (Conformité Européene / Declaration of Conformity).

In addition, under the Electrical Equipment (Safety) Regulations 2016, the instructions and safety information as supplied by the manufacturer must be provided with the appliance at each letting which must be in English. The equipment must be correctly labelled by having a serial number (or something similar) and the name and address of the manufacturer. It is possible for this information to be in the instructions or safety information (where the equipment is too small for example). Where equipment is not safe or does not meet these requirements, necessary corrective measures must be taken by bringing that electrical equipment into conformity or withdrawing the electrical equipment.

In order to meet these obligations either supply new appliances or get any appliances provided checked by a qualified electrician before the property is let to new tenants. All paperwork regarding the items (i.e. receipts, warranties, records of inspection) should be kept for a minimum period of six years.

One way of helping to achieve safety is to undertake a regular formal inspection of the equipment every 2.5 years. The Electrical Safety Council advises that as a minimum, landlords should (at each letting):

- check the condition of wiring, and check for badly fitted plugs, cracks and chips in casings, charring, burn marks or any other obvious fault or damage
- check that the correct type and rating of fuses are installed
- ensure all supplied appliances are checked by a competent person at suitable periods and that any unsafe items are removed from the property. Record details of all electrical appliances, including their condition and fuse rating
- ensure that instruction booklets are available at the property for all appliances and that any necessary safety warnings are given to tenants
- avoid purchasing second-hand electrical appliances for rented properties that may not be safe and
- maintain records of all checks carried out.

Use of inventory

The inventory can be used as evidence of any visual inspection and compliance with the regulations. For example (but not limited to), the inventory could show the following in respect of a kettle (ideally accompanied by a photograph):

- Kettle condition – new
- Cable and insulation – as new
- Plug – sleeved
- Fuse – 13amp
- Lid seal – as new
- CE marking – present
- Instructions – present (in English)
- Safety information – present (in English)
- Serial number – present
- name and address of manufacturer – present
- name and address of importer – present

Mains installation

Mains installation is the wiring, sockets, consumer unit etc.

Landlords need to ensure that the electrical installation is 'safe' with little risk of injury or death to humans, or risk of damage to property.

Although there is no statutory requirement to have annual safety checks on electrical installations as there is with gas, it is good practice to have the mains installation checked every five years with a visual inspection at each letting.

There is, however, a statutory requirement that all HMOs (both licensable and not licensable) must have their mains installation inspected every five years.

It may also be appropriate that where any risk is found to be enhanced, for example where an installation is old or where damage is regularly found, a more frequent inspection regime will be necessary.

Periodic inspection and testing and any necessary remedial work must only be undertaken by someone competent to do such work. On completion, a periodic inspection report, which indicates the installation is satisfactory (or why it is not), should be issued by the person carrying out the work and this should be acted upon and retained by the landlord.

2.8.2 Building Regulations Part P

The design, installation, inspection and testing of electrical installations is controlled under Part P of the Building Regulations which applies to houses and flats and includes gardens and outbuildings such as sheds, garages and greenhouses.

All work that involves adding a new circuit or is to be carried out in "wet areas", for example bathrooms, kitchens or utility rooms, will need to be either carried out by an installer registered with a Government-approved competent person scheme or alternatively notified to building control before the work takes place. Generally, small jobs such as the replacement of a socket outlet or a light switch on an existing circuit in a 'dry area' will not be notified to the local authority building control.

More details can be found in *Approved Document P* published by the CLG and in their guidance leaflet Rules for Electrical Safety in the Home. On completion of any new electrical installation work an Electrical Installation Certificate or Minor Works Form should be issued by the electrician or installer carrying out the work and this should be retained by the landlord.

Building regulations are enforced by local authority building control officers and they can be consulted for further information about compliance with these regulations.

2.8.3 Further Guidance

For further guidance about electrical safety and the competency of electricians and installers to carry out new work or undertake the formal periodic inspection and test of an existing installation, refer to the information provided on the Electrical Safety Council's website: http://www.electricalsafetyfirst.org.uk/

2.9 Safety Of Furniture

If furnished accommodation is being provided it is important to understand the need to provide safe furniture and furnishings, particularly in relation to fire safety.

2.9.1 The Furniture and Furnishings (Fire) (Safety) Regulations 1988

Since 1 January 1997 persons who hire out furniture in the course of a business (and this includes furniture provided with rented accommodation) are required to comply with the Furniture and Furnishings (Fire) (Safety) Regulations 1988 which set safety standards for fire and flame-retarding requirements for upholstered furniture manufactured after 1950 or where the tenancy commenced after March 1993. The regulations relate to:

- furniture meeting a cigarette resistance test
- cover fabric, whether for use in permanent or loose covers, meeting a match resistance test and
- filling materials for all furniture meeting ignitability tests.

Tenancies that commenced prior to 1993 are exempt, but all additional or replacement furniture added after 1993 must comply with fire resistance requirements. A new tenant after 1993 means that all relevant furniture must comply.

The regulations require that:

All new furniture (except mattresses, bed bases, pillows, scatter cushions, seat pads and loose and stretch covers for furniture) must carry a display label at the point of sale. This is the retailer's responsibility.

All new furniture (except mattresses and bed bases) and loose and stretch covers are required to carry a permanent label providing information about their fire-retardant properties. Such a label will indicate compliance, although lack of one in second-hand furniture would not necessarily imply non-compliance as the label might have been removed.

Generally, if second-hand furniture has not been bought from a reputable dealer and is not labelled, then it should be assumed that the furniture will fail to meet the regulations.

The regulations apply to any of the following that contain upholstery:

- furniture
- beds, headboards of beds, mattresses
- sofas, sofa beds, futons and other convertibles
- scatter cushions and seat pads
- pillows and
- loose and stretch covers for furniture.

The regulations do not apply to:

- sleeping bags
- bedclothes (including duvets)
- loose covers for mattresses
- pillowcases
- curtains
- carpets.

The regulations relate only to items provided by the landlord and do not apply to items provided by the tenants for which the landlord is not responsible.

2.10 Houses In Multiple Occupation (HMO)

Special requirements apply to types of properties known as Houses in Multiple Occupation (HMOs) which place special responsibilities on landlords and agents.

2.10.1 Definition Of An HMO

An HMO is defined in sections 254-259 of the Housing Act 2004. In simple terms, an HMO is a building, or part of a building, such as a flat, that:

- is occupied by more than one household and where the occupants share, lack, or must leave their front door to use an amenity such as a bathroom, toilet or cooking facilities
- is occupied by more than one household in a converted building where not all the flats are self-contained. 'Self-contained' means that all amenities such as kitchen, bathroom and WC are behind the entrance door to the flat
- is a converted block of self-contained flats, but does not meet the requirements of the Building Regulations 1991, and less than two thirds of flats are owner-occupied.

The households must occupy the building as their only or main residence (remembering that tenants can have more than one main residence) and rent must be payable in respect of at least one of the household's occupation of the property.

2.10.2 Household

Generally a household is a family (including co-habiting and same-sex couples or other relationship, such as fostering, carers and domestic staff). The definition of a family also includes parent, grandparent, child, stepchild, grandchild, brother, sister, uncle, aunt, nephew, niece, cousin and 'a relationship of the half-blood shall be treated as a relationship of the whole blood'.

Each unrelated tenant sharing a property will be considered a single household.

Properties which are shared by two individuals are exempt from the HMO definition as are those with a resident landlord with no more than two lodgers.

A self-contained unit is one which has a kitchen (or cooking area), bathroom and toilet for the exclusive use of the household living in the unit. If the occupiers needs to leave the unit to gain access to any one of these amenities then the unit is not self-contained.

A simple example of an HMO would be Janet, Jane and Jane's baby living in a property where Janet and Jane are just friends. Janet, Jane and the baby would be an HMO because there are 3 people and they are not all related to each other. Jane and the baby may be related but Janet is not related to either of them so they are "not all related to each other". To complicate matters, if Janet and Jane were a couple (living together as married), that would not be an HMO because they would be one household due to being regarded as related to each other, including the baby.

2.11 Duties On The Manager Of An HMO

The Management of Houses in Multiple Occupation (England) Regulations 2006 place specific duties on the manager of an HMO. Failure to comply with the regulations is a criminal offence, with unlimited fines on conviction. As an alternative to prosecution, from 6 April 2017, the local authority may offer the landlord the option of a financial penalty. The maximum offer is £30,000 which, given the fines for a prosecution are *unlimited*, may be an attractive alternative.

This section highlights some of the key duties in the regulations:

Duty to provide information to occupiers

- the name, address and telephone number of the manager must be provided to each household in the HMO and the same information must be displayed in a prominent position in the common parts of the HMO.

Duty to take safety measures

- means of escape from fire must be kept free of obstruction and kept in good order and repair
- fire-fighting equipment, emergency lighting and alarms must be kept in good working order
- all reasonable steps must be taken to protect occupiers from injury with regard to the design of the HMO, its structural condition and the total number of occupiers. In particular, any unsafe roof or balcony must be made safe or all reasonable measures taken to prevent access to them. Safeguards must be provided to protect occupiers where there are windows with sills at or near floor level

Duty to maintain the water supply and drainage

- these must be maintained in proper working order - namely in good repair and clean condition. Specifically, storage tanks must be effectively covered to prevent contamination of water, and pipes should be protected from frost damage.

Duty to supply and maintain gas and electricity

- these should not be unreasonably interrupted by the landlord or manager
- all fixed electrical installations must be inspected and tested by a qualified engineer at least once every five years and a periodic inspection report obtained
- the latest gas safety record and electrical safety test results must be provided to the council within seven days of the council making a written request for them.

Duty to maintain common parts, fixtures, fittings and appliances

- all common parts must be kept clean, safe, in good decorative repair and working order and free from obstruction
- in particular, handrails and banisters must be provided and kept in good order, any stair coverings securely fixed, windows and other means of ventilation kept in good repair and adequate light fittings available at all times for every occupier to use
- gardens, yards, outbuildings, boundary walls/fences, gates, etc., which are part of the HMO should be safe, maintained in good repair, kept clean and present no danger to occupiers/ visitors
- any part of the HMO which is not in use (including areas giving access to it) should be kept reasonably clean and free from refuse and litter.

Duty to maintain living accommodation

- the internal structure, fixtures and fittings, including windows and other means of ventilation, of each room should be kept clean, in good repair and in working order. Each room and all supplied furniture should be in a clean condition at the beginning of the tenant's occupation.

Duty to provide waste disposal facilities

- no litter should be allowed to accumulate, except for that stored in bins provided in adequate numbers for the requirements of the occupiers. Arrangements need to be made for regular disposal of litter and refuse having regard to the council's collection service.

2.11.1 Duties Of Occupiers Of HMOs

The regulations also place a number of duties upon the occupiers (the tenants) of an HMO.

These duties include:

- not obstructing the manager in the performance of their duties
- allowing the manager access to the accommodation at all reasonable times for the purpose of carrying out their duties
- providing information to the manager which would be reasonably expected to enable them to carry out their duties
- acting reasonably to avoid causing damage to anything the manager is under a duty to supply, maintain

or repair
- storing and disposing of litter and refuse as directed
- complying with reasonable instructions of the manager with regard to any fire escape, fire prevention measures and fire equipment.

If an occupier breaches their duties under the regulations it is likely to put their tenancy at risk, and the landlord/manager may be able to take legal action against the tenant. Tenants can also be prosecuted by the local authority and can be fined. The regulations impose duties on both landlords/managers and tenants, and both can be prosecuted and fined for breaching them.

2.11.2 Duty To Carry Out A Fire Risk Assessment

The Regulatory Reform (Fire Safety) Order 2005 (known as the FSO) introduced duties in relation to fire safety in the common areas of HMOs, flats and maisonettes. The duty is placed on the responsible person, who is required to carry out a fire risk assessment and take specific action to minimise the risk of fire in the common parts. 'Responsible person' means 'the person who has control of the premises in connection with the carrying on of a trade, business or other undertaking'. In practice this will usually be the landlord, but in the case of absentee landlords where the 'carrying on of the business' is undertaken by a managing agent it may be the managing agent.

Where a house is let as a shared house on a single tenancy then there are no 'common parts' and so a risk assessment is not required under the regulations.

These provisions are enforced by fire and rescue authorities and there is therefore a dual enforcement regime in place in multi-occupancy premises. In order to avoid duplication and the potential for conflict, a Fire Safety Protocol has been established as a framework for joint working arrangements between the fire and rescue authorities and local authorities.

2.11.3 LGA (formerly LACORS) National Fire Safety Guidance

In July 2008 the Local Authorities Co-ordinator of Regulatory Services (LACORS) issued national fire safety guidance for landlords and local authorities in England. As Welsh statutory fire safety requirements are very similar, the guidance may also be relevant in Wales.

Compliance with the guidance will satisfy landlords' legal requirements under the Fire Safety Order, and is available at: http://www.ihsti.com/lacors/NewsArticleDetails.aspx?id=19844&authCode= *(See two thirds down the page 'To download a PDF version...')*

The guidance explains the general principles of fire safety and how to carry out and record a fire safety risk assessment.

Part D of the guidance provides very useful illustrations of the fire precautions that may be suitable for the most common property types. The illustrations are based on properties being of normal fire risk and the guidance explains the factors that determine normal risk.

2.12 Licensing Of Private Rented Properties

The Housing Act 2004 introduced licensing of private rented premises. It is compulsory to license larger, higher-risk dwellings, but local authorities are also able to license other types of rented premises, including other lower-risk HMOs and individual houses and flats, if they can establish that other avenues for tackling problems in these properties have been exhausted.

2.12.1 Purpose Of Licensing

Licensing is intended to make sure that:

- a landlord is a fit and proper person (or employs a manager who is)
- each premises is suitable for occupation and
- the standard of management is adequate.

This is to ensure tenants are protected and that the risk of anti-social behaviour is reduced. High-risk premises can be identified through licensing and targeted for improvement by a local authority under the Housing Health and Safety Rating System (HHSRS).

The landlord of a licensable dwelling must apply to the local authority for a licence. The local authority can clarify whether a property is licensable. If the landlord refuses to apply for a licence (or cannot satisfy the 'fit and proper' person criterion) and does not use a managing agent, the local authority must manage the property instead.

More information about mandatory HMO licensing can be found below and on the GOV.UK website at https://www.gov.uk/house-in-multiple-occupation-licence.

2.12.2 Mandatory Licensing Of HMOs

Mandatory licensing applies if the HMO or any part of it:

- comprises three storeys or more
- is occupied by five or more persons and
- is occupied by persons from two or more households.

The definition of 'storey' can include commercial premises (for example below a flat / maisonette) and includes some attics and basements.

From 1 October 2018, an HMO property with five or more persons sharing (two or more households) will require a HMO licence irrespective of the number of storey's. The exception to this is if the building is a purpose built block of flats with more than two flats in it.

2.12.3 Additional Licensing Of HMOs

The Housing Act 2004 gives local authorities the discretion to establish additional HMO licensing schemes, to cover smaller types of HMO where management problems have been identified.

Before setting up such a scheme, the local authority must follow the legal process which includes:

- identifying the problems arising from that type of HMO
- considering whether any other course of action to deal with the problems is available
- ensuring the scheme is consistent with their local housing strategy
- consulting with those likely to be affected including tenants, landlords, landlord organisations etc.

A scheme does not come into effect until three months after it is made and a scheme may last for up to five years.

2.12.4 Selective Licensing Of Other Residential Accommodation

Part 3 of the Housing Act 2004 gives local authorities the discretion to introduce selective licensing schemes to cover all privately rented property, but not HMOs which are covered by Mandatory and Additional Licensing, in designated areas which suffer, or are likely to suffer from, low housing demand and also those which suffer from significant and persistent anti-social behaviour. The use of this discretionary power is subject to local consultation.

Before setting up such a scheme, the local authority must follow the legal process which includes:

- identifying the problems arising from that type of property
- considering whether any other course of action to deal with the problems is available
- ensuring the scheme is consistent with their local housing strategy
- consulting with those likely to be affected including tenants, landlords, landlord organisations etc.

Local authorities require confirmation from the Secretary of State for any selective licensing scheme which would cover more than 20% of their geographical area or would affect more than 20% of privately rented homes in the local authority area. In addition, the following criteria must be met:

- that the area contains a high proportion of properties in the private rented sector, in relation to the total number of properties in the area; and
- that those properties are occupied either under assured tenancies or licences to occupy;

And that one or more of the following applies:

- the local housing authority considers it would be appropriate for a significant number of the properties to be inspected, with a view to determining whether any category 1 or category 2 hazards exist on the premises;
- that the area has recently experienced or is experiencing an influx of migration into it;
- that the area is suffering from a high level of deprivation;
- that the area suffers from high levels of crime;

A scheme does not come into effect until three months after it is made and may last up to five years.

2.12.5 Applying For A Licence

Anyone who owns or manages a licensable premises, whether under the mandatory scheme or an additional or selective scheme, has to apply to the local authority for a licence.

The local authority must give a licence if it is satisfied that the:

- HMO is reasonably suitable for occupation by the number of people allowed under the licence
- the proposed licence holder or the proposed manager (if there is one) is a fit and proper person
- the proposed licence holder is the most appropriate person to hold the licence
- the proposed management arrangements are satisfactory
- the person involved in the management of an HMO is competent and the financial structures for the management are suitable.

2.12.6 Fit And Proper Person Test

In determining whether the licence applicant is a 'fit and proper person' the local authority will take into account a number of factors, including:

- any unspent convictions relating to violence, sexual offences, drugs and fraud
- whether the person has breached any housing or landlord and tenant law

- whether they have been found guilty of unlawful discrimination.

2.12.7 Licence Conditions

A licence will last for up to five years and the local authority normally charges a fee to cover the cost of issuing the licence. In some local authorities discounts are given if the landlord or property is accredited or if an application is made with a plan.

The licence will specify the maximum number of people who may live in the property. The following conditions must apply to every licence:

- a valid current gas safety record, which is renewed annually, must be provided (for properties that have gas)
- proof that all electrical appliances and furniture are kept in a safe condition
- proof that all smoke alarms and emergency lights are correctly positioned and installed
- each occupier must have a written statement of the terms on which they occupy the property. This may be, but does not have to be, a tenancy agreement.
- requiring the licence holder to comply with any scheme which relates to the storage and disposal of household waste at the HMO pending collection (this condition applies from 1 October 2018).

For a selective licence there is a requirement for references from prospective occupiers.

The local authority may also apply other conditions of their own which may include any of the following:

- restrictions or prohibitions on the use of parts of the property by occupants
- action necessary to deal with the anti-social behaviour of occupants or visitors
- ensuring the condition of the property and its contents, such as furniture and all facilities and amenities (e.g. bathroom and toilets) are in good working order and ensuring that specified works or repairs are carried out within certain time limits
- for an HMO, a requirement that the responsible person attends an approved training course in relation to any approved code of practice.

2.12.8 Minimum room sizes

Minimum room sizes will be introduced by way of conditions in a mandatory HMO licence and as such only apply to licensable HMOs from 1 October 2018.

For all mandatory HMO licences granted on or after 1 October 2018, mandatory conditions must be attached to the licence by the local authority requiring the licence holder –

- to notify the local housing authority of any room in the HMO with a floor area of less than 4.64 square metres.
- to ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged over 10 years is not less than 6.51 square metres;
- to ensure that the floor area of any room in the HMO used as sleeping accommodation by two persons aged over 10 years is not less than 10.22 square metres;
- to ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged under 10 years is not less than 4.64 square metres;
- to ensure that any room in the HMO with a floor area of less than 4.64 square metres is not used as sleeping accommodation.

In addition to those conditions, further conditions will be included in the licence whereby the licence holder must ensure that –

- where any room in the HMO is used as sleeping accommodation by persons aged over 10 years only, it is not used as such by more than the maximum number of persons aged over 10 years specified in the licence;
- where any room in the HMO is used as sleeping accommodation by persons aged under 10 years only, it is not used as such by more than the maximum number of persons aged under 10 years specified in the licence;
- where any room in the HMO is used as sleeping accommodation by persons aged over 10 years and persons aged under 10 years, it is not used as such by more than the maximum number of persons aged over 10 years specified in the licence and the maximum number of persons aged under 10 years so specified.

When calculating the floor area, any part of the room which the height of the ceiling is less than 1.5 metres is not to be taken into account.

Where there is somebody already occupying a room in an HMO and a licence is granted on or after 1 October 2018 (regardless of whether a licence was in place prior to 1 October 2018 or not), the local authority must notify the licence holder of the breach and give a period of time to stop the breach. The time given must not exceed 18 months (but can be less).

2.12.9 Renewing A Licence

If there has been no significant change in the property, you will be asked to renew the licence. Contact the local authority or check on their website which is the easiest way of renewing the licence. It is important that a renewal is requested before the initial licence runs out.

2.12.10 Properties Where A Licence May Be Refused

If the property is not suitable for the number of occupants, is not properly managed or the landlord or manager is not a fit and proper person, a licence will not be granted. If a property cannot be granted a licence the council must make an Interim Management Order (IMO), which will allow the local authority to manage the property (either directly or indirectly through a nominated partner).

The IMO can last for a year until suitable permanent management arrangements can be made. If the IMO expires and there has been no improvement, then the council can issue a Final Management Order (FMO). This can last up to five years and can be renewed.

2.12.11 Temporary Exemption From Licensing

If the landlord or person in control of the property that requires licensing intends to stop operating as a licensable property or legally reduce the numbers of occupants below the level that requires a licence and can provide evidence of this, then they can apply for a Temporary Exemption Notice (TEN).

This lasts for a maximum of three months and ensures that a property in the process of being converted from a licensable property does not need to be licensed. If the situation is not resolved, then the landlord can apply for a second Temporary Exemption Notice for a further three months.

When this expires the property must be licensed, become subject to an IMO, or cease to be a licensable property. TENs also apply where the licence holder dies. The property will be treated as if it is subject to an exemption notice for three months, during which time the estate can either apply for a new licence or cease to run the property as a licensable property. If it takes longer than the initial three months the estate can apply for one further exemption notice.

2.12.12 Right Of Appeal Against A Local Authority's Decision

A landlord can appeal to the First-tier Tribunal, normally within 28 days, if the local authority refuses a licence, grants a licence with conditions or revokes or varies a licence.

2.12.13 Offences

It is a criminal offence if the landlord or the person in control of the property fails to apply for a licence for a licensable property or allows a property to be occupied by more people than are permitted under the licence. An unlimited fine may be imposed. In addition, breaking any of the licence conditions can result in an unlimited fine. Note also, that no section 21 notice (see later for more information about section 21 notices) may be given in relation to a shorthold tenancy of a part of a licensable HMO so long as it remains unlicensed. This means that where a licence is compulsory, unlicensed HMO landlords will be unable to evict their tenants by the notice-only section 21 procedure.

As an alternative to prosecution, from 6 April 2017, the local authority may offer the landlord the option of a financial penalty. The maximum offer is £30,000 which, given the fines for a prosecution are *unlimited*, may be an attractive alternative.

Furthermore, after a licensing offence, a local authority can apply for a banning order. A banning order will ban the person from letting housing or acting as an agent (or both) in England.

2.12.14 Rent Repayment Orders

If a landlord operates an unlicensed property on or after 6 April 2017, in addition to any penalties that may arise from a prosecution, a rent repayment order of up to 12 months rent is available upon application to the First-tier Tribunal by a local authority or tenant. The order is available whether or not the landlord has been convicted of the offence but the tribunal must be satisfied *beyond reasonable doubt* that there has been a failure. Rent repayment orders exist for offences committed before 6 April 2017 in a slightly different form.

2.13 Planning Control

Planning approval is essentially about controlling the use of land and is required to alter, extend or change the use of existing properties, or to make changes to a listed building or to a property in a conservation area. Planning approval is needed when a previously singly occupied property is converted into bedsit units or flats.

A dwelling-house normally starts with permission for a single household (a single family where all residents are related) which is known as class C3.

Class C4 is defined as being a dwelling occupied by not more than six persons as a HMO (unrelated sharers) but this class does not include a building which has been converted into flats and the conversion does not meet the appropriate building regulations (known as a section 257 HMO).

Subject to local authority exemption from the rules (see below), planning permission is not required to change the use of a dwelling from C3 (single family) to C4 (up to 6 unrelated persons sharing). This is known as a 'permitted development'. It's also a permitted development to change the use from class C4 (HMO) to C3 (single household).

Where there are to be seven or more sharers, planning permission would normally be required. As there is no defined class for more than six sharers, this is known as a Sui Generis use.

In a number of towns (mainly associated with large numbers of students) local authorities have obtained what are known as Article 4 directions, which means that planning permission is required for any new class C4 HMOs and the above mentioned permitted developments do not apply. HMOs that existed before these powers came into effect retain their use whilst being used as HMOs.

In each locality there will be a separate planning policy or guidance pertinent to a designated area of control. In this case, the guidance of the planning authority should be sought before undertaking any work to convert a house to an HMO as permission for this may not be forthcoming. If an existing HMO is being purchased, the purchasers should ask for confirmation from the seller (normally in the form of a letter from the relevant planning authority) that the house has been previously used as an HMO.

2.13.1 Obtaining Planning Approval

To obtain planning approval, an application with detailed drawings and payment of a fee is made to the local planning authority. The authority will consider the application, may consult with local residents and will then issue a decision with the reasons for that decision. The approval may have conditions attached.

An applicant aggrieved by the decision can appeal against it to the Planning Inspector or may negotiate with the planning authority and amend and re-submit the application.

Enforcement action can be taken against unapproved developments requiring the reinstatement of the property back to its original condition.

2.13.2 Certificate Of Lawful Use

Unapproved conversions of singly occupied houses to HMOs and flats are outside the time limits for enforcement action by planning authorities if established use can be proved for 10 years in the case of bedsit properties, and four years for buildings in flats.

After the above time periods an application can be made to the planning authority for a Certificate of Lawful Use (CLU). This means that the use of the property is lawful despite the use not having planning approval.

2.14 Building Regulations Approval

New 'building work' must comply with Building Regulations and includes:

- installation of a service, e.g. washing or sanitary facilities
- material alterations to the structure
- conversions to flats
- some major repairs.

2.14.1 Obtaining Building Regulations Approval

There are two optional procedures available to carry out works with Building Regulations approval for which a fee is payable.

1. Full Plans Application

This is the normal procedure for most works, whereby the local authority's Building Control Service approves plans and details of the proposed works as being compliant before works commence. The application can be approved with or without conditions, or refused or have amendments requested.

A Commencement Notice is given to the Building Control Inspector when works start. At predetermined critical stages the contractor notifies the inspector that certain works are being carried out so that those works can be inspected to check compliance before being covered over.

A Completion Certificate is issued by the inspector at the end of work stating that the works have been carried out in compliance with Building Regulations.

2. Building Notice Procedure

This procedure is suitable for small-scale works that need to progress quickly and where pre-approval of plans is not essential.

The contractor gives a Building Notice to the Building Control Service that works are about to start and which will then be inspected as they progress. The contractor will be advised if any works are not likely to be Building Regulations compliant so corrective action can be taken.

An alternative to using a local authority Building Control Service is to use a private sector approved inspector's building control service. The procedures are similar with the exception of some additional administration to keep the local authority, as the statutory enforcement authority, informed of progress.

'Unapproved' building works are liable to enforcement action if discovered within 12 months of completion.

Further information is available from: https://www.gov.uk/building-regulations-approval.

2.15 Smoking And The Health Act 2006

Since 1 July 2007 it has been illegal to smoke or allow smoking in enclosed public areas of properties. The Health Act 2006, which bans smoking in public areas, imposes obligations to take action to implement the ban and creates a number of criminal offences for those who choose to ignore or break the law.

Tenants of individually let rooms and their guests are only permitted to smoke in bedrooms with the door closed. Smoking is not permitted in the common areas of the building, which are defined as public areas, and smoking is not therefore permitted in kitchens/living rooms, corridors or shared toilets or bath/shower rooms. It does not matter if all the tenants

and guests agree that smoking in the common areas is acceptable – it is still not legal – because the shared areas are not part of any individual tenant's dwelling. The dwelling is confined to the room that has been let to them.

Where tenants are renting the entire dwelling – including tenants who are renting on a joint tenancy and jointly renting the entire premises – then there are no 'public areas' within their premises. The Health Act ban allows smoking in their shared living space, because it forms part of their dwelling.

Common stairwells and entry lobbies serving flats will be public areas. Where public areas are involved appropriate 'no smoking' signs should be clearly displayed at the entrances to and within premises in required areas. Signs must meet a number of minimum requirements. They must:

- be at least A5 size
- display the 'no smoking' symbol
- contain, in characters that can be easily read by persons using the entrance, the words 'No smoking. It is against the law to smoke in these premises'.

Inside buildings, for example at an entrance to smoke-free premises from other smoke-free premises, signs can simply show the no-smoking symbol.

Enforcement

Enforcement can be difficult. People smoking tobacco products in prohibited areas should be politely asked to desist. Tenants who refuse to desist from smoking in a public area after being asked politely to do so should be provided with a letter from their landlord advising them that their failure to adhere to this policy is also a criminal offence, and that unless the tenant complies with the law, action will be taken against them.

If a tenant continues to smoke then it is recommended that they should be sent a letter by a solicitor. If no positive response is received to the solicitor's letter and other tenants are complaining then the landlord should take legal advice in considering repossession proceedings. The landlord themselves can face criminal proceedings and a hefty fine if they fail to take action to stop unlawful smoking.

2.16 Controlling Legionellosis

Legionellosis is a collective term for diseases caused by legionella bacteria including the most serious, legionnaires' disease, as well as the similar but less serious conditions of Pontiac fever and Lochgoilhead fever. Legionnaires' disease is a potentially fatal form of pneumonia and everyone is susceptible to infection. The risk increases with age, but some people are at higher risk, eg people over 45, smokers and heavy drinkers, people suffering from chronic respiratory or kidney disease, diabetes, lung and heart disease or anyone with an impaired immune system.

The bacterium Legionella pneumophila and related bacteria are common in natural water sources such as rivers, lakes and reservoirs. They may also be found in purpose-built water systems, such as hot and cold water systems and spa pools. If conditions are favourable, the bacteria may multiply, increasing the risks of legionnaires' disease, and it is therefore important to control the risks by introducing appropriate measures.

Legionnaires' disease is normally contracted by inhaling small droplets of water (aerosols), suspended in the air, containing the bacteria which is why showers and spa baths are higher risk. There is no risk from drinking contaminated water.

2.16.1 The Need For A Risk Assessment

Since a change to guidance (known as the approved code of practice, 'ACOP'), all systems require a risk assessment to assess the risk of legionella, however not all systems will require elaborate control measures. A simple risk assessment may show that the risks are low and being properly managed to comply with the law.

2.16.2 Who Should Carry Out The Risk Assessment?

The ACOP requires the risk assessment to be carried out by a "competent person". Where risks are small, as in many domestic properties, there is no reason why a landlord or agent cannot do the assessment themselves. The landlord or agent will be the 'duty holder' as they will be under the duty to ensure the property is safe and free from any substance that could harm the health of occupiers (including legionella).

The duty holder can nominate a "responsible person" who will undertake any general routine duties found under the risk assessment. Commonly the duty holder will nominate themselves as being the responsible person.

It is perfectly acceptable for the duty holder to ask a competent person such as a gas engineer when next carrying out a gas safety check to look for certain risks such as tanks in the loft, deadlegs and checking temperatures.

2.16.3 Identifying The Risk

The risk assessment should identify and evaluate potential sources of risk and:

- the particular means of preventing exposure to legionella bacteria;
- or if prevention is not reasonably practicable, the particular means of controlling the risk from exposure to legionella bacteria.

There are a number of factors that create a risk of someone acquiring legionellosis, including (but not limited to):

- conditions suitable for growth of the organisms, eg suitable water temperature (20 °C–45 °C) *Deposits that are a source of nutrients for the organism, such as sludge, scale, rust, algae, other organic matter and biofilms;

- a means of creating and spreading breathable droplets, eg the aerosol generated by showers or spa pools.

Any risks identified should have corresponding control measures in the risk assessment.

2.16.4 Void Periods

Void periods are a particular risk because water can become stagnant for a longer period giving the bacteria time to multiply at the correct temperatures.

The risk assessment will need to show that procedures are in place to eliminate or reduce the risk.

2.16.5 Recording The Risk

All of the above and anything else referenced in the ACOP guidance should be entered onto the risk assessment form along with any remedial action recommended and taken. For example, the risk assessment could identify a water tank in the loft which has no lid. This is an increased risk and the assessment should recommend a lid be fitted. The assessment can be further updated once the lid has been fitted thus reducing the risk.

The ACOP guidance provides:

> Once the risk has been identified and assessed, a written scheme should be prepared for preventing or controlling it. In particular, the written scheme should contain the information about the water system needed to control the risk from exposure. However, if it is decided that the risks are insignificant and are being properly managed to comply with the law, you may not need to take any further action. But it is important to review the risk assessment regularly and specifically if there is reason to suspect it is no longer valid, for example changes in the water system or its use.

2.17 Asbestos

Asbestos was widely used as a building material throughout the 60s and 70s. Asbestos still kills around 5,000 workers each year, which is more than the number of people killed on the road!

Being a relatively inert substance, so long as asbestos remains in good condition and is undisturbed, it presents no risk. However, if disturbed or damaged, fibres can be released which present a major health hazard and cancer risk. In fact, the process of removal of asbestos from buildings actually presents a higher risk than leaving it in place - and so identification and containment is the modern approach.

2.17.1 Who Has The Duty?

The duty to “manage” asbestos under the Control of Asbestos Regulations 2012 does not apply to domestic property - it only applies to non-domestic. Although the duty does not apply to domestic premises such as private houses, it does apply to the ‘common parts’ of multi-occupancy domestic premises, such as purpose-built flats or houses that are converted into flats. Where there are common parts, whoever is under a duty to keep in repair and maintain those common parts is the ‘duty holder’ under the regulations.

2.17.2 What Is The Duty?

The duty to manage asbestos requires the duty holder to:

- take reasonable steps to find out if there are materials containing asbestos in non-domestic premises, and if so, its amount, where it is and what condition it is in
- presume materials contain asbestos unless there is strong evidence that they do not
- make, and keep up-to-date, a record of the location and condition of the asbestos- containing materials - or materials which are presumed to contain asbestos
- assess the risk of anyone being exposed to fibres from the materials identified
- prepare a plan that sets out in detail how the risks from these materials will be managed
- take the necessary steps to put the plan into action
- periodically review and monitor the plan and the arrangements to act on it so that the plan remains relevant and up-to-date
- provide information on the location and condition of the materials to anyone who is liable to work on or disturb them.

2.17.3 Removing Asbestos

If the materials are high risk (e.g. pipe insulation and asbestos insulating panels), you will need to employ a licensed contractor. If the materials are lower risk (e.g. asbestos cement sheets and roofing) then an unlicensed but competent and trained contractor may carry out the work.

2.17.4 More Information

The approved code of practice (ACOP) titled ‘Managing and working with asbestos’ should be consulted for more information and is available on the Health and Safety Executive website - http://www.hse.gov.uk/pubns/books/l143.htm.

In addition, the HSE website has a dedicated section to working with asbestos here - http://www.hse.gov.uk/asbestos/index.htm.

2.18 Condensation

Moisture production is influenced by the design, construction and repair of the dwelling, and on occupant density and activity. Moisture is produced by occupants through their normal biological and domestic activities. Relatively low levels of moisture are generated through breathing and are spread out over the twenty-four hours. However, there are higher levels produced in peaks from cooking, clothes drying and bathing (or showering). Vapour pressure will equalize humidities throughout a dwelling, so that damp in one part will have an impact on relative humidities in other parts. The amount of water vapour that can be stored in the air can be increased simply by increasing the temperature.

Things that landlord's and agent's can do to assist with preventing condensation in a home include:

- The structure and finishes of a dwelling should be maintained free from rising, penetrating and traumatic dampness, or persistent condensation.
- Increase the size of any radiators so that rooms get warm enough efficiently especially in bathrooms or kitchens. Commonly in bathrooms, a heated towel rail is provided but often these don't produce sufficient heat for the size of the room.
- There should always be an extractor fan installed in bathrooms and kitchens. Where there is one, try increasing the overrun so that it stays on longer.
- Increasing insulation in attics can assist with keeping the house and rooms warmer for longer periods.
- Ensure windows correctly open so as to allow large amounts of steam build up to escape quickly.
- Educate tenants by providing a leaflet at the commencement of any tenancy. Many local authorities provide excellent leaflets - see for example leaflet by Haringey Homes http://www.homesforharingey.org/damp_leaflet.pdf

Tenants should be advised to do the following to assist with the control of condensation (which might be included in a good leaflet):

- When cooking or washing, open windows or use extractors.
- Where drying clothes inside is necessary (preferable to dry clothes outside), do so in a small room with windows open.
- Open windows for a while each day or use the trickle/night vents.
- Do not block air vents – this is also important where gas and heating appliances are concerned as they need a supply of oxygen to work effectively and allow gases, such as carbon monoxide, to escape.
- Allow air to circulate around furniture and in cupboards – this can be done by making sure cupboards and wardrobes aren't overfilled and there is space between the furniture and the wall.
- When the whole house is warmer, condensation is less likely to form.
- Maintain a low heat when the weather is cold or wet – this is more effective than short bursts of high heat.
- Wipe down surfaces where moisture settles.
- Cover boiling pans when cooking.
- Close doors when bathing, showering or cooking to prevent steam going into colder rooms.
- Cover fish tanks to stop water evaporating.

2.19 Smoke And Carbon Monoxide Alarms

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 affect almost every rented property (including existing tenancies) and commenced on 1 October 2015.

2.19.1 Smoke Alarms

All rented property (including existing tenancies) must have a smoke alarm installed on every storey where there is living accommodation, a bathroom or a lavatory.

It is worth noting that a mezzanine floor (half landing) containing a bathroom or toilet alone would be counted as a storey and require a smoke alarm. Where there is a mezzanine floor which is just used for access only, that won't be counted as a storey though.

There is no definition as to what is a suitable smoke alarm for the purpose of the regulations but in a regular family house, the best ones to fit would be either a mains interlinked with battery backup or a 10 year battery type because in the end they will cost less by needing less maintenance and fewer batteries throughout their life.

Where to fit the alarm is not provided for in the regulations (other than on each storey). As a general rule, the best place to fit a smoke alarm is on the highest point (normally ceiling) in a hallway leading to an escape route. In a regular 2 storey house, this would mean installing one on the ground floor and one on the first floor hallway by the stairs.

2.19.2 Carbon Monoxide Alarms

The regulations also require that a carbon monoxide alarm is equipped in any room which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance.

Note: a CO alarm is required to be fitted in a "room" (not a storey) and only where there is a "solid fuel burning combustion appliance" (i.e. rooms containing an open fire, log burning stove, etc.)

According to guidance issued by the Department for Communities and Local Government, a non-functioning purely decorative fireplace would not constitute a solid fuel burning combustion appliance.

2.19.3 Checking Alarms

A landlord must ensure that:

> checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

This applies to both the smoke and carbon monoxide alarms.

On the day the tenancy begins means "*on the day on which, under the terms of the tenancy, the tenant is entitled to possession under that tenancy*".

The *checking* only needs to be done on a new tenancy which means a tenancy granted on or after 1st October 2015, but does not include –

- a tenancy granted in pursuance of an agreement entered into before 1 October 2015;
- a statutory periodic tenancy which arises on the coming to an end of a fixed term shorthold tenancy;
- a renewal tenancy where the landlord, tenant and premises let are the same (or substantially the same) as previously let.

The guidance issued by the CLG suggests a suitable way of showing the alarms were tested on the start day of the tenancy by making–

> provision for the tenant to sign the inventory to record that the required alarms have been tested by the landlord and the tenant is satisfied they are in working order.

The general advice for checking smoke alarms 'on the day the tenancy begins' is as follows:

- always follow the manufacturer's instructions first and foremost for testing
- where the alarm is a simple mains interlinked, 10 year battery or cheap 9v battery type, pressing the button on the day the tenancy begins should be sufficient assuming the alarm sounds correctly
- where the system has a panel on the wall (usually in the communal hallway), visually inspect the panel to ensure there are no faults, press the evacuate button to test the system and for added comfort (and if competent) test a manual call point which is on the same zone as the relevant smoke alarms. Smoke spray can be used but only if you are competent in carrying out that type of test and spray shouldn't be used on every occasion (seek advice). If the sounders do not operate as they should immediately seek advice from a competent fire alarm engineer
- the regulations do not apply to licensable HMOs so the licence conditions should be consulted and the alarm would normally be subject to regular testing and maintenance under the licence and HMO regulations in any event.

In respect of checking carbon monoxide alarms 'on the day the tenancy begins', pressing the test button is presumably sufficient for the regulations.

The above advice is simply about checking on the day the tenancy begins and does not replace any other regular maintenance and testing requirements.

Where there are no shared elements in a house, the tenant(s) will normally be responsible for regularly checking the smoke and carbon monoxide alarms themselves. It is recommend they be checked monthly.

3 - Start Of A Tenancy

In this chapter, setting up a tenancy is considered including the types of tenancy available and terms of any written agreement.

A tenancy is granted between a landlord who is commonly the owner of the property (but doesn't have to be the freehold owner) and a tenant. The tenant will normally be the person wishing to occupy the property as their home. However, a tenancy can exist between a company or a person without the need for occupation as a home.

Once a tenancy has been granted which gives a person the right to occupy the property as their only or principal home, the tenant will have the right to exclude all persons including the landlord.

Where an agent draws up a tenancy agreement on behalf of a landlord, the agent can sign the tenancy on behalf of the landlord.

3.1 Types Of Tenancies

A tenancy is a contract on mutually agreed terms between a landlord and a tenant. Landlords or prospective landlords should understand the various types of tenancies, which have different rights and obligations.

3.2 Assured And Assured Shorthold Tenancies

These types of tenancies are governed by the statutory code set up in the Housing Act 1988, which was amended slightly by the Housing Act 1996. The vast majority of tenancies today will be assured shorthold tenancies. Both assured and assured shorthold tenancy can charge a market rent for the property.

3.2.1 The Main Differences Between An Assured And An Assured Shorthold Tenancy

Assured Shorthold Tenancies

Assured shorthold tenancies (ASTs) are now the 'default' type of tenancy. If a property is let, and it does not fall into one of the exceptions outlined below, it will automatically be an AST. If a property is let without a written agreement, which is most unwise, then that too will normally be an AST.

An AST can be for any term (the rule requiring them to be for a minimum term of six months was abolished by section 96 of the Housing Act 1996), although in fact the vast majority of tenancies are for terms of at least six months.

The main benefit of ASTs for landlords is that they can recover possession of the property without needing a reason, provided any fixed term has expired and the proper form of notice has been properly served. The notice is known as a section 21 notice, as the landlord's right to recover possession and the notice procedure is set out in section 21 of the Housing Act 1988.

Assured Tenancies

The non-shorthold version of the assured tenancy gives tenants long-term security of tenure, and tenants are entitled to stay in the property until either they choose to go, or the landlord can gain possession on one of the grounds listed in Schedule 2 of the Housing Act 1988. Possession under the 'no fault' section 21 procedure is not available for assured tenancies. Before 28 February 1997 assured tenancies were the 'default' type of tenancy, and some of the assured tenancies in existence today were created by mistake, through landlords not following the proper procedure required at that time to create an assured shorthold tenancy. Landlords should seek advice if they are unsure which type of tenancy applies.

3.2.2 Choosing An Assured Or An Assured Shorthold Tenancy

The vast majority of landlords will wish to create an assured shorthold tenancy. If the property is subject to a mortgage, most mortgage companies will also insist that all tenancies are assured shorthold tenancies. A landlord might consider letting a property under an assured (not shorthold) tenancy, where recovery of possession will not be required, and the landlord wishes the tenant to have security of tenure (for example a tenancy agreement with a family member or former employee).

Landlords should proceed with care and seek legal advice before agreeing an assured tenancy, as it will entail loss of the right to recover possession, perhaps during the landlord's lifetime, as these tenancies can be passed on to spouses.

3.2.3 Setting Up An Assured Tenancy

If a landlord wishes to create an assured tenancy, this can be done by giving notice to the tenant, clearly stating that the tenancy being created is an assured tenancy rather than an AST. There is no prescribed format for this. It is best done as part of the tenancy agreement, but can also be a separate form of notice, served either before or after the tenancy has been entered into.

3.2.4 Tenancies Which Cannot Be Assured Or Assured Shorthold Tenancies

In some circumstances the statutory codes set up by the Housing Act 1988 will not apply. The tenancy may be governed by some other Act of Parliament, or simply be subject to the agreed terms of the contract (usually called contractual tenancies) and/or the underlying 'common law'.

Tenancies excluded from being assured or assured shorthold tenancies are:

- where the tenancy began, or which was agreed, before 15 January 1989 (this will normally be governed by the provisions of the Rent Act 1977)
- where the property is not the only or principal home of the tenant

- where the rent is more than £100,000 a year
- where the rent is £250 or less a year (£1,000 or less in Greater London)
- a company let
- the tenancy has been granted to a full-time student by an educational body such as a university or college
- a holiday let or
- a letting by a resident landlord i.e. where the landlord and tenant live in the same building as originally constructed, (most commonly where landlord and tenant share some part of the accommodation, this is usually a licence/lodger situation not a tenancy).

In the circumstances set out above the tenancy will be governed by the contractual agreement or if there is no agreement, the common law. Note that the chief significance of a property not being an assured or an AST is that the procedures for recovery of possession are different.

3.2.5 Tenancies Which Can Be Assured, But Not Assured Shorthold, Tenancies

The following tenancies cannot be assured shorthold tenancies:

- those where there is an existing tenant with an assured tenancy. An existing assured tenancy cannot be converted into an AST, for example by issuing a new form of tenancy agreement. This applies whether or not the fixed term in the tenancy agreement has expired.
- an assured tenancy which the tenant has succeeded to on the death of the previous regulated (pre-1989) tenant under the 'succession' rules
- an assured tenancy following a secure tenancy as a result of the transfer of the tenancy from a public sector landlord to a private landlord
- an assured tenancy arising automatically when a long leasehold tenancy expires.

3.2.6 Fixed-term Tenancies

An assured or assured shorthold tenancy may be a fixed-term tenancy, which lasts for a fixed number of weeks, months or years. The length of the fixed term will be set out in the tenancy agreement.

Most tenancies have a fixed term of either six months or a year, but the fixed term can be of any length although advice should be sought if agreeing a fixed term of more than three years as particular procedures apply. After a fixed term has expired it can be allowed to 'run on' (see below) or a new fixed-term agreement can be entered into.

3.2.7 Periodic Tenancies

An assured or assured shorthold tenancy may be a periodic tenancy that runs indefinitely from one rent period to the next. (This is sometimes known as a rolling tenancy). There are two types of periodic tenancy. The contractual periodic tenancy is one that is periodic because the contract says it is periodic, typically because the initial letting was set up as a periodic tenancy. The second type is a statutory periodic tenancy and this exists because a fixed-term tenancy has expired, the tenant has remained in the property and no new agreement has been set up.

Periodic tenancies can exist either from the start of the tenancy, or after the fixed term of a tenancy expires. The periods of the tenancy are defined by the rent payment periods. This is the period of time for which the tenant pays rent, typically a week or a month. If the tenant moves in on the fifteenth of the month and then pays the rent in advance on the fifteenth of each month, the periods will be the fifteenth of one month to the fourteenth of the next month.

It is important when setting up an AST that landlords clearly identify what dates the rent is payable, and whether rent is payable in advance (the norm) or in arrears (the exception). This clarity ensures that if a fixed-term AST does end and a statutory periodic tenancy arises, both landlord and tenant know what the periods of the tenancy are, and can give the correct periods of notice.

If tenants remain after the fixed term they do not become 'squatters'. They do not acquire additional rights if they stay as a periodic tenant for a long time.

3.2.8 Initial Period Of An Assured Shorthold Tenancy

An AST tenancy can be set up as a periodic tenancy from the outset, but more usually the landlord and the tenant will agree an initial fixed term. There is no minimum fixed term prescribed by law, but regardless of what the landlord and tenant agree, under the section 21 possession procedure, a judge cannot grant an order for possession to take effect during the first six months of an AST. This means that even if a fixed term of less than six months or a periodic tenancy is agreed from the outset, there is not a guaranteed right for the landlord to recover possession until the initial six months have expired.

Possession can also be sought during this initial period, or during a fixed term under some of the statutory grounds for possession in Schedule 2 of the Housing Act 1988. The most important of these is for non-payment of rent, but for more information on this see the separate section on possession claims see Chapter 5 on possession.

These rules do not apply to non-Housing Act 1988 tenants (see the list of exclusions above).

Non-Housing Act 1988 tenants can be evicted at the end of a fixed term by serving notice to quit to end a periodic tenancy, or for breach of tenancy (including non-payment of rent), by applying to the court. Comparatively few tenancies are non-Housing Act 1988 tenancies and they can only be created in the special circumstances set out above.

3.3 Regulated Tenancies

Most lettings by private landlords which began before 15 January 1989 are regulated tenancies under the Rent Act 1977 unless the landlord and tenant live in the same house. Regulated tenants have greater security of tenure and are subject to rent control.

A tenant whose tenancy is regulated by the Rent Act 1977 is unlikely to be evicted unless significant rent arrears have been accumulated or the landlord is able to provide suitable alternative accommodation. More information can be found in the leaflet *Regulated Tenancies* available from the GOV.UK website at https://www.gov.uk/government/publications/regulated-tenancies.

3.4 Licences

A licence is where someone is allowed to occupy property but does not have a tenancy. The 'licence' or permission of the owner prevents the occupier from being a trespasser. Some of the protective legislation for tenants does not apply to licences.

The three main tests for a tenancy are:

- exclusive possession
- a fixed or periodic term
- the payment of rent.

If these three factors are present, there will be a tenancy.

If the occupier does not have exclusive possession, i.e. they share, say, facilities with an occupying owner, then they will only be a licensee. The essential difference between a tenant and a licensee will be having exclusive possession. A person who has exclusive possession of residential premises for a definite period is a tenant unless there are exceptional circumstances. The rules around how much of the property they have to have exclusive occupation of differ between Housing Act 1988 tenancies and non-Housing Act 1988 tenancies.

Other circumstances where a tenancy will not occur are 'serviced' accommodation where the landlord needs to have frequent access for cleaning and meals are provided, such as in a hotel, and where the occupier shares living accommodation with the landlord (here the occupier is normally referred to as a lodger).

3.5 Sub-letting/Assigning Tenancies

A landlord who has taken care to select a tenant by proper referencing and verification of suitability is unlikely to allow that chosen tenant to sub-let, assign or transfer the tenancy to another, without the landlord's permission. In the past, tenancy agreements always tended to prohibit subletting or assignment.

Now, standard terms in residential tenancy agreements are subject to the Consumer Rights Act 2015. The Office of Fair Trading (as they were at the time) had previously issued guidance to the effect that absolute prohibitions on assignment and sub-letting could be considered unfair and, therefore, void in terms of the legislation. However, a model agreement recently produced by the Government prohibits absolutely sub-letting or assignment as one of it's terms.

Landlords wishing to retain a degree of control over assignment and sub-letting are advised as a minimum to ensure that the tenancy agreement allows assignment or sub-letting only upon landlord's consent (which cannot, by law, be unreasonably withheld). It is unclear whether an absolute prohibition would be regarded as 'unfair' or not.

Even if the tenancy agreement does not provide for it, it is suggested that the landlord should always agree to re-let the property to a suitable new tenant, allowing the original tenant to terminate their agreement early if they wish. If the prospective new tenant is considered suitable, and there is only a short period remaining of the original agreement, the landlord might consider offering a longer term to help prevent a void period.

If the tenancy is a contractual periodic tenancy, or a statutory periodic tenancy that has arisen at the end of a fixed term, the tenant cannot by law give the tenancy or sub-let to someone else unless the landlord agrees that he or she can. A periodic tenant can end their tenancy by serving notice to quit.

If the tenant has paid a premium for the property (a lump sum, possibly in addition to a small rental payment or a sum paid as a deposit which is greater than two months rent), the tenant is able to sub-let unless there is a term in the tenancy agreement preventing this.

3.6 Joint And Several Tenancies

Joint tenancies can be agreed with two or more people from the outset of the tenancy. Each can then be responsible jointly and severally (individually) for meeting the terms of the tenancy in full, including paying the rent. This is known as 'joint and several liability'. Joint and several liability only arises where it is agreed. If nothing is agreed they will simply be jointly liable.

For example, if a property is let jointly and severally to four tenants A, B, C and D for a monthly rent of £400 (with each agreeing to pay £100 each), and C decides to leave, they will all each still remain liable under the contract for all the rent. So C is still liable for rent even though he or she may not be living there, and A, B and D will each be liable to the landlord, for all the rent, including the £100 share from C. This situation will continue until either vacant possession is given back to the landlord or a new tenancy is signed, for example with A, B, D and perhaps a new tenant E.

If one of the joint tenants wishes to vacate, it is best to regularise the situation as soon as possible by signing a new tenancy agreement with the remaining and new tenant(s), so long as any replacement tenants can be referenced satisfactorily. A landlord should not allow the situation to drift. Instead, a proactive approach should be taken to ensure the remaining tenants sign a new tenancy agreement. Failure to do so could cause the landlord difficulties in repossessing the property. If the tenants provided a guarantee with the original tenancy, the landlord should ensure that a new guarantee is provided with any new tenancy, or that the old guarantee will apply to any new tenancy granted to the same tenant.

Technically a tenancy can only be in the names of four tenants, as in land law only four people can hold a legal interest in land. However, if there are more than four tenants who wish to share, the additional tenants will still be liable for the rent and everything else under the contract, and their co-tenants will be deemed to be holding the tenancy on trust for themselves and the others. Practically therefore the four-name rule is not a problem.

3.7 Succession Rights And Rights Of Survivorship

If a joint tenant dies, the remaining joint tenant(s) are entitled to remain in the property (having a right of survivorship). They become liable for the rent.

If a sole tenant dies, the right to succeed to the tenancy will depend on whether the tenant had a fixed-term or periodic tenancy.

For fixed-term tenancies where the term has not expired, the position is, in theory, that the executors will arrange for the tenancy to be passed on to the person to whom it is left in the will (or whoever inherits it under the intestacy rules if there is no will). In practice, the executors will usually agree to surrender the property, and the landlord will agree to seek another tenant.

If there is a periodic tenancy, the tenant's spouse or a person who lived with the tenant as husband or wife, has an automatic right to succeed to a periodic assured tenancy unless the tenant who died had already succeeded to the tenancy. Only one succession is allowed. No one else in the family has an automatic right to succession (section 17 Housing Act 1988).

In a periodic assured tenancy, if someone is living in the property who does not have a right to succeed to the tenancy, the landlord can claim repossession under Ground 7, provided the proceedings for recovery of possession are commenced within a year of the death of the original tenant.

In a shorthold tenancy, the landlord is entitled to repossess the property at the end of any fixed term, or at the end of a period of a periodic tenancy, even if the tenant is entitled to succeed provided that the landlord gives the proper form of two months' notice under section 21.

3.8 Tenancy Agreements

3.8.1 Written Tenancy Agreements

Landlords should be aware of the benefits of written tenancy agreements and the procedures necessary for obtaining such an agreement. Although many short-term tenancies (three years or less) can be created without a written agreement, it is generally not advisable for landlords to allow occupation without first having secured a signed formal tenancy agreement.

3.8.2 Benefits Of Written Tenancy Agreements

A written agreement is required by law for fixed-term tenancies of greater than three years, when the tenancy must be produced by deed, with signatures being witnessed. Even in tenancies of three years or less, landlords are strongly advised to have a written tenancy agreement, which the tenants should sign before occupation. The benefits of having a written agreement are:

- it can prevent disputes later over what was agreed
- if there is a dispute, it can help to resolve the dispute more quickly
- a well drafted tenancy agreement will help protect the interests of all parties.

Landlords should note:

- after moving in, occupiers cannot be required to sign a tenancy agreement
- it will be difficult to evict a tenant without a valid tenancy agreement
- the accelerated procedure for recovery of possession (see Chapter 5) will not be available unless the tenancy and required notices can be evidenced from valid paperwork.

3.8.3 Tenant's Right To A Written Statement

A Housing Act 1988 tenant who does not have a written agreement has a right to ask for a written statement of any of the following main terms of the tenancy:

- the date the tenancy began
- the amount of rent payable and the dates on which it should be paid
- any rent review arrangements
- the length of any fixed term which has been agreed.

The tenant must apply in writing to the landlord for this statement. The landlord must provide it within 28 days of receiving the tenant's written request. A landlord who fails to provide a statement of tenancy particulars without reasonable excuse, is committing a criminal offence and could be prosecuted and fined.

3.8.4 Implications Of Oral Agreements

In law, a tenancy can be created by oral agreement. If a person occupies a property and pays rent, a tenancy will have been created even though there has been no written agreement.

A landlord cannot allow a tenant to live in a property 'on approval', on the basis that a tenancy will be granted later. The tenancy will have been created by the initial acts of occupation and payment of rent.

A person exclusively occupying a property and paying rent will legally be regarded as a tenant and be entitled to all the statutory protections provided to tenants under the law.

3.8.5 Preparing A Written Agreement

Although landlords may draw up their own agreements, this is not advisable. Drafting tenancy agreements is a highly skilled job and landlords doing this without legal advice may find that they have actually made their position worse in the very areas where they were seeking to protect their position.

It is far better to use one of the many excellent standard tenancy agreements which are available from landlord associations, law stationers, the larger general stationery stores, the many online services available for landlords, and some local authority housing advice centres. Landlords wishing to alter the terms of a standard agreement should seek specialist advice.

The preparation of a written agreement is the key opportunity for both landlord and tenant to agree the formal terms of their relationship. Both parties should have every opportunity to read and understand the terms of the tenancy which is being created before becoming bound by them.

Following changes to Stamp Duty in 2004, tenancy agreements no longer have to be stamped in order to be valid. The new Stamp Duty Land Tax may still be payable if they are of very high rent value. More details can be found in the Inland Revenue leaflet *Stamp Duty on Agreements Securing Short Tenancies* available from any Stamp Office. The Stamp Office Helpline can provide more advice on Stamp Duty on 0845 603 0135 and there are factsheets available on http://www.hmrc.gov.uk.

It is best to have two copies of the tenancy agreement signed by both parties with each keeping their own copy.

If the tenant occupies the property immediately, the agreement does not need to be witnessed. If the tenant does not intend to occupy until a later date (for example students signing a tenancy agreement in February and taking occupation in September) it is best practice to have the agreements formally drawn up as a deed and the signatures independently witnessed.

Contracts can be signed electronically but care needs to be taken that the document can be shown to have been agreed by the landlord and tenant. Where the tenancy is to be a deed (not taking effect in possession or greater than 3 years for example) it becomes more difficult electronically because of knowing the signatures were independently witnessed.

Where the tenancy does not need signing in advance and as a meeting will always take place to hand over keys, it might be a good idea to simply provide a draft tenancy electronically so the tenant can read the contents at their leisure, then, sign two copies of the agreement with the landlord at that meeting.

Both parties should be careful when completing the agreements. Make sure they are legible and that they can be read without difficulty in the event of a dispute. Landlords must provide a full, valid and current address in England or Wales. This could be the address of the landlord's agent or his registered business address. If a landlord does not give an address, this might cause difficulties should any dispute arise.

If no address for the landlord is given at all, apart from being bad practice, the penalty is that no rent is payable by the tenant until an address is given (and the previous rent can then be claimed) but this will cause the landlord difficulties later if there is a need to evict a tenant for arrears of rent.

3.8.6 Unfair Terms In Tenancy Agreements

The Consumer Rights Act 2015 ensure that standard contracts between a consumer and a business are 'fair'. The unfair terms part of the Act applies to tenancy agreements. Unfair terms are administered and enforced by the Competition and Markets Authority (CMA). The Office of Fair Trading (OFT) which used to administer the unfair terms regulations had issued guidance on the effect of the previous regulations on tenancy agreements https://www.gov.uk/government/publications/unfair-terms-in-tenancy-agreements--2). This guidance can continue to be used because the old regulations have basically been imported into the Act.

The legislation does not cover the core terms of a contract (e.g. the rent and property details) except in so far as they require that the contract must be in plain English.

A standard term is unfair if it creates a significant imbalance between the parties' rights and obligations to the detriment of the consumer and it is contrary to the requirement of good faith. If a term is found to be unfair it will be void and not enforceable – but the rest of the contract will stand.

So far as tenancy agreements are concerned:

- any clauses which attempt to limit or exclude rights (e.g. legal rights) which tenants would otherwise have had, are likely to breach the regulations and be deemed unfair, unless there is a very good reason for them (which should be apparent from the agreement)
- clauses which impose any penalty or charge on a tenant must provide for or state that the charge should be both reasonable in amount and reasonably incurred
- where a clause states that a tenant may only do something with the landlord's written consent, this should be followed by the words '(consent not to be unreasonably withheld)' or similar.

Any clauses which are difficult to understand, or which use legal terminology, or words which have a specific legal meaning which may not be understood by the ordinary person (such as 'indemnity' or 'jointly and severally liable'), will also be vulnerable to being found invalid under the legislation.

Here is an example of how this can work

Many landlords would prefer to prohibit pets from their properties and would like a clause in the agreement saying so. However, if the clause just says, 'The tenant is prohibited from keeping any pets whatsoever', this clause is likely to be void (ultimately only a court can decide what is or is not fair), and it will not stop the tenant from keeping pets if it is found unfair.

To make the clause more acceptable, it should say something like 'The tenant is prohibited from keeping pets, except with the landlord's written permission which shall not be refused unreasonably'.

A clause in this format is not saying a landlord has to give permission. There are many excellent reasons for refusing permission for pets – that they damage the property, that some people are allergic to them, or that the lease with the freeholder may also prohibit pets. If any of these reasons were given it would be difficult for the tenant to argue that the landlord was being unreasonable in refusing permission for a pet. The same words may be a fair term or an unfair term, depending on the context in which they are used.

It is easy to breach the regulations and render clauses invalid by inexpert adaptations. Professionally drafted tenancy agreements sold by reputable publishers and provided by landlord associations will normally have been drafted with these regulations in mind. Note also, that from time to time new cases may be decided or new guidance issued by the CMA which will need to be reflected in the form of tenancy agreements.

Make sure that the agreements in use are the most recent versions and do not use old versions.

3.9 Making An Inventory/ Schedule Of Condition

Having an inventory (sometimes also called a statement of condition) is essential if the property is let furnished, and a very good idea even if it is unfurnished. An accurate and current inventory will help to protect the position of both parties and can provide evidence to prove the condition of the property at the time it was let.

Care should be taken when preparing an inventory. Make a detailed list of all the belongings and furniture provided when a tenant first moves in. It is also essential to record the condition of such things as walls, doors, windows, and carpets etc. The inventory should be agreed with the tenant before they move in and a separate copy of the list held by each party. This should then be checked again at the time the tenant moves out. The inventory will only provide protection if it is agreed by both parties and if it is thorough and detailed. If the inventory simply records 'four chairs', that says nothing about whether they match, or about their quality or condition. The condition of the furniture, including existing damage to the furniture and fittings, decorations and other contents should be noted on the inventory and agreed with the tenant.

Photographs are often a good idea, particularly with high value furnishings. With some properties, landlords and agents are now also taking videos but this has more limited value in dispute resolution as they are much harder to work with.

When taking photographs ensure not just the mark or stain being complained is photographed close up. A further photograph at a distance to show the mark or stain should be taken to show context and size.

A thorough and detailed inventory will help avoid disputes, particularly those involving the return of a deposit. It is advisable to keep all receipts and to make a record of the meter readings in the inventory. Remember that if there is a dispute over the condition of the property and this goes to court or a deposit scheme adjudicator, it will generally be for the landlord to prove the claim.

The tenancy deposits schemes (see next) have produced a useful joint guidance titled 'Tenancy Deposits, Disputes and Damages'. This has useful guidance about producing inventories amongst other things. It is available to download here: http://www.depositprotection.com/documents/guide-to-deposits-disputes-damages-2013.pdf.

Taking an inventory is a long job and many landlords now use professional inventory clerks to do this for them. The advantage of this is that, if a dispute over the condition of the property ever happens, they will be able to give independent evidence to the judge. If a dispute about the condition of a property goes to court or to a deposit scheme adjudicator, generally it will be for the landlord to prove the claim that the deposit (or part of the deposit) should be withheld.

Inventory clerks can be found via the website of the Association of Independent Inventory Clerks at http://www.theaiic.co.uk.

3.10 Deposits And Tenancy Deposit Schemes

Many landlords take a deposit from tenants to hold for the duration of the tenancy. When the tenant moves out this is returned to the tenant less any deductions permitted: normally for damage (in excess of fair wear and tear), additional cleaning and to cover any outstanding rent. Note that a deposit (or part of it) can only be withheld if it is stipulated within the contract what the deposit is being held against.

Because a small minority of landlords wrongly withheld or did not return deposits the Government introduced in the Housing Act 2004 a statutory deposit protection scheme. This safeguards all deposits taken under an assured shorthold tenancy after 6 April 2007 or assured shorthold tenancies that have been renewed since that date. In certain circumstances, since amendments made by the Deregulation Act 2015, all deposits for assured shorthold tenancies should be protected in order to serve a section 21 notice, even deposits taken before 6 April 2007. Deposits relating to other types of tenancies are not covered.

3.10.1 Requiring A Deposit

A landlord may require a deposit from a tenant before they move into the property. Landlords often feel that holding a deposit means a tenant is less likely to abandon a property and instead terminate the tenancy correctly. A deposit can also act as an incentive to ensure that the property is properly cleaned and cleared at the end of the tenancy. Deposits can also help to protect landlords against any unpaid rent at the end of the tenancy. The amount of the deposit to be levied is part of negotiating a contract or agreement with the tenant. The amount of the deposit can vary significantly and depends on how much 'risk' the landlord perceives they are taking by letting the property to that tenant. Large deposits, however, can deter prospective tenants and there is considerable judgement to be exercised in setting a market-friendly, but practical, deposit level.

3.10.2 Withholding Part Of The Deposit

Deposits can cover:

- damaged items
- outstanding debts attached to the property
- failure of the tenant to carry out obligations set out in the tenancy agreement such as cleaning

- non-payment of rent
- other breaches of the tenancy.

In assessing any damage, allowance must be made for fair wear and tear, the cost of which is not deductible from the deposit. Fair wear and tear is paid for in the rent charged. Wear and tear arises from normal living in a property. Landlords should not expect to receive a property back in the same condition it was let at the start of the tenancy. Tenants should be expected to return the property in a clean and tidy condition. But after, say, a tenancy of two years normal living, a landlord will just have to accept that paintwork might be looking tired and carpets might be looking worn.

The tenancy agreement should state clearly the circumstances under which part or all of the deposit may be withheld at the end of the tenancy.

If the tenant cannot afford the deposit, the local authority's housing department or housing advice centre may operate a rent or deposit guarantee scheme in the area, which would guarantee rent or the costs of damage for a specified period.

At the end of the tenancy the inventory should be checked and an assessment made of the condition of the property - the landlord should take into account reasonable wear and tear.

If a claim is going to be made from the deposit the landlord should account for this with invoices or receipts and try to reach agreement with the tenant about the proposed deposit deductions. The landlord should promptly send any unclaimed balance of the deposit to the tenant. The landlord should not keep the full deposit as a way of getting the tenant to agree to deductions about part of the deposit.

3.10.3 Protecting A Deposit

The Housing Act 2004 introduced specific requirements relating to deposit protection which commenced on 6 April 2007. The Act has subsequently been amended by the Localism Act 2011 (the changes came in on 6 April 2012) and the legislation surrounding deposits was further amended from 26 March 2015 by the Deregulation Act 2015.

Under the Housing Act 2004 -

- a deposit must be dealt with in accordance with an authorised tenancy deposit scheme from the moment of receipt
- landlords must comply with their chosen scheme's *initial requirements* within 30 days of receiving the deposit
- landlords must give prescribed information to the tenant, and to anyone who paid the deposit on the tenant's behalf, within 30 days of receiving the deposit

The legislation uses the term to *comply with the initial requirements of a scheme* but this is commonly referred to as 'protecting the deposit'.

Precisely how to protect a deposit depends on the individual scheme of choice but essentially they all require a landlord or agent to -

- register with the scheme
- enter details about the property
- enter details about the tenancy and deposit
- enter details about the tenant(s)
- either send the deposit to the scheme or make payment if an insured based scheme (some agents will use a system where they pay per office rather than per deposit).

The deposit must be protected within 30 days of it being received 'in connection with an assured shorthold tenancy'. This means the time when the 30 days starts might be before the date the tenancy 'commences'. For example a student might sign and date a tenancy agreement in January and pay the deposit at the same time. But, the tenancy might not start until the following September. In this example, the 30 days would start from the date in January when the deposit was paid and not in September when the tenancy commences.

A renewal tenancy on or after 6 April 2007 is the same as receiving a new deposit in connection with a tenancy and would trigger deposit protection. Assuming a deposit was correctly protected when initially received (and prescribed information given), any renewals after that time do not require re-protection as long as the deposit remains in the same scheme and the renewal is between the same landlord, tenant and property as originally completed.

3.10.4 Penalties For Failing To Protect A Deposit

If a landlord fails to protect a deposit within 30 days of receiving the deposit in connection with a tenancy, a penalty of between 1 and 3 times the deposit is payable if a tenant or person who paid the deposit on their behalf makes an application to the court. This is usually in addition to an order requiring protection of the deposit or returning the deposit depending on the circumstances. The amount of the penalty is at the discretion of the court.

In addition to the financial penalty, where a deposit was not protected within 30 days, the section 21 notice (two months no fault notice) cannot be served unless the deposit is returned in full 'before' service of the notice. If there are 'agreed deductions' the balance must be refunded before service. For example if there are rent arrears, both landlord and tenant can agree to reduce the arrears by using the deposit. For this to work it must be 'agreed' by both parties and the court will want to see a written agreement to that effect. In a recent High Court case, a cheque representing an amount equivalent to the deposit was sent to the tenant by the landlord but the tenant returned the cheque without presenting it. Nevertheless, that cheque was held to be sufficient for the returning of the deposit in full.

Even if a deposit has been protected after 30 days, that is not good enough for serving a section 21 notice and the deposit (despite being protected) would have to be returned in full (or agreed deductions) before service of the notice.

If there was a deposit received prior to 6 April 2007 and the tenancy became a statutory periodic tenancy on or after 6 April 2007 and the tenant remains in occupation under that statutory periodic tenancy, the deposit had to be protected within 90 days of the Deregulation Act 2015 being passed (the Act was passed 26 March 2015). If such a deposit wasn't protected within 90 days, the same penalties as described earlier apply (no section 21 until returned plus financial penalty).

Where a deposit was received prior to 6 April 2007 and the tenancy went periodic before 6 April 2007 and the same tenant is in occupation under that periodic tenancy, no penalty can be sought for any failure to protect. However, if a section 21 notice is to be served at any time, the deposit must be first protected, returned in full or agreed deductions.

A tenant or person who paid the deposit on behalf of the tenant can make a claim for the financial penalty both during a tenancy and after they have left the property for up to 6 years.

3.10.5 Prescribed Information

Just as important as protecting a deposit is giving the prescribed information within 30 days of receipt.

The information is quite lengthy and must include the following:

- The name, address, telephone number, e-mail address and any fax number of the deposit scheme administrator
- Any information contained in a leaflet supplied by the scheme administrator to the landlord which explains the operation of the provisions contained in sections 212 to 215 of, and Schedule 10 to, the Act
- The procedures that apply under the scheme by which an amount in respect of a deposit may be paid or repaid to the tenant at the end of the shorthold tenancy
- The procedures that apply under the scheme where either the landlord or the tenant is not contactable at the end of the tenancy
- The procedures that apply under the scheme where the landlord and the tenant dispute the amount to be paid or repaid to the tenant in respect of the deposit
- The facilities available under the scheme for enabling a dispute relating to the deposit to be resolved without recourse to litigation
- The amount of the deposit paid
- The address of the property to which the tenancy relates
- The name, address, telephone number, and any e-mail address or fax number of the landlord
- The name, address, telephone number, and any e-mail address or fax number of the tenant
- Such details that should be used by the landlord or scheme administrator for the purpose of contacting the tenant at the end of the tenancy
- The name, address, telephone number and any e-mail address or fax number of any relevant person
- The circumstances when all or part of the deposit may be retained by the landlord, by reference to the terms of the tenancy
- Confirmation (in the form of a certificate signed by the landlord) that the information he provides under this sub-paragraph is accurate to the best of his knowledge and belief
- He has given the tenant the opportunity to sign any document containing the information provided by the landlord under this article by way of confirmation that the information is accurate to the best of his knowledge and belief

The landlord must sign the prescribed information or it can be signed by a landlord's agent. All tenants and relevant persons (see later) must be given the opportunity to sign the information.

Schemes are not allowed to supply the information. It must be given (and signed as accurate) by the landlord or agent.

All the information must be present. A link to the scheme rules on their website for example is not enough. The appropriate rules or information must be physically given to the tenant(s) and relevant person(s).

Where it asks for the landlord details, this may be the agent details if there is one (at the discretion of the landlord).

If the deposit was protected within 30 days but prescribed information was given after 30 days, a section 21 notice can be served (as long as the prescribed information was given 'before' service) but the penalty of between 1 and 3 times deposit would still be payable if applied for.

Where a tenancy is renewed and as long as the deposit was correctly protected and prescribed information given at the time of receipt, no further prescribed information is required to be given as it is deemed complied with. This is as long as the deposit remains in the same scheme and the renewal is between the same landlord, tenant and property as originally completed.

3.10.6 Types Of Schemes

The schemes are of two types:

- custodial (where the scheme administrators hold the deposit and which is free of charge) or
- insurance (where the landlord holds the deposit but has to pay an insurance premium).

At the time of writing, there are three schemes authorised under the Housing Act 2004 and all three offer a custodial or insured option.

The custodial scheme is open to all landlords and letting agents and is free to use. The landlord or agent must pay the deposit to the scheme administrator within 30 days of receipt. The scheme is funded from the interest the scheme operator makes on the deposits they hold.

Landlords and/or agents pay a fee to join insurance schemes. Insurance schemes operate on the basis that the deposit continues to be held by the landlord or agent during the tenancy. If there is a dispute about the deposit at the end of the tenancy, the deposit-holder must pay the disputed amount to the scheme. The scheme will make an award either based on the decision of the scheme's adjudicator, or an order by the court, or if the parties are subsequently able to reach agreement. The deposit money is insured, so that if the landlord or the agent does not pay the correct amount to the scheme when requested, the scheme can claim on the insurance and pay the tenant's award, and then try to recover the tenant's award from the landlord or agent. If there is no dispute about the proposed deductions from the deposit, tenants can often receive their deposits (or the balance due to the tenant) more quickly under these schemes because the landlord/agent can simply pay it back (rather than wait for the custodial scheme to refund the money).

It is for the landlord to decide under which scheme the deposit will be held, either custodial or an insurance-based scheme. The prescribed information that landlords are required to give to tenants, not more than 30 days after the taking of the deposit, includes giving the tenant (and anyone who paid the deposit on the tenant's behalf) details of the scheme under which the deposit will be held.

To avoid disputes about deposits having to go to court, all the schemes have an alternative dispute resolution (ADR) service which seeks to resolve disputes that have arisen about deposits. Use of a deposit protection scheme's ADR service is not compulsory. Both landlords and tenants still have the option of going to court but they cannot do both. In some cases, landlords who took their case to court were ordered by the judge to use the ADR service. There is a general obligation in the Civil Procedure Rules (the court rules) to try other means of resolving disputes before going to court – because court proceedings are often time-consuming and expensive all round.

3.10.7 Authorised Tenancy Deposit Protection Scheme Providers

There are three authorised schemes:

- The Deposit Protection Service (further details from www.depositprotection.com).
- The Dispute Service (further details from www.thedisputeservice.co.uk) and
- Mydeposits, (further details from www.mydeposits.co.uk).

Different membership options are available through the schemes. For example, managing agents may pay a membership fee which then covers that agent for all deposits they receive. Alternatively a landlord with only one or two properties who does not use an agent may be able to pay a flat fee per deposit, and this may be more cost-effective.

Landlords or their agents should familiarise themselves with the rules of their chosen scheme. The rules may direct landlords and agents to include special clauses in their standard tenancy agreements, for example. If tenancy agreements or other documents are not in the form required by the scheme, or if timescales are ignored, the adjudicator may award the full deposit to the tenant by default – whatever the merits of the landlord's claim.

From 6 April 2017, a local authority may seek information from the schemes in order to facilitate investigations for the purposes of the Housing and Planning Act 2016.

3.10.8 Relevant Person

Where a third party provides the deposit, i.e. money changes hands as opposed to the guarantee schemes listed below, then that person is a 'Relevant Person' and needs to be provided with a copy of the prescribed information. This is very common in student letting where parents often provide the deposit and some local authorities will provide a physical monetary deposit rather than a guarantee. The Relevant Person should also be provided with a copy of the tenancy agreement, as it could help to avoid or resolve disputes later if they are told up front what the deposit might be used for. Just like tenants, Relevant Persons can claim against landlords or agents if they are not given prescribed information or if the landlord/agent fails to comply with the chosen deposit protection scheme's initial requirements.

3.10.9 Lead Tenant

The Deposit Protection Service (DPS) and the Mydeposits scheme both use a 'Lead Tenant' or 'Nominated Tenant' system. This applies in any situation where more than one person has an interest in the deposit. This could be where there are joint tenants, parents of students or local authorities providing the deposit. In setting up the Lead Tenant all parties with an interest in the deposit need to agree who that will be. This may cause problems with students signing a joint tenancy trying to get six parents who have not met to agree if they choose a Lead Tenant who leaves the property before the end of the tenancy.

If a local authority had provided the deposit, the Lead Tenant may not be a tenant at all but the local authority which paid a deposit on behalf of the tenant.

3.11 Bond Guarantee Schemes

Landlords should be aware of the operation of bond guarantee schemes and their benefits.

There are various bond guarantee schemes operating across the country. These schemes generally replace the upfront cash deposit and instead guarantee to the landlord the cost of any damage to the property/rent arrears etc. If at the end of the tenancy the landlord finds that they need to make a claim they would do so via the bond bank. These types of scheme are generally only available to certain 'vulnerable' groups.

For landlords the schemes can:

- provide a guarantee against damage or rent arrears
- provide assistance in getting housing benefit processed quickly

- help find tenants in certain circumstances
- offer general advice on landlord and tenant matters.

The types of services offered may vary across the country and the local authority should have details of schemes operating within the locality.

Dealing appropriately with vulnerable groups can be challenging and rewarding. It is suggested that landlords wishing to deal with these groups should ensure they have the required confidence, skills and professionalism to do so.

3.12 Rent Setting

Landlord and tenant should mutually agree the initial rent. During the first six months of a tenancy, tenants have rights to refer the rent to the First-tier Tribunal (Property Chamber - Residential Property) for review if they consider the rent to be above the market rent. This is, however, very rarely done.

When considering the rent to charge a landlord should consider what repairs and other outgoings are likely to ensure there is sufficient income. This needs to be balanced with current market conditions.

3.12.1 Setting The Rent

Before the tenancy begins, landlord and tenant should mutually agree the rent, including arrangements for when to pay and review it. The details of these matters should be included clearly in the tenancy agreement. If the tenancy is for a fixed term, the rent given in the agreement will last for the whole of the fixed term unless there is a rent review clause.

3.12.2 Rent Book

A landlord is legally obliged to provide a rent book if the rent is payable on a weekly basis (failure to do so is a criminal offence.). The rent book provided must, by law, contain certain information. Standard rent books for assured and assured shorthold tenancies can be obtained from law stationers and larger general stationers. However, the landlord should also keep a record of rent payments and provide receipts for rent paid (particularly for cash payments) for all tenancies to avoid any disagreements later.

3.13 Housing Benefit And Universal Credit

Persons on low or no income who have a liability to pay rent may be entitled to housing benefit which is currently being replaced in phases by Universal Credit.

3.13.1 Housing Benefit

Housing benefit provides help with rental payments for people on no or a low income. How much a tenant will get is usually based on:

- the Local Housing Allowance Limit in the area
- their income - including benefits, pensions and savings over £6,000
- individual circumstances

3.14 Local Housing Allowance

Local Housing Allowance (LHA) is a flat rate allowance paid to housing benefit claimants. It is updated annually, each April.

LHA applies to private sector tenants who make a new claim for housing benefit or those claiming housing benefit who change address. It also applies to tenants on housing benefit who move from the social sector into private sector accommodation.

Rent Officers determine 5 different LHA rates for the following categories of property: Shared accommodation (room in a shared property), 1 bedroom, 2 bedrooms, 3 bedrooms and 4 bedrooms.

3.14.1 How Is The LHA Calculated?

The Rent Officer maintains rental information for each category of LHA rates. These are the list of rents.

Mathematical calculations are applied to the list of rents to determine the LHA rate which is set as the lower of:

- the 30th percentile on a list of rents in the Broad Rental Market Area
- the existing LHA plus an uplift of 1%
- the existing LHA plus an uplift of 4% (only selected LHA rates in specific BRMAs set out in the regulations)

LHA rates can not be higher than the following maximum weekly rents (correct June 2018) :

- £260.64 for one bedroom exclusive use (or a shared room)
- £302.33 for 2 bedroom accommodation
- £354.46 for 3 bedroom accommodation
- £417.02 for 4 bedroom accommodation

The list of rents is a representative sample of private sector rents paid across the BRMA, including those from the lower end through to the upper ends of each rental market.

A graph showing the list of rents for each applicable LHA category can be found on the LHADirect - Local Housing Allowances (LHA) webpage - https://www.gov.uk/government/publications/understanding-local-housing-allowances-rates-broad-rental-market-areas and the rental information is provided to Rent Officers by landlords, letting agents and tenants.

3.14.2 What Is A Broad Rental Market Area (BRMA)?

The BRMA is the geographical area used to determine the LHA rate. It is an area where a person could reasonably be expected to live taking into account access to facilities and services for the purposes of health, education, recreation, personal banking and shopping.

When determining BRMAs the Rent Officer takes account of the distance of travel, by public and private transport, to and from these facilities and services.

Rent Officers consult with local authorities when they determine and review the BRMAs. The boundaries of a BRMA do not have to match the boundaries of a local authority and BRMAs will often fall across more than one local authority area.

VOA Rent Officers provides the local authorities with information that identifies the BRMAs and which properties fall into them.

3.14.3 Number Of Bedrooms

The maximum LHA that someone is allowed to claim is dependent on the size of their household. This is worked out as follows:

If the claimant is under 35 years and single, that person will only be entitled to a maximum of the shared room rate. Otherwise, claimants are entitled to one bedroom for:

- every adult couple
- any other adult aged 16 or over
- any two children of the same sex under 16
- any two children under 10 regardless of sex
- any other child

(This would be the maximum LHA that a claimant could receive. What a claimant will eventually receive when their claim is assessed is dependent on their household income).

3.14.4 Non-dependants

The council may reduce someone's Local Housing Allowance if they share their home with adults who are not dependent on them – for example, adult sons or daughters, parents, relatives or friends. It is assumed that they should pay something towards the rent, whether they do so or not.

3.15 Benefit Cap

There is an overall benefit cap affecting all benefits a person / couple receives which means they can never receive more than what is specified in the legislation at the appropriate time.

For the current limits, please see the appropriate GOV.UK website page here: https://www.gov.uk/benefit-cap/benefit-cap-amounts.

3.16 Direct Payment

In most modern cases, the initial assumption is that payment of housing benefit is made directly to the tenant. It is only possible to be paid directly to landlords in certain cases.

3.16.1 Mandatory Direct Payment

A local authority must pay a landlord direct if the tenant is the equivalent of 8 weeks or more rent in arrears. The landlord must notify the local authority about the arrears before payment to the landlord can be made.

Where the rent is payable monthly in advance under the tenancy agreement, it is confirmed by the current Government guidance that direct payment should be made after one month and one day of non-payment as that is the equivalent of 8 weeks arrears - see paragraph 4.060 Local Housing Allowance guidance and good practice for local authorities https://www.gov.uk/government/publications/local-housing-allowance-guidance-and-good-practice-for-local-authorities.

Direct payment is also available when a tenant is receiving Universal Credit but is known as a "managed payment". The tenant should be two months or more in arrears and an application for a managed payment must be made to the central handling department. Further guidance and a form is available at https://www.gov.uk/government/publications/universal-credit-and-rented-housing.

3.16.2 Discretionary Direct Payment

There are a number of circumstances where the local authority may make direct payment to a landlord if they choose. However, even if the circumstances exist, they still don't have to make direct payment because these rules do not have to followed and are discretionary only:

- the local authority considers that the claimant is likely to have difficulty with the management of his financial affairs; or

- the local authority considers that it is improbable that the claimant will pay his rent; or
- a direct payment has previously been made to the landlord after being 8 weeks or more in arrears; or
- the local authority considers that it will assist the claimant in securing or retaining a tenancy.

Similar discretionary payments will also be available where the tenant is claiming Universal Credit.

3.17 Processing Claims

In order to make a claim, tenants will have to provide proof

- their income, and any savings
- their identity and sometimes details of their immigration status in the UK
- the rent to be paid (usually a written tenancy agreement is sufficient) and
- the name and address of the landlord/agent.

Local authorities should process housing benefit claims within 14 days from receipt of all the appropriate documentation they have requested. They cannot pay a claim until they have all the information they need.

Regrettably, some local authorities often fall short of the 14-day target, which can cause hardship and problems for both tenants and landlords. Sometimes delays occur if a tenant does not fully understand what is required. Some landlords are willing to help tenants with their applications, whilst others might form a view about a tenant's suitability if they are applying for housing benefit.

3.18 Universal Credit

Universal Credit will sweep away the current benefits system and provide a single monthly payment for people on a low income or are out of work. It will include support for the costs of housing, children and childcare, as well as support for disabled people and carers. Universal Credit will replace:

- Income-based Jobseeker's Allowance
- Income-related Employment and Support Allowance
- Income Support
- Working Tax Credit
- Child Tax Credit
- Housing Benefit

Universal credit will be centrally administered by the Department for Work and Pensions but local authorities will be able to assist claimants with the on-line claim procedure and advice.

3.18.1 When Will Universal Credit Be introduced?

Universal Credit is being rolled out in stages throughout England and Wales. It is currently available in most areas although it will likely be only single first time claimants that can apply at the moment. Some areas will start to allow couples to apply and slowly increase the situations as to who can apply.

An up to date list of all the jobcentre areas where Universal Credit can be claimed is available at https://www.gov.uk/guidance/jobcentres-where-you-can-claim-universal-credit.

3.18.2 How will Universal Credit Be Paid?

In most cases the whole benefit including the housing element will be paid directly to a claimant's bank account.

There will be limited circumstances such as the 8 weeks arrears rule similar to current housing benefit where it may be possible for direct payment. This is known as an Alternative Payment Arrangement and a landlord will need to contact the DWP to ask for direct payment to be made.

Universal Credit will be assessed monthly (no longer will payments be four weekly) and the amounts will be paid monthly in arrears.

3.18.3 How Much Will A Tenant Receive?

Universal Credit will include a *housing element* and the amount of that element is based almost entirely on the current local housing allowance system. The claimant will be entitled to the maximum of the local housing allowance rate based upon the number of bedrooms they are entitled to depending on their circumstances.

3.18.4 Where Can I Get More Information?

The DWP have produced a useful FAQ - Universal Credit and Rented Housing Frequently Asked Questions available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275875/universal-credit-rented-housing.pdf.

3.19 Tenant References

Landlords should interview prospective tenants carefully, so as to assist in choosing one who will be trustworthy and reliable. Taking up references from a prospective tenant's current or previous landlord, employer and bank can help to inform the tenant selection process.

Some landlords might also use a tenant referencing service, which will make checks and enquiries of a prospective tenant on a landlord's behalf. Many companies provide services such as this. They can be found online or via insurers or landlord associations.

As part of the pre-tenancy referencing/checks, it is suggested landlords ask the successful tenant to provide details of a close family member or friend who can be contacted in an emergency or if the tenant leaves without notice.

In some niche markets, such as letting to students, it is difficult to obtain references because this will be the first time that a tenant has lived away from home. To offset this risk, some landlords ask for guarantors where a parent or friend guarantees to meet the cost of unpaid rent and/or damage up to a given threshold if this is not met by the tenant.

3.20 Unlawful Discrimination

There are legal obligations on landlords both in the public and private sectors as service providers and employers, to take reasonable steps to ensure that people are not discriminated against directly or indirectly due to their "protected characteristics" like race, colour, gender or disability. The specific legislation is the Equalities Act 2010.

Direct discrimination is defined as treating a person less favourably than another on the grounds of their race, gender or disability. In some cases, discrimination may occur where there has been a failure to comply with a statutory duty. In relation to disability, it should be noted that the statutory definition has been widened to include those with certain long-term medical conditions.

Indirect discrimination consists of applying a requirement or condition that, although applied equally to persons whether male or female, black or white, is such that a considerably smaller proportion of a particular racial or gender group can comply with it than others, and it cannot be shown to be 'justifiable'.

With regard to issues pertaining to disability, a similar requirement exists that landlords do not impose criteria that could be identified as 'unreasonable'.

The Equality and Human Rights Commission published a code of practice on racial equality in housing. The code is important because it is a statutory code, which has been approved by Parliament. This means that the courts will take into account the code's recommendations in legal cases. The code is in two main parts; the first explains what landlords need to know about discrimination; the second makes recommendations about how landlords can avoid being discriminatory.

To find out more about discrimination and guidance on avoiding discrimination go to: www.equalityhumanrights.com.

The landlord should note that tenants should not be chosen on the basis of race, religion, marital status, disability or sexuality. If the landlord discriminates against any tenant on these grounds, the landlord could be prosecuted. If the landlord is letting rooms in the landlord's home, the landlord may specify the sex of prospective tenants. Age discrimination is prohibited in employment but is allowed in housing. In some cases, housing might have to be let to those over 55 in order to comply with planning requirements.

3.21 Immigration Act And Right To Rent

From 1 December 2014 in the areas Birmingham, Walsall, Sandwell, Dudley and Wolverhampton and then from 1 February 2016 in the rest of England, all landlords and agents will need to check the identity of all prospective occupiers. Copies of the documents obtained will need to be securely stored. Landlords and agents must not authorise an adult to occupy a property where the adult is not a national of the UK, EEA state or Switzerland AND who does not have right to enter or remain in the UK unless the *prescribed requirements* have been complied with.

3.21.1 Identify The Occupiers

Landlords and agents need to make reasonable enquiries as to the occupiers of the property even those not named on the tenancy agreement. For example, if a studio flat is being let to a single person, no further enquiries are likely to be needed but if the same single person wants to take a four bedroom house, enquiries would need to be made as to why a single person is taking the property alone. The duty to check identity applies to ALL occupiers not just tenants so includes lodgers. A landlord must not authorise ANY adult to occupy (not just tenants) if they have no entitlement to remain in the UK.

A suitable and well written application for accommodation form should be used asking all the necessary questions and obtaining necessary disclaimers from the prospective occupier regarding the answers.

3.21.2 Establish Whether Will Be Occupying As Only Or Main Home

Only the right to rent status of persons occupying as their only or main home require checking. Again, a good application form will ask the necessary questions.

When an occupier lives away from the home for extended periods due to employment, the address to which they return when they are not working is usually taken as being their only or main residence.

A landlord who considers that the occupier will not be using the premises as their only or main home is advised to make a record of the address which the occupier reports they do occupy as their main home, and the reasons for their view that they are not occupying the premises as their only or main home.

Where a landlord has any doubt about a person's intended use of the property, they should assume that the person intends to use it as their only or main home.

3.21.3 Document Checking

Once all adults who are going to occupy the property as their only or principal home has been established, landlords and agents will need to see original identification documents which will need to be checked against the document holder "*in person or via live video link*". Reasonable steps must be taken to ensure the ID matches the holder. For example, the picture (if there is one) must represent the person and the age must reasonably match their appearance. Landlords or agents are not expected to have the same level of expertise as an immigration officer though.

The documents that must be obtained are only summarised below. For other acceptable documents and further information, the statutory guidance accompanying the right to rent legislation should be consulted: https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice/code-of-practice-on-illegal-immigrants-and-private-rented-accommodation.

Some documents are sufficient where only one has been provided (for example a passport). Otherwise, a combination of two are required.

List A - Acceptable Documents Establishing A Permanent Right To Rent

Group 1 - Acceptable Single Documents

- A passport (current or expired) showing that the holder is a British citizen or a citizen of the UK.
- A passport or national identity card (current or expired) showing that the holder is a national of the European Economic Area or Switzerland.
- A registration certificate or document (current or expired) certifying or indicating permanent residence issued by the Home Office, to a national of a European Union, European Economic Area country or Switzerland.

Group 2 - Acceptable Document Combinations

Any two of the following documents when produced in any combination:

- A full birth or adoption certificate issued in the UK, the Channel Islands, the Isle of Man or Ireland, which includes the name(s) of at least one of the holder's parents or adoptive parents.
- A letter issued within the last 3 months confirming the holder's name, issued by a UK government department or local authority and signed by a named official (giving their name and professional address), or signed by a British passport holder (giving their name, address and passport number), or issued by a person who employs the holder (giving their name and company address) confirming the holder's status as an employee.
- A letter from a UK police force confirming the holder is a victim of crime and personal documents have been stolen, stating the crime reference number, issued within the last 3 months.
- Evidence of the holder's previous or current service in any of HM's UK armed forces.
- Letter from a UK further or higher education institution confirming the holder's acceptance on a current course of studies.
- A current full or provisional UK driving licence.
- Benefits paperwork issued by HMRC, Local Authority or a Job Centre Plus.

List B - Acceptable Documents With A Time Limited Right To Rent

All documents in this list must be valid (not expired) at the time of the right to rent check.

If presented with a document in List B, the landlord must carry out further checks at the longest of the following:

- one year, beginning with the date on which the checks were last made, or
- before the period of the person's leave to be in the UK, or
- the period for which the person's evidence of their right to be in the UK expires.

The further check towards the end of the longest period described above must be conducted within 28 days prior to the expiry of that period.

Acceptable documents from list B include:

- A valid passport or other travel document endorsed to show that the holder is allowed to stay in the UK for a time-limited period.
- A current biometric immigration document issued by the Home Office to the holder, which indicates that the named person is permitted to stay in the UK for a time limited period.
- A current immigration status document issued by the Home Office to the holder with a valid endorsement indicating that the named person may stay in the UK for a time-limited period.

3.21.4 Copying And Storing ID

Once obtained and checked in person (or via live video link), the document(s) must be copied and the date of copying recorded. The copy can be stored in hard copy or electronically. If electronically it can be stored in any format which cannot be later modified and jpeg (which most camera phones store images in) or PDF will be acceptable.

The documents must be stored securely and must be kept for at least 12 months after the tenancy has ended. The documents should be destroyed after that time because personal data must not be kept longer than necessary. When considering apps to use for storing documents, be prepared to keep the documents a long time as tenancies can continue periodic indefinitely.

Where documents obtained find the occupier to have a *limited right to rent*, the checks must be done no more than 28 days before the date the tenancy agreement is entered into (not necessarily commencement).

At the time of those checks, you should record the date for which their leave to remain in the UK expires and when their passport or other travel document expires (where the adult is a non UK, EEA or Swiss citizen).

If you find a tenant is in occupation after their right to remain has expired and you had previously carried out all the appropriate checks, there will be no penalty if you notify the Secretary of State "without delay" and within the longest period. There is no legal requirement to evict the tenant at this stage.

3.21.5 Landlord Checking Service

If during enquires, a prospective occupier informs you that they have some outstanding application, appeal or certain other ongoing case with the Home Office, a landlord or agent may contact the Landlord Checking Service - https://eforms.homeoffice.gov.uk/outreach/lcs-application.ofml where a positive right to rent notice can be obtained.

If the Landlord Checking Service fails to respond to a request within a period of 2 working days, then the landlord or agent may proceed as though the Landlord Checking Service had issued a Positive Right to Rent Notice.

3.21.6 Letting Agents

The default position is that all landlords are liable for the checks even if they employ an agent to carry out the letting of the property.

An agent is responsible for a landlord's contravention if (and only if) the agent acts in the course of a business and under arrangements made with the landlord **in writing**, the agent was under an obligation to comply with the prescribed requirements on behalf of the landlord.

3.21.7 Equality Act

In order to comply with the law on Right to Rent checks and avoid a breach of the Equality Act, ALL prospective occupiers must be checked at ALL times. This ensures you have a fair system that does not discriminate in any way.

3.21.8 Penalty

There is a civil penalty of up to £3,000 if a landlord (or agent) has authorised an adult to occupy premises under a residential tenancy agreement if the adult is disqualified as a result of their immigration status.

In addition, it a criminal offence for a landlord if:

- the premises are occupied by an adult who is disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement, and
- the landlord knows or has reasonable cause to believe that the premises are occupied by an adult who is disqualified as a result of their immigration status.

It will be a defence for any person charged with the above offence where:

- the person has taken reasonable steps to terminate the tenancy, and
- the person has taken such steps within a reasonable period beginning with the time when the person first knew or had reasonable cause to believe that the premises were occupied by the adult occupiers.

Guidance is to be issued which will assist with deciding what are *reasonable steps to terminate the residential tenancy agreement*.

3.21.9 Eviction

Where ALL occupiers have no right to rent, the Secretary of State may send the landlord a notice identifying all occupiers and the landlord may serve on the occupiers a notice on a prescribed form. The notice must give at least 28 days notice to the occupiers that their tenancy is to end. The notice is then enforceable as if it were an order of the High Court. Amendments have been made to the Protection from Eviction Act 1977 and where a notice has been given to the landlord as outlined, the tenancy is an excluded tenancy.

Where some (or all) occupiers have no right to rent, a new ground 7B has been inserted into the Housing Act 1988 which allows a landlord to serve a section 8 notice (where the tenancy is assured or assured shorthold). The ground may only be used after the Secretary of State has served on the landlord a notice notifying that some or all occupiers do not have a right to rent. If ground 7B is satisfied (by production of the notice from the Secretary of State) and no other ground apples (such as rent arrears) the court may order possession or order that the tenancy now vests only in those occupiers who do have a right to rent.

A similar provision applies for a protected or statutory tenancy under Rent Act 1977. For any tenancy that is neither assured, assured shorthold nor under the Rent Act 1977, an implied term is inserted into the tenancy by that:

> the landlord may terminate the tenancy if the premises to which it relates are occupied by an adult who is disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement. The term is implied into all tenancies (not assured shorthold etc.) whether they were entered into before or after 1 December 2016.

3.22 Notify Water Authority

Where a property is provided water by a supplier who operates “wholly or mainly in Wales”, certain notifications to the supplier about a new tenancy are required. The water authorities are Dwr Cymru Welsh Water and Dee Valley Water. The legislation does not affect properties covered by other water providers but does mean some properties in the English counties of Cheshire, Gloucestershire, Herefordshire and Shropshire supplied by those two providers are caught. Despite Severn Trent Water supplying water to some properties in Wales, those properties are NOT caught by the legislation (because they do not supply water wholly or mainly in Wales).

The owner of the property (or their agent) must supply the following information about any adult occupiers (including persons not named on the tenancy agreement but not children under age 18):

- their full names;
- their dates of birth (where such information has been provided to the owner);
- the date or dates on which the occupiers began to occupy the premises (if that date is after 1 January 2015).

It is important to clarify that the duty relates to all “occupiers” except lodgers. It does not matter what type of tenancy or licence they may have. Nor does it matter whether it is the occupiers only or principal home or not.

The information can be provided by any of the following methods:

- post
- telephone
- email
- Tenant Address Portal for Water Billing in England & Wales at http://www.landlordtap.com.

The information must be provided within 21 days of the date on which an occupier begins to occupy the premises. For existing occupiers as at 1 January 2015, the information must have been provided within 21 days of commencement (so by 21 January 2015).

A failure to provide the information will result in the owner of the property becoming jointly and severally liable for the occupiers water charges. However, where the information is provided within 21 days, the owner will not be liable for any of the water charges.

If the information is provided late (after 21 days), the owner’s joint and several liability will continue until the information is provided and will only cease from the point of providing the information onwards.

The occupier must be notified that the information will be provided before an owner gives the information to the water authority. A suitable application for accommodation form notifying the tenant that the information will be used in that way is the easiest way of complying with that requirement.

3.23 Prescribed Information

Not to be confused with tenancy deposit prescribed information, for all assured shorthold tenancies granted on or after 1 October 2015 including renewals, a landlord or landlord's agent must give the tenant the following information –

> the version of the document entitled “How to rent: the checklist for renting in England”, as published by the Department for Communities and Local Government, that has effect for the time being.

The information may be provided to the tenant—

- in hard copy; or
- where the tenant has notified the landlord, or agent, of an e-mail address at which the tenant is content to accept service of notices and other documents given under or in connection with the tenancy, by e-mail.

If the “how to rent” guide changes during the tenancy, the new version is not required to be provided.

Where a tenancy renewal is done between the same landlord and tenant for substantially the same property, another copy of the “how to rent” guide only needs to be provided if the guide has changed since the previous tenancy and previous version supplied to the tenant. Therefore, if doing renewals, landlords and agents will need to check and compare versions with what was given to the tenant previously and provide the new version if necessary.

It would appear that if the tenancy goes ‘statutory periodic’ (see chapter 5) at the end of the fixed term and the booklet has changed on or before that day, the updated one must be provided.

The legislation does not provide any time limit to supply the information. It simply says that the booklet must be given "under the tenancy". However, the ideal time is to serve the guide at the same time as granting the tenancy and that would appear to be the intention of the legislation.

The two months "no fault" section 21 notice may not be given at a time when the landlord is in breach of the requirement to give the information guide.

The “How to rent: the checklist for renting in England” can be downloaded here:
https://www.gov.uk/government/publications/how-to-rent.

3.24 Home Business Tenancies

Tenancies which are granted for business use will more often than not have protection under Part 2 Landlord and Tenant Act 1954. This gives the tenant a right to a renewal of their tenancy whenever the fixed term expires. Essentially giving the business a tenancy for life. Where a tenancy is granted for a home but the tenant wishes to operate a business from that home, the position can become unclear and landlords could be worried about giving consent for the tenant to also operate a business from their property.

Section 35 of the Small Business, Enterprise and Employment Act 2015 allows a landlord to grant a "home business tenancy" and such a tenancy is specifically excluded from any protection under Part 2 Landlord and Tenant Act 1954. This applies to any new home business tenancy granted from the 1 October 2015 except:

- a tenancy which is entered into before 1 October 2015
- a tenancy which is entered into on or after 1 October 2015, pursuant to a contract made before that day; or
- a periodic tenancy which arises at the end of the term where the original tenancy was before 1 October 2015 (where the tenancy is an assured shorthold tenancy).

If a tenancy meets the following conditions, it will be regarded as a "home business tenancy" for the purposes of the legislation:

- a dwelling-house is let as a separate dwelling,
- the tenant or, where there are joint tenants, each of them, is an individual, and
- the terms of the tenancy— * require the tenant or, where there are joint tenants, at least one of them, to occupy the dwelling-house as a home (whether or not as that individual's only or principal home), * permit a home business to be carried on in the dwelling-house, or permit the immediate landlord to give consent for a home business to be carried on in the dwelling-house (whether that be a particular home business, a particular description of home business or any home business), and * do not permit a business other than a home business to be carried on in the dwelling-house.

3.24.1 What Is A Home Business?

A "home business" is defined as:

> a business of a kind which might reasonably be carried on at home.

But, a business is not to be treated as a home business if it involves the supply of alcohol for consumption on licensed premises which form all or part of the dwelling-house.

There are provisions allowing regulations to be made prescribing cases in which businesses are, or are not, to be treated as home businesses.

An "assured shorthold tenancy" can also be a "home business tenancy". They are effectively the same thing if the tenancy contains the terms mentioned earlier. Mixed use (mixed commercial and residential premises) have special rules under the legislation.

A business which could "reasonably be carried on at home" might include:

- Web designer
- Accountant
- Financial advisor

Businesses which might not be suitable could include:

- Dentist
- Mechanic

3.25 Moving In A Tenant

Once the tenancy has been signed and normally after the first month's rent and deposit has been paid, the keys should be given to the tenant.

A standing order form could be completed at this stage if future rent is to be paid this way.

At the time of the tenant moving in, the inventory should be checked and signed, the meter readings checked and information provided to the utility companies (gas, electricity and water).

4 - During The Tenancy

In managing a house, and providing a service to the tenant in exchange for rent, the landlord should make every effort to establish a good working relationship with the tenant. This is particularly important when dealing with access to the property or when undertaking repairs. Part of that relationship will be good communication with the tenant and ensuring that their expectations are both reasonable and accurate about the level of service that will be delivered.

4.1 Periodic And Other Visits

Landlords have a common law obligation to maintain a let property reasonably free from disrepair. The local authority may take enforcement action if they identify risks including, but not limited to, hazards under the Housing Health and Safety Rating System (HHSRS) under Part 1 of the Housing Act 2004. Letting/renting a house in multiple occupation (HMO) adds specific management obligations for landlords and occupiers. These obligations are detailed in Chapter 2 of this manual.

The landlord, or some responsible person acting on the landlord's behalf, should visit the house regularly. Visits can also be carried out at any other reasonable time if the tenant reports a problem. This is both to identify and to prioritise repairs and other works which may need doing and to ascertain whether the tenancy conditions are being met. It is good practice to visit at least six monthly. As conditions within residential premises are now risk- assessed under the HHSRS the person undertaking the visits should also be looking out for hazards.

Some visits will need to be undertaken by a qualified and competent person, for example, a suitably qualified gas engineer for annual gas safety checks or a competent electrician for periodic fire alarm checks.

Tenants must have a means of contacting the landlord or letting agent at all times and there must be a procedure in place to deal adequately with emergencies. Any works, however identified, need to be resolved within a reasonable time period depending on their seriousness.

It is good practice to keep a record of all visits and/or referrals from the tenant, including the proposed solution and outcome. Some landlords have a standard checklist, which provides a useful prompt of things to look for and a record of what was found. Some landlords give a copy to their tenants.

Receipts should be kept when repairs are undertaken, for which the cost may be recovered through any of the tenancy deposit schemes and for tax purposes.

It is important to note that, unless the tenant agrees otherwise, a landlord must give adequate, at least 24 hours, written notice of any visit and its purpose. Some landlords include a note saying they will change the appointment to a mutually convenient date if requested and that unless the tenant objects they will let themselves in to conduct the inspection. If this procedure is used it should be incorporated into any tenancy agreement.

- Visits must not be intrusive. If they were, this could constitute harassment. Any terms in the tenancy agreement regarding access must be reasonable.
- These conditions apply only to areas where the tenant or tenants (in the case of a room lettings) have exclusive possession. Landlords can access communal areas which remain under their control at all reasonable hours. It is normally courteous to give tenants notice of any works in these communal areas that may cause them inconvenience.

4.2 Tenant Obligations

Landlords may impose reasonable obligations on the tenant which affect their behaviour (including anti-social behaviour), and that of their visitors, through the tenancy agreement.

In addition, occupiers of HMOs have specified legal obligations under the Management of HMO regulations referred to above and every occupier must -

- conduct himself in a way that will not hinder or frustrate the manager in the performance of his duties;
- allow the manager, for any purpose connected with the carrying out of any duty imposed on him by these Regulations, at all reasonable times to enter any living accommodation or other place occupied by that person;
- provide the manager, at his request, with any such information as he may reasonably require for the purpose of carrying out any such duty;
- take reasonable care to avoid causing damage to anything which the manager is under a duty to supply, maintain or repair under the regulations;
- store and dispose of litter in accordance with the arrangements made by the manager under regulation 9; and
- comply with the reasonable instructions of the manager in respect of any means of escape from fire, the prevention of fire and the use of fire equipment.

4.3 Entry And Refusal

Tenants have a right to quiet enjoyment of their accommodation.

Even if the landlord gives proper notice of a visit, the tenant may still legally refuse access. If a tenant refuses access the landlord should try and find out why before resorting to legal action. It may simply be the timing of the appointment and the fact that the tenant is unable to get time off work - in which case an evening or weekend appointment could be arranged.

Only if the tenant will not make alternative arrangements or where the tenant persistently causes delays and in so doing compromises the landlord's ability to fulfil their legal obligations should the landlord consider terminating the tenancy using the prescribed legal process or seeking a court order to secure access.

4.3.1 Emergencies

There are times when the property may have to be entered as a matter of urgency. Statutory bodies are able to do this in appropriate circumstances:

- gas: contact the National Grid emergency number 0800 111 999
- water: sewer and/or flooding: contact the utility company responsible for water in the area if closing the stopcock is ineffective
- suspicious circumstances relating to criminal activity: liaise with the police.

Landlords who enter without the consent of the tenant or against their wishes must be able to demonstrate, if challenged, that it was reasonable to enter under the circumstances.

4.4 Changing The Terms Of An Assured Or An Assured Shorthold Tenancy And Tenancy Renewal

If the tenancy is a fixed-term assured shorthold tenancy, the landlord can only change the terms of the tenancy, within the fixed term of the tenancy if the tenant agrees. It is best to agree any changes in writing.

Normally any changes are made by getting the tenant to sign a new tenancy agreement, incorporating the new terms and conditions.

After the fixed term of a tenancy has ended of an assured and assured shorthold tenancy a statutory[a][b] periodic tenancy will arise, on the same terms and conditions as the preceding fixed-term tenancy. The ‘period’ will be the period for which rent was last paid under the fixed term, typically either weekly or monthly.

There is also a procedure whereby the landlord or the tenant can propose new terms, including a new rent. This can be done, within a year of a statutory periodic tenancy arising upon the fixed term ending, using a special procedure under the Housing Act 1988. There is a special form, called a section 6 notice, which must be served on the tenant. This procedure may include a change in rent (up or down) but should not be used simply to change the rent alone (for rent only changes, see section 13 notices later). Landlords can obtain the forms from landlord associations, law stationers or solicitors.

Although rarely exercised, the landlord and the tenant both have the right to apply for an independent decision by a rent assessment committee if the new rent cannot be agreed.

4.5 Raising The Rent

There are three ways to review the rent in an assured shorthold tenancy:

- by way of a rent review clause in the tenancy agreement or
- by agreement with the tenant or
- by notice under section 13 of the Housing Act 1988.

4.5.1 Rent Review Clauses In The Tenancy Agreement

Normally, it is not possible to review the rent during the fixed term of the tenancy unless either there is a valid rent review clause, or the tenant agrees to the review. If the tenant agrees, this should be recorded (perhaps by seeking the tenant’s signature on a new tenancy agreement). A clause can also be included to review the rent within the tenancy agreement. The clause must comply with the unfair terms provisions of the Consumer Rights Act 2015 and be fair. Clauses allowing the landlord to review (and particularly to increase) the rent as he sees fit are likely to be unenforceable. Any increase upon a valid rent review is more likely to be enforceable if it can be justified by a recognised/established factor (such as significant improvements to the property or general cost increases reflected in the Retail Prices Index).

Clauses which provide for very large increases will normally be void. (for example where the rent increase is not to achieve a fair rent for the property but to increase the rent to a level where it would jeopardise the security of the tenant or by causing rent arrears or artificially raising it over £100,000). A rent review clause could also be challenged by referring it to the First-tier Tribunal (Property Chamber - Residential Property).

4.5.2 Rent Increase By Agreement

It is also possible to review the rent by seeking the tenant’s signature to a document (such as a copy letter to the tenant proposing the new rent) which confirms agreement. Landlords wishing to do this are encouraged to speak to the tenant first to gauge whether or not they are content with the proposed new rent.

Once agreement has been reached, the landlord should send a formal duplicate letter proposing the new rent and asking the tenant to sign, date and return one copy to confirm their agreement. If the tenant fails to return the letter or fails to pay the new rent, then the rent will not have been validly reviewed. The review will be less susceptible to challenge if the landlord gives the tenant something in exchange for any increase in rent – for instance allowing the tenant to stay longer than would otherwise be the case, or improving the facilities or condition of the property. If this is to be the case, it should be recorded in a letter from the landlord to the tenant.

It is not possible to increase the rent unilaterally by simply sending a letter to the tenant telling them that their rent will be increased from a specific date. If the tenant agrees to this and starts paying the rent the increase is agreed but if the tenant does not agree they can refuse to pay the increase.

4.5.3 Rent Increase By Notice Under Section 13 Of The Housing Act 1988

If the tenancy is an assured or assured shorthold tenancy the landlord can use a formal procedure in section 13 of the Housing Act 1988 to propose a rent increase. To do this a special form is needed, which is obtainable from law stationers, some landlord associations, and some of the online services for landlords on the internet.

The form must be completed in full, and served on the tenant. At least one month's notice must be given to the tenant. If the tenant does nothing during this period, then the rent increase will take effect.

It should be noted that the rent can only be increased by section 13 after the fixed term has ended, and that this facility can only be used once every 12 months.

If the tenant feels the rent increase is too high then they can refer it to the First-tier Tribunal (Property Chamber - Residential Property) for review. The application must be made no later than the last day of the notice period or it will be invalid and the increased rent will stand. If the rent is challenged the matter will be considered by the First-tier Tribunal who, if they consider the rent is not a market rent, will substitute what they consider is a market rent. The First-tier Tribunal's view is not always in the tenant's favour and it is not unknown for them to consider that the proposed rent may be too low.

4.5.4 Rent Act (Regulated) Tenancies

Regulated tenancies are tenancies governed by the provisions of the Rent Act 1977. They will all have been created prior to 15 January 1989.

The Rent Act provides for the tenant (or the landlord) to apply to have a 'fair rent' registered for the property and once this has been done the fair rent is the only rent the landlord can charge.

These are rents fixed by the local office of the Rent Service. The Rent Service does not take account of the impact of scarcity on the market value of rented accommodation. Contact details for the local Rent Service can be obtained from the council's housing advice service.

If a fair rent has been registered, a new registration cannot be made less than two years after the date the existing registration came into effect unless:

- landlord and tenant apply jointly or
- there has been a change of circumstances, for example, major repairs, improvements or changes in the terms of the tenancy.

It is in the landlord's interest to apply promptly for rent increases every two years otherwise the rent charged might fall behind market rents because the amount of increase is capped under a complicated calculation set out under regulations - The Rent Acts (Maximum Fair Rent) Order 1999.

In the unlikely event that the rent has not already been registered a landlord can increase the rent if the tenancy agreement or contract allows for rent increases. If the agreement does not allow for increases in rent it can only be increased if:

- the landlord and tenant make a formal rent agreement which must follow special rules or
- the Rent Officer registers a fair rent.

4.6 When And If The Tenant Can Leave During The Tenancy

A tenant in a fixed-term tenancy can only end the tenancy before the end of the term with the landlord's agreement (accepting the tenant's offer to 'surrender' the tenancy), or if this is allowed for by a 'break clause' in the tenancy agreement.

Where a 'break clause' exists the tenant must follow any requirements for giving notice specified in the tenancy agreement. Break clauses are comparatively rare.

If the agreement does not allow the tenant to end the tenancy early and the landlord does not agree that the tenant can surrender the agreement, the tenant will be contractually obliged to pay the landlord the rent for the entire length of the fixed term.

If the tenant wishes to surrender the property (end the letting before the end of the agreement), the landlord should try to mitigate their loss (future rent) by re-letting the property. Quite often a landlord will reach an agreement with the tenant to accept their surrender if they find a suitable replacement tenant, which will ensure that the landlord suffers no loss of income.

Reasonable re-letting costs can be charged, but these and any other conditions attached to the landlord's agreement to accept the surrender should be recorded in writing before the surrender takes place. Once a new tenant is found, the landlord cannot re-let without first accepting the surrender of the first tenancy and so there must be no 'double charging' of rent for the same period.

If the tenancy has no fixed term, the tenant must give the landlord notice in writing of their intention to leave. The tenant must give at least four weeks' notice where rent is paid on a weekly basis and at least a month's notice where rent is paid on a monthly basis. The date of expiry must be the end of a period of the tenancy or the first day of a new period.

4.7 Preventing, Controlling And Recovering Rent Arrears

In modern tenancies, rent is normally paid by the tenant via standing order into the landlord or agent's bank account. It is advisable that the tenancy stipulates the method for which rent is payable and how it will be collected. There should be consent from the tenant if collection is to be by regular visits to the property.

Proper and reasonable enquiries before letting will reduce the risk of arrears (see Chapter 3).

It is the tenant's responsibility to make sure rent is paid in full, on time and in the manner agreed in the tenancy agreement.

Although it is not the landlord's responsibility to issue reminders or chase payments, effective procedures for managing arrears should be established because late payment is not unusual.

Landlords letting to a tenant who claims housing benefit as a means of helping them pay their rent should make themselves familiar with the welfare benefit system and particularly housing related benefits. Arrears can occur where a landlord and/or tenant fails to complete paperwork properly and on time and claims may then not be backdated.

In times of hardship, tenants not initially claiming benefits may need to resort to housing benefit (HB) to help pay their rent. The landlord should be sensitive to such situations and offer support to the tenant to help them submit a valid HB claim. Help may also need to be given to vulnerable tenants who lack the ability to submit a claim unaided. Offering productive support can help to reduce arrears, even though this is not a legal requirement.

Arrears can occur for a variety of reasons and sometimes this can be resolved between the landlord and their tenant. If the tenant is unable or unwilling to pay, or is habitually late in paying, then the landlord may terminate the tenancy using the most appropriate legal method for that particular type of tenancy. These methods are dealt with in Chapter 5 of this manual.

Unless trained and skilled in the procedures to terminate a tenancy early legal assistance should be sought. Failure to follow procedures properly may mean any action will fail in court and it is important not to inadvertently harass or illegally evict the tenant as both are criminal offences.

Section 8 of the Housing Act 1988 can be used to recover possession and claim arrears owed. In general, if landlords make an error, the courts will be entitled to reject the application and sometimes the court does not have to agree with a landlord's request to terminate a tenancy, even if they agree the facts claimed are true.

Arrears may also be recovered through the County Court including the 'small claims' procedure and the court will be able to give details on how to do this. Further information is available from https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about.

A County Court Judgment (CCJ) can affect a tenant's credit rating which in turn can affect their ability to rent in the future and can act as a deterrent to running up arrears. Obtaining a CCJ against a tenant does not mean that the landlord will automatically receive what is owed. If the tenant does not pay, the judgement (or order) can be enforced but this will involve further costs.

In incurring any court or enforcement costs landlords need to consider how likely they are to be able to recover any monies owed. Bailiffs cannot take possession of a tenant's belongings if they are on hire purchase, so a tenant's apparent lifestyle may not be a true reflection of their ability to pay. As an alternative to using bailiffs, the judgment can be enforced by means of an attachment of earnings order where the tenant is employed, or by a third-party payment order where someone else who owes the tenant money pays it to the landlord instead. A CCJ can also be used to recover money from a bank account when it is in credit.

4.8 Nuisance And Anti-social Behaviour

Anti-social behaviour (ASB) is any behaviour which causes or is likely to cause harassment, alarm or distress to one or more persons not of the same household. Examples include, but are not limited to, noise, violence, abuse, threats and use of the property for illegal drugs. Adequate checks prior to letting should minimise the risk of letting to someone who is likely to behave anti-socially and the tenancy agreement should include appropriate clauses about anti-social behaviour. Some local authorities include a licence condition for premises which require a licence under the Housing Act 2004, stating that landlords must take reasonable action to prevent and, where necessary, to remedy anti-social behaviour.

Tenants may be the perpetrator or the victim.

In all cases there is a risk of repercussions and landlords should consider their actions carefully and take advice before acting. Sometimes the police or the local authority may contact the landlord if there is a problem in one of their properties and it is important to try to work with them to resolve the situation.

A range of measures can be used including mediation, Closure Orders, Anti-social Behaviour Orders (ASBOs) and/or eviction, depending on the circumstances and seriousness of the situation. Some councils offer mediation services but all parties have to agree to co-operate for it to work and it tends not to be appropriate in all cases, particularly in circumstances involving drugs or violence.

In cases of noise from the property contact the Environmental Health Department as they may be able to take enforcement action against the perpetrator including prosecution and seizing equipment.

If a landlord is aware of or suspects violence or drug-related activity, seek advice from the local anti-social behaviour team/co-ordinator or the police before acting. They may be able to assist by taking action themselves, for example by making an Anti-Social Behaviour Order on an individual or a Closure Order on the premises where anti-social behaviour is associated with Class A drugs. The latter does not terminate the tenancy but it can last for three to six months, giving an opportunity to terminate the tenancy and stop the perpetrator moving back in. If a tenant is at fault, and it is safe to do so, landlords may wish to discuss the situation with them or write to them.

If evidence of the anti-social behaviour is needed, the police or the anti-social behaviour co-ordinator may be able to help.

It is an offence under section 8 The Misuse of Drugs Act 1971 for a person being concerned with the management of any premises to knowingly permit or suffer any of the following activities -

- producing a controlled drug
- supplying a controlled drug
- preparing opium for smoking, or
- smoking cannabis, cannabis resin or prepared opium.

4.9 Tenant Relations And Dealing With Complaints

One of the keys to successful property renting is having good tenant relations and responding to complaints (including repair requests) quickly.

4.9.1 Preventing Problems

Problems will arise from time to time but measures can be put in place to reduce the likelihood such as:

- periodic visits checking for repairs
- good means of communication so a tenant can get in touch quickly and easily.

4.9.2 Dealing With Complaints

If a complaint is received, it should be acknowledged promptly so the tenant knows it has at least been received. Most complaints or problems are dealt with internally quickly and this is always the best way where possible.

If the complaint refers to a repair request, either completing the works quickly or providing details of what action is proposed within a reasonable time-scale should be sufficient in most cases.

Where the complaint is more detailed and the parties are unable to agree an amicable solution, it may be necessary to escalate the complaint.

4.9.2.1 Mediation

Mediation is an alternative to using courts. Normally each party pays a relatively small fee and the mediator will communicate with each party separately and then try to 'mediate' a solution. Any solution agreed becomes a formal contract and so binding in courts.

4.9.2.2 Dispute Resolution

Dispute resolution is very similar to mediation and in the first instance both parties will have an opportunity to offer evidence and views. It will vary by service what happens next but taking the dispute resolution offered by all tenancy deposit schemes as an example, an adjudicator would consider the evidence and make a decision. Each party would be bound by the decision of the adjudicator even if it was unfavourable. However, in the case of tenancy deposit schemes, there will have been no fee payable for the dispute resolution.

4.9.2.3 Legal Action

Legal action should always be considered as a last resort or where there is no other statutory alternative (for example possession may only be concluded by special legal action and mediation or dispute resolution wouldn't normally be suitable).

Where legal action is available on a specific subject, we have detailed about the procedure as appropriate.

4.9.3 Support

Some specialist lettings will offer support in addition to the providing of accommodation. Specialist training would be needed and commonly the support is provided by a local authority.

This type of letting is usually found with a disabled or vulnerable tenant.

4.9.4 Sustaining Tenancies

It is often said that a landlord is not in the business of evicting tenants but is in the business of letting property. A good tenant who remains in the a rented property is always a good thing for a professional landlord.

Having good communication channels is important to a lengthy tenancy. Also don't always be too keen to put the rent up, especially if the marketplace is fairly stagnant at the time. It is sometimes better to take a slightly lower rent for a longer period than trying to get the maximum rent but with lots of void periods in-between.

5 - Ending A Tenancy

This section covers what happens when an assured or an assured shorthold tenancy ends, how the landlord or a tenant can terminate such a tenancy and how to gain lawful possession of the premises. There are some tenancies that are neither assured nor assured shorthold tenancies (for example holiday lets, tenancies where the annual rent is over £100,000, or student tenancies in university accommodation). These are a minority and are dealt with briefly at the end of this chapter.

Ending a Rent Act tenancy is a complicated matter, and specialist legal advice should be taken before making any decision or taking any action. Bringing a Rent Act tenancy to an end and evicting the tenant can be a very complex process, and is beyond the scope of this manual. If an application fails or is struck out, the court may order a landlord to pay the tenant's legal costs in addition to their own. Some guidance is given at the end of this chapter, which, however, is mainly concerned with assured and assured shorthold tenancies, governed by the Housing Act 1988.

For Housing Act 1988 tenancies, i.e. most tenancies in the private rented sector, there are different methods of bringing possession proceedings depending on whether the contract is an assured or an assured shorthold tenancy. Every case is unique and the following can therefore only be a rough guide.

The information in this chapter about terminating tenancies and eviction is, inevitably, legalistic, but it is worth emphasising that at the end of their agreements most tenants leave their property voluntarily and many landlords experience no problems either moving into a new agreement or getting possession of their property back. This chapter deals with:

- practical tips for a pain-free handover at the end of the tenancy
- what to do at the end of a tenancy if landlord and tenant want it to continue
- what landlords can do if the tenant wants to leave
- what landlords can do if they want the tenant to leave
- procedures when applying to the court for possession
- applying to the court for arrears of rent.

5.1 Practical Tips For A Pain-Free End Of Tenancy Handover

The golden rule is: be prepared. If the tenancy is for a fixed term, make a diary note straightaway of when the tenancy is due to end, and another date around two months before that. Where appropriate, contact the tenant to see if they plan to leave. If the tenant is going to leave, there are a number of practical matters that the landlord can help trigger which make for a smooth ending to a tenancy:

- arranging a joint inspection of the property to agree on any damage that needs rectifying or decoration that might need undertaking. Landlords should take a checklist with them
- providing information about the cleaning required to return the property in an acceptable condition (it is often worth reminding the tenant of their obligations)
- advising the tenant about taking final utility readings and liaising with suppliers about issuing and paying final bills
- making arrangements for the handover of any keys
- arranging access for prospective tenants if applicable.

The more attention that is paid to ending the tenancy in an orderly manner the less likely it is that there will be any problems or misunderstanding about how the tenancy can best come to an end. It is usually a good idea to confirm anything that is agreed with the tenant in writing. Follow up any problems as quickly as possible – and record them in writing.

If the tenant does not hand the property back in the condition required by the tenancy agreement, the landlord may be entitled to make a charge against the deposit. Chapter 3 of this manual deals with returning tenants' deposits and claiming deductions. The adjudication services operated by the tenancy deposit protection schemes rely heavily on comparisons of check-in and check-out reports, so the better the quality of any check-in and check-out reports, the more likely it is that the proposed deposit deduction will be awarded to the landlord. Make sure that all photographs are clearly labelled and dated.

If the accounts for gas, electricity, water and telephone are in the name of the tenant, then the payment of these bills is a matter between the tenant and the supplier, and the supplier cannot require the landlord to pay (except certain water bills mainly in Wales – see chapter 3). When the tenant moves in the landlord should notify all the suppliers of the name of the new tenant and the date when the tenancy started. Some tenancy agreements state that tenants must not change the utility suppliers during the tenancy (this is most likely an unfair term and unenforceable); other tenancy agreements state that tenants must notify the landlord of the new supplier and the account number if they change utility provider. Landlords can then contact the utility provider easily at the end of the tenancy.

Landlords need to pay the bills for any services used during a void period. As there are so many different suppliers, it is helpful to notify the new tenant of the name of the existing suppliers if known.

If the gas or electricity company is trying to charge the landlord when they have been notified of the name of the new consumer (tenant), information about how to proceed can be obtained from www.consumerfocus.org.uk which also gives information on how to make an energy-related complaint. Landlords can also call Consumer Direct on 0845 04 05 06 for consumer advice.

5.2 What To Do If The Tenancy Is To Continue

A periodic tenancy will continue until either the landlord or the tenant brings it to an end. For tenants this will usually be by serving notice to quit and for landlords by serving an appropriate notice and (if the tenant does not leave) obtaining a court order.

A fixed-term assured tenancy (i.e. non-shorthold) will have a statutory periodic tenancy arise automatically after its expiry date, and the landlord can only bring it to an end on certain grounds. Most tenancies in the private rented sector start life as fixed-term assured shorthold tenancies. When the fixed term of an assured shorthold tenancy ends the landlord has the following options if they want the tenancy to continue:

- to agree a replacement fixed-term shorthold tenancy with the tenant
- to agree to a replacement assured shorthold tenancy on a periodic basis called a contractual periodic tenancy or
- to do nothing after the fixed term assured shorthold tenancy and allow a statutory periodic tenancy to arise on with the same terms.

5.2.1 Agreeing A Replacement

This is not something that the landlord has to do but a replacement fixed-term assured shorthold tenancy is advantageous for landlords who want to know that the tenant's obligations are going to continue for at least the duration of the replacement tenancy.

Check whether the tenancy deposit protection scheme being used requires re-registration of the deposit if the tenancy is renewed, because the scheme requirements vary and a further fee may be payable.

5.2.2 Agreeing A Contractual Periodic AST

This is not compulsory either but sometimes a tenancy agreement will contain a clause providing that the tenancy will not end at the end of the fixed term but will instead continue as a contractual periodic tenancy. Again, check whether the chosen tenancy deposit protection scheme requires re-registration of the deposit.

Where such a clause exists, the tenancy will be counted as a single tenancy 'continuing' from the original fixed term.

5.2.3 Statutory Periodic Tenancy

If the landlord does nothing, there are no provisions in the tenancy for what happens at the end and the tenant stays on in the property, a statutory periodic will arise with the tenancy automatically running on from one rent period to the next on the same terms as the preceding fixed-term assured shorthold tenancy. The tenancy will continue to run on this basis until a new fixed-term or periodic tenancy is agreed or the tenant leaves or the court awards the landlord possession. The terms of the existing tenancy agreement remain in force; a notice to gain possession of the premises can be served at any time. The period of notice is linked to the period for which rent was last payable under the tenancy. Take advice if there are doubts about which notice to serve.

A statutory periodic tenancy is a brand new tenancy comparable to a written renewal.

5.3 What To Do If The Tenant Wants To Leave

5.3.1 Tenant Termination Of A Periodic Tenancy

A periodic tenant intending to leave must provide a notice to quit in writing. The minimum notice period is four weeks (specified in section 5 of the Protection from Eviction Act 1977). The length of the notice should be at least the length of a rental period (subject to the four week minimum rule and up to a maximum of six months). In most cases this will be a calendar month for a calendar monthly rental. Where the rent is quarterly, a quarter's notice is required, six monthly or yearly requires six months' notice. The notice should always expire at the end of a rental payment period or the first day of a new period.

The contract may specify the terms on which notice may be given which must be fair.

Sometimes, tenants ignore notice requirements and will leave when convenient to them. It might not be worth the landlord's time or cost in attempting to chase the tenants to enforce those requirements. Concentrate on getting the property re-let.

Where a tenant gives a valid notice to quit but then fails to leave, a court order would be required to gain possession which could be obtained based upon the notice given by the tenant. A valid notice from a tenant brings the tenancy to an end so a landlord should not ask for rent after this time if possession is to be sought. Where a tenancy has ended this way, a landlord will be entitled to damages for the use and occupation of the premises which is usually equivalent to the rent. Further, where a valid notice has been given by a tenant and they fail to leave, a landlord is entitled to the equivalent of double the rent as would otherwise be payable under section 18 Distress for Rent Act 1737.

5.3.1.1 Joint And Several Tenancy

Where one of several joint tenants gives a valid notice on a periodic tenancy, the entire tenancy will end unless there is a provision in the tenancy agreement requiring all parties making up the tenant to give the notice. A standard joint and several clause found in most tenancy agreements, explaining that the obligations are liable by all tenants jointly and severally is not an express provision that requires all tenants to give a notice to quit.

5.3.2 Tenant Termination Of A Fixed-Term Tenancy When It Expires

There is no statutory requirement for a tenant to serve notice to end a fixed-term tenancy at the end of that fixed term. The tenant is generally entitled to leave without giving any notice. Any standard clause in the tenancy agreement requiring the tenant to give formal notice to leave at the end of the fixed term (and making the tenant liable for rent in lieu of notice if they fail to do this) may contravene the Consumer Rights Act 2015 and could be unenforceable. Only a court can decide if any given clause is fair or not. A clause asking the tenant to inform the landlord whether or not they will be leaving, so that arrangements can be made for the property to be checked and the damage deposit returned to them should not cause problems.

5.3.3 Tenant Termination Of A Fixed-Term Tenancy Before It Expires

If the tenant has a fixed-term tenancy but wants to terminate it before the term expires, they can only do so legally:

- with the agreement of the landlord or
- if early termination is allowed for by a break clause in the tenancy agreement and the tenant has followed any requirements for giving notice specified in the tenancy agreement or
- in an exceptionally rare case, if the landlord is in very serious breach of his obligations (but the breach must be 'fundamental' to the tenancy).

If the agreement does not allow the tenant to terminate early and the landlord has not agreed that he or she can break the agreement, the tenant will be contractually obliged to pay the rent for the entire length of the fixed term. If the landlord accepts the return of the tenancy, it is possible that the tenancy comes to an end due to 'surrender by operation of law'. This occurs where the landlord and the tenant behave in a way that is inconsistent with the continuation of the tenancy. If the tenant offers to hand back the keys, make sure that at that stage any conditions connected with that return are agreed, and record them in writing. For example, are the keys only being accepted on the basis that the tenancy continues until a new tenant signs up at the same or a higher rent? Once a landlord accepts a surrender of the tenancy, the tenant's liability for future rent ends unless it has been agreed otherwise. Unlike a claim for compensation for damage, the landlord is not under a duty to mitigate his or her loss if the tenant is liable for rent. Payment of rent is a debt, and the rent is due for as long as the tenancy continues. However, once the tenancy comes to an end (e.g. if the landlord agrees to accept the property back) the tenant's liability to continue paying rent stops (but they remain liable for any arrears that accrued up to that point).

If a tenant wants to end their fixed-term tenancy early, landlords should explain that the fixed-term tenancy requires the tenant to pay rent for the duration of the agreement. Some tenants will wish to change their plans at that point and stay at the property until a new tenant is found.

Landlords may then agree with the tenant that both of them will try to find a new tenant. Landlords may ask the tenant to agree to pay reasonable additional costs arising from the tenant's proposed departure, such as re-letting fees. Landlords should also inform tenants that any early termination of the tenancy is conditional on the property being handed back in good order, with rent paid up to the date when the new tenancy starts. Write to the tenant setting out the conditions and ask them to write back confirming acceptance of the conditions. In the meantime, to avoid any inference of a surrender occurring 'by operation of law', do not do anything that would be 'inconsistent with the continuance of the tenancy'. Do not treat the tenancy as over until the new tenancy starts.

Once a new tenant is found, there should be no 'double charging' for the same period. If an agreement is not reached, a tenant may decide to abandon a property and a landlord will have to decide if it is feasible to take any enforcement action against the tenant. This would be by way of a small claim in the County Court.

Where a tenancy is jointly held, all the tenants must agree to a surrender during a fixed term.

5.4 What Landlords Can Do If They Want A Tenant To Leave

A tenancy of someone's home, starting on or after 28 February 1997, will in most cases be an assured shorthold tenancy. Take advice at an early stage if there are any doubts about what type of tenancy is being terminated. The procedures for ending a tenancy are different, depending on the type of tenancy.

5.4.1 Service Of Notices

In most cases, the procedure will involve serving some kind of notice. The type and format of notice may vary depending on the circumstances of the case. Information about specific notices is given below, but as an introduction here are some general points about service of notice:

- The tenancy agreement may specify the method and manner by which notices may be served and if the landlord does not follow the required method, the landlord's claim for possession could be struck out by the court. Any specified method in the agreement should therefore be followed.
- In the absence of a specified method of service, service by hand, preferably with a witness, should be followed and this should be backed up by an alternative method. The alternative could be by post, with a free of charge certificate of posting. Only use recorded delivery if you are confident the tenant will sign for the document because otherwise a failure could be proof they did not receive the notice (it may be a requirement of the tenancy to use recorded delivery so check first). At the time of making the application to court a landlord will be required to supply the court with information about the service of the notice.
- If the notice is in the wrong form, or incorrectly served, it could mean that the landlord will lose the case. Take advice if unsure what to do.

Time should always be added onto any notice being given to allow for delivery of the notice by post or otherwise. Courts often look at court rules to decide how long a notice may take to arrive. For example court documents are deemed delivered the second business day after posting which means if posted on a Thursday they are not deemed delivered until the following Monday. It is good practice therefore to always allow a further four days onto any notice being served.

Where the tenancy is joint and several (multiple people named on a single tenancy agreement) a single notice containing all names should be served.

5.4.1.1 Agent's Service

A letting / managing agent may serve any of the notices discussed below. The notice should be made out as being from the landlord and served by the agent. To make possession for the landlord smoother, the precise names as shown on the tenancy agreement (for example the landlord name) should be used exactly the same on the notice. This avoids confusion as to whom the notice is from.

5.4.2 Assured Shorthold Tenancies

For the remainder of this section, only the procedures for ending an assured shorthold tenancy will be discussed. Other types of tenancy will be discussed briefly in later sections of this chapter.

5.4.3 Serving Notice During The Fixed Term - No Fault

5.4.3.1 For Tenancies (Including Renewals) Granted BEFORE 1 October 2015

For an assured shorthold tenancy granted BEFORE 1 October 2015 and there has been no renewal after that date and if the landlord does not want the tenancy to continue beyond the fixed term where there is no fault (or grounds) being relied upon, the landlord will need to serve a section 21 notice and obtain an order from the court to bring the tenancy to an end. The notice is known as a section 21 notice requiring possession and the notice procedure is set out in section 21 of the Housing Act 1988. The notice must be served on the tenant at least two months before the landlord wants the tenancy to end although except for a break clause this can't be before the last day of the fixed term.

A section 21 notice cannot be served before a tenancy has been granted.

If there is a break clause, it can be activated using a section 21 notice as long as the terms of the break clause are followed precisely and be at least two months in length. A landlord should not have a break clause without the tenant having the same right, or the landlord's break clause could be invalid.

The section 21 procedure is considered to be a no-fault procedure as it is not necessary for the landlord to establish that there has been any wrongdoing by the tenant. The landlord only has to prove that the tenancy is an assured shorthold, that the appropriate notice has been validly served and that the fixed period, has expired.

A section 21 notice, if served during the fixed term, does not need to be on a prescribed form and may be issued by letter providing that the notice complies with the following rules;

- the duration of the notice must be at least two months and
- the notice must not expire earlier than the fixed term of the agreement (it may expire on any given date after the end of the term).
- the notice must be given in writing

Most landlord associations, solicitors or legal stationery suppliers will have a standard preformed section 21 notice.

If a landlord is likely to require the property to be returned to them immediately after the fixed term expires, the section 21 notice can be served early into the tenancy (after any deposit has been protected) provided that the notice expires on or after the tenancy has come to an end.

5.4.3.2 For Tenancies (Including Renewals) Granted On Or After 1 October 2015 (Or Any Tenancy From 1 October 2018)

Where an assured shorthold tenancy has been granted on or after 1 October 2015 including a renewal or, for every assured shorthold tenancy (including existing) from 1 October 2018, the rules for serving a section 21 notice in England are different.

If the landlord does not want the tenancy to continue beyond the fixed term and there is no fault (or grounds) being relied upon, the landlord will need to serve a prescribed section 21 notice and obtain an order from the court to bring the tenancy to an end.

The notice is known as a section 21 notice seeking possession and the notice is a special prescribed form which must be precisely used. The procedure to follow is as set out in the amended section 21 of the Housing Act 1988.

The notice may not be served until at least four months from the original tenancy has passed and the date the tenant is asked to leave must be at least two months from when the notice is deemed served. The date the notice asks the tenant to leave is known as the expiry date of the notice. The four month rule (where service is prohibited) does not apply to a renewal (where the same tenant(s) are given a new tenancy for the same property by the same landlord).

If there is a break clause, it can be activated using a section 21 notice as long as at least four months from the original term has passed before being served and as long as the terms of the break clause are followed precisely. The notice must be at least two months in length. A landlord should not have a break clause without the tenant having the same right, or the landlord's break clause could be invalid.

The section 21 procedure is considered to be a no-fault procedure as it is not necessary for the landlord to establish that there has been any wrongdoing by the tenant. The landlord only has to prove that the tenancy is an assured shorthold, that the prescribed notice has been validly served and that the fixed period has expired.

The prescribed section 21 notice is titled "Form 6A" and most landlord associations, solicitors or legal stationery suppliers will be able to provide the prescribed form.

Once served, the section 21 notice must be acted upon (by seeking a possession order through there courts) within six months of its service. Otherwise, a new one will be required to be served.

5.4.4 To End A Periodic Tenancy - No Fault

At the end of a fixed-term AST, if the landlord does nothing and the tenant stays on in the property, the tenancy will automatically run on from one rent period to the next on the same terms as the preceding fixed-term assured shorthold tenancy. Where there is no term in the tenancy, this is called a statutory periodic tenancy, otherwise it will be a contractual periodic tenancy. The tenancy will continue to run on this basis until a new fixed-term tenancy is agreed, the tenant leaves or a bailiff enforces a possession order obtained through the court by the landlord. Some landlords think that if assured or assured shorthold tenants stay on after the end of the fixed term they are unauthorised 'squatters'. This is not the case, the tenancy continues by operation of law, and they are still tenants and are legally entitled to be there.

A section 21 notice cannot be served before a tenancy has been granted including if the tenancy is periodic from the outset.

5.4.4.1 For Tenancies (Including Renewals) Granted BEFORE 1 October 2015

For an assured shorthold tenancy granted BEFORE 1 October 2015 and there has been no renewal after that date and where the assured shorthold tenancy is periodic, the landlord wants possession and is not relying on any grounds, a section 21 notice must be given in writing and it must:

- state that possession is required under section 21 of the Housing Act 1988
- have a notice period of at least two months and
- expire on the last day of a period of the tenancy.

For example, if the rent period is from the eleventh of the month to the tenth of the next month, the end of tenancy date in the notice must be the tenth of the month. If the tenancy is paid weekly the proper notice periods end in the same way at the end of a period for which rent is paid. For example, if the rent is paid every Monday for the period through to the following Sunday, the notice must expire on a Sunday.

If the rental periods are greater than two monthly (for example a quarterly or six monthly rent) the notice must be at least the length of a rental period up to a maximum of six months notice.

Periodic notices may also contain a 'savings clause', referring to the last day of a period of the tenancy as well as, or instead of, a specific date. Such a clause may correct an incorrectly dated notice, provided that the savings clause is clear and precise. A savings clause cannot, however, correct all faults in the notice.

There has been a court of appeal ruling (*Spencer v Taylor* [2013] EWCA 1600) which provides that where a tenancy is *statutory periodic* after the fixed term has ended, a section 21(1)(b) notice can be used instead. This is the notice discussed earlier which can be given during the fixed term and does not need to expire on any particular date. However, *Spencer* does not apply to a contractual periodic tenancy (where the tenancy contains a clause continuing the tenancy) nor other types of contractual periodic tenancy such as a verbal agreement with no fixed term initially. The advice given here applies to 'all' periodic tenancies that are assured shorthold and so is the safest route to take. If in doubt, seek advice.

5.4.3.2 For Tenancies (Including Renewals) Granted On Or After 1 October 2015 (Or Any Tenancy From 1 October 2018)

Where an assured shorthold tenancy has been granted on or after 1 October 2015 including a renewal or, for every assured shorthold tenancy (including existing) from 1 October 2018, the rules for serving a section 21 notice in England are different.

Where the assured shorthold tenancy is periodic and the landlord wants possession and is not relying on any grounds, a section 21 notice must be given. The notice to be used is the same prescribed form as is used for the fixed term tenancy discussed earlier.

For tenancies granted before 1 October 2015, it was the case that any section 21 notice served during a contractual periodic tenancy had to expire "after the last day of a period of the tenancy". That rule has been removed for these 1 October 2015 onwards tenancies. For these tenancies, a simple two months' notice plus time for service (recommended four days) is all that is needed. The notice may expire on any date including a Sunday.

If the rental periods are greater than two monthly (for example a quarterly or six monthly rent) the notice must be at least the length of a rental period up to a maximum of six months.

The prescribed section 21 notice, is titled "Form 6A" and most landlord associations, solicitors or legal stationery suppliers will be able to provide the prescribed form.

In most cases, the section 21 notice must be acted upon (by seeking a possession order through the courts) within six months of its *service*. If the rental period is greater than two monthly (quarterly rent for example) the notice must be acted upon within four months of its *expiry*.

5.4.5 Court Order After Service Of A Section 21 Notice

After a section 21 notice has been served and it has expired (the date in the notice asking the tenant to vacate has passed), The requirements for an order for possession under section 21 are:

- that the tenancy is an assured shorthold tenancy
- that any fixed term of the tenancy has expired
- that a notice properly drafted in accordance with the provisions of section 21 has been served on the tenant and has expired
- that any deposit paid was duly protected within 30 days under the appropriate regulations for tenancies created on or after 6 April 2007 (or returned in full prior to service)
- that any licence required under the Housing Act 2004 (for example a mandatory House of Multiple Occupation licence) has been applied for.

And, for tenancies (including renewals) granted on or after 1 October 2015 the following must also apply in addition to the above:

- at least four months from the original tenancy had passed before the notice was served
- court proceedings were commenced within six months of service of the notice (or four months of expiry where the rental period exceeds two monthly)
- the ""How to rent: the checklist for renting in England" was given under the tenancy before the notice was served
- any energy performance certificate and gas safety record were given before occupation of the property (for the EPC it may be acceptable that these are simply given before the section 21 was served)
- none of the retaliatory eviction provisions are satisfied (for which see later)

If the tenancy is evidenced in writing and the above requirements have been met, it may be possible to use the accelerated possession procedure. Otherwise, the standard procedure must be followed, which will involve a court hearing. The accelerated possession procedure may take up to six to eight weeks after submitting the application to court, depending on the caseload of the court at the time.

The court cannot grant an order for possession to take effect during the first six months of the tenancy using the section 21 procedure. This six-month 'moratorium' only counts from the first tenancy agreement with that particular tenant for a particular property, not any subsequent agreements. But if a tenant is renting a room in a shared house and moves to another room, this will count as a new tenancy and the six-month moratorium will apply, even though he or she may have lived in another room in the house for some time.

It is not uncommon for landlords to think that they cannot issue an assured shorthold tenancy for less than six months. This is not true, it is just that, it is not possible to get a Court to order repossession during the first six months of the first tenancy.

5.4.6 To End A Fixed-term Or Periodic Tenancy Where There Are Grounds

There will be cases when a landlord has agreed a tenancy and things are not working out with the tenant. If a landlord wishes to obtain possession of the property during the fixed term or periodic term of an assured or assured shorthold tenancy, they can only seek possession if one of the grounds for possession in Schedule 2 of the Housing Act 1988 (as amended) applies (see below).

If the tenancy is still in the fixed term, there must be a clause in it providing for possession to be sought on one of the grounds (this is sometimes known as a re-entry or forfeiture clause, even though forfeiture cannot be used for assured/assured shorthold tenancies).

The grounds for possession are divided into mandatory grounds (upon which the court must order possession if the landlord proves the allegation) and discretionary grounds (upon which the court may order possession if the allegations are proved and if the court considers it reasonable to make the order). The grounds must be specified in the notice, which must be a section 8 notice. The notice is in a prescribed form. Section 8 of the Housing Act 1988 also specifies what minimum notice period must be given – and this depends on the ground(s) being used. Many landlords will need to take advice about service of notices and termination using section 8, until they become familiar with the procedure.

A landlord will have to consider what it is that they wish to achieve by commencing legal proceedings to end the tenancy. They will have to take into account the time, effort and cost involved and also if they have used all other methods of resolving a problem.

It may be beneficial to obtain a possession order, even on discretionary grounds, as the terms of any order may assist the landlord to influence a tenant to change their behaviour or to pay the rent arrears by instalments or maintain the garden or whatever has been the problem.

Because the grounds of a section 8 notice needs to be proven in court, it is good practice to consider serving a section 21 notice (discussed earlier) in addition to a section 8 notice. This provides the landlord with a fall back position should the section 8 notice fail.

Mandatory Grounds

Grounds 1-5 of the Housing Act 1988 require the landlord to serve notice prior to the commencement of the tenancy, warning the tenant that possession might be sought for the reason stated in that ground. In some circumstances the court may decide to waive the requirement of notice if it is just and equitable to do so. Grounds 1-5 are:

Ground 1 can be used if the property to be repossessed was, or after the let, is intended to be returned to the landlord as their own home. For this ground to be successful the landlord must have notified the tenant in writing before the tenancy started, that he or she intended one day to ask for the property back on this ground.

Ground 2 relates to a lender's right to possession. If the property is subject to a mortgage the landlord will often be required to serve this notice on the tenants.

Ground 3 requires that the fixed term is less than eight months and the property has been let as a holiday home within the preceding 12 months.

Ground 4 is for further and higher education providers only.

Ground 5 is where the dwelling is owned for the purposes of a minister of religion to better carry out their duties and the residence is needed for such a purpose.

The remaining mandatory grounds, grounds 6-8, do not require notice to be given in advance of the start of the tenancy.

Ground 6 relates to recovery of possession when the landlord needs to carry out substantial building works. It cannot be used by a landlord against a tenant who was already in the property when the landlord bought it. This is particularly important as a tenant may in fact be a regulated tenant and be protected by the provisions of the Rent Act 1977 rather than the Housing Act 1988. A landlord who purchases a property should check the date that the person moved into the property and not just accept that a shorthold contract supplied by the seller is in fact a shorthold.

Ground 7 can be used to recover possession after the death of the tenant where the tenancy has devolved under their will or intestacy and the tenancy was periodic.

Ground 7A contains five 'conditions'. A landlord is entitled to possession if any one or more of the conditions are proven.

- condition 1 - the tenant (or a person visiting) has been convicted of a serious offence in, or in the locality of, the dwelling-house or the offence was committed against the landlord or another person residing in the premises
- condition 2 - a court has found that the tenant (or person visiting) has breached an injunction under the Anti-social Behaviour, Crime and Policing Act 2014 and the breach occurred in the locality of the dwelling or against the landlord or other persons residing
- condition 3 - the tenant (or person residing) has breached a criminal behaviour order in the locality of the dwelling or against the landlord or other persons residing
- condition 4 - the dwelling is or has been subject to a closure order and access was prohibited for more than 48 hours
- condition 5 - the tenant has been convicted under a number of other specified offences.

Ground 7B The landlord has received a notice in relation to the immigration status of the occupiers of the property.

Ground 8 relates to serious rent arrears and is one of the main grounds used by landlords of Housing Act 1988 tenancies seeking possession for rent arrears. Both at the date of the service of the notice under section 8 of this Act and at the date of the hearing

- if rent is payable weekly or fortnightly, at least eight weeks' rent is unpaid
- if rent is payable monthly, at least two months' rent is unpaid
- if rent is payable quarterly, at least one quarter's rent is more than three months in arrears or
- if rent is payable yearly, at least three months' rent is more than three months in arrears.

Discretionary Grounds

The court must consider the landlord's claim and, if proved, the judge has the power to make an absolute order or a suspended order, which is usually with conditions. In some cases the court may decide to adjourn the proceedings on terms that the tenant is directed to comply with conditions. The terms of the adjournment may allow the landlord to bring the matter back to court within a given period. To gain possession the landlord will have to prove the facts and that it is reasonable for the court to award possession on the facts of the case.

Grounds 9-17 are all discretionary grounds. They refer to 'dwelling-house' but this expression would include a flat.

Ground 9 can be used where suitable alternative accommodation is available for the tenant or will be available for him or her when the order for possession takes effect.

Ground 10 is commonly used alongside ground 8 and can be used where some rent that is lawfully due from the tenant:-

- is unpaid on the date on which the proceedings for possession are begun and
- except where subsection (1)(b) of section 8 of the Housing Act 1988 applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

Ground 11 is also commonly used alongside grounds 8 and 10. It can be used in cases where the tenant has persistently delayed paying rent which has become lawfully due whether or not any rent is in arrears on the date on which proceedings for possession are begun.

Ground 12 can be used where any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

Ground 13 is for use where the condition of the dwelling-house (or any of the common parts if the dwelling is part of a larger building) has deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any other person residing in the dwelling-house. In the case of an act of waste by, or the neglect or default of, a person lodging with the tenant or a sub-tenant of his or hers, the ground can also be used if the tenant has not taken such steps as he or she ought reasonably to have taken for the removal of the lodger or sub-tenant.

Ground 14 can be used in cases of anti-social behaviour committed by the tenant or any other person living with the tenant or visiting the property if that person:

- has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality or,
- has been guilty of conduct causing or likely to cause a nuisance or annoyance to the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord's housing management functions, and that is directly or indirectly related to or affects those functions or,
- has been convicted of :-

  * using the dwelling-house or allowing it to be used for immoral or illegal purposes or
  * an indictable (Crown Court) offence committed in, or in the locality of, the dwelling-house.

Ground 14ZA is for use where the tenant or an adult residing in the dwelling-house has been convicted of an indictable offence which took place during, and at the scene of, a riot in the United Kingdom.

Ground 15 can be used where the condition of any furniture provided for use under the tenancy has, in the opinion of the court, deteriorated owing to ill-treatment by the tenant or any other person residing in the dwelling-house. In the case of ill-treatment by a person lodging with the tenant or by the tenant's sub-tenant, the tenant has not taken reasonable steps for the removal of the lodger or sub-tenant.

Ground 16 relates to where the dwelling-house was let to the tenant in consequence of his employment by the landlord seeking possession or a previous landlord under the tenancy, and the tenant has ceased to be in that employment.

Ground 17 can be used where the tenant is the person, or one of the persons, to whom the tenancy was granted and the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by either the tenant or a person acting on the tenant's instigation.

A landlord may use several grounds on an application for possession if several grounds apply to the facts of a case. For example, it is possible (and common) to use grounds 8, 10, and 11 at the same time. There is a good reason for specifying all grounds that apply. If a tenant reduces the rent arrears to below the specified sum at the date of the hearing, and the landlord has only pleaded ground 8, the claim could be dismissed. However, if the alternative grounds also apply, the court can still make an order for possession, which may be absolute or suspended.

As discussed earlier, the time required to be given before court proceedings can commence on a section 8 notice varies considerably depending on each particular ground. The most common grounds - 8, 10 and 11, require at least 14 days to be given although it is always best to allow 18 days to include service time of the notice.

If one of the mandatory grounds is used and proven then the judge must make an order for possession. The date of possession should normally be 14 days from the date of the hearing but the judge has discretion for it to be postponed to a period not longer than six weeks after the making of the order.

A landlord will not necessarily know if a tenant will be represented at court, as they may not seek advice until shortly before the hearing. Therefore, any landlord who is contemplating taking legal proceedings should seek advice before doing so.

5.5 Powers And Duties Of District Judges

Judges are directed by the terms of the legislation on which the application is made, and also by the Civil Procedure Rules (www.justice.gov.uk/courts/procedure-rules/civil) and other regulations.

This means that there are some things that the judge must do and some things that they may do. Judges must act fairly and impartially, and their decisions will be based upon the facts that are proven, the rules that apply to the case and/or the wider social consequences of any decision that they make.

Although a judge may strike out a claim if it is defective due to an error, they may also allow some errors to be corrected and allow a case to proceed.

5.6 Absolute Orders Or Suspended (Postponed) Orders

A possession order granted by the court may be made as an absolute order or suspended on terms. For example, a landlord's allegations of anti-social behaviour (ground 14) may be found to be proven and the tenant may have produced no evidence to suggest that their conduct has changed or will change. In that situation the court may decide to make an absolute order. By contrast, an application made due to breach of contract on the basis of the tenant failing to pay rent (say ground 10) may be granted as a suspended order, if the tenant has shown that since the application was made, they have commenced making regular payments towards the arrears.

5.7 Applying To Court For Possession — Standard Procedure

As soon as the relevant notice period expires it is possible for the landlord either to apply to the court in person or to instruct a solicitor to do so.

Only the landlord personally, or their solicitor, can sign the court papers. A common reason for possession claims being rejected by the court is that they are signed by a letting agent. A letting agent can help the landlord draft the paperwork, but they cannot sign on the landlord's behalf and they do not have a right to represent the landlord at court in the landlord's absence. A landlord who is likely to be absent from the UK will need to instruct a solicitor to commence legal action if they wish to be represented in their absence.

If the grounds relate only to rent arrears and nothing else (grounds 8, 10 and / or 11), an application to the court can be made on-line for a cheaper fee at https://www.possessionclaim.gov.uk/pcol/.

After proceedings have been issued at court there is normally a waiting period of at least a month for a court hearing. The tenant is not required to vacate the property until there is a court order requiring them to do so (although they will sometimes simply leave during this period). If a landlord attempts to evict a tenant before the court order is made, they are likely to commit a criminal — and imprisonable — offence.

If the court orders possession, the tenant will have to leave on the date specified in the court order. This is called an absolute possession order.

If the court makes a suspended possession order and the tenant breaches the conditions of it, the landlord may apply to the court for an absolute possession order or a warrant for possession, depending on the terms of the suspended order. If the landlord intends to apply for a warrant after a suspended order, permission from the court is required first. Frequently the tenant will then apply to the court for a 'stay of execution' which may be granted by the judge if the tenant is able to present sufficient evidence of their willingness and capability to comply with the original or revised terms of the order or that something has occurred that has led to the tenant being unable to comply with the original terms. This may have been caused because the tenant had been unable to obtain advice before the previous hearing.

5.8 Applying To Court For Possession — Accelerated Procedure

An application for possession by the accelerated procedure is only available after service of a section 21 notice and is processed using the N5B claim form.

The claim is dealt with through an exchange of papers without a court hearing. The court will issue the claim to the tenant who is then given 14 days to provide a response. The 14 days is from a designated date of service which may be slightly later than the date the papers are received. The tenant is given the opportunity to respond to the facts given in the claim. If there is any dispute about the facts the court may decide to hold an oral hearing at short notice to make a finding of fact. If, however, the facts are not disputed and the claim is in order the judge will make a decision to award possession, normally 14 days after the date of the decision. The date may be later if the tenant has been able to establish that they will suffer undue hardship. The date cannot be later than 42 days after the decision was made.

A landlord association may be able to recommend solicitors who specialise in housing law and who can undertake this type of work for a fixed fee. Alternatively, the various landlord websites may provide guidance on the procedure. The forms issued by the court are reasonably easy to follow and perhaps after one application has been drafted professionally, a landlord should be able to follow the guidance.

5.9 After The Court Order — And Eviction

The court will normally award the costs of the application for possession against the tenant but they may allow them time to pay if they are on a limited income. A landlord may feel that it is not worth seeking to claim the costs once the property has been recovered, if it is going to be difficult to administer the instalments.

Where the tenancy is an assured shorthold tenancy, the landlord can continue to accept money from a tenant at any time during the possession process, from service of the notice to eviction.

If possession is ordered on the grounds of rent arrears, the court will normally order the tenant to pay back the rent owed at a rate appropriate to their circumstances. If asked to consider it, the court may also award a sum to cover interest on the outstanding rent and the court costs associated with obtaining the order. A landlord will need to consider whether it is viable to chase a debt after the end of the tenancy. It is common advice to landlords that they may be throwing good money after bad by pursuing the debt if the tenant is unlikely to be able to pay it.

The tenant should leave the property on or before the date of possession but if they do not do so, a landlord must apply to the County Court for a Warrant for Possession. A landlord cannot themselves evict a tenant, even if they have a court order. If the tenant refuses to leave after the date specified in the order, a warrant for eviction must be obtained from the court, using Form N325: Request for Warrant of Possession of Land. The form is available from http://www.justice.gov.uk/forms/hmcts.

The warrant is normally served on the property or the tenant by the bailiff by hand, and a time is booked by the court for the bailiff to return and carry out the eviction. The landlord should attend at the same time so that the bailiff can formally hand over the property and, if necessary, arrange for the locks to be changed. If the tenant still does not have anywhere to move to it may be necessary for the tenant's possessions to be retained for a reasonable time until they can be collected or disposed of.

If the tenant has not already done so, the landlord may wish to advise the tenant to apply to the local council's homelessness services who may assist with the provision of storage of the possessions and or temporary and permanent accommodation. That will then mean that the landlord can make arrangements for the property to be re-let.

In certain circumstances it may be possible to employ the services of a High Court Enforcement Officer. However, the procedure can be complex, lengthy and expensive. Such a decision will generally depend on the length of time a County Court bailiff is likely to take to attend. Permission from the County Court is required to transfer the possession claim to the High Court and this isn't often forthcoming.

Where the County Court bailiff is going to take 6 weeks or less, that is usually the best route to follow. If however they might take longer, then consideration could be given to the more expensive alternative route.

You can contact the County Court bailiff before making a decision to get an estimated time of attendance.

It is possible to apply for permission to transfer to the High Court at the same time as making the claim which could reduce the time considerably. Seek professional legal advice if this is something you wish to do.

5.10 Applying To The Court For Rent Arrears Only

If it is not necessary to obtain possession a landlord may wish to make a claim under the terms of the tenancy agreement for debt using the small claims procedure of the County Court. The amount awarded by the court will be determined at the date of trial. If a claim is being made for interest to be paid on the arrears this must be stated on the claim form because interest will not be added to the debt automatically. If the sum is cleared and then further arrears arise it will be necessary to submit a further claim. The court service has a simple form (N1) that can be completed at the local court or using money claim online https://www.moneyclaim.gov.uk/web/mcol/welcome. The claim fees are based upon the amount of debt due at the date of the claim. Following an application to the court a claimant and defendant may be invited to reach an agreement to settle by negotiation or by using a free telephone mediation service.

It is always worth making an effort to establish any reason for non-payment of rent before taking action. Non-payment may be a result of delays by the local authority in processing a housing allowance claim, and liaison with the tenant and local authority may well be sufficient to resolve any problem.

If the amount of the arrears (and any other charges) is less than the tenancy deposit, it may be worth applying for the case to be adjudicated in accordance with the tenancy deposit protection scheme. Make sure that good paperwork is submitted to support the claim to the adjudicator. Simply declaring on the application form that the tenant did not make a payment will not usually be sufficient.

5.11 Rent Act Tenancies

Some types of tenancy do not fall within the statutory code set up by the Housing Act 1988 and different rules for possession apply in these cases. These are mainly tenancies which are protected under the Rent Act 1977 and contractual tenancies (for example residential lettings to companies or where the annual rent exceeds £100,000). These can be complex and a landlord should obtain specialist legal help.

Rent Act tenants are very difficult to evict, as they have long-term security of tenure. Generally they can only be evicted if they are in arrears of rent or if suitable alternative accommodation is provided for them.

If A Rent Act Tenant Is In Arrears Of Rent

It is possible to bring proceedings for possession on the basis of nonpayment of rent. In bringing these proceedings there is no need to serve any form of notice on the tenant first (although it is advisable to warn the tenant that possession proceedings are imminent if they do not pay). However, the judge has powers to suspend or stay the order as they think fit.

If A Rent Act Tenant Is Not In Arrears Of Rent

The only other eviction ground which has any chance of success is that suitable alternative accommodation is available to the tenant. Note that the accommodation must be on a protected tenancy (which it will be if the suggested accommodation is to be provided by the same landlord) or equivalent (if provided by another landlord). Offering a tenancy on an assured shorthold basis will not be sufficient.

There is a lot of case law on the question of 'suitable alternative accommodation' and a landlord considering using this ground is advised to seek legal advice, certainly before buying any replacement property.

5.12 Contractual Or Common Law Tenancies

Provided the proper procedure is followed, evicting contractual/common law tenants should not be difficult. However, as the rules are different for this type of tenancy from others mentioned here, legal advice should be sought.

Contractual tenancies include:

- lets of residential properties to companies (but not business premises)
- lettings at a rent of over £100,000 or
- lettings by some resident landlords.

Holiday lets and university lettings to students also fall into this category.

Note that some resident landlords may set up contractual tenancies and others will only give a licence to the occupier. Although these occupiers are 'excluded occupiers' for the purposes of the Protection from Eviction Act 1977, and no court order is required to evict them, the Criminal Law Act 1977 still applies. This states that nobody should use or threaten violence to gain entry to someone's room if there is someone present who is opposed to the forced entry – they risk criminal proceedings if they do.

5.12.1 If The Common Law Tenant Is In Arrears Of Rent

It is possible to bring court proceedings for possession on the basis of nonpayment of rent and in this event there is no requirement to serve a section 146 notice on the tenant first (although it is advisable to warn them that possession proceedings are imminent if they do not pay). However, the judge has powers to suspend or stay the order as they think fit. The terms of the contract should specify when and how the tenancy can be terminated.

Once court proceedings have been issued, rent should not be demanded nor accepted but the landlord can ask for and receive 'damages for use and occupation' of the property (which can be the equivalent to the rent).

If the Common Law Tenant Is Not in Arrears of Rent

It is not normally possible to evict a tenant during the fixed term unless there is a break clause in the tenancy agreement or the tenant breaches the terms of that tenancy agreement and the agreement states it can be terminated for breach. It is technically possible to seek possession for breaches of the tenancy agreement other than non-payment of rent, but this is not often successful. Usually, a notice under section 146 of the Law of Property Act 1925 is required, giving the tenant notice that they are in breach of the tenancy conditions and an opportunity to put things right, if possible. Legal advice should be sought from a solicitor experienced in eviction work to do this properly.

Contractual/common law tenancies do not have the same 'statutory periodic' run-on that the Housing Act 1988 assured and assured shorthold tenancies do. It is possible for these types of tenancy to contain a 'continuation clause' basically ensuring the tenancy does not end upon expiry of the fixed term but instead continues as a contractual periodic tenancy. Where no such clause exists, at the end of a fixed term, the landlord will be entitled to apply for a possession order. If possession is not required, a specific renewal should be agreed where there is no continuation clause.

If the tenancy is a periodic tenancy (either from the outset or after a fixed term has ended with a continuation clause) the landlord can end the tenancy at any time by serving a 'Notice to Quit' (a section 21 notice is often referred to as a notice to quit but this is not correct and not the document referred to here). This must give a notice period of no less than four weeks (but longer if the rent is payable monthly or more). The notice must expire on the last day or the first day of a period of the tenancy and must be in writing and must contain prescribed information. Once this has expired, if the tenant has not vacated, the landlord can apply to the court for an order for possession which they are entitled to as of right. A landlord does not need to give any reason for asking for possession.

Once the notice to quit has expired, the tenancy will have ended and rent should not be demanded nor accepted but the landlord can ask for and receive 'damages for use and occupation' of the property (which can be the equivalent to the rent).

5.13 Assured Tenancies

Where the tenancy is 'assured' (not shorthold) and is in the fixed term or periodic, the section 21 procedure does not apply, and the landlord can only bring the tenancy to an end on certain grounds. Most landlords will need to take specialist legal advice before proceeding.

The section 8 notice (which relies on the grounds for possession) is available on an assured tenancy in exactly the same way they are available with an assured shorthold tenancy – both during a fixed term or periodic. Please refer to the appropriate part of this chapter.

5.14 Unlawful Eviction

The Protection from Eviction Act 1977 makes it a criminal offence for any person to unlawfully deprive a 'residential occupier' of their occupation of the premises. This means that, unless the tenant agrees to vacate, the only legal way a landlord can evict a tenant is by obtaining a court order. Any term in the tenancy agreement that says otherwise will be void.

'Residential occupier' is defined in the Protection from Eviction Act 1977. It covers virtually everyone living in residential accommodation including tenants who rent from a private landlord and any of their friends or visitors who have gained lawful access to the property. It is a common belief that this Act does not apply to licences. In almost all cases it does.

The Act does specify certain limited classes of occupier, in particular lodgers who share living accommodation with their landlords, but even here eviction must not involve any force. If considering evicting a lodger the landlord should still seek legal advice before evicting because getting it wrong could be a criminal offence.

The procedures for lawful eviction of tenants are set out in the various Housing and Rent Acts as detailed above.

If a landlord commits an offence of securing entry by violence or unlawful eviction on or after 6 April 2017, in addition to any penalties that may arise from a prosecution, a rent repayment order of up to 12 months rent is available upon application to the First-tier Tribunal by a local authority or tenant. The order is available whether or not the landlord has been convicted of the offence but the tribunal must be satisfied *beyond reasonable doubt* that the offence has been committed.

5.15 Unlawful Harassment

Harassment is a criminal offence under the Protection from Harassment Act 1997. There is also a special type of harassment relevant to residential premises. It is a criminal offence under the Protection from Eviction Act 1977 for any person to harass a residential occupier, or any of their friends or visitors who have gained lawful access to the property, in such a way that as a result they could be expected to give up their accommodation.

The key elements of harassment are defined as:

Acts likely to interfere with the peace and comfort of the residential occupier or the persistent withdrawal of essential services and either is committed by any person with the intention of causing the residential occupier to leave or is committed by any person with intent to stop the residential occupier pursuing their legal rights (for example, complaining about disrepair) or is committed by a landlord or agent who knows or has reasonable cause to believe that a likely result of their acts is that the residential occupier will leave, or will not pursue their legal rights. Common acts of harassment include:

- threats of violence or unlawful eviction
- disconnecting gas, electricity or water
- breaking off the key in the lock
- deliberately disruptive repair works
- frequent visits, at unreasonable hours
- entering the property without the tenant's permission.

Local authorities may prosecute landlords who harass tenants. If a landlord receives a letter from their local authority regarding alleged harassment against the tenant or any of their friends or visitors who have gained lawful access to the property, this should be taken very seriously. Be very careful in any dealings with that tenant and keep a detailed record of all meetings and telephone conversations. A landlord should follow any advice given to them by the council officer and they should also seek immediate advice from a solicitor experienced in landlord and tenant law.

A landlord or agent can be prosecuted in the Magistrate's Court or in very serious cases a case may be transferred to the Crown Court. A penalty on conviction may include a fine and/or a term of imprisonment.

Tenants may also make a claim to the County Court for an injunction to reinstate them to the property and can claim special and general damages which can amount to tens of thousands of pounds. In addition the landlord may have to take action to terminate a new tenancy and likewise pay further compensation if they have given the tenancy to a new tenant. If an injunction is granted to reinstate a tenant and the landlord fails to abide by the order, the court may commit the landlord to prison for contempt.

If a landlord commits an offence of harassment on or after 6 April 2017, in addition to any penalties that may arise from a prosecution, a rent repayment order of up to 12 months rent is available upon application to the First-tier Tribunal by a local authority or tenant. The order is available whether or not the landlord has been convicted of the offence but the tribunal must be satisfied *beyond reasonable doubt* that the offence has been committed.

5.16 Abandonment

Although a landlord can re-take possession if it is obvious that the tenant has abandoned the property, in most cases the landlord will need to obtain an order from the court. Evicting a tenant without a court order is a criminal offence (with very few exceptions) as detailed earlier.

If a tenant ceases to occupy an assured shorthold tenancy as their only or principal home (i.e. abandons the property and lives elsewhere), without more, the tenancy does not end - it simply ceases to be an assured shorthold tenancy and becomes a contractual tenancy.

As a tenancy remains in force, a court order is required.

When debating if there is abandonment, the question is not "is somebody living here?" - the correct question to ask is "does the tenant intend to return at some future date?"

5.17 Tenant Moves Out

In the vast majority of cases the tenant will move out in an amicable fashion. There are a few housekeeping items to consider before the next tenant moves in.

5.17.1 Meter Readings

Check all meter readings and make sure the outgoing tenant has notified the relevant gas, electricity and water suppliers. A landlord or agent could contact the suppliers directly to be sure.

5.17.2 Inventory And Deposit

Check the inventory ideally with the tenant present. If there are any works necessary that are intended to be deducted from the deposit, it is far easier to get these agreed between the parties.

Any deposit should be returned in accordance with the terms of the tenancy agreement and the scheme with which it is protected. If the tenant has asked for the deposit to be returned and the landlord (or agent) has failed within 10 days, the tenant may contact the deposit scheme and raise a dispute.

If the landlord needs more time to establish costs, this should be communicated.

If both parties have agreed to use dispute resolution offered by a deposit scheme, an adjudicator will determine what amounts should be distributed between landlord and tenant.

5.17.3 Outstanding Bills

Where the tenant is responsible under the tenancy for paying bills, it is for the tenant to deal directly with the appropriate supplier at the end of the tenancy. The tenant should pay all the final bills.

If a tenant fails to pay all bills, the landlord will be able to deduct from the deposit but only if the terms of the tenancy allow for the deposit to be used this way and only if the tenant does not have any genuine grievance with the supplier over the amount payable.

5.18 Retaliatory Evictions

The Deregulation Act 2015 introduced new measures intended to prevent "retaliatory evictions" for any assured shorthold tenancy granted on or after 1 October 2015 including a renewal tenancy. From 1 October 2018, the provisions will apply to all assured shorthold tenancies including existing ones.

The legislation is in essence in two parts. Firstly, a section 21 notice cannot be served within a certain time period after some notice has been served under the Housing Health and Safety Rating System ('HHSRS') (discussed earlier in Chapter 2). Secondly, if a tenant asks for works to be completed, a section 21 notice served in retaliation to that request may be rendered invalid.

5.18.1 Service Of A Section 21 Notice After A HHSRS Action

Where a relevant 'HHSRS notice' has been issued By a local authority, no section 21 notice may be served in relation to the dwelling-house within six months from the day of service of the HHSRS notice.

A relevant 'HHSRS notice' is-

- an improvement notice, or
- an emergency remedial action notice.

5.18.1.1 When The Six Month Rule Does NOT Apply

The starting point is that once a HHSRS notice has been served, no section 21 notice may be given within six months. This is the case even if any works contained in the HHSRS notice are completed within the given time-scales. However, there are a number of exclusions where, despite the six month prohibition, a section 21 notice may nevertheless be given at a time of less than six months from the HHSRS notice. These exclusions are-

- if the improvement notice was served in error and as a result is revoked. In this case, a section 21 notice may be served *after* the notice has been revoked (assuming that is within six months otherwise the section 21 may have been served anyway)
- if the notice is appealed on a number of grounds to the First-tier Tribunal and as a result the notice is quashed or revoked, a section 21 notice may be served *after* the tribunal's decision (assuming the decision is within six months).

Where a HHSRS notice has been served but the works specified in the notice was caused by the tenant being in breach of “the duty to use the dwelling-house in a tenant-like manner” (or some express term to the same effect), the six month rule does not apply.

This would be a risky defence though because the starting position is that no section 21 can be served within six months from the HHSRS notice. To argue that the landlord was entitled to serve a section 21 notice during the six month prohibition period on the grounds that the tenant caused the works would have to be backed up by substantial proof.

Finally, the six month rule does not apply if at the time the section 21 notice is given, the dwelling-house is genuinely on the market for sale (for which see later).

Example

A tenant moves into a property and after 12 months the extractor fan in the bathroom breaks. The tenant contacts the local authority (without first contacting the landlord) and the local authority inspect. The fan is found to be broken and damp and mould is accumulating as a result.

The local authority decide it is a category 2 hazard (the lower of the hazards) and issue an improvement notice on the landlord to fix the fan within 28 days. The notice is served on 28 November.

The landlord may not serve a section 21 notice for six months (at least 29 May using our example), even if the fan is promptly fixed in November.

5.18.2 Service Of Notice After Request For Repair

The second part to the prevention of retaliatory eviction rules relates to a tenant asking the landlord for some works to be completed and the landlord then serves a section 21 notice in retaliation. In order for a section 21 notice to be invalid, there is a strict set of rules that must be followed in a specific order.

5.18.2.1 The Steps

A section 21 notice served in England will be invalid and any possession claim struck out where ALL of the following applies (and in the following order)-

Step 1: before the section 21 notice was given, the tenant made a complaint in writing to the landlord (or to the landlord's agent) regarding the condition of the dwelling-house.

And

Step 2: at the time of the complaint, the landlord did not provide a response to the complaint within 14 days, or provided a response to the complaint that was not an adequate response, or gave a section 21 notice in relation to the dwelling-house following the complaint.

And

Step 3: the tenant then made a complaint to the relevant local housing authority about the same, or substantially the same, subject matter as the complaint to the landlord.

And

Step 4: the local authority served a relevant HHSRS notice in relation to the dwelling-house in response to the complaint.

And

Step 5: if the section 21 notice was not given before the tenant's complaint to the local housing authority, it was given before the service of the relevant notice.

Discussion

It is important to stress that the steps must be followed throughout and if an order for possession is made before step 4 (service of a HHSRS notice by the local authority) even where the section 21 may have been given after a written request for repairs, the notice will nonetheless be held to be valid.

In step 4, a relevant HHSRS notice is the same as defined earlier under the six month prohibition part (improvement notice or emergency remedial action notice).

Where a section 21 has not yet been served and the local authority serve a HHSRS notice (including in step 4), the six month prohibition on serving a section 21 discussed earlier applies.

In step 2, the landlord is required to respond in some way and if does so, in an adequate manner, the steps cease to move to the next and as such any section 21 notice served afterwards would be valid. An adequate response would be-

- carrying out the works being asked for within 14 days, or
- if the works cannot be completed within 14 days, the landlord provides in writing, a description of the action that the landlord proposes to take to address the complaint, and sets out a reasonable timescale within which that action will be taken. This reply must be in writing and be within 14 days of the tenants complaint.

A complaint by a tenant may refer to not just parts of the dwelling physically occupied by the tenant but also to any common parts. But, only if the landlord has a controlling interest in the common parts in question, and the condition of those common parts is such as to affect the tenant's enjoyment of the dwelling-house or of any common parts which the tenant is entitled to use.

Once possession has been ordered by the court, it must not be set aside on the ground that a relevant HHSRS notice was served after the order for possession was made.

5.18.2.2 When The Retaliatory Eviction Provisions Do NOT Apply

The section 21 notice will always be valid even if all steps have been completed if the HHSRS notice served by the local authority under step 5 solely contains works that have become necessary due to a breach by the tenant of the duty to use the dwelling-house in a tenant-like manner (or an express term of the tenancy to the same effect).

Further, a section 21 notice will be valid despite steps 1 to 5 having been satisfied if the "dwelling-house is genuinely on the market for sale." (see later for definition of genuinely for sale).

Examples

Example 1 A tenant writes to the landlord about a faulty fan in the bathroom. The landlord fixes the fan on day 21 after the complaint. the following day, the landlord serves a section 21 notice on the tenant.

A possession order is applied for through the court and a hearing is called. On the day of the hearing, the tenant had not previously contacted the local authority, nor has a HHSRS notice been served by the council.

In this example, the section 21 notice is valid and possession will be ordered because steps 3 (contact local authority), 4 (council serve HHSRS notice) and 5 (section 21 notice served after complaint but before HHSRS notice) shown above have not been satisfied so the retaliatory eviction prohibition is not triggered.

Example 2 A tenant writes to the landlord about a loose handrail on the stairs which is promptly fixed (within a day or two).

A month later and without first contacting the landlord, the boiler breaks and the tenant contacts the local authority. The local authority contact the landlord to give 24 hours notice that they are going to inspect about the boiler (which they must do by law). On that same day before the inspection, the landlord hand delivers a section 21 notice to the property.

The following day the council inspect and a further two days later serve an improvement notice on the landlord seeking that the boiler be repaired. The landlord promptly repairs the boiler (within a day or two).

Two months later after expiry of the section 21 notice, the landlord applies for a possession order which is defended by the tenant on the basis that they made a written request for repairs and an improvement notice was served.

In this example, the section 21 is nonetheless valid because of a couple of reasons:

(1) After the original complaint about the handrail, there was an adequate response by the landlord – the handrail was fixed within 14 days. As a result, step 2 is not satisfied and all 5 steps must be completed in order for the notice to be invalid.

(2) Further, when the tenant went to the local authority, the complaint was not "about the same, or substantially the same, subject matter as the complaint to the landlord". In our example, the complaint to the landlord was about a handrail but the complaint to the local authority was about a boiler. As a result, step 3 was not satisfied.

Example 3 A tenant moves into a property and after six months the roof starts leaking. The tenant sends the landlord an email asking that the roof be fixed.

After a month the landlord replies to the tenant apologising for the delay as he was in Spain on holiday for the last four weeks. In the landlord's reply he confirms the roof would be fixed within 28 days. Alongside the reply, the landlord also serves a section 21 notice.

The tenant, not happy with the reply, contacts the local authority who, within a week, inspect and issue an improvement notice seeking that the roof be fixed. The landlord is given 6 weeks to repair the roof.

After the roof is fixed, the landlord applies for possession which is defended under the retaliatory eviction provisions.

The section 21 notice will be held invalid and the landlords claim struck out because of step 2 and the failure of the landlord to carry out the repair within 14 days or to provide a written response within 14 days. Although the landlord arguably replied adequately (with a description of the works and a reasonable time-frame), the reply needed to be within 14 days.

What's more, step 2 was further satisfied because the landlord served a section 21 notice following the complaint.

Going through the steps:

Step 1 was satisfied because the tenant wrote a complaint.

Step 2 was satisfied because the landlord (a) failed to respond within 14 days and (b) served a section 21 following the complaint. (Any one of these would have rendered the step satisfied).

Step 3 was satisfied because the tenant complained to the local authority about the same complaint as to the landlord. (Note: there is no time-limit from the written complaint to when the tenant must then go to the local authority).

Step 4 was satisfied because a relevant notice (improvement notice) was served by the local authority (before an order for possession had been obtained).

And finally, step 5 was satisfied because the section 21 notice was not served before the written complaint in step 1 and was served before the HHSRS notice had been served.

5.18.3 Genuinely On The Market For Sale

Where a property is genuinely for sale at the time the section 21 notice is given, neither the six month prohibition after a HHSRS notice has been served nor the retaliatory rules apply.

If a property is genuinely on the market for sale, is not defined in the legislation and it appears to be for the court to decide – each case being considered on its own merits. However, what is NOT genuinely for sale is helpfully defined (although not conclusively).

A dwelling-house is NOT genuinely on the market for sale if, in particular, the landlord intends to sell the landlord's interest in the dwelling-house to—

- a person associated with the landlord,
- a business partner of the landlord,
- a person associated with a business partner of the landlord, or
- a business partner of a person associated with the landlord.

A business partner and persons associated are also further defined in the legislation.

To clarify, the legislation is not defining the above as being a conclusive list of what is NOT genuinely for sale. The court may consider a house for sale at £500,000 when three agents have valued the same house as £250,000 to be not genuinely for sale. The crucial word is "genuinely". Putting a house on the market on the same day as serving a section 21 and then taking it off the market the following day is not likely to be "genuine".

What's more, the legislation does not prohibit the sale of a property to a business partner or associate of the landlord – it's just that the retaliatory eviction rules will continue to apply under both old and new landlord.

Finally, the property must be genuinely on the market at the time the section 21 is served. It is no use to put it on the market say a couple of days before a possession hearing. That will not avoid the retaliatory eviction rules.

5.19 Apportioned Rent

The common law position is that where a tenancy ends midway through a period of a tenancy, the landlord is nonetheless entitled to receive the full payment of rent for the full period.

For an assured shorthold tenancy granted on or after 1 October 2015 including a renewal and all assured shortholds (including existing) from 1 October 2018, this changes for some circumstances and may require a repayment of rent apportioned daily where the tenant ceases occupation mid-way through a rental period of the tenancy.

Those circumstances are—

- as a result of the service of a notice by a landlord under section 21, the tenancy is brought to an end before the end of a period of the tenancy,
- the tenant has paid rent in advance for that period, and
- the tenant was not in occupation of the dwelling-house for one or more whole days of that period.

The amount of repayment to which a tenant is entitled is calculated by considering the number of days in the month and how many of those days the tenant occupied the property.

If the repayment of rent has not been made when the court makes an order for possession under section 21, the court must order the landlord to repay the amount of rent to which the tenant is entitled.

Nothing in these rules affects any other right of the tenant to a repayment of rent from the landlord for example compensation for a failure to repair.

5.20 Banning Orders

If a landlord or agent is convicted of a “banning order offence” a local authority may apply to the First-tier Tribunal for a banning order against the landlord or agent who committed the offence.

A banning order offence includes (but not limited to):

- illegally evicting or harassing a residential occupier
- using violence to secure entry
- providing false or misleading information
- failing to comply with an improvement notice
- failure to comply with a prohibition order
- offences in relation to licensing of Houses in Multiple Occupation
- offences in relation to selective licensing
- violence for securing entry
- offences related to drugs
- contravention of an overcrowding notice
- fire and gas safety offences
- harassment and stalking

A banning order will ban the person from letting housing or acting as an agent (or both) in England.

A banning order must last for at least 12 months although there can be exceptions to allow for example a landlord to obtain possession orders against current tenants or to allow a letting agent wind down their business.

5.20.1 Database

There is a national database of rogue landlords and anybody with a banning order must be placed in the database.

Even without a banning order, a local authority may place a person on the database if they have been convicted of a banning order offence or have received a financial penalty in respect of a banning order offence at least twice in a 12 month period.

Local authorities throughout England will have access to the database (and are responsible for keeping it up to date) which will allow them to ensure a landlord or agent with a banning order can’t move areas within England.

Appendix 1 - Practical Checklist For Landlords: Obligations And Considerations

Preparation Before Letting

1. before investing, prepare a business plan that takes into account the cost of the investment, running costs, cash flow and rent level. Allow at least a 10% return to cover costs and voids
2. if necessary obtain permission from mortgage lender and/or freeholder for renting the property
3. consider what part of the private rented sector market the property is designed to serve
4. decide on the kind of tenant to let to. Is a tenant needing Housing Benefit an issue? Is the property to be let furnished or unfurnished?
5. calculate realistically whether the rental income will cover loan or mortgage payments, repairs and all the other rental costs. If not, budget to set aside money from earnings each month (in the early years) to cover any shortfall
6. decide on the likely market rent
7. decide whether gas, electricity and water charges are included in the rent
8. consider who will manage the property and the cost of this. If using an agent agree costs and levels of service
9. ensure adequate levels of relevant insurance (check the policy is suitable for rented property)
10. deal with the tax implications of the revenue stream and inform Revenue and Customs
11. consider joining a landlord association and undertaking professional development
12. obtain planning or Building Control approval for major improvement work done to property
13. make sure the property is both safe and healthy for any potential occupiers or visitors, including;
14. adequate heating and insulation
15. free from tripping and falling hazards
16. free from significant disrepair and asbestos
17. good lighting and ventilation
18. good security
19. good sanitation, food preparation and is hygienic
20. obtain a tenancy agreement suitable for your letting and avoid unenforceable unfair terms
21. decide on length of letting
22. advertise through the internet, agent, newspaper or other means
23. obtain an Energy Performance Certificate (EPC)
24. undertake an annual gas safety check by a Gas Safe registered engineer
25. comply with the electrical and furniture standards
26. ensure the property meets with the relevant fire safety standards with the fitting of alarms and/or smoke/heat detectors and emergency lighting.

If the property is a House in Multiple Occupation (HMO):

1. ensure any electrical installation is inspected by a qualified person before letting and every five years subsequently
2. contact your local authority to check whether a licence is needed and if it is apply for a licence and comply with the conditions of the licence and the HMO regulations
3. ensure a fire risk assessment is carried out under the Fire Safety Order
4. ensure that smoking does not take place in public areas in accordance with the Smoking and Health Act 2006

Before The Tenant Moves In

1. check the ID of the tenant. One ID is required if passport or other travel document but two forms of ID will be required otherwise such as driving licence and birth certificate
2. all documents obtained should be copied in electronic or hardcopy and kept for at least 12 months after tenancy ended
3. if adult is a national of UK, EEA state or Switzerland no further action but if other national who has limited right to remain in UK, further checks will be needed

When The Tenant Moves In

1. sign the tenancy agreement – two copies, landlords retain one signed by tenant and tenant should have one signed by landlord
2. consider asking tenant to sign bank standing order form for rent payments, or letter of authority to the Housing Benefit office if tenant is on benefit
3. complete and agree an Inventory and Schedule of Condition (consider using professional inventory clerk, if appropriate)
4. give the tenant the landlord's (or agent's) contact details for repairs and other problems – name, address and telephone
5. notify the utility suppliers and the local authority (for Council Tax etc) of the details of the new tenant/s
6. inform the tenant/s of utility suppliers etc and read any relevant meters
7. if charging a deposit and letting on an assured shorthold tenancy ensure that the deposit is protected under one of the schemes available and give the required information to tenants to confirm this
8. consider any local council schemes such as deposit guarantees
9. keep tax records of income and expenditure and if rental income exceeds (allowable) expenditure, set an amount aside to cover future tax demands. Complete a tax return ideally soon after the end of your tax year
10. provide receipts to tenant for any cash rent payments
11. keep detailed records of repair requests, inspections, safety checks, repairs done, other management issues and a rent statement.

When The Tenant Moves Out

1. make a note of when a tenancy is due to end and see if the tenant wants to extend or renew their agreement
2. if leaving, arrange a joint inspection of the property and agree on any damage or decoration that needs rectifying
3. provide information about any cleaning required
4. advise the tenant about taking final utility readings for an end of tenancy bill
5. make arrangements for the handover of keys.

Appendix 2 -Property Inspection Form

Insert PDF version of original landlord manual

Appendix 3 - First-tier Tribunal Property Chamber (Formerly Rent Assessment Committees)

Rent assessment committees are now under the duties of the First-tier Tribunal Property Chamber. The tribunal is specialist in general housing matters.

The Tribunal operates under a number of regions in England. The tribunal members are independent of both central and local Government.

The tribunal can decide on the following types of dispute:

- tenants of assured shorthold tenancies can refer their rent for review during the first six months of their original tenancy, if they consider the rent is above a market rent
- tenants of assured/assured shorthold tenancies can refer a rent for review where the landlord has sought to increase it under the notice procedure under section 13 of the Housing Act 1988
- tenants of assured/assured shorthold tenancies can refer for review a landlord's notice of a change in the tenancy agreement terms under section 6 of the Housing Act 1988 (this is very rare and therefore will not be discussed further)
- either landlords or tenants can refer a rent officer's decision on a 'fair rent' under the Rent Act 1977 if they disagree with it.

There is no appeal against a decision except on a point of law.

The tribunal may make a decision by considering the relevant papers although you or the tenant can ask for a hearing, which you may both attend. There is no charge for a decision. When settling disputes on rent, the tribunal normally decides what rent could reasonably be expected for the property if it were let it on the open market under a new tenancy on the same terms.

It does not take into account any increase in the value of the property due to voluntary improvements by the tenant or any reduction in the value of the property caused by the tenant not looking after the property.

The tribunal may agree the proposed rent or set a higher or lower rent.

More information is available at http://www.justice.gov.uk/tribunals/residential-property

Appendix 4 - Where To Get Help

Central And Local Government

Ministry of Housing, Communities & Local Government (CLG)

Responsible for policy on housing, planning, regional and local government and the fire service. Provides a range of useful information and leaflets. www.communities.gov.uk

Department of Work & Pensions

Provides benefits and services for a wide range of people including Housing Benefit. www.dwp.gov.uk

Gov.uk

Links to Government departments and local council websites. www.gov.uk

The Court Service

For court forms and information leaflets. www.hmcourts-service.gov.uk

The Residential Property Tribunal

For information about the work of the rent assessment committees and their jurisdiction under the Housing Act 2004. www.justice.gov.uk/tribunals/residential-property

Health & Safety Executive

For information about gas safety. www.hse.gov.uk

Competition and Markets Authority

Consumer advice and guidance on unfair terms in tenancy agreements.
https://www.gov.uk/government/organisations/competition-and-markets-authority

Housing Network

Online housing and real estate news resource. www.housingnetwork.co.uk

Department of Business Energy and Industrial Strategy https://www.gov.uk/government/organisations/department-for-business-energy-and-industrial-strategy

Valuation Office Agency

www.voa.gov.uk

Planning Portal

Online planning and building regulations resource. www.planningportal.gov.uk

HM Revenue & Customs

www.hmrc.gov.uk

Ministry of Justice

Includes information on Civil Procedure Rules. www.justice.gov.uk

Residential Property Tribunal Service (RPTS)

Public body that can decide many Rent and Leasehold disputes. www.justice.gov.uk/tribunals/residential-property

Landlord associations

Landlord associations provide advice and information for member landlords. Some organisations provide information accessible to non-members.

Guild of Residential Landlords

The Guild of Residential Landlords is one of the landlord associations that operate nationally. For a quarterly or annual subscription it provides access to a help-line, over 100 forms, guidance on possession notices and court action and much more. Call 01423 873399 or visit the website - www.landlordsguild.com

Residential Landlords' Association

Supporting all private rented sector landlords. Owned and trusted by its members. For information or membership enquiries call 0845 666 5000 or visit the website - www.rla.org.uk

National Landlords' Association

For further information or to join over the telephone (by credit or debit card) the Membership Department is on 020 7840 8937 or e-mail info@landlords.org.uk. It is also possible to join via the website. www.landlords.org.uk

Association of Residential Letting Agents

www.arla.co.uk

Landlords UK

Links, forums and information. www.landlords-uk.net

Landlord Law

Legal information, forms and services for landlords and tenants. www.landlordlaw.co.uk

Landlord Zone

Information for landlords, tenants & agents. www.landlordzone.co.uk

LLAS and London and South East Landlords Day

www.londonlandlord.org.uk

Decent and Safe Homes (East Midlands)

www.eastmidlandsdash.org.uk

Residential Landlord

Free information and advice for landlords and property investors www.residentiallandlord.co.uk

Report Registers

Search for Domestic Energy Assessors (DEAs). www.hcrregister.com

Landlord Accreditation Scotland

For information about landlord accreditation scheme for Scotland www.landlordaccreditationscotland.com

Agents' professional bodies websites

Private Rented Sector Professionals

The vision for setting up PRSP (Private Rented Sector Professionals) was to create an organisation that would represent its members and by working together, help those members. https://prsp.co.uk

The Royal Institute of Chartered Surveyors

www.rics.org

The National Approved Letting Scheme

www.nalscheme.co.uk

The National Association of Estate Agents

www.naea.co.uk

Other trade associations

The Association of Independent Inventory Clerks

www.theaiic.co.uk

Lawpack Publishing

Low cost forms for landlords. www.lawpack.co.uk

The Leasehold Advisory Service

For landlords of flats on long leases who may have problems with their freeholder. www.lease-advice.org

Gas Safe Register

www.gassaferegister.co.uk

Electrical Safety Council

www.esc.org.uk

Energy Efficiency Partnership for Buildings

www.eeph.org.uk

Equality and Human Rights Commission

Providing advice and guidance to promote equality and human rights. www.equalityhumanrights.com

Consumer Focus

www.consumerfocus.org.uk

Energy Performance Certificate and Home Condition Report Registers

Search for Domestic Energy Assessors (DEAs) www.hcrregister.com

Electrical Safety Council (ESC)

An independent charity committed to reducing deaths and injuries through electrical accidents. www.esc.org.uk

Unipol Student Homes

A charity established to help students find the best housing they can, to drive up standards and to be a beacon of good practice for other housing suppliers. www.unipol.org.uk

The Accreditation Network UK (ANUK)

The national body that publicises, promotes and shares good practice in accreditation. www.anuk.org.uk

Universities UK (UUK)

Administers one Government-approved national scheme for buildings controlled and managed by educational establishments. www.universitiesuk.ac.uk

Deposit Protection Services

Deposit Protection Service

tel: 0844 4727 000 www.depositprotection.com

The Dispute Service

tel: 0845 226 7837 www.thedisputeservice.co.uk

Mydeposits

t:el: 0844 980 0290 www.mydeposits.co.uk

Redress Schemes

Property Redress Scheme

tel: 0333 321 9418 https://www.theprs.co.uk

The Property Ombudsman

tel: 01722 333306 http://www.tpos.co.uk/index.htm

Ombudsman Services - Property

tel: 0330 440 1634 http://www.ombudsman-services.org/property.html


Guild of Residential Landlords

Private Rented Sector
Accreditation
Scheme

Training for Professionals

ANUK
ACCREDITATION
NETWORK UK

Local
Government
Association