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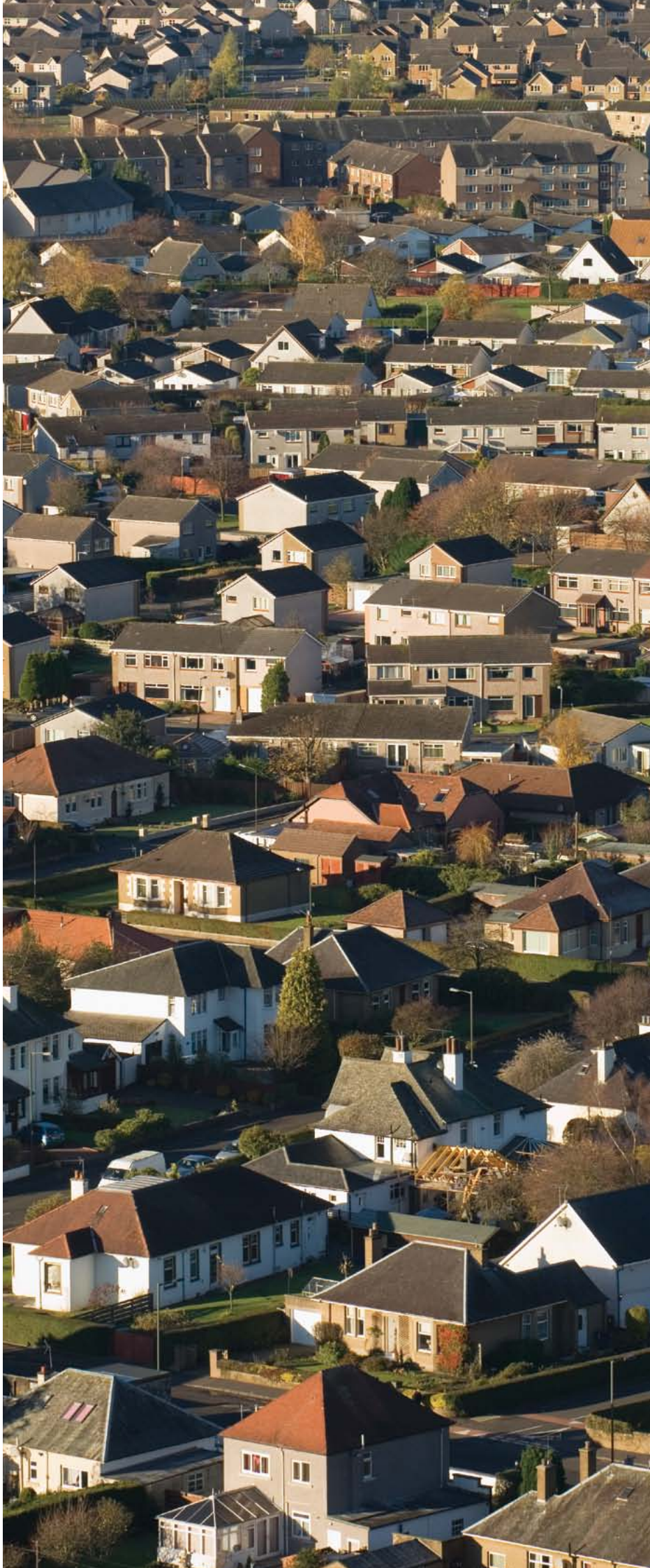
Local Government Association

The Landlord Handbook



The Landlord Handbook - revised 2012

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 second revision is based on the earlier *Landlord Development Manual* undertaken jointly by IDeA, LACORS and ANUK and the new *Landlord Handbook*, undertaken by ANUK, Unipol Student Homes and the Local Government Association (LGA) .

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Published by

ANUK
ISBN 978-0-9573053-0-4

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1.1 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 [see section 1.1.1]
- 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 (see section 1.8.3)
- 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.

1.1.1 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.

The latest data from the Department for Communities & Local Government (Footnote *English Housing Survey 2010-11* Headline Report, CLG 9 February 2012) shows how the recession has altered the housing market. It shows that owner-occupation has declined from 70.7% of housing tenure in 2005 to 66% of tenure in 2010-11 as mortgages have become harder to get. As a consequence private renting is up, from 11.7% of tenure in 2005 to 16.5% in 2010-11 - a dramatic increase of 48%.

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.

1.2 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.

Schemes may be locally or regionally operated e.g. Wales and Scotland have their own national schemes.

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: **www.anuk.org.uk**.

1.2.1 How 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.

1.2.2 Membership Benefits

Accreditation status provides landlords with a market advantage.

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.

1.2.3 ANUK/Unipol Codes of Standards or 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.

Licensable HMOs that are owned by educational establishments and are members of the Educational Establishment Code 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: **www.nationalcode.org/**

1.2.4 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: **www.universitiesuk.ac.uk/POLICYANDRESEARCH/GUIDANCE/ACCOMMODATIONCODEOFPRACTICE/Pages/Information-for-students.aspx**

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) [see section 3.1.2] must be protected in one of the three Government-approved tenancy deposit protection (TDP) schemes. It is the landlord's legal responsibility to ensure their tenants receive the relevant scheme's terms and conditions (known as the prescribed information) 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.

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 damage 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:

- 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.

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.

1.4 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 section 3.1.2 for an explanation of assured shorthold tenancy] or a restriction on Housing Benefit/Local Housing Allowance 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 Part 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 have an Energy Performance Certificate (EPC) when a property is let to a new tenant. The purpose of the EPC is to show prospective tenants the energy performance of the dwelling they are considering renting.

The EPC has undergone significant review with a newly designed certificate coming into use from 1 April 2012.

The older certificate (before 1 April 2012) shows two things; the energy efficiency rating (relating to running costs) and the environmental impact rating (relating to the carbon dioxide emissions) of a dwelling. It is shown as coloured graphs similar to those found on, for example, fridges and other domestic appliances. The rating is also accompanied by a recommendation report that shows how to improve the dwelling's energy efficiency.

The new certificates show the energy efficiency rating only but goes into more detail by comparing the home's energy performance related features with the average ratings. The new certificates also draw specific attention to the 'Green Deal'.

Once an EPC is obtained it is valid for 10 years unless the property is sold and a new EPC must be obtained at that point.

The EPC should be arranged before the property is advertised and a copy must be available to tenants, free of charge, before they are given written details, arrange a viewing or agree a letting. The actual tenant who takes the property should be given a full copy of the EPC including the assessor's recommendations.

It is a requirement to provide an EPC when the property is 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 are completed by registered Domestic Energy Assessors (DEAs). An assessor can be found at **www.hcrregister.com/searchAssessor.html** or seek recommendations from friends and contacts. Once commissioned, the EPC is valid for 10 years or until a new EPC is produced.

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:* **www.communities.gov.uk/documents/planningandbuilding/pdf/957171.pdf**
- *Energy Performance Certificates (EPCs) and renting homes: A tenant's guide:* **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.

There are provisions in the Energy Act 2011 to ensure that from April 2018 it will be unlawful to rent out a residential or business premise that does not reach a minimum energy efficiency standard (the intention is for this to be set at EPC rating 'E'). Landlords with a property where this rating might apply will need to consider how the energy performance of the property can be improved by that time.

1.6 Green Deal

The Green Deal was established by the Energy Act 2011 and is a Government initiative designed to help meet the upfront cost of making buildings more energy efficient. It will be available to landlords, tenants, home owners and small businesses, and is intended to be one of the key measures for meeting the interim carbon reduction targets established in the Climate Change Act. For the private rented sector it has added importance because of its link to the energy efficiency enforcement proposals due to be enacted sometime before April 2018 and discussed above in the Energy Performance Certificate section.

The Green Deal is to be launched in late 2012, and will allow the installation of energy efficiency measures without any upfront cost to either the property owner or occupier. The Green Deal is not a personal loan but a charge placed out on the electricity meter. The cost of the measures will be recovered through instalments on the electricity bill over several years, and as such there is no requirement for the current bill payer to continue paying the instalments if they move house. If they move out, the new occupant (tenant) will pick up the charge while also benefiting from a more energy-efficient property.

As the charge is attached to the electricity meter it will be the tenant who pays for the installation.

There is a 'golden rule' which applies to the Green Deal finance model and that is the expected savings from the energy efficiency works must equal or exceed the cost of the improvements. In principle the bill payer (tenant) should not be paying out more once the works are completed than they were before the improvements and in theory there may be a net saving on their fuel bills.

For work such as solid wall insulation or where the occupier is on very low income, who frequently use less energy than average, the Green Deal will not be able to fund the improvement works because of the golden rule. In these cases there will be grant funding from the energy providers, known as the Energy Company Obligation, or ECO, which will also start in late 2012.

There are several companies which provide the Green Deal including British Gas, EON, Scottish and Southern Electricity and Kingfisher (B&Q)

Green Deal Protections

The Government is aware that for the scheme to be a success consumers must have confidence in the scheme and consumer protection is a key requirement.

The person proposing to take out a Green Deal must get the written permission of all persons with an interest in the property. In the private sector these will include the landlord, current tenant, freeholder, any head leaseholder, mortgage company etc, plus any necessary permissions from the authorities, e.g. planning, building regulation etc.

To ensure future tenants are made aware of the existence of a Green Deal charge, a clause must be inserted into their tenancy agreement, or a separate document prepared, and must be signed by them making it clear they are aware of the charge.

The assessment of the energy improvement works must be carried out by an accredited assessor, and the works carried out by an accredited installer. The works once completed will be guaranteed for the life of the Green Deal charge.

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
- interest (not the capital repayments) on loans used to buy or improve the property
- water rates
- Council Tax
- heating
- lighting
- security
- accountancy fees
- subscription to a landlord association; motor and travelling expenses for visiting the property and for attending to matters relating to let properties.

A special wear and tear allowance of approximately 10% of the rents received can be claimed if the property is let furnished.

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

A special tax allowance exists if the landlord undertakes certain improvements to the property to increase energy efficiency, known as the Landlords' Energy Saving Allowance (LESA). Further details can be obtained from **www.hmrc.gov.uk/manuals/pimmanual/PIM2072.htm**

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.

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 liable for Council Tax. Landlords should notify the local council of the name of the tenant and when they moved in.

If the property is empty, the landlord will be liable for Council Tax, but an exemption can be sought for up to six months if the property is unfurnished.

Students undertaking full-time education courses are 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 also covers that period.

If there is more than one tenancy agreement for the property (e.g. if it is divided into bedsits), then 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. Recent 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. 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.

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

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.

1.10 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 CLG website **www.communities.gov.uk/housing/privaterentedhousing/** (or follow the links for Housing, then Private Housing, then Private Rented Housing).

Publications are available free of charge from:
CLG Publications, PO Box 236, Wetherby, LS23 7NB
Tel: 0870 1226 236, Fax: 0870 1226 237,
Textphone: 0870 1207 405,
Email: communities@twoten.com

Most landlords now have access to the internet, and a search for landlord legal advice can lead to a number of sites giving free basic information and offering other services where a charge is made. [See Appendix 5 - Useful contacts for landlords.]

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 Membership of a Landlord Association

There are a number of landlord associations [see Appendix 5 - Useful contacts for landlords] 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.

1.12 Useful Contacts for Landlords

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. [See Appendix 4 - Where to get help.]

2. The Responsibilities and Liabilities of the Landlord/Letting Agent

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 in Consumer Contracts Regulations 1999. 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

2.3.1 The Right of a Tenant to Quiet Enjoyment of a Rented Property without Intrusion or Disturbance by a Landlord

The main terms implied by common law are detailed below:

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. 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.

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 should leave the property in the same condition as when they took possession, fair wear and tear excepted.

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'.

2.4.2 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. The right to enter for the repair would be an implied term, as the law says the landlord must do the repair, it is implied he or she has the right to enter to do it. 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 damage 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, because the right of access is an implied term of the 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 best accompanied by a witness.

2.4.3 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 HM Courts Service website at **www.hmcourts-service.gov.uk**.

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.

2.4.4 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.

2.4.5 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 tenants' risks to 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).'

Depending on the seriousness of risk, local authorities assess hazards as either category 1 or category 2 hazards. Section 5 describes the duty on the local authority to take enforcement action where a category 1 hazard exists.

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.

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.

2.5.1 Hazards

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

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 is available at:
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 **www.communities.gov.uk/publications/housing/housinghealth**

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

To assist landlords to identify and risk-assess hazards on site and record any necessary remedial works, a property inspection form is provided in Appendix 3 of this handbook.

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.

Additional information can be obtained from the CLG, in particular the two guidance documents:

- *Housing Health and Safety Rating System: - Guidance for Landlords and Property Related Professionals*
- *Housing Health and Safety Rating System: - Operating Guidance*

2.6 Decent Homes Standard *(applicable to England only)*

The decent homes standard was a measure of general housing conditions introduced by the Government in 2000. Although private landlords were not directly required to take any action to bring their properties up to this standard, the Government set targets for local authorities. However, from April 2008, all other sets of indicators, including Best Value Performance Indicators and Performance Assessment Framework Indicators, have been abolished.

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.

From March 2009 the Gas Safe Register has replaced CORGI gas registration in Great Britain and is now 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 **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 when they first move in, 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 **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 or to an existing tenant(s) within 28 days of the check

- keep a record of the gas safety check made for each appliance for two years

- ensure that gas appliances, fittings, and flues are maintained in a safe condition.

2.7.2 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 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.

2.7.3 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.

2.7.4 Indications that an Appliance is Faulty or Dangerous

Danger signs to look for are:

- stains, soot or discolouring 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.

2.7.5 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 by the following regulations:

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

Landlords need to ensure that the electrical installation and all electrical 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 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 installation and appliances on an annual basis. The Electrical Safety Council advises that as a minimum, landlords should:

- 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.

Although there is no statutory requirement to have annual safety checks on electrical installations as there is with gas, the Institution of Electrical Engineers recommends a formal periodic inspection and test being carried out on the installation at least once every 10 years or on a change of tenancy.

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 regulations relating to electrical installations fall into two categories: existing installations and new work.

New Work

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 bathrooms and kitchens 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 provision of a socket outlet or a light switch on an existing circuit 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.

2.8.3 Further Guidance

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

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: **www.esc.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.

The publication *A Guide to the Furniture and Furnishings (Fire) (Safety) Regulations* is available from the Department for Business Enterprise & Regulatory Reform (BERR) website: **www.berr.gov.uk/files/file24685.pdf**

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.

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.

2.11 Duties on the Manager of an HMO

The Management of Houses in Multiple Occupation (England) Regulations 2006 and 2007 place specific duties on the manager of an HMO. Failure to comply with the regulations is a criminal offence, leading to fines of up to £5,000 on conviction. 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 with 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 with a maximum fine of £5,000. 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: **www.lacors.gov.uk/lacors/NewsArticleDetails.aspx?id=19844** *(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.

In addition to HMOs the guidance includes fire safety advice for singly occupied properties. The Housing Act 2004 requires such properties to be fire safe.

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:

1. a landlord is a fit and proper person (or employs a manager who is)
2. each premises is suitable for occupation and
3. 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 CLG website at **www.communities.gov.uk**.

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.

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 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 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.

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 Renewing a Licence

Many licences, first issued for five years, are now coming up for renewal. There has been no change in primary legislation so a property that is currently licensed will need its licence renewed in order to operate legally. If there has been no significant change in the property, many local authorities are now asking landlords to renew their initial licence rather than reapply as if an entirely new licence was required. 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.

2.12.9 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.

2.12.10 Temporary Exemption from Licensing

If the landlord or person in control of the property intends to stop operating as a licensable property or legally reduce the numbers of occupants 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.

2.12.11 Right of Appeal Against a Local Authority's Decision

A landlord can appeal to the Residential Property Tribunal Service (RPTS), normally within 28 days, if the local authority refuses a licence, grants a licence with conditions or revokes or varies a licence.

More information about the work of the RPTS and the jurisdiction of residential property tribunals under the Housing Act 2004 can be obtained from **www.justice.gov.uk/tribunals/residential-property**

2.12.12 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. A fine of up to £20,000 may be imposed. In addition, breaking any of the licence conditions can result in fines of up to £5,000. Note also, that no section 21 notice [see section 5.5.7 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.

2.12.13 Rent Repayment Orders

The local authority may apply to the RPTS for a 'rent repayment order' allowing it to reclaim any housing benefit that has been paid during the time the property was without a licence up to a maximum of 12 months.

A tenant living in a property may also make an application to claim back any rent they have paid during the unlicensed period, up to a maximum of 12 months, if the landlord has been convicted of operating a licensable HMO without a licence, or has been required by a rent repayment order to make a payment to the local authority in respect of housing benefit on the property.

For more information about HMO licensing go to: **www.communities.gov.uk/housing/rentingandletting/privaterenting/housesmultiple/**

For more information about selective licensing go to: **www.communities.gov.uk/housing/rentingandletting/privaterenting/selectivelicensing/**

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.

Approval is not normally required for a property let as a shared HMO for up to six tenants on a group contract, living together as a single household and where no significant changes have been made to the property. For a group of seven or more the presumption should be made that approval may be needed and the advice of the local planning authority should be obtained.

In around 25 towns (mainly associated with large numbers of students) local authorities have obtained what are known as Article 4 powers, which means that planning permission is required for any new HMOs. 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.

These are comparatively new and evolving powers and there is still much confusion and uncertainty about the policies being followed. What happens if a house changes occupancy levels? Is existing HMO usage based on current or previous occupancy?) What happens if a house is let to a single household and then reverts back to 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.

The interactive site given below provides an illustration of works that require Planning and Building Regulations approval. **www.planningportal.gov.uk/uploads/hhg/houseguide.html**

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 pre-determined 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:
www.direct.gov.uk/en/HomeAndCommunity/Planning/BuildingRegulations/DG_10014170

3. Setting up a Tenancy

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.

3.1.1 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.

3.1.2 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 be as AST.

An AST can be for any term (the rule requiring them to be for a minimum term of six months was abolished by 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. The notice must be served on the tenant at least two months before the landlord wants the tenancy to end. To end a fixed-term AST, the section 21 notice must expire on the last day of the fixed term. To end a periodic AST, the section 21 notice must expire on the last day of a period of the tenancy.

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 17 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.

3.1.3 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.

3.1.4 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.

3.1.5 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 tenants
- 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.

3.1.6 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.

3.1.7 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 section 3.1.8 below] or a new fixed-term agreement can be entered into.

3.1.8 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 in 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 roll over into a statutory periodic tenancy, both landlords and tenants 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.

3.1.9 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, assured shorthold tenants have a right to stay in the premises for a minimum period of six months. 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. (If the initial term was less than six months there is no reason why proceedings for possession cannot be commenced before the six months is up but the possession order will not take effect till the end of the six months.)

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 in section 3.1.5 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 in 3.1.5 above.

3.1.10 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 CLG website at **www.communities.gov.uk**.

3.1.11 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 occupiers does not apply to licences.

The three main tests for a tenancy are:

1. exclusive possession
2. a fixed or periodic term
3. 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, the bedroom, 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).

3.1.12 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 sub-letting or assignment.

Now, standard terms in residential tenancy agreements are subject to the Unfair Terms in Consumer Contracts Regulations 1999, administered by the Office of Fair Trading (OFT). The OFT has issued guidance to the effect that absolute prohibitions on assignment and sub-letting could be considered unfair and, therefore, void in terms of the regulations.

Landlords wishing to retain a degree of control over assignment and sub-letting are advised to ensure that the tenancy agreement allows assignment or sub-letting only upon landlord's consent (which cannot, by law, be unreasonably withheld). Alternatively, the tenancy agreement should be framed in such a way as to allow the tenant to terminate it easily if they are unable to recommend to the landlord a suitable person to take over the tenancy.

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.

3.1.13 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 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.

3.1.14 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 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.

3.2 Tenancy Agreements

3.2.1 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.

3.2.2 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.

3.2.3 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.

3.2.4 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.

3.2.5 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 **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 June and taking occupation in September) it could be better to have the agreements formally drawn up and independently witnessed. Landlords should seek advice on this (particularly if tenancy agreements are being created online) as the legalities of the situation are complex.

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 should 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, this will cause the landlord difficulties later if there is a need to evict a tenant for arrears of rent.

3.2.6 Unfair Terms in Tenancy Agreements

There are now regulations to ensure that standard contracts between a consumer and a business are 'fair'.

These are the Unfair Terms in Consumer Contracts Regulations 1999. It has been confirmed that they apply to tenancy agreements. The regulations are administered and enforced by the Office of Fair Trading (OFT) which has issued guidance on the effect of the regulations on tenancy agreements.

The regulations do 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 regulations.

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 this. 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, save 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 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 OFT 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. [See Office of Fair Trading's website for *Guidance on Unfair Terms in Tenancy Agreements*: **www.oft.gov.uk.**]

3.2.7 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. The use of digital photographs is not always accepted by the courts as evidence so it is advisable to print the photographs and for both the landlord and tenant to sign and date the photographs as an accurate image. 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.

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.

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 **www.theaiic.co.uk**.

3.3 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. Deposits relating to other types of tenancies are not covered.

3.3.1 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.

3.3.2 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.

3.3.3 Protecting a Deposit

The Housing Act 2004 introduced specific requirements that affect AST deposits taken after 6 April 2007. The requirements are likely to apply where a deposit was held before that date if a renewal tenancy agreement is given to the tenant after 7 April 2007. As originally enacted, the Housing Act 2004 set out the following requirements:

- a deposit must be dealt with in accordance with an authorised tenancy deposit protection scheme from the moment of receipt
- landlords must comply with their chosen scheme's initial requirements within 14 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 14 days of receiving the deposit.

Section 184 of the Localism Act 2011 (which came in to force on 6 April 2012) extends the 14-day time limits for initial requirements and prescribed information to 30 days. Although the Localism Act means more time to comply, it also means less opportunity for retrospective compliance. Tenants can claim compensation if the deadlines are missed. The Localism Act also makes it clear that tenants (or someone who paid the deposit on the tenant's behalf) can still take a landlord to court after the tenancy has ended, if the landlord failed to protect a deposit or give prescribed information within the 30-day deadline.

If the court is satisfied that an AST deposit was not protected, the Housing Act 2004 directs the judge either (a) to order the landlord to refund the deposit; or (b) to protect the deposit in the custodial scheme (see below). In addition, as originally enacted, the Housing Act directed judges to award tenants three times the amount of the deposit in compensation. The Localism Act 2011 gives judges discretion to award tenants minimum compensation of an amount equal to the deposit, and maximum compensation of an amount equal to three times the deposit.

Landlords are not allowed to seek possession under section 21 Housing Act 1988 (the assured shorthold, no fault ground) if the deposit has not been protected. If protection is late then section one can only be served if the deposit has been refunded or the tenant has taken court action.

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 this handbook was published, three schemes are authorised by under the Housing Act 2004 (see 3.3.4 below).

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. This scheme tends to be used mainly by smaller landlords. Only landlords who are resident and companies which are registered abroad can use this scheme.

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 the custodial or an insurance-based scheme. The prescribed information that landlords are required to give to tenants, not less 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.

3.3.4 Authorised Tenancy Deposit Protection Scheme Providers

There are three authorised schemes:

The custodial scheme is run by the Deposit Protection Service (further details from **www.depositprotection.com**)

There are two insurance-based schemes. The larger of these is run by the Dispute Service (further details from **www.thedisputeservice.co.uk**) and the other scheme, trading as Mydeposits, is a partnership between the National Landlords Association and Hamilton Fraser Insurance (further details from **www.mydeposits.co.uk**)

The scheme run by the Dispute Service is aimed principally at agents and now only accepts members of specified professional bodies. Mydeposits is aimed principally at private landlords.

Different membership options are now 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.

The prescribed information which landlords or agents must give to tenants includes information about the chosen deposit protection scheme.

3.3.5 Relevant Person

Where a third party provides the deposit, i.e. money changes hands as opposed to the guarantee schemes listed below, then under the Housing Act 2004 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.

3.3.6 Lead Tenant

The custodial scheme (DPS) and the Mydeposits insured scheme both use a 'Lead 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 and then only that person will have authority to deal with the deposit at the end of the tenancy. This may cause problems with students signing a joint tenancy trying to get six parents who have not met to agree which of them will be the only one with the right to argue about this at the move-out, or 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.

3.4 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.

3.5 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 rent assessment committee for review [see Appendix 3 - Rent assessment committees] if they consider the rent to be above the market rent. This is, however, very rarely done.

The rent charged may include a sum to cover the cost of repairs, although these costs cannot be passed on to the tenant in the form of a separate service charge. In particular, a landlord cannot seek to pass on to the tenant the cost of any repairs which are their responsibility under section 11 of the Landlord and Tenant Act 1985 or under the regulations relating to

gas safety or similar.

3.5.1 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.

3.5.2 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.

3.6 Raising the Rent

There are three ways to review the rent in an assured shorthold tenancy.:

1. by way of a rent review clause in the tenancy agreement or
2. by agreement with the tenant or
3. by notice under section 13 of the Housing Act 1988.

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 after the fixed term has ended. The clause must comply with the provisions of the Unfair Terms in Consumer Contracts Regulations 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 rent assessment committee.

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 to refuse to pay the increase.

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 rent assessment committee 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 rent assessment committee who, if they consider the rent is not a market rent, will substitute what they consider is a market rent. The rent assessment committee'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.

3.6.1 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.

3.7 Housing Benefit

There are currently two systems of housing benefit in use. The old system, called Rent Allowance (RA), is being phased out and all new claims are now called Local Housing Allowance (LHA). Existing claims for RA will continue for the foreseeable future until there is a break in the claim. Many of the rules are similar but there are differences.

Also LHA entitlement is based on household size but makes no consideration of the value of a given property (removing the previous need for the Rent Service to visit the property to make a valuation). Where this manual talks about RA it refers only to the old system, where the manual refers to LHA it refers only to the new system and where the manual refers to housing benefit it generally refers to both systems.

Housing benefit is for people on low incomes, including unemployed people, who have to pay rent. The tenant has to complete an application form which can be done manually or online either through the local authority website or at Jobcentre Plus. Applications can also be made by telephone to Jobcentre Plus.

3.7.1 Tenants have to provide Information and Proof of:

- 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.

Most local authorities aim to 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 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.

3.7.2 Conditions for Rent Allowance and Local Housing Allowance

As housing benefit is means-tested, (dependent upon income and savings) some tenants may have to pay part of the rent themselves.

Some tenants, such as most full-time students, some people only allowed to stay temporarily in the country, or people who have just arrived, will not be eligible to receive housing benefit. Usually housing benefit cannot be paid for a tenant who is a close relative of the landlord: the arrangement must be that of a genuine arms-length commercial transaction.

3.7.3 Setting the Rent

When someone makes a claim for housing benefit the maximum they will receive is the Local Housing Allowance rate applicable to the size of their household within a particular locality or Broad Rental Market Area (BRMA). There are over 150 BRMAs covering England and local authorities will have one or more BRMAs within their boundaries.

LHA rates within BRMA's are set by the Valuation Office Agency's Rent Officers who collect monthly market evidence of private sector lettings within every BRMA in order to set LHA rates which are updated and published monthly. You can find the LHA rates for your property at: **www.direct.gov.uk/en/Diol1/DoItOnline/DG_196239** or they are usually published on your local authority's website.

When the new system was introduced, the LHA rate was set at the median level or fiftieth percentile. This meant that in theory 50% of the properties within a given BRMA would be affordable to people claiming LHA.

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

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).

Another feature of the new system was that if the contractual rent was more than the LHA in the BRMA for the size of property to which the tenant was entitled, then they were allowed to keep the surplus (capped to a maximum of £15 per week). This potentially allowed a tenant to keep just over £60 per month if they chose to rent a low-cost property.

Finally, there are different rules for single tenants aged under 25. Housing benefit will only pay an amount based on the average rent for a room in a shared house, even if the tenant is living in a self-contained flat (this is called the single room rent). This does not apply to couples under 25 or families.

In any event, the agreed contractual rent is the rent due from the tenant, and any shortfall in housing benefit payments should also be collected. If there is likely to be a shortfall, it is advisable to check the tenant's ability to pay it before letting the property. Enforcing the terms of a contract is likely to be a fruitless endeavour where the tenant has no money.

3.7.4 April 2011 Changes

There are a number of changes to the LHA system that have been implemented since it was introduced for all new housing benefit claims nationwide in April 2008.

At that time the maximum number of bedrooms that a claimant and their family was entitled to claim for was six. From April 2009 this was reduced to five.

In their emergency budget of June 2010 the coalition Government introduced a number of measures aimed at reducing the housing benefit bill. The majority of these would be implemented for all new claims made from April 2011 and included:

- removal of the five-bed LHA rate – the maximum LHA that a claimant and family could claim for would be that for a four-bedroom property

- the introduction of maximum LHA Caps -
  - £250 is the maximum LHA someone can claim for a one-bed property
  - £290 is the maximum LHA someone can claim for a two-bed property
  - £340 is the maximum LHA someone can claim for a three-bed property
  - £400 is the maximum LHA someone can claim for a four-bed property

- removal of the up-to-£15 excess payable to those claimants whose rent was lower than their LHA rate

- from April 2011 the LHA rate would be set at a level covering the bottom 30% of the local private rented market (previously the LHA rate was set at the 50% level meaning that half of the properties in the local private rented sector should in theory be affordable to those claiming LHA. From April 2012 only the bottom 30% of the market will be affordable to those claiming housing benefit).

In order to try and prevent these changes affecting everyone claiming LHA simultaneously, the Government has provided transitional protection from the changes for up to nine months. In practice this means that the changes may not affect a person's claim until nine months from the 'anniversary date' of their claim (LHA claims are reviewed annually at which time the current LHA rate will be applied to the claim).

For example if someone claimed LHA in December 2010, their anniversary date would be December 2011. At this point they would be entitled to the LHA rate set at the bottom 30% of the market. However, the transitional protection arrangements mean that they could continue to receive the LHA rate they were previously receiving for up to a further nine months until September 2012 when they would then go onto the 30% rate.

The same protection applies to those whose current rent is higher than the relevant capped rate of LHA.

For example, someone who claimed LHA in December 2010 at a rate of £320 per week for a two-bedroom property will continue to receive this until their anniversary date of December 2011. They will then be eligible for transitional protection for up to a further nine months when their LHA will be reduced to the capped rate for this type of property of £290 per week.

The purpose of the transitional protection is to allow LHA claimants, whose LHA will be reduced, to try and negotiate with their landlord to reduce their rent to the new LHA rate or, if this is not possible, to try to seek alternative

accommodation.

Claimants who were receiving the up-to-£15 per week excess as their LHA rate was higher than their rent prior to April 2011 will continue to receive this until the anniversary date of their claim when they will move to the normal LHA rate. There is no transitional protection for this.

3.7.5 Extension of the 'Shared Accommodation' LHA rate

The Government also announced that they would be extending the 'shared room rate' entitlement from single claimants under 25 to those under 35 from 1 January 2012.

This means that from 1 Jan 2012 single people under 35 who make a new claim will only be entitled to the LHA rate for a room in shared accommodation.

For claimants who claimed prior to April 2011, who will still be under 35 at 1 Jan 2012, the change will take effect from the anniversary date of their claim although they will be eligible for up to nine months' transitional protection.

For example if the claim was made in February 2011, the anniversary date will be February 2012 when the claimant would then move from the one-bedroom self-contained LHA rate to the shared accommodation rate. However the claimant would be eligible for up to nine months transitional protection and therefore they could remain on the one-bed self-contained LHA rate till November 2012.

3.7.6 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.

The rate of these deductions depends on the income of the individual in question. These rates did not change for a number of years. However, from April 2011 they were increased significantly and will continue to increase each April thereafter.

You can find out more about non-dependant deductions and how much they are from your local authority website.

3.7.7 Revised Guidance on Direct Payment of LHA to Landlords

The Department of Work & Pensions (DWP) issued revised guidance around the issue of direct payments of LHA to landlords. As mentioned previously, in general a person's LHA can only be paid to their landlord if the claimant is regarded as 'vulnerable' or if the claimant is in rent arrears of eight weeks.

From April 2011 the DWP have widened the discretion that local authorities have when considering whether to pay a claimant's LHA to their landlord particularly where, 'they consider that it will assist the customer in securing or retaining a tenancy'.

For example a local authority may agree to pay an existing claimant's LHA direct to their landlord if the landlord agrees to reduce the rent to the new lower LHA level. In the case of a new tenant the local authority may consider paying the LHA direct to the landlord if the landlord has reduced the rent to the prevailing LHA rate.

3.7.8 Rent Allowance

If the rent covers the cost of gas and electricity, Rent Allowance will be reduced so that the tenant must pay for these items. This also applies to water rates and any meals or other services the landlord may provide.

For Rent Allowance only, accommodation in the private rented sector where the tenant applies for Rent Allowance is valued by the Rent Service. If the rent is more than the Local Reference Rent (average) for similar size accommodation in the locality, Rent Allowance will not extend to the full rent. If the accommodation is larger than the tenant needs, for example if a couple rent a two-bedroom flat, Rent Allowance will also not extend to the full rent.

If a prospective tenant intends to claim Rent Allowance, the landlord or the tenant can check whether the rent will be regarded as reasonable before any agreement is signed. Both need to complete a Pre-Tenancy Determination application form and send it or take it to the Housing Benefit Office covering the area in which the property is located. They will forward it to the Rent Service which will then value the property and send its decision to the landlord, the tenant and to the council. The target for a decision is seven working days.

3.9 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.

Many agents, and some landlords, ask tenants to pay the fee for using the referencing service. If this is the case, it should be made clear to the tenant that the fee will be non-refundable once the landlord has paid it to the referencing service. Many referencing services turn applications round in three days or so.

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.

3.10 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 race, colour, gender or disability. The specific legislation is as follows:

- Sex Discrimination Act 1975
- Race Relations Act 1976
- Disability Discrimination Act 1995
- 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.

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, items of repair 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 quarterly. 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 joint tenancy) 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 regulations referred to above.

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.

4.4 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.

4.5 Changing the Terms of an Assured or an Assured Shorthold Tenancy and Tenancy Renewal

If the tenancy is a fixed-term contractual periodic tenancy or an assured shorthold tenancy, the landlord can only change the terms of the tenancy, within the contractual period 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.

If the tenancy is an assured shorthold tenancy, and the tenant refuses to co-operate there is the option of serving a section 21 notice [see Chapter 5] and ending the tenancy at the end of its initial term. New terms can then be written into any new AST.

After the fixed term of a tenancy has ended, assured and assured shorthold tenancies will automatically run on as a statutory periodic tenancy, on the same terms and conditions as the preceding fixed-term tenancy. The 'period' will normally be either weekly or monthly depending on how rent is paid.

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 the statutory periodic tenancy starting, using a special procedure under the Housing Act 1988. There is a special form, called a section 6 notice, which needs to be used, and which has to 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 Housing Act at section 3.6 above). Landlords can obtain the forms from law stationers and from some of the online services for landlords.

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.

4.6 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. Periodic notices should end at the end of a rent period for both landlords and tenants.

4.7 Preventing, Controlling and Recovering Rent Arrears

Proper and reasonable enquires 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 housing benefit system and particularly the new system of Local Housing Allowance and its effects on new tenancies. Arrears can occur where a landlord and/or tenant fails to complete paperwork properly and on time and claims may then not be back-dated.

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 **www.hmcourts-service.gov.uk.**

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.

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 whether they would be interested in renewing their tenancy, or whether 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.

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. 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 a potentially unfair term); 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 – usually by serving notice to quit.

A **fixed-term assured tenancy** (i.e. non-shorthold) will continue 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 and allow the assured shorthold tenancy to run on with the same terms, under a statutory periodic tenancy.

5.2.1 Agreeing a Replacement Fixed-term AST

This is not something that the landlord has to do but a replacement fixed-term 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.

5.2.2 Agreeing a Contractual Periodic AST

This is not compulsory either but it can be a good option for landlords who need to be flexible about when they can have their property back. Landlord and tenant can agree that the tenancy agreement will terminate by either of them giving notice to quit. Take advice about the tenancy agreement and the legal requirements of a notice to quit, if there are any doubts about this. Again, check whether the chosen tenancy deposit protection scheme requires re-registration of the deposit.

5.2.3 Statutory Periodic Tenancy

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. This is called a statutory periodic 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.

5.3 What to do if the Tenant wants to leave

5.3.1 Tenant Termination of a Periodic Tenancy

A periodic tenant must provide notice in writing of their intention to leave. The minimum notice period is four weeks (specified in section 5 of the Protection from Eviction Act 1977). In most cases, the contract will specify at least a month for a monthly rental and that notice should always expire at the end of a rental payment period. The contract may also specify the terms on which notice may be given. If the terms are standard terms, they will only be enforceable if they are fair.

In practice, tenants tend to ignore notice requirements and will leave when convenient to them. It is often not worth the landlord's time or cost in attempting to chase the tenants to enforce those requirements. Concentrate on getting the property re-let.

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 Unfair Terms in Consumer Contract Regulations 1999 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 a few rare cases, 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 to tenants 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 should 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.

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.

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 either a certificate of posting or recorded delivery. 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.

5.4.1 At the End of a Fixed-term Assured Shorthold Tenancy

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. This is called a statutory periodic 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. 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.

If the landlord does not want the tenancy to continue as a statutory periodic tenancy the landlord will need to serve a section 21 notice to bring the tenancy to an end. 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. The notice must be served on the tenant at least two months before the landlord wants the tenancy to end.

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 either six months, or the fixed period, has expired, whichever is the longer.

Notices to end an AST, if served during the fixed term, do not need to be on a prescribed form and may be issued by letter providing that they comply 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).

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 at the beginning of the tenancy provided that the notice expires on or after the tenancy has come to an end.

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 under the appropriate regulations for tenancies created on or after 6 April 2007

- that any licence required under the Housing Act 2004 (for example a mandatory House of Multiple Occupation licence) has been applied for.

If it is necessary to regain possession of the property quickly, it may be possible to use the accelerated possession procedure. If the above requirements are met, and the section 21 notice and tenancy agreement are available in writing, the accelerated possession procedure may be used. 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 case load of the court at the time. Details of the process are set out in section 5.8 of this manual.

The court cannot grant an order for possession during the first six months of the tenancy using the section 21 procedure. It follows that the accelerated possession procedure cannot be used during that time either. For example, if a tenancy has been granted to a new tenant for a period of two months from 1 January and is issued a section 21 notice on the second day of the tenancy, it is possible to issue proceedings for possession shortly after the fixed term has expired, i.e. in early March. However, when making the order for possession the judge cannot order that possession be given any earlier than 1 July. Realistically, this is not normally a problem as by the time the court papers have been drafted and issued and gone through the court system, the six-month period will be nearing its end anyway.

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 tenancy.

5.4.2 At the End of a Fixed-term Assured Tenancy

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 legal advice before proceeding.

5.4.3 To end a Periodic Tenancy

Most landlords will need to take legal advice if the tenancy is an assured periodic tenancy.

If the tenancy is a contractual periodic assured shorthold tenancy, the landlord should follow any notice stipulations set out in the tenancy agreement. The landlord may need to take legal advice before proceeding.

In the majority of cases in the private rented sector, a periodic tenancy will be a 'statutory periodic tenancy', i.e. an assured shorthold tenancy that has run on past its expiry date. In these cases, notices must be given in writing and 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.

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.

5.4.4 To end a Fixed-term Tenancy before it is due to expire

There will be cases when a landlord has agreed a fixed term, but needs to end the tenancy early. This might be because of a change in the landlord's circumstances, or because things are not working out with the tenant.
If a landlord wishes to obtain possession of the property during the fixed 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), and
- if the tenancy agreement has a clause in it providing for this (this is sometimes known as a re-entry or forfeiture clause, even though forfeiture cannot be used for assured/assured shorthold tenancies) or
- by activating a properly drafted break clause and then using the section 21 procedure (assured shorthold tenancies only).

For break clauses, to be valid they must be available for use by both the landlord and the tenant, not just the landlord alone.

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).

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 ofthe 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.

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 8 relates to serious rent arrears and is the main ground 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 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 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 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 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 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 [see section 5.3], 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.

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. The Legal Services Commission, in conjunction with the Court Service, now provides emergency legal advice and representation at most courts for unrepresented tenants facing possession proceedings based upon rent arrears. Therefore a landlord may find that they are at a disadvantage if the tenant is represented and the landlord is not.

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.

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. 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 normally 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.

The landlord can continue to accept money from a tenant at any time during the possession process, from service of the notice to eviction. Indeed, the landlord must accept rent if it is offered to them.
If a possession order is made, technically this ends the tenancy. However, the court will normally order that the landlord is entitled to receive 'damages for use and occupation' until the tenant actually vacates the property, calculated on a daily basis. 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. If a tenant is in receipt of Income Support and Housing Benefit the court will normally award the minimum expected deduction from benefit (and such an award against the Income Support will also entitle the landlord to direct payments, even under Local Housing Allowance). After the end of the tenancy the debt will merge with any other debts that the tenant has and it will cease to be a priority. This is also relevant to whether a landlord may feel 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, and details of the fee payable, is available from **www.hmcourts-service.gov.uk** (look in the County Court section of the site).

The warrant is normally served on the property or the tenant 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.

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 moneyclaim online. 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 ,ay 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 non-payment 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 unlimited 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 landlord from others mentioned here, legal advice may need to 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.

If the common law tenant is in arrears of rent

It is possible to bring proceedings for possession on the basis of non-payment of rent and in this event there is no need to serve any specific form of 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 unlimited powers to suspend or stay the order as they think fit. Many larger student-type HMOs in the private rented sector are likely to be exempt from Housing Act 1988 status due to the annual rental income. (Assuming the letting is all on a single contract it is the total rent payable under the contract that counts not the individual contributions.) The terms of the contract should specify when and how the tenancy can be terminated.

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. 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. If it is a periodic tenancy 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.

5.13 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.

5.14 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 of up to £5,000 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.

6. Smoking and the Health Act 2006

Since1 July 2007 it has been illegal to smoke or allow smoking in enclosed public areas of properties. The Health Act 2006 which bans smoking 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 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.

Appendix 1 - *Practical checklist for landlords: obligations and considerations*

Preparation before letting

✔ 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 7% for voids

✔ if necessary obtain permission from mortgage lender and/or freeholder for renting the property

✔ consider what part of the private rented sector market the property is designed to serve

✔ decide on the kind of tenant to let to. Is a tenant needing Housing Allowance an issue? Is the property to be let furnished or unfurnished?

✔ 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

✔ decide on the likely market rent

✔ decide whether gas, electricity and water charges are included in the rent

✔ consider who will manage the property and the cost of this. If using an agent agree costs and levels of service

✔ ensure adequate levels of relevant insurance (check the policy is suitable for rented property)

✔ deal with the tax implications of the revenue stream and inform Revenue and Customs

✔ consider joining a landlord association and undertaking professional development

✔ obtain planning or Building Control approval for major improvement work done to property

✔ make sure the property is both safe and healthy for any potential occupiers or visitors, including;
- adequate heating and insulation
- free from tripping and falling hazards
- free from significant disrepair and asbestos
- good lighting and ventilation
- good security
- good sanitation, food preparation and is hygienic

✔ obtain a tenancy agreement suitable for your letting and avoid unenforceable unfair terms

✔ decide on length of letting

✔ advertise through the internet, agent, newspaper or other means

✔ obtain an Energy Performance Certificate (EPC)

✔ undertake an annual gas safety check by a Gas Safe registered engineer

✔ comply with the electrical and furniture standards

✔ 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):

✔ ensure any electrical installation is inspected by a qualified person before letting and every five years subsequently

✔ 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

✔ ensure a fire risk assessment is carried out under the Fire Safety Order

✔ ensure that smoking does not take place in public areas in accordance with the Smoking and Health Act 2006.

When the tenant moves in

- ✔ sign the tenancy agreement - two copies, landlords retain one signed by tenant and tenant should have one signed by landlord
- ✔ 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
- ✔ complete and agree an Inventory and Schedule of Condition (consider using professional inventory clerk, if appropriate)
- ✔ give the tenant the landlord's (or agent's) contact details for repairs and other problems - name, address and telephone
- ✔ notify the utility suppliers and the local authority (for Council Tax etc) of the details of the new tenant/s
- ✔ inform the tenant/s of utility suppliers etc and read any relevant meters
- ✔ 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
- ✔ consider any local council schemes such as deposit guarantees
- ✔ 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
- ✔ provide receipts to tenant for any cash rent payments
- ✔ keep detailed records of repair requests, inspections, safety checks, repairs done, other management issues and a rent statement.

When the tenant moves out

- ✔ make a note of when a tenancy is due to end and see if the tenant wants to extend or renew their agreement
- ✔ if leaving, arrange a joint inspection of the property and agree on any damage or decoration that needs rectifying
- ✔ provide information about any cleaning required
- ✔ advise the tenant about taking final utility readings for an end of tenancy bill
- ✔ make arrangements for the handover of keys.

Appendix 2 - Property Inspection Form

Defects & deficiencies can be scored with the following key: 1. not satisfactory 2. defective 3. seriously defective

Address

Reason for inspection	Name of person doing inspection Date
Name & address of Owner(s) Tel	Name & address of manager Tel

Property age: Pre 1900 ☐ 1900 - 1920 ☐ 1920 - 1945 ☐ 1946 - 1979 ☐ Post 1979 ☐

Description of dwelling:
Mid. back to back ☐ End back to back ☐ Mid terr. ☐ End terrace ☐ Semi detached ☐ Detached ☐

No. of storeys *(excl basement)*: Habitable basement: Y / N Cellar: Y / N

Mixed Commercial Use: Y / N
If Y give details _____
_____
(consider fire safety, security)

Occupancy

Vacant : Y / N **Normal max. no. occupiers** _____ **Children under 11 yrs** Y / N **Elderly persons** Y / N
(consider overcrowding & hazards to vulnerable persons)

Accommodation *(consider overcrowding, adequacy of no. of kitchens, bathrooms, WCs, maximum floor distances from amenities, compliance with local authority's guidance on standards)*

No. of bedrooms	No. of living rooms	No. of kitchens	No. of bathrooms	Separate WC Y / N

Mode Of Occupation: Indicate which is applicable:

Single occupation ☐ Shared HMO - group contract ☐ Shared HMO - individual contracts ☐
Bedsit HMO ☐ Non self-contained flats ☐

Licensable HMO Y / N

(there are different fire safety requirements & amenity levels for different modes of occupation)

Certificates:		**Issue date**
Gas Safety Certificate Available	Y / N	____ / ____ / ____
Current Electrical Periodic Inspection Report	Y / N	____ / ____ / ____
Fire Alarm Maintenance Cert	Y / N	____ / ____ / ____
Energy Performance Certificate	Y / N	____ / ____ / ____
Emergency Lighting	Y / N	____ / ____ / ____
Details deposit lodged with scheme	Y / N	____ / ____ / ____

Security
Burglar Alarm Y / N 20 minute cut out Y / N Key holder details provided to local authority _____
(consider security & avoiding noise nuisance)

Insulation *(consider excess cold & condensation)*
Adequate quality / depth in loft space Y / N Insulation in roof structure in attic rooms Y / N
Adequate quality / depth in flat roof structure Y / N Cavity wall insulation Y / N
Defects / comments _____

Water supply
Storage tanks protected from contamination Y / N
Defects / comments _____

Drainage
Adequate foul & surface water drainage in sound repair Y / N
Defects / comments _____

ROOM LOCATION : **USE:**

Ceiling *(consider damp ,mould ,disrepair)*
Defects / comments _____

Walls *(consider damp, mould, disrepair, fire safety)*
Defects / comments _____

Floors *(consider damp, disrepair, tripping hazards)*
Defects / comments _____

Windows *(consider falls between levels, entrapment, adequacy natural lighting, ventilation, fire safety)*
Type _____
Opening restrictors Y / N Sill height <1.1m above floor level Y / N Lockable Y / N
Safety glass (BS Kite Mark) Y / N Access to clean Y / N Easy to open Y / N Openable for ventilation Y / N
Useable as escape window Y / N
Defects / comments _____

Space heating *(consider excess cold, fire safety)*
Type of heating _____
Heating controllable Y / N Capable of heating dwelling adequately Y / N Properly maintained Y / N
Safely sited heaters Y / N Unguarded flames/ hot surfaces Y / N CO Detector Y / N
Defects / comments _____

Electrics
Age (Old / New) _____
Adequate (no. & siting) power points Y / N Adequate lighting Y / N Properly located Meters / Fuses Y / N
Earth bonding Y / N Presence of water Y / N Safe electrical appliance Y / N
Defects / comments _____

Fire Safety
Smoke/heat detectors Y / N Fire resistant furnishings / fabrics Y / N Adequate storage space Y / N
Clothes drying facilities available Y / N Walls – adequate fire separation Y / N
Defects / comments _____

Fire safety: room door
Ill fitting Y / N Fire proof glazing Y / N Fire Door Y / N Intumescent Strip Y / N Smoke seal Y / N
Self closer Y / N Openable without key Y / N
Defects / comments _____

Lighting:
Obstructed windows Y / N Small windows Y / N Inappropriate position of window Y / N
Adequate artificial light Y / N Adequate natural lighting Y / N Area glazing to floor area at least 1:10 Y / N
Defects / comments _____

KITCHEN

Ceiling: (consider damp , condensation, mould ,disrepair, cleansable)
Defects / comments _____

Walls: (consider damp, mould, condensation, disrepair, cleansable, dirt traps)
Cleansable surfaces Y / N
Defects / comments _____

Floors *consider damp, disrepair, tripping hazards, cleansable, dirt traps)*
Defects / comments _____

Windows:
Type _____
Easy to clean Y / N Easy to open Y / N Adequate ventilation Y / N
Defects / comments _____

Means of heating:
Is kitchen used as dining room Y / N Type of heating _____
Heating controllable Y / N Safely sited heaters Y / N
Defects / comments _____
(consider heating required if kitchen also used for dining)

Electrics:
Age (Old / New) _____
Adequate no. of power points Y / N Power points sited for easy use Y / N
Power points sited near sink Y / N Mechanical extract ventilation Y / N
Defects / comments _____
_____
_____

Fire Safety:
Smoke/heat detectors Y / N Fire resistant furnishings / fabrics Y / N Adequate storage space Y / N
Clothes drying facilities available Y / N Fire blanket Y / N
Defects / comments _____
_____
_____

Room door:
Ill fitting Y / N Glazed Y / N Fire Door Y / N Intumescent Strip Y / N Smoke seal Y / N
Self closer Y / N
Defects / comments _____
_____
_____

Lighting:
Adequate artificial light Y / N
Defects / comments _____
_____
_____

Food prep: *(consider food hygiene, cleansable surfaces, safety, adequacy of amenities)*
Provision of adequately sized cooker Y / N Safe siting of cooker Y / N Sink with H/C water Y / N
Impervious work surface Y / N Adequate sized dry food storage Y / N Microwave Y / N
Safe Layout / Adequate space Y / N Sink Y / N Space for fridge/freezer Y / N
Adequate size kitchen area Y / N Dish washer Y / N
Defects / comments _____
_____
_____

BATHROOM / WC LOCATION:

Ceiling: *(consider damp ,mould, condensation, disrepair)*
Defects / comments _____
_____
_____

Walls: (consider damp ,mould, condensation, disrepair)
Cleansable wall surfaces Y / N
Defects / comments _____
_____
_____

Floors: *(consider non-slip surface, cleansable)*
Cleansable floor surface Y / N Non-slip floor covering Y / N
Defects / comments _____
_____
_____

Windows: (consider falls between levels, entrapment, adequacy natural lighting, ventilation, fire safety)
Type _____
Opening restrictors Y / N Sill height <1.1m above floor level Y / N Lockable Y / N
Safety glass (BS Kite Mark) Y / N Access to clean Y / N Openable for ventilation Y / N Easy to open Y / N
Useable as escape window Y / N Safe external surface below Y / N
Defects / comments _____
_____
_____

WHB:
Conveniently sited Y / N Adequate for nos. of occupants Y / N Wall tiled above whb Y / N
Adequate Lighting Y / N Constant supply hot & cold water Y / N
Defects / comments _____
_____
_____

WC:
Adequate for nos. of occupants Y / N Adequate Vent Y / N Cleansable floor covering Y / N
Adjacent WHB Y / N Separate WC provided if licensed HMO Y / N
Defects / comments _____
_____
_____

Bath/shower:
Adequate Privacy Y / N Properly sited Y / N Cleansable wall surfaces Y / N
Adequate for nos. of occupants Y / N Poor friction of internal surface Y / N Safe siting of taps / shower Y / N
Adequate supply constant hot & cold water Y / N Adequate size Y / N Handrails / grab rails Y / N
Adequate Lighting Y / N Space Heating Y / N Projections Y / N Pull Switch Y / N
Is there anything which would increase the likelihood of an electric shock? Y / N
Defects / comments _____
_____
_____

STAIRS / LANDING/ HALLWAY* **LOCATION:**

Ceiling: *(consider disrepair, fire safety)*
Defects / comments _____
_____
_____

Walls: *(consider damp , disrepair, fire safety)*
Defects / comments _____
_____
_____

Floor: (consider falls, tripping hazards, disrepair)
Defects / comments _____
_____
_____

Windows: *(consider falls between levels, entrapment, borrowed natural lighting, ventilation, fire safety)*
Type _____
Opening restrictors Y / N Sill height less than 1.1m above floor level Y / N Lockable Y / N
Safety glass (BS Kite Mark) Y / N Access to clean Y / N Openable for ventilation Y / N Easy to open Y / N
Useable as escape window Y / N Safe external surface below: Y / N
Defects / comments _____
_____
_____

Stairs:
Treads less than 280mm or more than 360mm Y / N Riser less than 100 or more than 180mm Y / N
Uneven treads/risers Y / N Winders Y / N Stair width less than 1000mm Y / N Poor tread grip Y / N
Sound repair Y / N Projections into stairway Y / N Hard surfaces at foot of flight Y / N
Long flight of steps Y / N Steep pitch (more than 42o) Y / N
Handrail height (less than 900 or more than 1000mm) Y / N Any glazing is safety glass Y / N
Defects / comments _____
_____
_____

Lighting:
Adequate lighting at top & bottom of flight) Y / N Proper switch location Y / N
Defects / comments _____
_____
_____

Fire Safety:
Smoke detector Y / N Stairway free of obstructions Y / N Stairway free of flammable substances Y / N
Fire extinguishers Y / N Emergency lighting Y / N Whole stair (dedicated lighting) Y / N
Defects / comments _____
_____
_____

Doors to stairs/ landing:
Glass present Y / N Safety glass Y / N Fire Door Y / N Intumescent Strip Y / N Smoke seal Y / N
Self closer Y / N
Defects / comments _____
_____
_____

Guarding to staircase / landing:
Fall prevention guarding (balustrades and handrails) Y / N Gaps between balustrades more than 100mm Y / N
Defects / comments _____
_____
_____

EXTERNAL **ELEVATION:**

Paths / yards:
Adequate night illumination Y / N Safe steps Y / N Excessively steep slope Y / N Handrails Y / N
Adequate slip resistance Y / N Tripping hazards Y / N Facilities for refuse storage Y / N
Defects / comments _____
_____
_____

External Door:
Ill fitting Y / N Door viewer Y / N Door locks Y / N Door chains Y / N Secure Y / N
Can be opened from inside without key Y / N Security grille can be opened from inside without key Y / N
Defects / comments _____
_____
_____

Entrance steps:
Guarding Y / N Handrails Y / N Adequate slip resistance Y / N Excessively steep slope Y / N
Security Lighting Y / N Steps worn Y / N Uneven treads & risers Y / N
Defects / comments _____
_____
_____

General:

The following are in satisfactory, safe repair:		Defects/comments:
Flaunching to chimney pots	Y / N	_____
Pointing to chimney stack	Y / N	_____
Lead flashings to stack	Y / N	_____
Roof tiles/slates	Y / N	_____
Verge pointing	Y / N	_____
Verge flashing	Y / N	_____
Gutters	Y / N	_____
Rainwater downpipes	Y / N	_____
Bathroom waste drainage pipe work	Y / N	_____
WC waste drainage pipe work	Y / N	_____
Soil vent stack	Y / N	_____
Pointing to walls	Y / N	_____
External flues	Y / N	_____
Damp proof course not breached	Y / N	_____
Boundary walls & fences	Y / N	_____
Gardens tidy & free of rubbish	Y / N	_____
Exterior decoration	Y / N	_____
Outbuildings	Y / N	_____

General comments _____
_____
_____
_____
_____

Summary of Property Inspection – summary of checks of most common hazards

Each item should be checked and a tick placed in the Yes or No box indicating that the item is satisfactory or not. If not applicable, please write N/A. Items not satisfactory and needing remedial action to be marked for priority as low **L**, medium **M** or high **H**. The Certificate of Property Inspection should be retained in your property file.

Hazard	**Condition**	**Satisfactory Y / N**	**Action Priority**
1. Structural Stability	The property is in good structural order and is not likely to cause injury due to failure of any structural element		
2. Repair	The elements, fabric and fixtures of the building are in good repair and wind & weatherproof		
3. Falls on the level	There are no unsecured items or tripping hazards		
4. Falls on stairs	The stairs are in sound repair, coverings secure, handrails provided and adequate artificial lighting		
5. Falls between levels	Guards are in place to prevent falls		
6. Falls in the bath	Floor coverings in bathrooms are non-slip, grab rails are provided		
7. Dampness & mould growth	The roof covering, flashings, eaves guttering and all other building elements have been checked and dampness is not penetrating into the dwelling. Plumbing and drainage items have been checked and are free from leakage. There is no evidence of rising or penetrating dampness.		
8. Electrical Wiring	The electrical wiring & appliances are in a safe, operational condition. It is recommended that a periodic inspection report and certificate should be obtained and renewed every five years by a qualified electrician. This is mandatory in HMOs.		
9. Gas Installations	All gas installations have been inspected and certified by a Gas Register approved installer and is in a safe condition.		
10. Security	The property has adequate security measures fitted		
11. Excess cold	Efficient effective space heating controllable by tenants is provided		
12. Lighting	Adequate natural & artificial lighting is provided		
13. Water Supply	Suitable supplies of both hot and cold water are provided to the kitchen and bathroom amenities. The cold water supply is free of contaminants, particularly concerning lead (from lead piping) and from uncovered cisterns.		
14. Food safety - facilities for cooking and food preparation	The layout of the kitchen is such as to provide a safely designed and hygienic place to prepare and cook food. Surface finishes to walls, floor and ceiling are easy to clean. The facilities provided are sufficient for the number of persons accommodated within the premises		
15. Personal hygiene, sanitation & drainage	The accommodation is provided with adequate facilities for washing, including a bath or shower and wash hand basin, and WC. Generally this provision is adequate for up to five persons, additional facilities are required with increased occupancy. The drainage provided for foul, waste and surface water is in satisfactory condition		
16. Asbestos	Property is free of asbestos or existing asbestos is in safe condition		
17. Flames & hot surfaces	Measures are in place to minimize burns & scalds		
18. Collision & entrapment	Measures are in place to minimize accidents. Floor to ceiling heights are adequate		
19. Fire	Property has been risk assessed & fire safety measured provided		
20. Overcrowding	Property is satisfactory for the number of occupants		

I confirm that I have carried out an inspection of the property and checked all the items that are applicable.

NAME ______________________________ SIGNATURE _______________________ DATE ____ / _____ / ____

PLAN FOR REMEDIAL ACTION & TIMESCALE TO CARRY OUT

HAZARD	**REMEDIAL ACTION**	**TIMESCALE**

Appendix 3 - *Rent assessment committees*

Rent assessment committees are made up of two or three people - usually a lawyer, a property valuer and a lay person. They are drawn from rent assessment panels - bodies of people with appropriate expertise appointed by Government Ministers.

There are six rent assessment panels in England and Wales. The committees are independent of both central and local Government.

Rent assessment panels have the following functions for private lettings:

- 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 committee's decision except on a point of law.

The committee may make a decision by considering the relevant papers although you or the tenant can ask for an informal hearing, which you may both attend. There is no charge for a committee decision. When settling disputes on rent, the committee 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 committee may agree the proposed rent or set a higher or lower rent.

More information on the work of the rent assessment committees is available from the Residential Property Tribunal Services website at **www.justice.gov.uk**.

Appendix 4 - *Where to get help*

Central and local Government

Department for 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

Direct.gov.uk
Links to Government departments and local council websites.
www.direct.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

Office of Fair Trading
Consumer advice and guidance on unfair terms in tenancy agreements.
www.oft.gov.uk

LACORS (LGA)
Responsible for overseeing local authority regulation.
www.lacors.gov.uk

Housing Network
Online housing and real estate news resource.
www.housingnetwork.co.uk

Department of Business Innovation & Skills
www.berr.gov.uk

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.

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

Guild of Residential Landlords
www.landlordsguild.com

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

Landlord Accreditation Wales
For information about landlord acceditation scheme for Wales
*www.wels*hlandlords.org.uk

Agents' professional bodies websites

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

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

Copies of this handbook can be purchased:

Members of ANUK
Up to 50 copies - £4.25 per copy (including P&P)
50 or more - £3.50 per copy (exclusive of P&P)

Non-members of ANUK
Up to 50 copies - £4.75 per copy (including P&P)
50 or more - £4.00 per copy (exclusive of P&P)

To order please write to: ANUK, 155/157 Woodhouse Lane, LS2 3ED;
or call: 0113 205 3404; or email: info@anuk.org.uk

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F: 0113 234 3549
E: info@anuk.org.uk

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