The West of England Partnership

Third Edition

Landlord Manual

ALL THE INFORMATION YOU NEED AT YOUR FINGERTIPS

INTRODUCTION

By the West of England Local Authority Partnership

Welcome to the Landlord Manual third edition. This manual has been developed to assist Private Sector landlords and agents with the basic information needed to manage rented accommodation.

The Manual has been produced by the West of England Housing Group; which consists of the four local authorities in the region;

- Bath & North East Somerset Council
- Bristol City Council
- North Somerset Council
- South Gloucestershire Council

We are committed to providing private landlords and agents with quality information to help them to operate successful businesses now and into the future. As a result of this we have released this issue of the Landlord manual to coincide with the Landlord Expo event in April 2014.

Development of the manual was original undertaken by the Improvement and Development Agency (IDeA), Local Authority Coordinators of Regulatory services (Lacors) and the Accreditation Network UK (ANUK).

The growth of the private rented sector over the last few years is likely to continue into the future and it is essential for the success of the region that the quality, standards and training of those working in the sector is maintained.

For these reasons the West of England Housing Group will continue to work in partnership with private sector landlords and agents.

Council Partners:

Bath & North East Somerset Council

Bristol City Council

North Somerset Council

South Gloucestershire Council

YOUR LANDLORD MANUAL

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1. PRE-TENANCY

1. Pre Tenancy

1.1 Matters to consider before investing in a property

The Private Rented Sector [PRS] is expanding and Buy-to-Let mortgages allow property investors to acquire a mortgage to purchase a property to let out, with rental income covering mortgage repayments. If you are thinking about purchasing a property to let out, you should consider the benefits very carefully. Some of the matters you should consider are:

- The demand for rented accommodation in the area in which you are considering investing. In many areas, including popular inner city locations, there may be an oversupply of rented accommodation and therefore it could be difficult to rent the property out
- The achievable rent and the amount you would need to charge to cover your mortgage and other outgoing costs
- The profit margins
- All costs like repairs and letting expenses - advertising and professional fees
- How much of the year you can afford to have the property vacant. Every landlord should allow for about a seven per cent void rate for vacancies or turnaround times between occupants
- The ability to pay your mortgage if the tenant stops paying their rent or you have an unexpectedly large repair bill
- The sort of market you will be entering. Each has its own characteristics and particular benefits and problems
- The potential investment return. You need to be realistic about the returns you will achieve. It is more realistic to expect lower short-term gains and higher long-term profits
- Your degree of experience managing properties and tenancies. The knowledge and skills needed to be a landlord are considerable.

Private rented sector markets and the relevant standards

When deciding to let you should consider what market you want to enter. Broadly speaking there are five PRS markets:

i. Renting to people on benefits
ii. Renting to students
iii. Renting to working tenants
iv. Renting to professionals & higher end market.
v. Renting to families

The type of property you own and its location may determine the market you aim for. Different markets will command different rent levels and will require different standards of letting. Some of the issues that you might like to consider are:

- Professionals will insist on higher standards and will expect showers and possibly en suite facilities. Renting to unrelated professionals is also likely to bring with it Houses in Multiple Occupation (HMO) Regulations and sometimes licensing. *[See Section 4]*
- Housing benefit renters whilst commanding a lower rent are likely to be more stable renters – young professionals tend to be more mobile and may lead to higher voids and increased re-letting expenses
- Renting to students sees higher occupancy rates which can maximise income; however they may not fully understand their responsibilities and may not look after the property as you would wish. Renting to 3+ students is also likely to bring with it requirements to meet Houses in Multiple Occupation (HMOs) responsibilities and sometimes licensing
- Student lets may not extend for a full year
- All renters will expect a high level of customer care from landlords with expectations generally rising in line with the amount of rent paid.

If you propose to let a mortgaged property, or a room within it, you will require permission from the mortgage lender.

If the property is subject to a long lease, permission may also be required from the freeholder before renting. This will be determined by the terms of the lease.

1.2 Letting and managing agents

If you decide to get help with letting or managing your property, there are three potential options, although the services will vary from agent to agent:

A) Letting only
This is where an agent markets the property, advises on rent levels, finds a tenant, undertakes reference checks if required, and provides a tenancy agreement. Once the tenancy has started, the owner (landlord) undertakes all management of the property. The agent charges the landlord a fee for this. The amount will vary but is usually based on the rent, often it will be one month's rent.

They may also charge the tenant an administration fee. You need to agree what deposit is to be collected, and ensure it is held in accordance with statutory tenancy deposit protection measures.

B) Letting and rent collection
This option is where the agent finds a tenant but also collects the rent 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 still dealt with by the landlord.

The agent is likely to charge a fee and then a monthly fee (a percentage of the rent, perhaps 5% to 10%) for collecting the rent. This is a good option if you are unsure of the process for dealing with rent arrears.

C) Full management
This option is for the agent to act as a full managing agent. As well as all of the above, they deal with all management issues, repairs, rent collection, starting the tenancy and some steps towards ending the tenancy. For example, they may serve notice but not take court action. This is obviously more expensive (perhaps 10% to 15% of the rent), but it is worthwhile if the property owner either does not have the time to manage the property, or lacks the expertise. You need to agree with the agent what repairs they can do without asking you, and what repairs you want to get involved in. As the owner you are still responsible for the property.

The relationship between the landlord and 'agent'

The landlord agrees (expressly or by implied consent) 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 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 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). If the agent agrees to something which the landlord had not authorised, the landlord is still bound by the agent's action, unless it is something obviously outside the authority of a normal agent in these circumstances. This means, for example, that if the agent is acting as managing agent for the property and fails to carry out a statutory duty, such as ensuring an annual gas safety inspection is carried out, the landlord will be held liable for the failure as well. A landlord will also be ultimately liable to the tenant for the return of the damage deposit and will be obliged to pay this to the tenant, for example if the agent were to go bankrupt or abscond with the money.

In view of this, you should be very careful when choosing an agent, and choose one who will carry out their responsibilities properly. You should also be very clear when giving agents any special instructions (such as 'no pets') preferably putting these in writing.

The liability of the agent in agency agreements

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 for any losses which may follow from this. Liability may depend on, amongst other things, the precise instructions from the landlord and subsequent correspondence or conversations.

An agent may be personally liable to the tenant if the agent has not told the tenant that they are acting for a third party and the tenant believes the agent to be the landlord. The agent is also liable in respect of claims for the damage deposit money where the agent has held this as 'stakeholder'.

Agents and notice to quit

Agents can validly serve possession and other notices on behalf of their landlords. Also a notice to quit served on a landlord's agent by a tenant will normally be considered validly served.

Agents and court claims

Although they can deal with the notice element of recovering possession, agents should not initiate legal proceedings on behalf of landlords without their knowledge. Also, agents are not entitled to sign claim forms for possession proceedings even if they hold power of attorney. Only litigants or their solicitors are able to sign these. The fact that a claim form is signed by a letting agent is a common reason for the rejection of claims by the county court. It is generally best for you to deal with any court proceedings which may arise yourself. Even if you wish to delegate much of this to the agent to deal with, it is prudent to keep aware of what is happening as you will be potentially liable to the other party, for example for costs, if the claim is not successful.

Defining responsibilities in the contract

If you enter into an agreement with an agent, you should get a written contract (or Terms of Business) from them indicating what level of service they are offering, and their agreed fees. It is important to read the whole contract and discuss any points you are not satisfied with before signing. The contract should also define who is responsible for ensuring the property complies with the relevant safety standards and who will apply for a property licence if appropriate. You also need to agree how you can terminate the contract for any reason, including if you want to take over management yourself.

How to choose an agent

Investigate the agent. It is worth trying to get a personal recommendation (your local landlords association may be helpful here). Check how long the company 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)
- National Approved Lettings Scheme (NALS)
- Royal Institute of Chartered Surveyors (RICS)
- The Housing Ombudsman Service (HOS)
- The Bristol Association of Letting and Managing Agents (BALMA)
- UK Association of Letting Agents (UKALA)
- SAFE Agent

Redress Scheme for agents

It is compulsory for all letting agents to sign up to a redress scheme. This allows complaints about poor service or hidden fees to be independently examined, and where a complaint is upheld, compensation will be awarded.

There are a number of recognised schemes for more information see www.gov.uk

Questions to ask your agent

- What are your fees? What are they for and when are they payable?
- What are your fees to tenants?
- How will you advertise and market the property? Do you have a database of waiting tenants who are emailed/texted whenever a suitable property comes up?
- On average, how long does it take you to let a property, and when do you start marketing it once the tenant gives notice? (You want to avoid an empty property between tenancies on which you may have to pay full council tax.)
- Do you do credit checks? What are your referencing procedures? Can I see the references? (Some agents will argue that you can't, for data protection reasons, but it could mean they haven't done the checks in the first place.)
- How often do you visit the properties? (Three months is normal, but some agents check after the first month.)
- How do you handle emergencies? Do you have an out of hours line for tenants to call?
- How do you handle maintenance and repairs, and do you have trusted contractors?
- Do you have client money protection?

1.3 Advertising properties

There are a number of websites which allow landlords to advertise their properties. However landlords need to include information about non-optional fees in adverts for rental properties. This applies to ads placed by letting agents and private landlords and covers non-optional fees, such as administration fees, charges for inventories and reference checks etc.

This requirement is monitored by the Committee of Advertising Practice (CAP). See www.cap.org.uk

1.4 Assistance with letting your property

A number of councils can offer landlords assistance to let their properties, either directly or through partner organisations. This can either be through a matching service or a full leasing service. Please contact your local authority to see what they can offer.

1.5 Permissions to let property

Before letting out a property you own, there are a number of steps you need to take. Failing to notify your mortgage lender, insurance provider or HMRC that you are letting a property could lead to very serious consequences, including repossession of the property. You may also need planning permission if you are changing the use of the property.

Inform the freeholder

If you are a leaseholder then your lease or contract will contain a clause that you must get the freeholder's permission to sub-let or part with possession. This permission may not be unreasonably withheld, but it is very important that you get the permission. If you let the property out and then later seek permission you will have already breached your lease. This breach is what we call a 'once and for all' breach and your freeholder can take legal proceedings against you.

The freeholder's permission will generally be a formality, although it is usual for the freeholder to make a small charge for granting their permission. Refusal will only be given where it is reasonable. For instance, if there have been complaints about noise from former tenants this might be discussed and you might be required to satisfy the freeholder that you will be renting to responsible tenants. If the freeholder does refuse permission you should make sure you have read the lease and know what it says about this, and then seek the freeholder's reasons for his refusal. You may be able to satisfy his misgivings before you need to take further advice.

Inform the mortgage lender

You will need to check the terms of your 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 2.1 for an explanation of assured shorthold tenancy]* or a restriction on housing benefit tenants.

If you are unsure of the requirements, speak to your legal adviser assisting with the purchase. You will probably need special permission from the lender if you want to rent the property out as 'rooms' or bedsits which might create a House in Multiple Occupation *[See section 4.1 Definition of an HMO]*. If you purchase the property as an owner-occupier on a standard mortgage for home owners, you will need to obtain permission to rent the property to tenants. The lender may increase the cost of the mortgage if they give permission to rent the property out.

1.6 Insurance (building & contents)

You need buildings insurance to cover the risk of damage to the structure and permanent fixtures and fittings of a building, for example as a result of fire. Tenants are usually responsible for providing their own contents insurance to cover their personal belongings, but you should take out contents insurance to cover loss or damage to household goods that you have supplied, e.g. cooker, carpets, curtains etc. Note that it is a matter for the tenants whether or not to take out insurance for their own property: you cannot require them to do this.

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

There are special policies for landlords that provide cover for loss of rental income, and the cost of temporary accommodation where a property is made uninhabitable as a result of one of the causes insured against. The policy should also include a Public Liabilty element. The insurance market is extremely competitive and it is worth shopping around to find the best value for money. Landlords' organisations often offer lower cost insurance to members.

1.7 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 you have any doubts as to the applicability of any rule. The tax implications for commercial property are, in many instances, very different and have not been addressed here.

All areas of tax require you to practice good record keeping (this is equally applicable when you sell a property). It is essential that you keep full and accurate records of all income and expenditure, perhaps maintaining a separate bank account for these, so that you can be sure that you have all of the ammunition to allow you to claim the maximum deductions and thereby pay the minimum amount of tax.

Income Tax

If you are a new property investor you should promptly notify HM Revenue & Customs (HMRC) of the new source of income which you are now receiving. The tax is computed through the 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. However deposits need protecting with an authorised scheme. *[See section 2.3 Deposit protection schemes]*

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 and lighting
- security
- accountancy fees
- motor and travelling expenses for visiting the property and for attending to matters relating to let properties.

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

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

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).

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.

Ownership

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 thus 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 who then let out the properties to the ultimate tenants. In this way, the let income from the property is taxed at the lower rate of Corporation Tax, thus leaving more for the ultimate owners.

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.

The profit or 'gain' on which tax is levied is calculated by taking the final price received for the property when it is sold (after deducting legal costs and agent's fees), compared with what the property cost initially (including and legal fees and Stamp Duty).

There are then potential deductions and tax relief available including:

- 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 relief
  - A proportionate principal private residence relief
- If the property was owned on March 1982 its value at that date is substituted for the original cost of the property in calculating the ultimate gain.
- There is a set value tax free allowance in a single tax year, tax is only charged on any gain above that value.

Inheritance Tax

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

There are ways of reducing the IHT liability. If properties are held in joint names (as tenants-in-common rather than joint tenants) from the outset, then only a proportion of the value of the property will fall into your Estate. And because you do not own all of the property, a discount can be applied to the proportionate value, thus reducing the IHT even further. A tax efficient will should be drawn up to ensure maximum use of IHT allowances.

For further information about tax see www.hmrc.gov.uk

1.8 Council Tax

When a dwelling is unoccupied and not subject to a tenancy, you will be billed for Council Tax. Please tell the council tax section about changes; to your billing address, the name(s) of your tenant(s), when they move in/out and their forwarding addresses where possible; this will highlight your entitlement to any related reductions and if/when changes should be made to who is billed.

The tenant(s) of a self-contained dwelling is/are billed for Council Tax. A tenant over 18, living alone in a property will normally qualify for a 25% discount on their council tax bill, but they must apply for it. A household of full-time students although billed for Council Tax will normally qualify for a full exemption, but they must apply for this.

In the case of shared dwellings (where the tenants pay individual rents or where there are locks on internal doors, but also shared facilities), Council Tax is normally the responsibility of the landlord.

- Rent should be set to include the amount of council tax you must pay.
- Council Tax increases do not create an automatic right to increase the rent. Agreements should include a provision for increasing the council tax element when the bill increases.
- Shared dwellings are referred to as Houses in Multiple Occupation (HMO's), which can be confusing, but the criteria used for Council Tax is very different to that used by Private Housing.
- If all or all but one of your tenants are full-time students you can apply for a reduction/exemption

HMO Criteria for council tax: a dwelling inhabited by persons who do not constitute a single household, each of whom either;

(a) is a tenant of, or has a licence to occupy, part only of the dwelling; or .
(b) has a licence to occupy but is not liable (whether alone or jointly with other persons) to pay rent or a licence fee in respect of the dwelling as a whole.

1.9 Planning control

Planning approval is essentially about controlling the use of land and is normally 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 also normally required 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 will be needed and the advice of the local planning authority should be sought.

Some Councils have recently introduced Article 4 directions. These require planning permission for houses being converted into small HMOs i.e. those occupied by between 3 to 6 unrelated persons. This allows the Council to control the number of new HMOs that are created. Article 4s are currently in operation in Bristol and Bath; please check the council website for the most up to date information.

1.10 Building Regulations Approval

New 'building work' must comply with Building Regulations and includes:
- Installation of a service, eg. Washing or sanitary facilities
- Material alterations to the structure
- Conversions to flats
- Extensions and loft conversions
- Some major repairs, including re-roofing, rendering external walls, replacing windows and replacement of heating systems

Contact your building regulations department to enquire if your proposed work requires consent or to make a building regulations application *[For contact details see Appendix 2, Useful contacts for landlords]*

The design, installation, inspection and testing of electrical installations is also controlled under the Building Regulations Part P *[See 3.11 Building Regulations Part P]*

1.11 Accreditation

The Accreditation scheme is a voluntary free scheme for private landlords, which recognises good quality, well managed, private rented accommodation.

The scheme was first introduced more than ten years ago and has been regularly reviewed to keep it relevant to local policies and national legislation since its launch.

It is currently being reviewed by each of the four West of England local authorities following consultation with local landlords, agents and other interested parties.

Details of the schemes can be found at www.privatehousinginformation.co.uk

1.12 Protecting your property against fraud

You can help to make sure that you do not become a victim of property fraud by:
- Registering your property with the Land Registry
- Keeping your contact details up to date with the Land Registry see www.landregistry.gov.uk

You're likely to be more at risk if:
- your property's mortgage has been paid off
- your property is empty or you're letting it
- you're abroad, absent, ill or in a care home

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2. SETTING UP A TENANCY

2 Setting up a Tenancy

2.1 Types of tenancies

If you are a landlord or are looking to be one it is important that you understand the types of tenancy which exist. This is because sometimes the rights and obligations of both the landlord and the tenant, particularly in the procedure for possession, will depend on the type of tenancy involved. *[See section 6 for ending of tenancies]*

Assured and assured shorthold tenancies

These types of tenancies are governed by the Housing Act 1988, which was amended slightly by the Housing Act 1996. The vast majority of tenancies today will be assured or, more usually, assured shorthold tenancies. Both assured and assured shorthold tenant landlords can charge a market rent for the property.

The main differences between an assured and an assured shorthold tenancy

Assured shorthold tenancies

Assured shorthold tenancies are now the 'default' type of tenancy, so if you are renting out a property and it does not fall into one of the exceptions discussed below, it will automatically be an assured shorthold tenancy, without you having to do anything (although letting a property without a written agreement is unwise).

The main benefit of assured shorthold tenancies is that the landlord can recover possession of the property, as of right, so long as any fixed term has expired and the proper form of notice has been served. This notice must be properly drafted and give the tenant notice of not less than two months.

These notices are known as section 21 notices as the landlords' right to recover possession and the notice procedure is set out in section 21 of the Housing Act 1988.

Assured tenancies

These give tenants long-term security of tenure, and tenants are entitled to stay there until either they agree to go, or an order for possession is obtained against them. Possession under the 'no fault' section 21 procedure is not available for assured tenancies, and you will only be able to evict if one of the statutory 'grounds' for possession, as set out in Schedule 2 of the Housing Act 1988, apply. Before 24 February 1997 assured tenancies were the 'default' type of tenancy, and many 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.

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 shortholds. The only circumstances where you may want to consider letting a property under an assured tenancy are if you are certain that you will not want to recover possession and you wish the tenant to have security of tenure (for example a family member or former employee). However you should be very careful before doing this, as you will be depriving yourself of the right to recover possession, perhaps during your lifetime (bearing in mind that assured tenancies can be passed on to spouses), and ideally should take legal advice first.

Setting up an assured tenancy

In the unlikely event that you will wish to create an assured tenancy, you do this by giving notice to the tenant, saying that the tenancy is an assured rather than an assured shorthold tenancy. 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.

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 and the tenancy instead will be governed by either another statute or the underlying 'common law'. These are as follows:

i. A tenancy which began, or which was agreed, before 15 January 1989 (this will normally be governed by the provisions of the Rent Act 1977)
ii. An agricultural tenancy: this will normally be governed by the Rent (Agriculture) Act 1976, assuming that the tenant is a qualifying agricultural worker
iii. A tenancy for which the rent is more than £100,000 a year
iv. A tenancy which is rent free or for which the rent is £250 or less a year (£1,000 or less in Greater London)
v. A letting to a company
vi. A tenancy granted to a student by an educational body such as a university or college
vii. A holiday let
viii. A letting by a resident landlord (i.e. where the landlord lets self-contained accommodation in the building where he lives and where accommodation is shared, this is a licence/lodger situation not a tenancy).

In the circumstances set out in points iii-viii the tenancy will be governed by the common law.

Note that the chief significance of a property not being an assured shorthold tenancy is that the procedures for recovery of possession are different.

Tenancies that can be assured but not assured shorthold tenancies

The following tenancies cannot be assured shorthold tenancies:

- Where you have an existing tenant who holds an assured tenancy, you cannot convert an existing assured tenancy into an assured shorthold tenancy, for example by giving a new form of tenancy agreement. This applies whether or not the fixed term in their tenancy agreement has expired
- An assured tenancy which the tenant has succeeded to on the death of the previous regulated (pre1989) 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.

Fixed term tenancy

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. Any fixed term of more than 3 years must be a 'Lease by Deed'.After a fixed term has expired you can either allow it to run on *[See section below on Contractual Periodic Tenancy]* or give a new fixed term agreement.

Statutory periodic tenancy

When a fixed term assured or assured shorthold tenancy ends, a statutory periodic tenancy arises automatically if the tenant remains in occupation beyond the fixed term. The statutory periodic tenancy runs in 'periods'.

It is perfectly acceptable for tenancies to run on in this way and many tenancies have operated for years as statutory periodic tenancies. It is not the case either that tenants become 'squatters' if they stay on, or that they will acquire additional rights if they stay as a periodic tenant for a long time.

Note: In rare cases, a tenancy agreement may contain a clause that determines what happens to the tenancy when the fixed term ends and creates a contractual periodic tenancy. If this is the case, then a statutory periodic tenancy does not arise because the tenancy has not 'ended' and the periods of the tenancy will be those defined in the clause.

If the tenancy becomes a statutory periodic tenancy, a landlord should reissue the prescribed information provided by the Deposit Protection Scheme to remind the tenant that the deposit is still protected.

Contractual periodic tenancy

An assured or assured shorthold tenancy that has no fixed term and just runs on the rental periods will be a contractual periodic tenancy. This type of tenancy is perfectly acceptable. The periods of a contractual periodic tenancy will be the same as the rental periods, so if the rent is payable monthly, the periods of the tenancy will be monthly and so on.

Initial period of an assured shorthold tenancy

The assured shorthold tenancy does not require an initial fixed term although one may be agreed. This may be a fixed term of less than six months if the tenant agrees or the tenancy can be set up as a periodic tenancy from the outset.

However, notwithstanding what is agreed, effectively assured shorthold tenants have a right to stay in the premises for a minimum period of 6 months, as under the section 21 possession procedure, a Judge cannot grant an order for possession to take effect during the first six months. 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 to possession until the initial six months has expired (although if the initial term was less than six months there is no reason why proceedings for possession cannot be commenced during this period).

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 section 6.2 on possession].*

During this initial six months period, assured shorthold tenants can also apply to have their rent reviewed by the Rent Assessment Committee, although very few actually do this.

These rules do not apply to common law tenants. A common law tenancy can be forfeited (for example for non payment of rent) during the fixed term, and a landlord is entitled to recover possession as of right after the fixed term has expired. However, very few tenancies are common law tenancies and they cannot be created, save in the special circumstances set out above.

Regulated tenancies

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

Practically, it is virtually impossible to evict a regulated tenant unless they are in serious arrears of rent or you are able to provide suitable alternative accommodation.

More information can be found in the leaflet 'Regulated Tenancies' available from the CLG website at: www.gov.uk

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 them from being a trespasser. Most of the protective legislation for occupiers does not apply to licences.

The three main tests for a tenancy are:

i. Exclusive possession
ii. A fixed or periodic term and
iii. The payment of rent.

If these three factors are present, there will be a tenancy, unless there is some special circumstance reducing it to a licence. Landlords and Tenants cannot 'contract out' of the Rent Acts or other legislation, for example by getting a tenant to sign an agreement headed 'licence agreement'.

A person who has exclusive possession of residential premises for a definite period is a tenant unless there are exceptional circumstances. This would include when the occupier's possession is due to a relationship other than that of landlord and tenant, for example an employee who is required to live in employer's premises as part of their employment.

Other circumstances where a tenancy will not occur is '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).

Subletting/assigning tenancies

If you have taken the effort to reference your tenant and check that they will be suitable, you will not normally want them to then assign (i.e. transfer the tenancy) or sublet it to someone else who may not have gone through your referencing procedure. In the past, tenancy agreements as a matter of course always used to prohibit any subletting or assignment. However, tenancy agreements are now subject to the rules in the Unfair Terms in Consumer Contracts Regulations 1999 which is administered by the Office of Fair Trading (OFT). In their guidance on this, the OFT stated that absolute prohibitions on assignment and subletting will be considered unfair and void under the regulations.

To enable you to retain some measure of control therefore, you should either ensure that your tenancy agreement provides for assignment and subletting only with your consent (and this will have to include the words 'consent not to be refused unreasonably' or similar), or provide some way for the tenant to end the tenancy early (for example if they get transferred by their job to another part of the country), by allowing them to end the tenancy if they are able to provide a suitable replacement tenant.

Even if your tenancy agreement does not provide for it, it is suggested that you should always agree to re-let the property to a suitable new tenant, allowing the existing tenant to end their agreement early should they wish; provided of course that a suitable replacement tenant can be found to take their place.

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 sublet to someone else unless the landlord agrees that he or she can.

If the tenant has paid a premium for the property (a sum which is additional to rent or a sum paid as a deposit which is greater than two months' rent), the tenant is able to sublet unless there is a term in the tenancy agreement preventing this.

Joint tenancies

Joint tenancies can be agreed with two or more people from the outset of the tenancy. Each is then 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'.

For example, if a property is let jointly 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 still remain liable under the contract for all the rent. So C is still liable for rent even though she may not be living there, and A, B and D will each be liable to you, 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. Do not let the situation drift

and allow tenants to come and go at will without signing a tenancy agreement with you, otherwise when you need to recover possession of the property you will encounter difficulties.

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 this is not a problem.

Succession rights/right of survivorship

If a tenant dies and the tenancy is a joint tenancy, the remaining joint tenant or tenants have an automatic right to stay on in the property (Right of Survivorship).

If the tenant was a sole tenant, the right to succession will depend on whether the tenant had a fixed term tenancy or a periodic tenancy. If a fixed term tenancy and the fixed term has not expired, the executors will arrange for it to be passed onto whoever is left the tenancy in the will, or whoever inherits under the intestacy rules if there is no will.

If it was a contractual periodic tenancy or a statutory periodic tenancy, the tenant's husband or wife or a person who lived with the tenant as husband or wife, has an automatic right to succeed to a periodic 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 (s17 Housing Act 1988).

If the tenancy was a contractual periodic tenancy or if it was or becomes a statutory periodic tenancy and there is someone living in the property who does not have a right to succeed to the tenancy, the landlord has a right to possession under Ground 7, provided that they start possession proceedings within a year of the death of the original tenant.

If the tenancy is a shorthold tenancy, the landlord has an automatic right to repossess the property at the end of any fixed term, even if the tenant had a right to succession, provided that the landlord gave the proper form of 2 months' notice under section 21, that the landlord required possession.

Unlawful discrimination

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.

There are legal obligations on landlords both in the public and private sector 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, age 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 discrimination.

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

2.2 Tenancy Agreements

Written tenancy agreements

Landlords should be aware of the benefits of written tenancy agreements and the procedures necessary for obtaining such an agreement. Generally it is most inadvisable to hand over the keys to a property unless your tenants have signed a form of tenancy agreement.

Benefits of written tenancy agreements

This is only required by law for fixed-term tenancies of greater than three years. However, it is highly advisable to have a written tenancy agreement, and to get the tenant to sign this before going into occupation. For example:

- It will prevent disputes later over what was agreed
- A well drafted tenancy agreement will help protect your interests
- You cannot force tenants to sign a tenancy agreement once they are in occupation of the property
- You may experience difficulties in evicting the tenant if you are unable to produce a tenancy agreement and in particular
- You will not be able to use the special 'accelerated' possession procedure *[See section 6.2]* as this can only be used where the tenancy and its termination can be shown from the paperwork.

Tenant's right to a written statement

A 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 for this statement to you, the landlord, in writing. You must then provide the statement within 28 days of receiving the tenant's request. If you fail to do this, without a reasonable excuse, this is a criminal offence for which you can be prosecuted and if found guilty, fined.

Implications of oral agreements

There is no reason legally, why a tenancy should not be created orally. If a tenant goes into a property and starts paying you rent, then this will be a tenancy notwithstanding the fact that there is no written agreement.

It is not possible, for example, for you to allow the tenant to live in the property 'on approval' on the basis that you will give them a tenancy later. If they have exclusive occupation of the property and pay a rent, then they will automatically be a tenant and will be entitled to all the statutory protection provided to tenants under the law.

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. If you need these altered you should seek specialist advice rather than doing it yourself.

Prospective tenants should be given every opportunity to read and understand terms of the tenancy, and any other agreement, before becoming bound by them.

You will need two tenancy agreements, one for the tenant(s) and one for yourself. You should keep the copy signed by the tenant and the tenant should keep the copy signed by you, but there is no harm in having both of you sign both copies. If the tenant is going to go into the property immediately the tenancy does not need to be witnessed, but if they are not going to move in for a while (for example when students sign up in June to go into a property the following September) it is best to ensure that the agreements are signed 'as a deed' which means getting the signatures witnessed by someone independent.

Be careful when completing the agreements, and if they are written by hand, ensure that they are legible. Remember that they may one day be scrutinised by a Judge if you ever need to evict your tenants! Make sure also that an address is given for the landlord. Under s48 of the Landlord and Tenant Act 1987, rent will not be due unless this is done. The address must be in England and Wales. It is acceptable for the address to be the address of your agent or a business address rather than your personal home address. If no address for the landlord is given at all this may cause difficulties if you later want to evict your tenant for arrears of rent.

Unfair terms in tenancy agreements

There are now regulations to ensure that 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) who have issued guidance on their effect on tenancy agreements. The OFT have also published a draft 'Guidance for Letting Professionals' which assists letting professionals to comply with consumer law.

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 determent of the consumer and contrary to the requirement of good faith. If a term is found to be unfair it will be void and unenforceable.

So far as tenancy agreements are concerned:

- Any clauses which limit or exclude rights (e.g. legal rights) which your tenants would otherwise have had, are almost certainly going 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 your 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 landlords written consent, this should be followed by the words "(consent not to be unreasonably withheld)" or similar
- Finally, any clauses which are difficult to understand, or which use legal terminology which is not in common use, or words which have a specific legal meaning which may not be understood by the ordinary person (such as 'indemnity'), 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 will actually be void, and it will not stop the tenant from keeping pets.

To make the clause valid, it should say something like "The tenant is prohibited from keeping pets, save with the landlords written permission which shall not be refused unreasonably". You may say, "this is silly, there are no circumstances under which I will allow pets and this is just encouraging tenants to have them". However, a clause in this format is not saying you have to give permission. There are many reasons for refusing permission for pets - that they damage the property, that some people are allergic to them, or that your own lease with the freeholders prohibits pets. If you gave one of these reasons it would be difficult for the tenant to argue that you were being unreasonable and your refusal of permission would stand.

Unless you are familiar with landlord and tenant law, it is very 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 by lawyers with these regulations in mind. Note also, that from time to time new cases may be decided or new guidance issued which will need to be reflected in the form of tenancy agreements. Make sure that the agreements you use are the most recent versions issued by the publisher, company or association concerned, and do not use old precedents. See Office of Fair Trading website for Guidance on Unfair Terms in Tenancy Agreements: www.oft.gov.uk

Making an inventory/schedule of condition

If you are renting a property, having an inventory (sometimes also called a statement of condition) is essential if your property is let furnished, and a very good idea even if it is unfurnished. This will protect your position and provide evidence to prove the condition of the property at the time it was let to the tenant.

Care should be taken when drafting your inventory. Make a detailed list of all the belongings and furniture provided when a tenant first moves in. It is also a good idea to record the condition of such things as walls, doors, windows, and carpets etc. The list should be agreed with the tenant before they move in and a separate copy of the list held by them. This should then be checked again at the time the tenant moves out.

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, however the use of digital photographs is not always accepted by the courts as evidence; 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 very high value properties, landlords and agents are now also taking videos.

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, it is the landlord who has the 'burden of proof' not the tenant.

Taking an inventory is a long job and many landlords now use professional inventory clerks to do this for them. The advantage of this, if a dispute over the condition of the property ever goes to court, is that they will be able to give independent evidence to the Judge. You can find an inventory clerk via the Association of Independent Inventory Clerks who have a web-site at: www.theaiic.uk.com

Setting the rent

The landlord should agree with the tenant the rent and arrangements for paying it and, if required, arrangements for reviewing it, before the tenancy begins. The details should be included 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. Note that rent review clauses are subject to the Unfair Terms in Consumer

Contract Regulations 1999 and clauses which simply say (for example) that the landlord can increase the rent to whatever figure he things appropriate, will be void.

Rent reviewed should be referable to something independent and external such as the retail price index.

Rent book

A landlord is only legally obliged to provide a rent book if the rent is payable on a weekly basis (where failure to provide a rent book 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.

2.3 Deposits and tenancy deposit schemes

Most landlords nowadays will take a 'damage 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 for 'damage'. However, there have been many problems with deposits, including some landlords unreasonably withholding them from tenants on a regular basis. This has resulted in the imposition of a statutory scheme under the Housing Act 2004 which was effective from April 2007.

Requiring a deposit

A deposit may be required from the tenant before moving into the property. Many landlords feel the holding of a deposit decreases the chances of abandonment, by acting as an incentive for the tenant to terminate the agreement correctly. It also gives security in case the tenant leaves the property owing rent or to pay for any damage or unpaid household bills at the end of the tenancy. The amount should be negotiated with the tenant. However, if a deposit of more than two months' rent is required, it could be regarded as a premium that may give the tenant a right to give the tenancy to someone else or sublet.

Tenancy deposit protection schemes

The Housing Act 2004 requires a landlord who has received a deposit after 06 April 2007 to protect the deposit with an authorised scheme and supply the tenant with a prescribed form within 30 days.
The legislation only applies to Assured Shorthold Tenancies. The legislation will also apply if you renew a tenancy (grant a new fixed term tenancy to the same tenants) after the 6th April 2007, even if you received the deposit before this date for the previous tenancy.

The legislation does not require a landlord to take a deposit, it simply places requirements on a landlord should he choose to take a deposit.

A landlord may only take money as a deposit under the legislation.

There are two types of tenancy deposit schemes, custodial and insurance based. The main difference between the two is that the custodial scheme is free of charge to use but the deposit must be passed to the scheme administrator to hold for the duration of the tenancy. The insurance based schemes allow a landlord to retain the deposit in their own separate bank account but only whilst there is no dispute. If a dispute over the deposit arises, the deposit must be transferred to the insurance based scheme. The landlord must pay to use an insurance based scheme.

It is for the landlord to choose which scheme to use and there are three authorised schemes for a landlord to choose from. For contact details of the schemes *[For details of the Deposit Protection scheme providers see Appendix 2 - Useful Contacts for Landlords]*

Prescribed information

Along with protecting the deposit, a landlord must also supply a prescribed form (or a form substantially to the same effect) to the tenant within 30 days. The prescribed form is called a section 213 notice (because it is a notice required by section 213 Housing Act 2004) or a deposit information certificate. The form is probably best served at the same time as signing the tenancy agreement because the tenant must be "given the opportunity to sign" the certificate contained within the prescribed form. The landlord must sign the certificate within the form. (This is not the certificate provided by the scheme administrator about the deposit, it is a different certificate.)

The information required within the prescribed form is contained in The Housing (Tenancy Deposits) (Prescribed Information) Order 2007 and it must contain a certificate signed by the landlord with specific wording (see below).

The prescribed information required is as follows:

- the name, address, telephone number, e-mail address and any fax number of the scheme administrator of the authorised tenancy deposit scheme applying to the deposit;
- any information contained in a leaflet supplied by the scheme administrator to the landlord which explains the operation of the provisions contained in sections 212 to 215 of, and Schedule 10 to, the Act;
- the procedures that apply under the scheme by which an amount in respect of a deposit may be paid or repaid to the tenant at the end of the shorthold tenancy ("the tenancy");

- the procedures that apply under the scheme where either the landlord or the tenant is not contactable at the end of the tenancy;
- the procedures that apply under the scheme where the landlord and the tenant dispute the amount to be paid or repaid to the tenant in respect of the deposit;
- the facilities available under the scheme for enabling a dispute relating to the deposit to be resolved without recourse to litigation; and
- the following information in connection with the tenancy in respect of which the deposit has been paid-
  i. the amount of the deposit paid;
  ii. the address of the property to which the tenancy relates;
  iii. the name, address, telephone number, and any e-mail address or fax number of the landlord;
  iv. the name, address, telephone number, and any e-mail address or fax number of the tenant, including such details that should be used by the landlord or scheme administrator for the purpose of contacting the tenant at the end of the tenancy;
  v. the name, address, telephone number and any e-mail address or fax number of any relevant person;
  vi. the circumstances when all or part of the deposit may be retained by the landlord, by reference to the terms of the tenancy; and
  vii. confirmation (in the form of a certificate signed by the landlord) that-
- the information he provides under this sub-paragraph is accurate to the best of his knowledge and belief; and
- he has given the tenant the opportunity to sign any document containing the information provided by the landlord under this article by way of confirmation that the information is accurate to the best of his knowledge and belief.

Disputes

All schemes offer a free to use alternative dispute resolution (ADR) service, however the ADR is not compulsory on either party and in more complicated cases it might be wise to consider using courts instead, in particular because there is no appeal to the ADR.

If the deposit is not protected

If a deposit is taken but either the deposit is not protected in an authorised scheme by the landlord or the landlord fails to provide the prescribed information, the tenant may apply to the court who must order the landlord to pass the deposit to the custodial scheme or replay it to the tenant. The court must also require the landlord to pay the tenant **three times** the amount of the deposit.

A landlord is **unable to serve the no fault section 21** procedure for obtaining possession of the property where the deposit is not protected or the prescribed information has not been provided.

Legitimate withholding of part or all of the deposit

Deposits can cover:

- Damaged items
- Stolen 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.

Allowance for fair wear & tear must be made, which is not recoverable from a deposit. Wear and tear is the sort of damage which is the result of normal living in a property. You cannot expect to receive a property back in the same pristine condition as it was at the start. You can expect it to be clean and tidy, but if a tenant has been living in the property for two years, you must take this into account. For example paintwork will be less fresh and carpets may be worn.

Best practice regarding deposits

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. It is advisable to keep the deposit in a separate bank account so that it can be returned at the end of the tenancy, unless the conditions for withholding it are met.

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 send the balance of the deposit to the tenant.

If the tenancy changes from an assured shorthold to a period tenancy, a landlord should reissue the prescribed information to remind the tenant that the deposit is still protected.

2.4 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 up to the value of the bond.

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/bond provider.

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
- In certain circumstances the bond banks can help find tenants
- 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 in your area.

2.5 Setting the rent

As the landlord you agree the initial rent with the tenant. However, during the first six months the tenants have rights if they consider the rent is above the market rent to refer the rent to the Rent Assessment Committee for review. This is very rarely done however.

The rent you charge can include a sum to cover the cost of repairs however these costs cannot be passed on to the tenant in the form of a separate service charge. Note in particular that you cannot seek to pass on to the tenant the cost of any repairs which are your responsibility under section 11 of the Landlord and Tenant Act 1985 or under the gas or similar regulations.

2.6 Raising the rent

There are three basic ways to increase the rent in an assured shorthold tenancy:
- By way of a rent review clause in the tenancy agreement
- By agreement with the tenant and
- By notice under Section 13 of the Housing Act 1988.

Rent review clauses in the tenancy agreement – If the landlord wishes to be entitled to increase the rent during the fixed term of the tenancy this must be done by way of a properly drafted rent review clause. The clause can also be effective to increase 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 increase the rent as he sees fit will be void - the increase must be referable to someone or something independent, such as the retail price index. Note also that clauses which provide for very large increases (i.e. increases which the tenant would be unable to pay) will normally also be void.

Most standard tenancy agreements do not include rent review clauses as most rent is increased by the tenant signing a new agreement.

Rent increase by agreement

The vast majority of rent increases are done by the tenant signing a new fixed term tenancy agreement giving the new rent. This is the best method of increasing the rent as it cannot be challenged by the tenant. You can also increase the rent by getting the tenant to sign a document (such as a copy letter sent to the tenant suggesting a new rent) confirming his agreement. If you wish to do this, perhaps speak to your tenant first to see that they are happy with the proposed increase. Then send a formal letter to them in duplicate proposing the new rent, asking them to sign and date one copy and return it to you to confirm their agreement. However if they fail to return the letter or to pay the increase then the rent will not have been validly increased.

Note however that you cannot increase the rent unilaterally by just 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, well and good, the increase is agreed, but if the tenant does not agree he is entitled to refuse to pay the increase.

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 you need to use a special form, 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 fully, and served on the tenant.

At least one months notice must be given to the tenant. If the tenant does nothing during this period, then the rent increase will take effect. However if the tenant feels the rent increase is too high then he can refer it to the Rent Assessment Committee for review. The application must be made not later than the last day of the month 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 for the rent proposed. This is not always in the tenant's favour as it is not unknown for them to consider that the proposed rent is too low!

The rent can only be increased by section 13 after the fixed term has ended and can only be used once every 12 months.

Rent increases in fixed term tenancies

Normally it is not possible to increase the rent during the fixed term of the tenancy unless either there is a valid rent review clause, or the tenant agrees to the increase. If the tenant agrees this should be recorded, perhaps by getting the tenant to sign a new tenancy agreement.

Rent increases in contractual periodic tenancies

Rent can only be increased in contractual periodic tenancies by:

- A rent review clause in the tenancy agreement
- Agreement with the tenant or
- Alternatively if the tenancy is an assured or assured shorthold tenancy by the procedure in section 13 of the Housing Act 1988.

Rent increases in statutory periodic tenancy

If the tenancy agreement was initially for a fixed period as above, but the tenant has continued to live in the property after this period with the landlord's consent and it becomes a statutory periodic tenancy the landlord can either agree a rent with the tenant or use the formal procedure under Section 13 of the Housing Act 1988 as discussed above.

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. You or the tenant may apply to register a fair rent. Contact details for the local Rent Service can be found on the Valuation Office Agency website: www.voa.gov.uk

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 (three years if the existing registration was made before 28 November 1980) unless:

- You and the tenant apply jointly
- There has been a change of circumstances, for example, major repairs, improvements or changes in the terms of the tenancy.

Note that it is in your interest to ensure that you apply promptly for the rent increases every two years. The reason being that the amount of increase is capped under a complicated calculation set out under regulations - The Rent Acts (Maximum Fair Rent) Order 1999.

2.7 Housing benefit and Local Housing Allowance

Housing Benefit is available to assist people on low incomes to pay their rent. An application has to be made to the local council for this benefit and can be made online, using a paper form or through the Department for Work and Pensions (if claiming a state benefit). In exceptional circumstances we can carry out home visits or telephone claims.

Tenants have to provide information and, in some cases, proof to support their claim for benefit. Examples include:-

- National Insurance Number
- Income and savings, capital or investments
- Identity, including nationality and whether they have leave to remain in the United Kingdom
- Rent liability
- Name and address of landlord/agent

We aim to make a decision on a Housing Benefit claim within 14 days of receiving all of the information that we need. If the information is not provided, we are unable to decide that the claimant is entitled to Housing Benefit.

The amount of Housing Benefit payable depends on the claimant's circumstances and the income and savings that they have. This means that some tenants will still need to pay a proportion of the rent themselves.

Most full time students, people with limited or no leave to remain in the United Kingdom, those subject to immigration control and most economically inactive European Union nationals will not be eligible to claim Housing Benefit. In addition, the rent liability must be on a commercial basis. Those living with a close relative as their landlord cannot claim Housing Benefit.

2.8 Local Housing Allowance

Most private tenants have their housing benefit calculated using the Local Housing Allowance (LHA). This is a standard figure across an area (the Broad Rental Market Area) and depends on the size of property a household needs, according to the statutory 'size criteria'. The Local Housing Allowance payable cannot exceed the rent of the property.

Local Housing Allowances are calculated annually by Valuation Office Agency Rent Officers. They are published in advance in January, coming into effect from April each year. LHA rates are based on the 30th percentile of a list of private rents for similar size properties in the Broad Rental Market Area. Changes introduced with effect from 2014 mean that the annual uprating will be either the 30th percentile or the previous LHA rate plus either a 1% or 4% increase depending on the property type and area. Increases are

capped by upper limits set out in the legislation. The current rates can be found on the council website.

Single tenants who do not have any children and are under the age of 35 will usually have their entitlement to Housing Benefit based on the Local Housing Allowance for a room in a shared house. This is irrespective of whether they rent self-contained accommodation.

There are some exceptions to this rule for some disabled people, certain ex-offenders and people who used to live in hostel accommodation. If this is uncertain, it is best to check.

Local Housing Allowance will usually be paid directly to the tenant every fortnight. It is their responsibility to make payments to the landlord. The landlord may be paid directly if there are exceptional reasons why the tenant is unable to receive payments themselves or if landlord payments would help to secure or maintain a tenancy.

If a tenant is eight weeks behind with their rent, the landlord can be paid directly. Note that this is based on when payment is due, so if rent is to be paid in advance, it is possible that only four weeks have passed by the time a tenant is in arrears. We do our best to provide advice to landlords but the information regarding someone's Housing Benefit claim is confidential. Limited information can be shared with landlords if payments are made directly or the claimant has given their express permission that we can discuss the award with their landlord.

Changes in circumstance

Claimants must contact the council if there has been a change in their circumstances that may affect their Housing Benefit entitlement. Landlords should also tell the council if they think their tenant has had a change in circumstance.

Examples of changes include:

- The tenant moving out or changing address
- Absences from the property exceeding 13 weeks, even if the tenancy is ongoing
- Household circumstances have changed (partners, children moving in, out etc.)
- Change of room within the same property

If there has been a delay in notifying a change in circumstance an overpayment may result that will need to be repaid either by the landlord or tenant (depending on the payment method and circumstances of the case).

If the change results in more Housing Benefit entitlement it is important that the change is reported to the council within one month of the date of change, otherwise it may only be paid following the date the council was informed. In very exceptional cases the council can accept changes reported up to 13 months late.

Overpayments

An overpayment occurs when Housing Benefit entitlement ends or is reduced and results in more Housing Benefit being paid than the claimant is entitled to. Most overpayments are recoverable from either the claimant or the landlord (if paid directly).

The council will not recover an overpayment from the landlord when they have notified the council that they suspect that an overpayment has occurred and the reason for the overpayment was not a change of address.

If it is decided that an overpayment is recoverable from the landlord, the council will send a letter to them explaining how the overpayment has occurred, the period it covers and the amount.

The council can send an invoice to the landlord to request payment in full or arrange instalments. If the landlord has other tenants who receive Housing Benefit the council can make deductions from payments made in respect of those tenants.

A court order can be obtained for Housing Benefit overpayments to allow the use of bailiffs or a charging order, as well as attachments to earnings and making deductions from the landlord from third party debtors.

Appeals

There is a right for 'affected persons' to appeal to an independent tribunal. The council will review its decision in any case where an appeal is made. Landlords are limited to appealing against:

- The amount of an overpayment
- Whether the overpayment is recoverable

If the council cannot revise its decision, it will submit the appeal to the HM Courts and Tribunals Service to be considered by the First Tier Tribunal. They will look at whether the council made the correct decision when assessing the case.

Where the landlord does have a right of appeal they must do so within one month of the decision notice being issued to them.

2.9 Universal Credit

Universal Credit is a new benefit that will replace 6 existing benefits with a single monthly payment. It is gradually being introduced across the country, it will be rolled out in Bath in Spring 2014, although is not likely to be brought in for the other West of England authorities until 2016/17.

2.10 Utilities

The Tenancy Agreement should indicate who is responsible for the payment of utility bills. Ordinarily the tenant should take over the account and put it in their own name, payment is then a matter between the tenant and utility company. The tenants will usually need to arrange for meters to be read, and the supplies put in their name.

The utility companies may send someone to read the meter or they may ask you or the occupier to supply a reading. It is recommended to include all relevant meter readings on the inventory.

If fuel has been used during the void period you can either agree to reimburse the tenant who may have to pay for it (if it is only a small amount) or pay the suppliers for the fuel used.

If you charge for utilities on the rent, for example because you are renting out rooms and there is no separate bill, you should set the rent at a level that reflects the cost. However, you cannot usually increase the rent just because the water bill has gone up. You must follow the normal rules for rent increases. However, a contract term which provides for rent to be increased to reflect increases in the utility bills paid by the landlord, will normally be considered fair under the regulations, so long as the tenant is given reasonable notice of the increase and is given the right to inspect the relevant bills to check that the increase in rent reflects the increase in the bills.

If you pay for the utilities, and your tenant is receiving Housing Benefit, the payment they receive will be reduced by an amount to reflect this, and they will need to pay you from their other income.

You can agree the meter readings with the incoming tenant, and let them know which companies are currently supplying the fuel. The tenant can choose their own electric/gas utility supplier after one months' period of a tenancy.

If you need to find out which company is supplying your property; for gas supply you need to phone the Meter Number Helpline on 0870 608 1524, and for electric you need to phone Western Power Distribution on 0845 601 5972.

2.11 References

It is very important that the landlord interviews tenants carefully. The landlord will want to choose a person who will be a trustworthy and reliable tenant and although first impressions are useful, the landlord is strongly advised to take up references from the prospective tenant's current or previous landlord, employer and bank. Landlords should also verify that their prospective tenants are who they say they are. Landlords should get the tenant to show some identification (ID) with a photo such as a passport or European style driving licence so that the landlord can see the tenants' name and an identifying picture.

The landlord may also consider using a tenant referencing service, which will make these and additional checks for the landlord. There are many companies who do this, many of whom can be found via a search on the internet. Alternatively your insurer or Landlords Association may be able to recommend someone.

Ask new tenants for contact details of a close family member or friend whom the landlord can contact in an emergency. This information is also useful if the tenant leaves without notice.

The landlord should note that tenants should not be chosen on the basis of race, religion, marital status, disability, sexuality or age. 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. Some local authorities have introduced Selective Licensing Schemes which require landlords to take up references.

2.12 List of rents used to calculate Local Housing Allowance rates

The rental information used to calculate Local Housing Allowance rates is provided on a goodwill basis by landlords and letting agents. VOA Rent Officers keep all the information on a secure database and comply with the Data Protection Act 1998. Their independence of any commercial interests enables them to collect rents from all parts of the market. Without compromising commercial confidence, they also publish free downloadable Private Rental Market statistics and maps by local authority. www.voa.gov.uk/prmmaps

Landlords wishing to contribute rental information can contact their local Lettings Research Manager. Go to www.voa.gov.uk/lettingsresearch (and follow the link to 'Contact a Lettings Research Rent Officer').

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Avon and Somerset Constabulary - Drug Expert Action Team - Tel: 01275 816628 – email: deat@avonandsomerset.police.uk

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CHAPTER 1

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3. RESPONSIBILITIES & LIABILITIES OF THE LANDLORD/AGENT

3 Responsibilities & liabilities of the landlord/agent

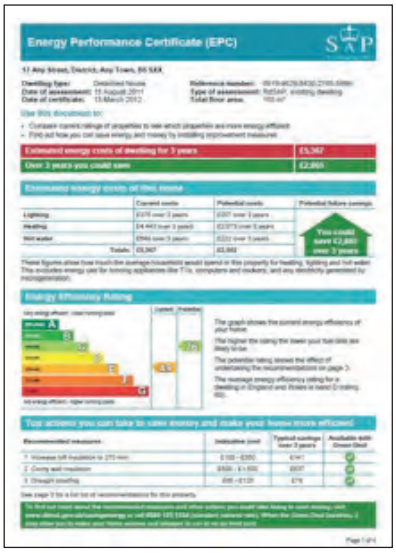
This section deals with the practical matters you should consider prior to letting a property. This includes the legal requirements as well as best practice for the safe and effective letting of a premises including:

- The requirements surrounding Energy Performance Certificates
- Responsibilities for repair, both statutory and at common law
- The Housing Health and Safety Rating System
- Responsibilities for gas and electrical safety
- Furnishings and fire safety
- Responsibilities of managers of Houses of Multiple Occupation (HMO)
- Asbestos in common parts
- Safety of goods in accommodation

3.1 Energy Performance Certificates

In most cases 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 certificate shows the energy efficiency rating (relating to running costs) and compares the properties energy performance related features with the average ratings.



Example of an Energy Performance Certificate

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 the responsibility of the landlord to use all reasonable efforts to obtain an EPC within 7 days of first marketing the property for rent. If this is not possible, this period is extended for an additional 21 days, i.e. there is an overall maximum of 28 days. However, this is not a licence to delay matters. It is the responsibility of the landlord to make sure that reasonable efforts are used to obtain the EPC and, if challenged, the landlord could be required to prove this to the satisfaction of Trading Standards.

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. Also an EPC is not required for listed buildings.

Breaking the EPC rules can result in a £200 penalty charge.

EPCs are completed by registered Domestic Energy Assessors. An assessor can be found at www.hcrregister.com

Although the EPC may suggest a number of improvements that could be made there is generally no legal obligation to undertake any of these works. However, this situation is expected to change from 2016, when minimum energy efficiency standards will apply. The requirement to set and enforce minimum standards was set out in the proposed Energy Act 2011:

- From April 2016, no domestic landlord will be able to refuse a tenant's request to make energy-efficiency improvements
- From 2018,it is expected that it will not be legal to let out a private rented property unless it meets a minimum energy-efficiency standard (EPC rating E). Landlords should meet the minimum standard or make full use of Green Deal, even if that doesn't bring the property up to an E rating.

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. The Green Deal is not a personal loan but a charge placed 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 benefitting from a more energy-efficient property. As the charge is attached to the electricity meter it is the tenant who pays for the installation.

There is a 'golden rule' which applies to the Green Deal finance model and that is that the expected saving 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.

For work such as solid wall insulation or where the occupier is on very low income, the Green Deal will not be able to fund the improvement works because of the golden rule. In these cases grant funding is provided by the energy providers, known as the Energy Company Obligation.

The person proposing to take out the Green Deal must get the written permission of all persons with an interest in the property. These will include the landlord, current tenants, freeholder, any head leaseholder, mortgage company etc. plus any necessary permissions from the authorities eg. Planning, building regulations 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 that 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.

For more information see www.gov.uk/greendeal

Assistance with energy efficiency measures

There may be schemes which provide grants for insulation and heating improvements, including central heating systems, for vulnerable households in the private rented and owner occupied sectors. Contact the Centre for Sustainable Energy for details on 0800 082 2234.

3.2 Landlords' responsibilities for repair/maintenance

In addition to any repair responsibilities expressly set out in the tenancy agreement, common law and statute will imply terms to the agreement between landlord and tenant. These are obligations between the landlord and tenant which may not be set down in the agreement but which are given by law and are implied into all tenancy agreements. These terms form part of the contract, even though they have not been specifically agreed between the two parties. *[See section 3.3 for more detail on Implied Terms]*

Specific obligations to repair are set out in detail in the sections below *[See also section 3.6 – HHSRS]*. 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. It must 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 damp, penetration from the outside or condensation. 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), you will be liable to them for damages for personal injury.

Guide to repair timescales, once a fault has been reported

Emergency repairs – affecting health or safety eg. Major electrical fault, blocked WC	24 hours
Urgent repairs – affecting material comfort eg. Hot water, heating or fridge failure, serious roof leak	5 working days
Other non-urgent repairs	20 working days

3.3 Implied terms in tenancy agreements

Implied terms are those that are incorporated within a legal lease, tenancy agreement and/or licence unless otherwise agreed by the landlord and tenant. Implied terms can arise from either common law and/or statute. The terms may be implied because the parties, landlord and/or tenant, did not express them (for example in an oral contract) or because the law requires them to be implied whether the parties intended them to be implied or not.

Note: any attempts to evade statutory and common law repairing responsibilities by way of any contract term in the tenancy agreement, will normally result in the

relevant term being found void under the Unfair Terms in Consumer Contracts Regulations 1999. For example, any clauses 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), or terms requiring the tenant to be responsible for repairs to the gas appliances.

3.4 Common law implied terms

The main implied terms in respect of common law in relation to repairs are:

- **Quiet enjoyment** - this is a general standard clause implied into all tenancies which entitles the tenant to live in the property without disturbance (it does not mean that the property must be quiet or that the tenant must enjoy it!). It has been held that breach of the repairing covenants can also be considered to be breach of the covenant of quiet enjoyment

- **Fitness for habitation** - the property must be fit for human habitation at the start of the tenancy

- The tenants' obligation to use the property in a 'tenant like manner'.

This has been defined in the case law as "to do the little jobs about the place which a reasonable tenant would do" such as unblocking sinks when blocked by waste

- Not to commit waste - waste is any act or omission which results in a permanent change to the premises
- Tenant to leave the property in the same condition as when they took possession, fair wear and tear excepted
- Using rent to pay for repairs.

3.5 Statutory implied terms

Landlord and Tenant Act 1985 (as amended)

Section 11 of the Landlord and Tenant Act 1985 (which replaced S.32 of the Housing Act 1961) is a statutory implied term 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
- The communal areas and installations associated with the dwelling (S.11 as amended by S.116 of the Housing Act 1988).

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'.

So a landlord need not maintain a tatty run-down property in an inner city area to the same high standards expected in an expensive central London apartment.

Access to property

Landlords (or people authorised by them) who are subject to the provisions of section 11 have the right to access the property for the purpose of viewing its condition and state of repair [section 11 - subsection (6)]. The access can only be at reasonable times of the day and after giving not less than 24 hours' notice in writing.

This section does not extend to actually carrying out the repairs. However, the right to enter to do repairs (subject to notice being given) is generally included in tenancy agreements. In addition, 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, they 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 regardless if 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 contract.

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, without their express permission. They may be making themselves liable to a claim of harassment, or be vulnerable to allegations of theft if the tenant claims that property has gone missing.

Breach of repair obligations

The landlord will not be liable for works or repairs caused by the tenant's breach of his obligations under the tenancy.

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

The landlord should receive notice of this in advance of any claim being brought, as tenants are now obliged to

comply with the 'Pre-action Protocol for Housing Disrepair'. This protocol provides that tenants must inform their landlord in writing (an 'early notification letter' followed by a 'letter of claim') of all relevant matters before issuing legal proceedings. The protocol gives full details of the information to be provided and specimen letters.

If the tenant does not comply with the protocol, the landlord can ask the court to stay the claim until the provisions of the protocol have been complied with. A copy of the protocol can be downloaded from the court service website at:
www.hmcourts-service.gov.uk

Section 17 of the Landlord and Tenant Act 1985 requires specific performance by the landlord where there has been a breach, i.e. the payment of compensation will 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 its named officer, can 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 can still be claimed even if the works are carried out by the time the case reaches Court.

In practice it is rare for these extreme measures to be used. However you need to be aware that these penalties exist, and should be careful to deal promptly with your repairing obligations when they arise. It is after all protecting your financial investment.

Defective Premises Act 1972

The landlord is not implicitly liable for dangerous defects; however 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 and 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 inspections.

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

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. using areas such as lifts and common parts.

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.

Local authority powers

Local authorities have statutory duties and powers to take enforcement action to deal with properties containing hazards identified under the Housing Health and Safety Rating System (HHSRS) *[See Section 3.6 below]*. Under the HHSRS which is set out in Part 1 of the Housing Act 2004, 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 in residential properties.

3.6 Housing health and safety rating system (HHSRS)

The Housing Health and Safety Rating System (HHSRS) is the method used by local authorities to assess housing conditions. The Housing Act 2004 Part 1 establishes the HHSRS as the current statutory assessment criterion for housing and it is based on the principle that:

- Any residential premises should provide a safe and healthy environment for any potential occupier or visitor.

The system applies to all dwellings including owner occupied, privately rented and Housing Association dwellings. Local authorities are required to keep housing conditions in privately owned property under review and also have a duty to inspect a property where they have reason to believe that this is appropriate to determine the presence of hazards to the health and safety of the occupants or other relevant person.

The HHSRS is not a standard which the property must meet, but it is a system to assess the likely risk of harm that could occur from any 'deficiency' associated with a dwelling.

A deficiency is a variation from the ideal standard and may be due to an inherent design or manufacturing

fault, or due to disrepair, deterioration or lack of maintenance. It acknowledges, however, that some hazards may exist and provides a method of deciding whether or not the degree of risk is acceptable.

The use of a formula produces a numerical score which allows comparison of all the hazards. This score is known as the Hazard Score and irrespective of the type of hazard, the higher the score, the greater the risk.

Local authority officers undertake assessments and they must decide for each hazard what is:

i. The likelihood, over the next twelve months, of an occurrence that could result in harm; and
ii. The range of potential outcomes from such an occurrence e.g. death, severe injury requiring medical attention etc.

There are 29 hazards associated with the system.

When an assessment is made, how the property is currently occupied is ignored and the assessment is based on the likely effect of the hazard on the relevant vulnerable age group. For some hazards there is no vulnerable group, but for many hazards it may be either the young or the elderly.

Hazards

A hazard is any risk of harm to the health or safety of an actual or potential occupier that arises from a deficiency.

The system is concerned with disease, infirmity, physical injury, and also includes mental disorder and distress. There are 29 hazards, which need to be considered, and these have been divided into 4 groupings: Physiological, Psychological, Protection against Infection and Protection against accidents.

Physiological requirements:

- Damp and mould growth
- Excess cold
- Excess heat
- Asbestos and manufactured mineral fibre
- Biocides
- Carbon monoxide and fuel combustion products
- Lead
- Radiation
- Uncombusted fuel gas
- Volatile organic compounds.

Psychological requirements:

- Crowding and space
- Entry by intruders
- Lighting
- Noise.

Protection against infection:

- Domestic hygiene, pests and refuse
- Food safety
- Personal hygiene, sanitation and drainage
- Water supply for domestic purpose.

Protection against accidents:

- Falls associated with baths
- Falling on level surfaces
- Falling on stairs
- Falling between levels
- Electrical hazards
- Fire
- Flames and hot surfaces
- Collision and entrapment
- Explosions
- Position and operability of amenities
- Structural collapse and falling elements.

Landlord responsibilities

As the HHSRS is not a standard there is no model guidance available to follow, although there may be some guidance available for fire safety if you contact your local authority *[see Appendix 2, Useful contacts for landlords]*.

Each property will have its own hazards depending upon its location, age, construction, design, state of repair etc. but landlords must take steps to make sure that the dwelling provides both a safe and healthy environment.

For enforcement purposes the landlord is responsible for the provision, state and proper working order of:

- The exterior and structural elements of the dwelling:
  - This includes all elements essential to the dwelling including access, amenity spaces, the common parts within the landlords control, associated outbuildings, garden, yard walls etc.
- The installations within and associated with the dwelling for:
  - The supply and use of water, gas and electricity
  - Personal hygiene, sanitation and drainage
  - Food safety
  - Ventilation
  - Space heating; and
  - Heating water.

This includes fixtures and fittings, but excludes moveable appliances unless provided by the landlord.

HHSRS enforcement

If a hazard presents a severe threat to health or safety it is known as a Category 1 Hazard (hazard bands A to C). 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 (hazard bands D to J) 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 authorities' enforcement policy.

Although statutory action is mandatory for Category 1 hazards and discretionary for Category 2 hazards, the actual choice of the appropriate course of action is also up to the authority to decide and again will depend on the individual local authorities' enforcement policies and the particular circumstances of the case.

The West of England authorities' enforcement policies state that action will be taken on band A – C hazards (category one). However, the policies also go on to say that action will normally be taken on band D hazards (category 2) unless there is a specific reason not to take action. The West of England Authorities may still take action on Hazards of Band E or below in certain circumstances.

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

- Serving a hazard awareness notice, which merely advises that a hazard exists, but does not demand works are carried out.
- 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 these types of notice for a period of time, or until particular circumstances occur
- Taking emergency action themselves
- Demolition
- Designating a clearance area.

More information on certain hazards

The hazards most likely to exist in all types of dwellings are:

- Damp & mould growth
- Excess cold
- Entry by intruders
- Falling on the level
- Falling on stairs
- Fire

However this will vary depending on, amongst other things, the location, the type, the state of maintenance and age of the property.

The following outline of certain hazards provides an insight into how the HHSRS operates and what factors are taken into account when an assessment is made by the local authority. The scoring system of the HHSRS allows all hazards to be rated against each other for importance within any dwelling. The inclusion or exclusion of any hazard in this section is not an indication of its relative importance. All 29 hazards have the potential to result in harm.

Damp and mould growth

The most vulnerable age group is all persons aged 14 years or under. One in eight children suffer with asthma in the UK.

The hazard covers the health effects from house dust mites and mould or fungal growths resulting from dampness and/or high humidity. It includes threats to mental health and social well-being.

The waste from house dust mites and mould spores are both potent airborne allergens and exposure to these over a prolonged period will cause sensitisation of susceptible individuals. Deaths from all forms of asthma in the UK are around 1,500 a year, of which around 60 per cent has been attributed to dust mite allergy.

Ventilation to any room helps prevent condensation by dispersing water vapour generated by normal household activities. It helps to remove pollutants from within the accommodation and helps to control internal temperatures. Dwellings should be warm and dry with good ventilation. The dwelling should be free from rising and penetrating dampness.

Good ventilation is normally achieved by opening windows. As a rough guide, the minimum level of natural ventilation would be a window with an open area equivalent to not less than 5% of the floor area.

Current building requirements for new buildings require that in rooms such as kitchens and bathrooms, mechanical ventilation should be provided by ducting to the external air. In existing bathrooms or toilets which do not have windows, mechanical ventilation must be provided. Mechanical ventilation in bathrooms/WCs should achieve a minimum of 6 litres per second. The system is often linked to the light switch and should incorporate a minimum 15 minute over-run.

The use of mechanical heat recovery ventilation (MHRV) can provide increased ventilation without the associated heat loss. Their use is recommended, as occupiers are more likely to use MHRV to control condensation as they do not result in cooling of the accommodation and they are energy efficient.

Excess cold

The most vulnerable age group is all persons aged 65 years and over. This is by far the most likely hazard to affect a dwelling. For example, the hazard score for a pre-1946 property will on average mean that a

category 1 hazard exists and action by local authorities is mandatory.

An estimated 31,000 excess winter deaths occurred in England and Wales in 2012/13, a 29% increase compared with the previous winter. It is not hypothermia, but respiratory and circulatory diseases in the elderly which is responsible for most of these deaths. 'The increase in deaths from heart attacks occurs about two days following the onset of a cold spell, the delay is about five days for deaths from stroke, and about 12 days for respiratory deaths.'

Lack of heating also causes increased illness, increased risk of falls, as well as distress and discomfort. Inadequate heating is directly linked to ill health when the internal temperatures start falling below 19°C. It is essential that occupiers be provided with adequate and controllable (preferably central) heating within their accommodation.

British Standards state that a minimum standard of heating is a fixed space-heating appliance to each occupied room. It should be capable of efficiently maintaining the room at a minimum temperature of 18°C, in sleeping rooms, and 21°C in living rooms, when the temperature outside is minus 1°C and it should be available at all times. The adequacy of loft insulation and cavity wall insulation is important and would be considered as part of any HHSRS assessment, as would significant draughts. The heating running costs may also be taken into account when determining if the heating system is adequate or whether a hazard exists.

Falls on stairs

The most vulnerable age group is all persons aged 60 years or over. Although physical injury is the most likely outcome, death may occur several weeks or months after the initial fall injury, due to cardio-respiratory illness, including heart attack, stroke and pneumonia.

Several factors can influence the likelihood of an accident including the following:

- Accidents are nearly twice as likely on stairs consisting of straight steps with no winders or intermediate landings
- Accidents are more likely where the pitch of stairs is more than 42°, and the steeper the pitch, the worse the outcome
- An accident is three times more likely to occur on stairs without carpet covering
- The lack of any handrail doubles the likelihood of a fall, even if there is a wall to both sides of the stairs.

Fire

The most vulnerable age group is all persons aged 60 years or over.

There are approximately 56,000 fires each year reported to the fire authorities, but it is considered that only about 20 per cent of fires are reported. It has been estimated that fires occur in about 3 per cent of all dwellings per year. In 2007 there were 190 deaths with most deaths associated with being overcome by smoke and fumes. Over 80 per cent of accidental fires in dwellings result from occupier carelessness or misuse of equipment or appliances, etc.

Over 65 per cent of fires start in the kitchen, about 10 per cent start in bedrooms and bedsitting rooms, and 10 per cent start in living and dining rooms. Around 90 per cent of fires are confined to the rooms where they started.

There is a greater risk of a fire occurring in flats and bedsits than in houses, where there is also a higher risk of the fire resulting in harm. An adult living in either a self-contained flat or bed-sit accommodation in a building of three or more storeys is around 10 times more likely to die in a fire than an adult living in a two storey house.

Factors to consider include the design, layout and condition of the dwelling, which should be such to reduce the risk of fire starting carelessly, the spread of any fire and allow effective means of escape in the case of fire. Also relevant is the correct design, installation and maintenance of equipment and appliances, especially those provided for cooking and heating; the maintenance and presence of adequate and sufficient electrical outlets; and the use of residual electric current devices (circuit breakers).

The presence or absence of a fire detection and alarm system affects the level of harm suffered. The death rate from dwellings with alarms is less than half of that for non-alarmed dwellings.

The HHSRS Operating Guidance states that properly working alarms, connected to smoke or heat detectors are probably most effective at saving lives in the event of a fire. They provide early warning to the occupants, allowing them to escape before they are overcome by fumes or burned.

For any form of multi-occupied buildings, there should be adequate fire protection to the means of escape and between each unit of accommodation, appropriate fire detection and alarm system(s), and, as appropriate, emergency lighting, sprinkler systems or other fire fighting equipment.

In 2008 the Local Authorities Coordination of Regulatory Services (LACORS) issued national fire safety guidance for landlords and local authorities in England.

The guidance explains the general principles of fire safety and how to carry out and record a fire safety risk assessment. The guidance and further information about fire safety is available from: www.privatehousinginformation.co.uk

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3.7 The Regulatory Reform (Fire Safety) Order 2005

The Regulatory Reform (Fire Safety) Order 2005 (FSO) rationalises existing fire safety legislation in relation to commercial premises into one piece of legislation. The new order also covers domestic properties where there are common parts shared between different dwellings. For example, common hallways and stairwells of blocks of self-contained flats.

The FSO places duties on the person having control of the property to have fire precautions in place, to make sure the property is safe and to carry out fire risk assessments. Where the property is a licensed HMO *[see section 4.3, Licensing of HMOs]* the fire risk assessment needs to be recorded in writing.

The law states that if a full and sufficient fire risk assessment is not carried out on an HMO, the responsible person can face a fine of £5000 for each offence or up to two years in jail.

As there is a cross-over with fire safety requirements under the Housing Act 2004, the West of England local authorities have agreed a protocol with Avon Fire and Rescue Service, which sets out who takes the lead in relation to fire safety in a property. Currently the local authority will take the lead in all residential properties, except hostels, bed & breakfast accommodation, hotels and residential accommodation that shares an entrance with commercial business, where Avon Fire and Rescue Service will take the lead.

Avon Fire and Rescue Service and the West of England authorities have agreed common levels of fire precautions that act as a guide for the majority of properties.

Information on this can be found on the website: www.privatehousinginformation.co.uk

You can also look at the Avon Fire & Rescue Service website for information. www.avonfire.gov.uk

3.8 The First-tier tribunal – Property Chamber (Residential Property)

The First-tier tribunal – Property Chamber (Residential Property) was formerly the Residential Property Tribunal. It determines appeals or applications in respect of Improvement Notices, Prohibition Orders, Emergency Remedial Notices, Emergency Prohibition Orders and Demolition Orders. They also have jurisdiction in respect of HMOs, licensing, Management Orders and Empty Dwelling Management Orders.

The Panel is usually made up of three members, a lawyer, a valuer or property professional and a lay-person. The Tribunal is intended to be much less formal and intimidating than court proceedings. Professional advocates are not required. Preparation of any appeal or application must be thorough, because great attention is given to the substance and detail of cases. The overriding objective is "to deal fairly and justly with applications which it is to determine".

The Tribunal has equivalent status to the County Court and decisions are binding on the parties involved. Decisions of the Tribunal may be appealed to the Upper Tribunal. Appeals to the Upper Tribunal may be made on points of law and must take place within 14 days of receipt of the Tribunal decision. Alternatively, if you consider that there has been a breach of the rules of natural justice, you could seek leave from the High Court to challenge the decision by judicial review. More information on the Tribunal and the Upper Tribunal, along with appeal application forms and other literature can be found on: www.justice.gov.uk/tribunals

3.9 Decent homes standard

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 and Housing Associations to do so.

Standards

A decent home is one that meets all of the following four criteria:

i. It meets the current statutory minimum standard for housing. The property must be free of all Category 1 hazards under the Housing Health & Safety Rating System
ii. It is in a reasonable state of repair. It would fail this if:
   - One or more key building components are old and because of their condition need replacing or major repair.
   - Two or more other building components are old and because of their condition need replacing or major repair.
iii. It has reasonably modern facilities and services. It would fail here if it lacks three or more of the following facilities:
   - A kitchen which is 20 years old or less.
   - A kitchen with adequate space and layout.
   - A bathroom which is 30 years old or less.
   - An appropriately located bathroom and WC.
   - Adequate external noise insulation.
   - Adequate size and layout of common entrance areas for blocks of flats.
iv. It provides a reasonable degree of thermal comfort. The property must have both efficient heating and effective insulation.

Assistance to meet the standard

To meet the decent homes standard, resources will continue to be targeted at vulnerable households, or to landlords who provide accommodation for them. Financial assistance is often only being made available to these groups or they will receive enhanced levels of assistance.

3.10 Gas safety

It is vital that you clearly understand your responsibilities in relation to gas supply and appliances and the duties and responsibilities placed on a landlord by the Gas Safety Regulations.

You or your agent may not contract out of your obligations under the Regulations by including a clause in the tenancy agreement and a breach of the Regulations is a criminal offence enforced by Health & Safety Executive.

Gas safety (installation and use) Regulations 1998

The Gas Safety (Installation and Use) Regulations 1998 make it mandatory that gas appliances must be maintained in a safe condition at all times. You are required by the Regulations to ensure that all gas appliances are maintained in good order and that an annual safety check is carried out by a tradesperson who is registered with GAS SAFE REGISTER.

All GAS SAFE REGISTER installers should carry identification cards which will state on the back the type of work they are authorised to carry out.

For further information about GAS SAFE REGISTER installers and to locate one local to you, see the GAS SAFE REGISTER web-site at: www.gassaferegister.co.uk

Once the inspection has been carried out, the installer will provide you with a gas safety record. A gas safety record must be provided to tenants of properties which contain gas appliances when they first go in, and annually thereafter. Failure to do this is a criminal offence.

You should also arrange (and pay for) any necessary repair work to be carried out and should not seek to place responsibility for this onto the tenants, although if the repairs are caused by the tenants' improper use of the property, then the tenants can be charged for the (reasonable) cost of the repair work.

For further information about your responsibilities, contact the Health and Safety Executive (HSE) for advice. Additional information and details of your local Health and Safety Executive office can be obtained from the Health and Safety Executive 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 face manslaughter charges and jail.

A landlord must:

i. Ensure a gas safety check has been carried out on pipe work, each appliance and flue every 12 months by a GAS SAFE registered installer. The installer must take remedial action if an appliance fails a safety check.
ii. Give a copy of the safety check record to any new tenant before they move in or to an existing tenant(s) within 28 days of the check.
iii. Keep a record of the safety check made on each appliance for two years.
iv. Ensure that gas appliances, fittings, and flues are maintained in a safe condition.

Exceptions to the regulations

i. The Regulations do not apply to gas appliances, which are owned by the tenant.
ii. The Regulations do not apply to leases of more than 7 years unless it can be ended before 7 years from the commencement of the term.
iii. 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.
iv. 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.

Room-sealed appliances

The regulations require that:

- A gas appliance installed in a bathroom or a shower room must be a room-sealed appliance (A room-sealed appliance is an appliance which is sealed from the room in which it is located and obtains the air for combustion from the open air outside the building and the products of combustion are discharged to 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,
  - It must 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.

Concealed room-sealed boiler flues

Some properties, mainly flats and apartments, have been built with boiler flues which cannot be inspected because they are hidden behind walls or ceilings.

The boiler flues that this information relates to are connected to room-sealed fan assisted boilers only.

Gas Safe registered engineers need to be able to see the flue –which take fumes away from the boiler – as part of essential safety checks whenever the boiler is worked on. Otherwise the engineer will classify the boiler as At Risk, this means that they will turn the boiler off, with your permission, and formally advise you not to use it until inspection hatches have been fitted in appropriate places.

If your room-sealed boiler is situated on an outside wall, it is unlikely you have this type of flue. Alternatively, if your engineer can examine all of the flue, you will not need to take any further action in relation to this matter. If you do have a room-sealed boiler where all, or part of, the flue cannot be seen, you will need to arrange for inspection hatches to be fitted.

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.

HSE strongly recommends the use of carbon monoxide (CO) alarms as a useful precaution to give advance warning of CO in a property. The Government is currently considering if CO alarms should be mandatory.

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. You should inform tenants of this in writing and should include a clause explaining the duties in the tenancy agreement. This would include reporting any defect and not using an appliance that is not safe.

3.11 Electrical safety and electrical goods

Landlords are required by law to ensure:

- That the electrical installation in a rented property is safe when tenants move in and maintained in a safe condition throughout its duration.
- That a House in Multiple Occupation (HMO) has a periodic inspection carried out on the property every five years.

If your property is not an HMO, you are not legally obliged to undertake a periodic inspection however you still have a duty to make sure the electrical system is safe.

The Electrical Safety Council (ESC) recommends that a periodic inspection and test is carried out by a registered electrician on your rental properties at least every five years.

- That any appliance provided is safe and has at least the CE marking (which is the manufacturer's claim that it meets all the requirements of European law)

To meet these requirements a landlord will need to regularly carry out basic safety checks to ensure that the electrical installation and appliances are safe and working.

Periodic installation inspection

All electrical installations deteriorate with age and use. They should therefore be inspected and tested at appropriate intervals to check whether they are in a satisfactory condition for continued service. Such safety checks are commonly referred to as 'periodic inspection and testing'.

A periodic inspection will:

- Reveal if any of your electrical circuits or equipment are overloaded.
- Find any potential electric shock risks and fire hazards.
- Identify any defective electrical work.
- Highlight any lack of earthing or bonding.

Tests are also carried out on wiring and fixed electrical equipment to check that they are safe. A schedule of circuits is also provided, which is invaluable for a property.

How often is a periodic inspection required?

Your electrics should be inspected and tested every 5 years for a rented home.

Who should carry out the periodic inspection and what happens?

Periodic inspection and testing should be carried out only by electrically competent persons, such as registered electricians. The Electrical Safety Register is an online database with details for over 36,000 registered contractors, based throughout the UK. www.electricalsafetyregister.com

The inspection takes into account all the relevant circumstances and checks on:

- The adequacy of earthing and bonding.
- The suitability of the switchgear and controlgear. For example, an old fusebox with a wooden back, cast-iron switches, or a mixture of both will need replacing.
- The serviceability of switches, sockets and lighting fittings.
- The type of wiring system and its condition. For example, cables coated in black rubber were phased out in the 1960s.
- Sockets that may be used to supply portable electrical equipment for use outdoors, making sure they are protected by a suitable residual current device (RCD).
- The presence of adequate identification and notices.

- The extent of any wear and tear, damage or other deterioration.
- Any changes in the use of the premises that have led to, or may lead to, unsafe conditions.

The competent person will then issue an Electrical Installation Condition Report detailing any observed damage, deterioration, defects, dangerous conditions and any non-compliances with the present-day safety standard that might give rise to danger.

If any dangerous or potentially dangerous condition or conditions are found, the overall condition of the electrical installation will be declared to be 'unsatisfactory', meaning that remedial action is required without delay to remove the risks to those in the premises.

Safety checks on the electrical appliances

As a landlord you are required to take reasonable steps to ensure that the appliances you provide are safe. One way of doing this is to carry out regular basic safety checks.

It is also recommended that an Interim Electrical Safety check is carried out between lettings, a checklist can be found on the ESC website www.esc.org.uk

For example, you and/or your tenant should check that:

i. there are no cuts or abrasions in the cable covering (sheath)
ii. the outer covering of the cable is gripped by the cord grip in the plug top, so that no coloured cable cores are visible from outside of the plug
iii. the plug has no cracked casing or bent pins
iv. there are no signs of overheating or burning, particularly at the plug and socket
v. there are no loose parts or screws
vi. no part of the appliance is damaged or missing

Most dangerous defects in electrical appliances can be identified by carrying out such simple checks. Alternatively you can arrange for a Portable Appliance Test (PAT Test) to be carried out on the appliances that you provide for your tenants. This is the best way to demonstrate safety of appliances provided.

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 certain areas of 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. High-risk areas such as bathrooms and kitchens are exceptions. All work that involves adding a new circuit or in certain areas of bathrooms and kitchens will need to be either notified to Building Control with a Building Regulations application, or carried out by a competent person who is registered with a Part P Self- Certification Scheme.

More details can be found in 'Approved Document P' published by the DCLG 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 you, the landlord.

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

3.12 Furniture and Furnishings (fire) (safety) Regulations 1988

If you are providing furnished accommodation you need to understand your responsibility to provide safe furniture and furnishings, in particular in relation to fire safety.

The Furniture and Furnishings (Fire)(Safety) Regulations 1988 set safety standards for fire and flame-retarding requirements for upholstered furniture. 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.

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-retarding properties. Such a label will indicate compliance, although lack of one would not necessarily imply non-compliance as the label might have been removed.

Generally, if second-hand furniture has not been brought 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
- Sofa beds, futons and other convertibles
- Scatter cushions and seat pads
- Pillows
- 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.

Further information can be obtained from the publication 'A Guide to the Furniture and Furnishings (Fire) (Safety) Regulations' available on www.privatehousinginformation.co.uk

3.13 Waste and Recycling

Each local authority has a different arrangement for waste and recycling collections. It is advisable for landlords to inform tenants when and how recycling and rubbish collections are made. Contact your local authority for full details of your scheme; they will usually produce leaflets that you can download to give to your tenants.

3.14 Asbestos

Landlords have a responsibility to identify and manage the risk associated with any asbestos present in the property. Landlords should therefore take reasonable steps to find asbestos in the premises and assess the condition of these materials, pass any relevant information on to new tenants and contractors. For more information see www.hse.gov.uk

The most commonly used asbestos product in homes is asbestos cement. It was widely used as a cladding material and can still be found in garages, sheds and around the home. It is also found in things like guttering, down-pipes, corrugated sheets, wall panels, flue pipes and soffit boards.

If you believe you have any materials in your property that my contain asbestos, it is best to assume that they do contain asbestos and leave them alone. Moving or disturbing asbestos materials can release fibres which could be harmful to people.

3.15 Smoking in rented properties

A landlord can choose whether to allow smoking in their properties. If smoking is not permitted, there will be a clause in the tenancy agreement that states this. This would apply both to tenants and their guests.

In HMOs, additional regulations apply; under the recently introduced smoke-free laws, smoking is prohibited in the shared areas of HMOs, such as stairs, corridors and communal rooms. No Smoking signs should be displayed in these areas. For signage and more information on the smokefree regulations, visit www.smokefreeengland.co.uk

3.16 Glazing

If you are buying replacement glazing, safety glass must be used in critical locations, as follows:

- Any glazing that is less than 800mm from the floor
- Any glazing in a door that is less than 1500mm from the floor, or within 300mm either side of a door

Small glass panes (with a smaller dimension up to 250mm, and a total area up to 0.5m^2) do not need to be made of safety glass if they are thick enough (6mm in most cases). However if you are buying a replacement door, for example, with small panes, it is better to choose safety glass if it is available.

3.17 Responsibility for meeting safety requirements

If you use a managing agent, the contract you have with them should define who is responsible for ensuring the property complies with the relevant safety standards and who will apply for a property licence if appropriate.

4. HOUSES IN MULTIPLE OCCUPATION (HMOs) AND LICENSABLE PROPERTIES

4 Houses in multiple occupation [HMOs] and licensable properties

Special requirements apply to types of properties known as 'Houses in Multiple Occupation' (HMOs) and some properties require a licence by law.

4.1 What is an HMO?

Broadly speaking, an HMO is one of the following:

- A shared house
- A house divided into bedsits
- An individual flat; lived in by three or more people who belong to more than one family and who share one or more facilities
- A building of self-contained flats that should have but does not meet 1991 Building Regulation standards where less than two thirds of the self-contained flats are owner occupied

Exemptions:

- If it is occupied by the owner (and their family if any) and one or two lodgers
- If it is occupied principally for the purposes of a religious community
- If the occupiers have their main residence elsewhere (Accommodation used by full-time students while they are studying is counted as their main residence)
- If none of the occupiers are required to pay rent or give other consideration in respect of the living accommodation
- If the owner or manager is a specified public body eg. NHS
- If the owner or manager is an educational institution eg. University Halls of Residence
- A building of self-contained flats if two thirds or more of the flats are owner-occupied
- If the property is part of a guest house or hotel (unless an 'HMO Declaration' is made)
- Only occupied by two people

The definition of an HMO is contained in sections 254 and 257 of the Housing Act 2004. An HMO can be a whole building or part of a building (e.g. a block of flats might not be an HMO, but one of the flats within the block could be an HMO).

What is licensing?

A property must have a licence issued by the local authority if all three of the following apply:

- It is an HMO and;
- It is three storeys or more (includes commercial storeys above and below and loft conversions) and;
- It is occupied by five people or more

or

- it is subject to an additional or selective licensing scheme (currently in operation in areas of Bristol, Bath and North Somerset)

See section 4.3 for information on licensing.

If you should have applied for a licence and don't, you could be prosecuted and fined up to £20,000 and rent reclaimed.

4.2 Duties upon the manager of all HMOs

The Management of Houses in Multiple Occupation (England) Regulations 2006 place the following duties upon the manager of a house in multiple occupation (HMO). Failure to comply with the regulations without a reasonable excuse is a criminal offence. The local authority could prosecute for failure to comply with the regulations and on conviction a landlord could be fined £5000. 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 clearly displayed in a prominent position in the HMO (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
- In HMOs of more than four occupants, notices indicating the location of means of escape from fire must be displayed so they are clearly visible to all occupiers.

Duty to maintain 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 5 years and a results certificate obtained
- The latest gas safety record and electrical safety test results must be provided to the council within 7 days of the council making a written request for this.

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.

Duties on occupiers of HMOs

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

These duties include:

- Not to obstruct the manager in the performance of their duties
- Allow the manager access to the accommodation at all reasonable times for the purpose of carrying out their duties
- Provide information to the manager which would be reasonably expected to enable them to carry out their duties
- Act reasonably to avoid causing damage to anything the manager is under a duty to supply, maintain or repair
- Store and dispose of litter/refuse as directed
- Comply with reasonable instructions of the manager as regards to any fire escape, fire prevention measures and fire equipment.

The Regulations require that the specified duties are met and maintained. If an occupier breaches their duties under the Regulations it is likely to put their tenancy at risk, and you may be able to take legal action against the tenant. They can also be prosecuted by the local authority with a maximum fine of £5000. So tenants are liable to being prosecuted and fined in the same way as landlords if they fail to comply with the regulations.

4.3 Licensing

The Housing Act 2004 introduced licensing of some categories of HMOs. It is compulsory to licence larger, higher-risk dwellings. Local authorities are able to licence other types of rented properties through additional or selective licensing if they can establish that other avenues for tackling problems in these properties have been exhausted.

Purpose of licensing HMOs

Licensing is intended to make sure that:

i. A landlord is a fit and proper person (or employs a manager who is)
ii. Each HMO is suitable for occupation by the number of people allowed under the licence
iii. The standard of management of the property is adequate.

This is to ensure vulnerable tenants are protected and that the dwelling is not overcrowded.

High-risk HMOs can be identified through licensing and targeted for improvement by a local authority using the HHSRS.

If you are the landlord of a licensable HMO you must apply to the Local Authority for a licence. More information about mandatory HMO licensing can be found on the website: www.privatehousinginformation.gov.uk

For clarification of whether or not your property is licensable contact your local Environmental Health team. *[see Appendix 2 - Useful Contacts for Landlords]*

Failure to apply for a licence is a criminal offence. The local authority may prosecute for failure to apply for a licence. On conviction you could be fined up to £20,000. In addition, your tenants could apply for a rent repayment order which entitles them to receive the rent for the period your property was without a licence. If the Council pays housing benefit, the Council can apply for the rent repayment order.

Applying for a mandatory licence

Anyone who owns or manages a licensable HMO has to apply to the local authority for a licence. HMO licence application forms for the West of England local authorities can be found at: www.privatehousinginformation.co.uk

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 is a fit and proper person or that the proposed manager, if there is one, is fit and proper
- 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 the HMO is competent and the financial structures for the management are suitable.

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. They have to consider among other things:

- 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.

All cases will be considered on their own merit.

Licence conditions and fees

A mandatory licence, which will normally last for the maximum five year period, will carry a fee to be charged by the local authority to cover their administration costs. This fee will vary with the size of the property and the number of occupants. There may also be discounts or rewards available.

The licence will specify the maximum number of people who may live in the HMO. 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.

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 HMO by occupants
- Action necessary to deal with the behaviour of occupants or visitors
- Ensuring the condition of the property, its contents, such as furniture and all facilities and amenities (e.g. bathroom and toilets) are in good working order and to carry out specified works or repairs within certain time limits
- A requirement that the responsible person attends an approved training course in relation to any approved code of practice.

A full list of HMO licensing conditions can be obtained from the licence application form, available at: www.privatehousinginformation.co.uk

Additional licensing of HMOs

Local Authorities have a discretionary power to establish a scheme to require particular types of HMO within their area to be licensed. This can apply to any type of HMO provided it isn't already mandatorily licensable, nor exempted by the Act (for example student halls of residence, housing association owned properties).

Before they can set up such a scheme, the 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 for up to five years.

At the time of printing, Bristol, BANES and North Somerset Councils have introduced additional licensing schemes, please contact your council for full details.

Selective licensing

Local authorities have the power to selectively licence any privately rented properties, other than HMOs in designated areas suffering from low housing demand and/or significant and persistent anti-social behaviour.

A similar process to that for Additional Licensing must be followed before a scheme can be made. A scheme does not come into effect until 3 months after it is made and may last for up to 5 years.

At the time of printing, Bristol Council has introduced a selective licensing scheme, please contact your council for full details.

Properties which cannot be granted a licence

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 the property is supposed to be licensed but cannot be granted one, the council must make an Interim Management Order (IMO), which allows it to manage the property.

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.

Temporary exemption from licensing

If the landlord or person in control of the property intends to stop operating or legally reduces the numbers of occupants and can give clear evidence of this, then they can apply for a Temporary Exemption Notice (TEN). The Council can only grant if it is appropriate to do so.

A TEN lasts for a maximum of three months and ensures that a property in the process of being converted 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 runs out the property must be licensed or become subject to an Interim Management Order.

If the licence holder dies a Temporary Exemption Notice can be applied for by the estate. 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. If it takes longer than the initial three months the estate can apply for one further exemption notice.

Right of appeal against a local authority's decision

A landlord can appeal to the First-tier tribunal – Property Chamber (Residential Property), normally within 28 days if the local authority refuses a licence, grants a licence with conditions, revokes or varies a licence.

More information about the work of the Tribunal Service and the jurisdiction of Tribunals under the Housing Act 2004 can be obtained from: www.gov.uk/tribunals

Offences

It is a criminal offence if the landlord or manager 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 without reasonable excuse. 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.

Where a property is rented via a managing agent, both the landlord and the managing agent will commit an offence if a licence is not applied for.

Should a landlord fail to apply for a licence or meet licence conditions, the Council may also reconsider whether the landlord meets the "Fit and Proper Person" test to hold a licence.

Note also, that no section 21 notice *[see section 6.7 for more information about section 21 notices]* may be given in relation to a shorthold tenancy of a part of an unlicensed property so long as it remains let. This means that unlicensed landlords will be unable to evict their tenants by the notice-only section 21 procedure.

Rent repayment orders

The Local Authority may apply to the Residential Property Tribunal 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.

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5. DURING TENANCY

5 During Tenancy

5.1 Routine visits

You will need to keep an eye on your properties and ensure that things are running smoothly. To do this most landlords carry out regular inspection visits, just to check that everything is all right and to see if there is any essential repair or other work that needs to be carried out.

You should however note the following:

- Any terms in the tenancy agreement regarding inspection visits must always comply with the law, for example they should not provide for unreasonable access (or they will be void under the regulations)
- You have a duty to carry out repairs within reasonable time limits, emergency repairs should be responded to more quickly
- You should give tenants as much warning as possible of inspection visits - at least 24 hours notice in writing, except in an emergency
- You (or your agent if your property is managed by an agent) should be available to be contacted by telephone during normal working hours and have an emergency procedure in place for other times
- Quarterly visits are normal.

You should keep sufficient records relating to the property and any repair work done by you.

5.2 Rights of entry and refusal

It is the tenant's right not to be unreasonably disturbed or harassed whilst living in the landlord's property *[See harassment section 6.11].* The landlord is giving the tenant the right to occupy the property as their home, and is not entitled to enter without permission.

It is advisable to set out the arrangements for access and procedures for getting repairs done in the tenancy agreement. The landlord or landlord's agent has the legal right to enter the property at reasonable times of day to carry out the repairs for which the landlord is responsible and to inspect the condition and state of repair of the property. However he must give at least 24 hours written notice before doing so; other than by mutual agreement, or in genuine emergencies.

It is the tenant's right to refuse access if the tenant wishes. If access is refused the landlord cannot enter - this is because the tenant's right to exclude people from the property overrides the landlord's right of access if the two are in conflict. However, refusal to let the landlord inspect at all, will put the tenant in breach of the tenancy agreement.

Normally a tenant will refuse access because they wish to be present at the inspection visit and the suggested appointment date is not convenient. This is entirely reasonable and is indeed in the landlord's favour to have the tenant present as it will then be less difficult for the tenant to raise any accusations of theft against the landlord if items go missing in the property.

The landlord should seek legal advice from a landlords association or legal advisor if the tenant will not provide access to the property at all.

If a tenant will not give their consent for work to be carried out, then you may apply to the court for an order to enter and carry out the works.

An order can be made subject to conditions regarding the time at which the work is carried out. It may possibly require alternative accommodation arrangements depending on the extent of the works.

Note however, that if the tenant is injured in a situation where they have refused to allow access for the relevant repair work to be done, the tenant cannot then claim against the landlord for damages as it will be their fault that the problem has not been rectified.

Emergency procedures

There are times when the property may have to be entered as a matter of emergency. Statutory Bodies can do so and the most common examples to enter, inspect and carry out repairs are:

- **Gas** – contact the National Grid emergency number 0800 111 999
- **Water** – sewage and/or flooding – contact the utility company responsible for water in your region, Wessex Water on 0845 600 4600, if closing the stopcock is ineffective
- **Suspicious circumstances relating to criminal activity** – liaise with the police
- **Private Housing** - Environmental Health

If you are in dispute with your tenant, it is best to allow these organisations to enter the property under their statutory powers rather than enter the property yourself, as this will prevent the tenant from making allegations of unlawful entry and harassment against you.

5.3 Tenant obligations and responsibilities

Tenants have rights and obligations and responsibilities. All councils and landlords wish to encourage responsible letting and advise tenants of their duties, in particular:

- To keep to the conditions of the tenancy agreement
- Not to cause noise, nuisance or other disturbance to neighbours
- To allow access to the property in order for necessary repairs to be carried out subject to reasonable notice and at a reasonable time
- To take reasonable care of the property
- Take reasonable care not to hinder or frustrate the manager/landlord in carrying out their duties
- Comply with all reasonable refuse storage and disposal arrangements; and
- To take reasonable care and not to damage or disable any fire precautions, warning signs or installations and not to obstruct any means of escape.

5.4 Changing the terms of an assured or an assured shorthold tenancy & tenancy renewal

If the tenancy is a fixed term or contractual periodic tenancy, the landlord can only change the terms 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 you have the option of serving a section 21 notice and ending the tenancy.

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, and annually thereafter using a special procedure under the Housing Act 1988. There is a special form which needs to be used, and this needs to be served on the tenant. This procedure is often used for rent increases, particularly for assured tenancies but rarely for amending the terms of the tenancy agreement. You 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 new terms cannot be agreed.

5.5 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 agreement of the landlord 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.

If the agreement does not allow the tenant to end the tenancy early and the landlord does not agree that he or she can break the agreement, the tenant will be contractually obliged to pay the landlord the rent for the entire length of the fixed term. Landlords may agree with the tenant that both of them will try to find a new tenant. Reasonable re-letting costs can be charged for. Once a new tenant is found, there should be no 'double charging' 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. A tenant's notice must end either on the last day of period of the tenancy, or on the day when, but for the notice, a new period would commence. (in most cases this means a tenant's notice may end on the day before the rent is due, or on the day the rent is due. *[See section 6, Ending a tenancy]*

In the absence of express terms to the contrary, where there are joint tenants, the notice may be given by one of them without the concurrence of the others. However, a short notice or a notice exercising a break clause must be given by all of them.

Should a tenant give a valid notice to quit (ie in writing, correct length and expires on correct day) and the tenant fails to leave on the date provided in the notice, then the landlord is entitled to double the rent that was due before the notice expired. The landlord must treat the tenants as trespassers for this to apply ie he must not agree to them remaining in occupation.

5.6 Preventing & controlling rent arrears

It is the tenant's responsibility under the tenancy agreement to ensure that their rent payments do not fall into arrears. It is the legal responsibility of the tenant to ensure that their rent is paid to the landlord in accordance with the requirements of their tenancy agreement, and there is no legal obligation upon the landlord to remind tenants when the rent is due, nor

to chase them for payment. However undue financial hardship to tenants can be alleviated if arrears are identified at an early stage and tenants are given the opportunity to seek specialist advice. To this end, you should develop rent arrears procedures to identify those tenants who have a problem paying their rent and ensure that action is quickly taken to try and resolve the difficulty.

It is important therefore that you review rent accounts on an ongoing basis.

If the tenant receives Housing Benefit and is in arrears with their rent by 8 weeks or more, the landlord has the right to ask the Housing Benefit department for direct payments.

There is a 'pre-action protocol' in existence for claims for possession based on rent arrears which is now part of the court rules. This only applies to social landlords and so need not worry you. However you may care to read it, as it sets out procedures some of which you may like to follow, even though they will not be legally binding on you in the same way as they are on council and registered social landlords. See www.justice.gov.uk

Triggers for arrears

The reasons for arrears are many and varied. It is important to recognise the warning signs and intervene promptly and effectively but also sensitively.

Some common triggers are:

- Change in relationships
- Change in circumstances, death or job loss
- Tenant may be making a 'counter claim' for disrepair.

If rent is not paid the landlord is able to take action to obtain possession of the property through the courts, or to use a number of other legal remedies to obtain settlement of the debt. Obviously, it is in the landlord's interest to obtain payment of rent rather than possession of the property and, therefore, comprehensive procedures can be developed to not only remind the tenant when rent is due, but to encourage payment and to provide as many payment options and arrangements as possible.

Options to recover arrears, other than possession proceedings

Possession proceedings are potentially costly and you may want to look first at other forms of recovery. However, this does not mean that possession proceedings should be delayed whilst other options are explored.

The main options available, other than or along side possession proceedings are:

Non-court related options:
Arrears may be pursued by letters, phone calls or visits, however although a certain amount of chasing is acceptable, you should not do anything which can be construed as harassment.

Court related options
You can bring a claim in the small claims court for a county court judgment (often referred to as a CCJ) for the arrears.

If the tenant contests the claim you will normally need to complete a long form, called an allocation form, so the case will be assigned to the appropriate court procedure which for claims with a value of less than £5,000 will be the 'small claims track'. When doing this the judge will consider this form, make 'directions' for the future conduct of the case and, for most small claims, set it down for a hearing.

This however is often of limited value - if the tenant is genuinely unable to pay rent they will also be unable to pay a judgment debt. However, many tenants will make a greater effort to pay if they think you are going to apply for a CCJ as the registration of a CCJ against their name will affect their credit rating.

There is a series of very useful leaflets published by the court service, which are available at most court offices and online at: www.hmcourts-service.gov.uk

These describe how to make a claim, and also how to enforce any judgment made, which is not paid by the defendant, though the courts.

Court related options – enforcement:

Once you have your county court judgement there are various methods of enforcing this through the courts if the tenant fails to pay voluntarily. Note that in the enforcement stage, the claimant is often referred to as the 'judgement creditor' and the defendant as the 'judgment debtor'.

Here are a few of the most common enforcement methods used:

- **Enforcement via the county court bailiffs** - this is where the bailiff goes round and removes the defendants possessions, eventually (if they do not settle the debt) to sell at auction. You can also transfer a case where there is a judgement for over £600, up to the High Court for enforcement by the High Court Sheriffs, who are considered to be more efficient than the county court bailiffs, but you may need the help of a solicitor to do this.
- **Third Party Payment Orders** - this is where an order is made that someone who owes the defendant money pays it to you, rather than to the defendant. It is most commonly used against banks when the defendant has an account in credit. The problem is that many tenants with rent arrears will be overdrawn at the bank.

- **Attachment of Earnings Orders** - this can only be used if the defendant has a job (i.e. not if he is self employed). The court will order the employer to pay part of the defendant's salary to you on a monthly basis until the debt is settled.

The court service produces some helpful leaflets on the enforcement of county court judgments, which can be obtained from any court office or online at: www.hmcourts-service.gov.uk

Options to recover arrears – possession proceedings

If you are unable to obtain payment of your rent from the tenant, eventually you will have to go to court to obtain an order for possession (unless you are prepared to allow the tenant to live in it rent free). There are two types of proceedings that are commonly used, a claims for possession on the rent arrears ground or a section 21 notice *[See section 6.2].*

5.7 Enforcing Tenancy Conditions

Legal action to enforce tenancy conditions

The tenancy agreement sets out the conditions of tenancy for both the landlord and the tenant. Where tenants breach the tenancy conditions the landlord may take action, either by negotiation and/or by proceeding through the Courts.

You should negotiate with all parties concerned to try and resolve disputes. However, where this does not result in a satisfactory conclusion, you may take legal action as necessary. This legal action may include obtaining injunctions and/or possession proceedings.

The landlord will need robust evidence to prove the breach, as dispossession of somebody's home is a very serious matter *[See section 6.2 on possession]*.

Note that in most cases it will be far better to obtain possession via the quick and simple section 21 procedure *[See section 6.7]*, even if you have to wait a couple of months before you can start court action. Claims for possession under the discretionary grounds can become complex, long-winded and expensive.

If the problem with your tenant is so urgent that immediate legal action is necessary (and in reality few cases are this urgent) you should obtain legal advice before taking any action and ideally should use a solicitor experienced in possession proceedings. Note that it may be expensive however, particularly if you are looking to obtain an injunction.

Legal action by the tenant to enforce tenancy conditions

If a tenant does not want to use the court system or if it is more a case of complaint about an administration matter, tenants can make a complaint to their local authority. Local authorities have extensive powers under various legislation, so if you receive a letter from them you should take it very seriously and either contact the local authority to deal with the problem or take legal advice.

Perhaps the most common legal action by tenants against landlords is for disrepair. Before bringing a claim for disrepair tenants are now obliged to follow the disrepair pre-action protocol which is part of the county court rules. This provides for preliminary letters to be sent to you setting out the tenant's complaints. If the tenant issues proceedings before following this procedure the judge will normally adjourn the claim to allow the preliminary matters to be dealt with. You will find the pre-action protocol on the Ministry of Justice web-site at: www.justice.gov.uk

If a valid claim is made against you based on disrepair, you should seek to get the repairs done as soon as possible to minimise any compensation claim which may be made against you.

If complaints are made against you for any other reason, unless it is something you accept and can resolve quickly, you should seek legal advice.

Mediation

Mediation is a process in which a skilled and impartial third party helps people in dispute to reach a mutually acceptable agreement without incurring the time and expense of court action. Mediation or alternative dispute resolution models have been successfully used in a range of circumstances apart from neighbour disputes /harassment, e.g. family, organisational, and victim-offender contexts.

Community mediation schemes are growing but the geographical spread is not uniform and many have ongoing funding difficulties. Mediation U.K. is the umbrella organisation for all types of conflict/dispute resolution.

There are many different models but the most common involves indirect mediation initially where contact is made separately with each party to build a relationship, establish key facts, work out important issues, look at options and develop a joint action plan. Such 'shuttle diplomacy' where the mediators listen to both sides and convey messages between them may itself resolve the conflict. This also might be important if one or both parties refuse to meet face-to-face.

Mediation is good for complex problems such as some repairing issues and disputes over damage deposits. However if the problem is that the tenant is not paying rent, mediation is not really appropriate. You do not want to sit around while the rent arrears mount higher and higher waiting for the matter to be resolved by

mediation. For some problems, particularly rent arrears, an order for possession is the only answer.

To find out about mediation services in your area, speak to your local Citizens Advice Bureau or local authority housing adviser. You could also consult a mediation specialist who have a web-site at: www.nationalmediationhelpline.com

5.8 Nuisance and Anti-social behaviour

Anti-social behaviour: definition

Anti-Social Behaviour (ASB) is any behaviour that causes or is likely to cause alarm, distress or harassment to one or more people not of the same household or which causes a nuisance and annoyance and is of a serious and persistent nature.

Anti-social Behaviour is the umbrella term which includes, for example, causing nuisance, harassment, hate crimes, neighbour disputes and noise complaints.

Dealing with anti-social behaviour

Landlords may experience problems relating to anti-social behaviour either where their tenant is causing the problem or where the tenant is the victim of ASB.

Every day problems such as noise or lifestyle differences can usually be sorted out by mediation. Local authorities may be able to put landlords in touch with a local mediation service. These are usually operated by charitable organisations with services offered at no cost *[see section 5.7 for information on mediation].*

Landlords are able to resolve most ASB involving their tenants through swift, proportionate action such as a verbal or written warning. Repeated issues can be addressed through voluntary behaviour contracts or final warnings.

In serious or persistent cases where you are not able to resolve the problem through informal measures for example:

- Where there are threats or violence, or
- Where the parties will not agree to mediation or do not heed your formal warnings

There are some changes currently going through Parliament expected to be introduced in late 2014.

You should contact the local authority's Anti-Social Behaviour team or the police for assistance. Or alternatively you can seek to evict the tenant, preferably under the 'no fault' section 21 procedure *[See section 6.7].*

If the Tenant is the victim

They should keep an accurate record of the problem and events as they happen.

If the Tenant is behaving anti-socially

Landlords need evidence of anti-social behaviour in order to take action (unless they are using the section 21 eviction procedure). The nuisance has to be substantial and persistent, not just a one-off incident.

You should speak to the people complaining and gather evidence of names and addresses of people affected as well as dates/times/detail of incidents. Further supporting evidence may be sought from other neighbours and agencies such as the local authority's environmental health services or the police who may also have received complaints.

Once the evidence has been gathered the landlord can take the appropriate action. This may initially just be talking to the tenant about the matter. If this doesn't resolve the problem then the matter can be put to the tenant in writing. You can inform the tenant that as the landlord you have the legal right to obtain possession of the property if you can prove to a court that the tenant's behaviour has created a nuisance to neighbours and that you intend to apply to the court if the matter is not resolved.

If landlords decide to bring this sort of claim, they should take care that their action cannot be construed as being discriminatory in anyway, and that they cannot be accused of racial or other harassment.

The option to pursue will be determined by the circumstances of the case. Dealing with neighbour disputes can have repercussions for the landlord/complainant and, therefore, it is important to seek legal advice.

Legal Action against anti-social behaviour

If the matter does go to court in a claim based on anti-social behaviour grounds, it can take anything from under 6 months from the date they first notify the landlord to reach court, to a much longer period if it needs to go to a higher court on appeal. This has been made a little easier as the new procedures for housing possession cases in court are introduced in accordance with the Housing Act 1996 and Anti-social Behaviour Act 2003.

If the landlord takes action in the case of neighbour disputes the landlord is the claimant, the complainant may have to attend County Court as witness, perhaps a "Pre - Trial Review" (although unlikely), and possibly High Court and beyond, if an appeal is made by either party.

Therefore if a landlord has a tenant who is behaving in an anti-social manner, the best course of action is to

bring a claim for possession under the 'no fault' section 21 procedure at the earliest opportunity.

This is cheaper and quicker and is also less likely to antagonise the tenant as you will not be citing any anti-social behaviour in your court proceedings which he will wish to dispute.

There is no defence to a properly drafted section 21 claim and so you will not be faced with the possibility of the judge deciding that the tenant needs a 'second' chance to improve his behaviour.

Action for possession for nuisance

In some county courts it is extremely difficult to obtain a suspended possession order or outright order for a claim based on nuisance.

A lot of evidence must be collected and presented as sometimes witness statements are not enough. However issuing a Notice of Seeking Possession (NSP) may increase the likelihood of later obtaining an injunction to stop the alleged nuisance.

Nuisance is a 'discretionary' ground for possession that means that the court does not have to agree to the landlord's request to evict if it thinks the landlord is being unreasonable or can't prove his case *[See section 6.2 on possession]*.

If you wish to bring proceedings on this basis, it is advisable to liaise with the local authority's ASB Unit for help and advice when taking possession action.

However again, it is frequently possible to avoid all these problems by simply bringing a claim for possession under the section 21 procedure. Unless the situation is so serious that it cannot wait, in which case you should take legal advice from a solicitor experienced in this type of work.

Selective Licensing and Anti-social Behaviour

Local authorities have the power to declare Selective Licensing Schemes in an area suffering from significant and persistent anti-social behaviour. If a selective licensing scheme is introduced, landlords renting properties will have to comply with licensing conditions specifically referring to anti-social behaviour. These may include clauses such as the following:

- Require and retain a reference from each tenant including information about anti-social behaviour, acting in a non-tenant-like manner and any problems in respect of payment of rent.
- On request from other landlords, provide an honest, factual and accurate reference relating to existing or past occupiers.
- Issue new tenants with a tenancy agreement including anti-social behaviour clauses.
- Have facilities to receive and respond to complaints about the behaviour of tenants or their visitors.
- Take all reasonable practical steps to deal with and prevent anti-social behaviour.
- Take all reasonable steps to ensure that the property is not used for illegal or immoral purposes.
- Ensure that the property is inspected on a regular basis to assess evidence of anti-social behaviour.
- Take all reasonable steps to keep the exterior of the property free from graffiti and fly posters.

For more information on Selective Licensing, *[See section in 4.3]* or contact your local authority.

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6. ENDING A TENANCY

6 Ending a tenancy

This section covers what happens when an assured or an assured shorthold tenancy ends, how you can terminate a tenancy and how to gain lawful possession of your premises.

6.1 Termination of the tenancy by the tenant

Termination of a fixed term tenancy

If the tenant has a fixed term tenancy but wants to terminate this before the end of the term, they can only do so legally:

- with your agreement
- if this 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.

If the agreement does not allow the tenant to terminate early and you do not agree that he or she can break the agreement, the tenant will be contractually obliged to pay you the rent for the entire length of the fixed term. If the property is handed back, you have a duty to try and mitigate the tenant's loss (future rent) by re-letting the property. Reasonable re-letting costs can be charged for this. Once a new tenant is found, there should be no 'double charging' for the same period.

End of a fixed term assured shorthold tenancy

When an assured shorthold tenancy comes to the end of the fixed term, any replacement tenancy agreed by you will automatically be on assured shorthold terms unless you set up a replacement tenancy as an assured tenancy.

There is no statutory requirement for a tenant to serve notice to end a fixed term tenancy, and the tenant is perfectly entitled to leave without giving you 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 let you know whether or not they will be leaving so you can make arrangements for the property to be checked and the damage deposit returned to them should be valid.

If you do 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 you replace it, the tenant leaves or you seek possession from the tenant though the courts.

Some landlords think that if tenants stay on after the end of the fixed term they are unauthorised 'squatters'. This is not the case. They are still tenants and are legally entitled to be there.

When the fixed term of an assured shorthold tenancy ends you can:

i. Agree a replacement fixed term shorthold tenancy
ii. Agree a replacement assured shorthold tenancy on a periodic basis called a contractual periodic tenancy
iii. Do nothing and allow the assured shorthold tenancy to run on with the same rent and terms, under a statutory periodic tenancy
iv. Start proceedings for possession under the section 21 procedure if you require vacant possession and the tenant has not left, provided you have already served a properly drafted section 21 notice and the correct notice period has been given and has expired *[See section 6.2 on possession].*

If you need to regain possession of the property at short notice, make sure you have served a section 21 notice well in advance and follow option (iv).

If option (i) is chosen you will only be able to regain possession during the fixed term on one of grounds for possession in the Housing Act 1988 (as amended), grounds 2, 8, 10 to 15 or 17 *[See section 6.2]*.

Once the fixed term has ended, again you will be able to regain possession, provided you have given the tenant two months notice.

Note that the giving of a new tenancy agreement to the tenant will cancel any notices for possession already served on the tenant and you will have to serve fresh ones.

6.2 Grounds for possession: Housing Act 1988 (as amended)

The Housing Act 1988 as amended by the Housing Act 1996 lays down certain circumstances (grounds) under which a landlord applying for possession of a residential property may be successful. The grounds for possession fall into two categories: mandatory, where the tenant will definitely be ordered to leave if you can prove the ground exists, and discretionary, where the court can decide one way or the other (i.e. the Judge has a 'discretion' whether or not to make the order).

Mandatory grounds 1 to 8

Grounds 1 to 5 are prior notice grounds which means they can usually only be used if you notified the tenant in writing before the tenancy started, that you intended one day to ask for the property back on one of these grounds. For example Ground 1 can be used if the

property let was or is intended to be after the let, your own home. Ground 2 relates to a mortgagee's right to possession and if the property is subject to a mortgage you will often be required to serve this notice on your tenants. Ground 3 relates to lets for out of season holiday homes, grounds 4 and 5 are not relevant to most private landlords.

Ground 6 relates to recovery of possession when the landlord needs to carry out substantial building works. It cannot be used by landlords by purchase. You should seek legal advice if you are looking to use this ground.

Ground 7 can be used to recover possession after the death of the tenant where the tenancy has devolved under their will or intestacy.

Ground 8 relates to serious rent arrears and is the main mandatory ground which will be used by landlords. This ground will be satisfied if both at the time of service of any Section 8 notice (see further below) and at the time of the court hearing, the tenant is in arrears of rent of either two months or eight weeks. So if the monthly rent is £400 or £100 per week, the arrears must total £800 or more at these two dates. If the tenant brings the arrears down to less then two months before or at the hearing for possession the ground will not be made out. However you will have the rent!

Note that it is unwise to use this ground if the tenant has a valid ground for complaint against you, as they could seek to defend and counter claim on this basis. It is wise therefore to resolve any disputes, for example regarding disrepair, before proceeding to recover possession based on the rent arrears ground (this will not apply however to claims for possession under the section 21 route).

When an order for possession has been obtained under a mandatory ground, the order will normally be effective in 14 days. The judge's powers to stay and suspend the order are limited to six weeks, and can only be used if the tenant would otherwise suffer hardship.

Discretionary Grounds - 9 to 17

As a general rule landlords will not wish to use any of these grounds as most landlords seeking possession will want to be certain that they will obtain this (or in the case of the serious rent arrears ground, the rent).

There are number of potential disadvantages of basing a claim for possession solely on discretionary grounds:

- They give a window of opportunity for the tenant to defend
- The tenant may be able to obtain legal aid to defend
- The judge will normally be sympathetic towards the tenant as they will potentially be made homeless which is a serious matter. Judges do not like making tenants homeless, particularly if there are children
- If you lose, you will probably be ordered to pay your tenant's legal costs, and
- Where possession is obtained under a discretionary ground, the judge can suspend the order for possession if he thinks it appropriate (which he frequently will) which means that even though you may have an order for possession you may not be able to actually get your property back. Even if the tenant breaches the order, judges will often re-instate a suspended order if they consider it reasonable.

The discretionary possession grounds include:

- The provision of suitable alternative accommodation
- Rent arrears of less than two months and persistent delays in the payment of rent
- Other breaches of the tenancy agreement
- Deterioration in the condition of the property and its furniture
- Creating a nuisance to neighbours
- Using the property for illegal purposes
- Lettings to employees
- False statements at the time the tenancy was granted.

Most landlords, if they have got as far as considering going to court for possession, will want to obtain this as quickly and easily as possible. For this reason it is best to avoid the 'discretionary' grounds for possession and just to use one of the mandatory grounds.

If the judge decides in the end to exercise their discretion not to make an order for possession, you can also be ordered to pay the tenant's legal costs. If the tenant has obtained legal aid to defend your claim the costs could be very substantial.

If you use the mandatory ground then he has no discretion and he cannot delay the date for possession by more than six weeks.

The two types of claim most commonly used by landlords to recover possession are claims based on the serious rent arrears ground, ground 8 *[See section below]* or a claim under section 21, normally using the accelerated procedure. If you wish to bring proceedings based on any other ground then you should take legal advice.

Note also, that if your tenant has a complaint against you, such as for disrepair, it is best to sort this out before issuing proceedings as otherwise your tenant can counter claim on this basis and this will delay, or perhaps even prevent altogether, the obtaining of your order for possession.

If you are acting in person you should always seek legal advice if your claim is defended.

6.3 Possession for rent arrears

Ground 8 is a mandatory ground which means that provided you are able to prove the ground at court, the judge cannot refuse you an order for possession. What you will have to prove under ground 8 is that:

- You have served a possession notice properly drafted in accordance with section 8 of the act
- The tenant is in arrears of rent of two months worth or more at the date of service of that notice, and
- At the date of the court hearing.

There are two 'discretionary' grounds for possession based on rent arrears of less than two months. However, using these grounds alone is not advisable as the Judge does not have to grant an order for possession (the making of an order is in his 'discretion'), and if he does grant an order he has the power to suspend it on terms.

Whichever type of procedure you use, note that none of them are quick - even the so called 'accelerated' procedure can take up to 10 weeks before an order is made, during which time you will probably not be receiving any rent. You should therefore take action on rent arrears as soon as possible.

6.4 Section 8 notices

Before bringing proceedings for possession based on any of the above grounds, it is necessary to first serve a notice in accordance with the provisions of section 8 of the Housing Act 1988 (see further on this below). In most circumstances the Judge can waive the requirement of this if he considers it reasonable to do so, but he cannot waive this in the case of claims for possession based on ground 8 (Rent Arrears).

So far as section 8 notices are concerned, the period of notice is usually either two weeks or two months, depending on which ground for possession you are using (Serious ground 14 cases can go to court immediately after serving the notice.)

The notice periods for each ground are given in the list of grounds for possession. You must give notice on a special form called 'Notice seeking possession of a property let on an Assured Tenancy or an Assured Agricultural Occupancy', available from law stationers, and rent assessment panel offices, from some of the online services providing legal information, documentation and support for landlords. Note that the 'Assured Tenancy' in the title of this form includes assured shorthold tenancies which, technically, are a variant of assured tenancies.

The form asks you to state which of the grounds for possession is being used, each should be written as it appears in the legislation (many forms will have this pre-printed and you just delete the parts which are not relevant). Note that if the ground is copied incorrectly and/or if any part is left out, this will make the form invalid.

6.5 Possession prior to expiry of agreement

If you wish to obtain possession of the property during the fixed term of an assured or assured shorthold tenancy, you can only seek possession if:

- One of the grounds for possession in schedule 2 of the Housing Act 1988 (as amended) apply *(see section 6.2 above)*, and
- The tenancy agreement has a clause in it providing for this (this is sometimes known as a forfeiture clauses, 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. Note that break clauses, to be valid, must be available for use by both the landlord and the tenant, not the landlord alone.

6.6 Procedure for possession

You can apply to the court to start court proceedings as soon as the notice expires. You can do this yourself or, if you are unfamiliar with court work, instruct a solicitor. Alternatively, some online legal services for landlords provide 'do-it-yourself' kits for a modest price. If you use a solicitor, make sure it is one who is experienced in this area of work. There are several firms who specialise in this work and who should be able to offer a fixed fee. Your landlords association will be able to recommend a suitable firm or many of them will advertise on the internet.

As this type of claim involves a court hearing, it is best to get at least some advice before starting unless you are familiar with court work.

Note that the most common reason for possession claims being rejected by the court is that they are signed by a letting agent. Only the landlord personally or his solicitor can sign the court papers. Your letting agent can help you draft the paperwork but he cannot sign on your behalf (unless there is a properly drafted power of attorney which must be produced to the court).

After proceedings have been issued at court you will usually have to wait 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 do so). If the court orders possession on one of the mandatory grounds, the tenant will have to leave on the date specified in the court order - this is

called an absolute possession order. Normally the order is 14 days from the date of the court hearing, but the judge can delay this by up to six weeks if the tenant is able to show exceptional hardship. However the judge is not allowed to exceed this six week limit.

If the court orders possession on one of the discretionary grounds, it can either grant an absolute possession order or it may allow the tenant to stay on in the property provided the tenant meets certain conditions - for example, paying back an amount of rent arrears each week.

This is called a suspended possession order and the tenant cannot be evicted provided that they meet the conditions.

You cannot evict the tenant yourself. If the tenant refuses to leave after the date specified in the order, you must seek a warrant for eviction (request for Warrant of Possession of Land N325) from the court and pay an additional court fee. The court will arrange for bailiffs to evict the tenant. You will need to attend this appointment to take possession from the bailiffs.

If the tenant breaches the conditions of a suspended possession order you 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 is usually granted by the judge.

You can continue to accept rent from your tenant at any time during this process, from service of the notice to eviction. The old rule that you could in some circumstances invalidate your right to possession by accepting rent does not apply for assured/assured shorthold tenancies. Indeed you must accept rent if it is offered to you - you cannot artificially continue a rent arrears claim by refusing to accept the rent.

If a possession order is made, technically this ends the tenancy. However the court will order that you are entitled to receive rent until the tenant actually vacates the property, on a daily basis. This used to be called 'mesne profits' but is now normally called an occupation rent.

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.

Claims for rent alone

If you do not want to bring a claim for possession, or if the rent arrears are less than two months /eight weeks, you can also bring a claim for a judgment, often referred to as a CCJ.

6.7 Section 21 notices

The provision of notice under the notice procedure set out in section 21 of the Housing Act 1988 allows you to recover possession of the property from the tenant at the end of the fixed term.

A section 21 notice is by far the best course of action to use if you wish to evict your tenant for any reason, be it rent arrears, or disruptive/anti-social behaviour, or simply because you want the property back for your own use. Indeed there is no need to mention in the court papers the real reason why you are seeking possession. 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
- That the proper notice period was given to the tenant and has expired at the time proceedings are issued.
- That any deposit paid was duly protected under the appropriate regulations for tenancies created 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 these requirements are met, and assuming there is a written form of tenancy agreement, you will be able to use the quicker and cheaper 'accelerated possession procedure' [see section below].

The main advantage of the section 21 procedure is that for cases where the requirements are satisfied, the judge cannot refuse to make an order, so the tenant cannot prevent you recovering possession by paying off all or part of any arrears.

A section 21 notice needs to be served at least two months before proceedings are issued and proceedings cannot be issued before the expiry of the fixed term of the tenancy. However it is often wise when granting tenancies, if you suspect that a tenant may not be satisfactory, to only grant a shorthold fixed term for perhaps three months (certainly not longer than six months). You may want to serve a section 21 notice towards the start of the tenancy, however though it does not appear to have been tested, it may be that if you serve a section 21 notice near the start of the tenancy, the tenant will most likely be able to leave at any time without giving you notice. (Because you can't one minute ask a tenant to leave, then complain when they do!)

A section 21 notice should not be served on the same day that the tenancy documents are signed as it will then be open to the tenant to argue that it was served

on them before the tenancy was signed. You cannot serve a notice to end a tenancy which has not begun yet. Section 21 notices should be served at least one day after the tenancy has started.

The notice needs to be properly drafted. A letter asking the tenant to leave will not be valid. It is best to use one of the forms available from law stationers or some of the online landlords legal services. You may even prefer to have it drafted by a solicitor, the fact that it is served under cover of a solicitors letter may make your tenant think twice.

Following a Court of Appeal Case, Spencer v Taylor in November 2013, there are two sets of rules for serving a section 21 notice.

In cases where there is a fixed term, the notice must:
- Be in writing
- Give not less than 2 months notice
- State that possession of the dwellinghouse is required

The notice must not expire earlier than the fixed term contract.

If the fixed term has expired and a statutory periodic tenancy has arisen, the rules for serving notice remain the same as above. This was the judgement of the Spencer v Taylor case.

In cases where there has never been a fixed term contract and the tenancy has always been periodic, the rules are different. In these cases the notice must:
- Be in writing
- Give not less than 2 months notice
- Expire on the last day of a period
- State that the notice is being served by virtue of the Housing Act 1988, section 21
- If the tenancy is a periodic tenancy, and the notice is served during the periodic tenancy, the notice period must be at least two months and the date specified in the notice must be the last day of a period of the tenancy. So for example if the rent is payable on the 15th day of every month, then the periods will be from the 15th to the 14th of every month. The date on the notice must be the 14th of the month. The notice period therefore will be between two and three months depending on when in the month the notice is served.

It is very easy to get the expiry date of the notice wrong for periodic tenancies and this is a common reason for judges refusing to make orders for possession. Many of the printed forms you can buy will include some 'saving wording' which should mean that the notice will still be valid even if you get the date wrong. However, even a notice with the saving formula can be invalid if the date you entered was wrong. Therefore, the safest option is to use a notice that does not include a calendar date. In an important court case, a judge clarified the position for landlords serving section 21(4) notices:

"Because of the wording of section 21(4) if an actual date is to be given in the notice it must be 'the last day of the period of the tenancy' and there is an obvious risk of a minor arithmetical error giving rise to the argument that the notice is invalid which is no doubt why the printed form suggests as a possible wording that the notice will expire 'at the end of the period of your tenancy which will end after the expiry of 2 months from the service upon you of this notice'. In my judgement, that is a form of words which does meet the requirements of section 21(4) because the tenant knows or can easily ascertain the date referred to."
(Kennedy LJ at 69M).

Try to use one of these forms if possible. Do not delete the special wording or alter it in anyway.

You should make at least four copies of the notice and you may serve one on the tenant by hand in the presence of a witness. However, the best way to serve the notice is by ordinary post but you must get a free of charge 'certificate of postage' which is available from all post offices. This will prove that you posted the notice and is therefore sufficiently served. Recorded delivery is not always satisfactory as the tenant can refuse to accept delivery. Always make sure you keep a copy of the notice for yourself because you will need to send a copy to the court (along with proof of postage) should you need to commence possession proceedings in the court. The ideal scenario would be to both post a copy, getting a certificate of postage and hand deliver a second copy.

When the notice has expired, you will be able to issue proceedings for possession using the accelerated procedure.

6.8 When an assured shorthold tenancy can be ended

If the tenancy started on or after 28 February 1997 it is automatically an assured shorthold tenancy (assuming that no notice has been given to the tenant to the contrary) you have a right to recover possession using the section 21 procedure.

Note that when using this procedure the judge cannot grant an order for possession during the first six months of the tenancy. For example if you grant a tenancy for a period of two months from 1 January and issue a section 21 notice on the second day of the tenancy, you will be able 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 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' (as it is called) does not apply to second or subsequent tenancies of the same property. However if the 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 may have lived in another room in the house for some time.

6.9 Accelerated possession procedure

If you are looking to recover possession of your property under the 'no fault' section 21 procedure, the best way of doing this is via the so called 'accelerated' procedure. The accelerated possession procedure is fairly straightforward and inexpensive and does not normally involve a court hearing. The court will make its decision by looking at the documents that you and the tenant provide, unless it considers that a hearing is required.

You can only use this procedure if the following applies:

- The tenancy is an assured shorthold tenancy
- You have a written tenancy agreement (you cannot use this procedure for oral tenancies)
- You have served a properly drafted section 21 notice and the notice period has expired.

Needless to say, as the judge will be deciding this case on the paperwork, it is important that your paperwork is perfect.

You should apply to the county court using the special form for accelerated possession proceedings. More information can be obtained from the Court Service or the Court Service's website. If you are at all uncertain, it may be wise to use a solicitor, particularly if you require possession urgently, as judges are unforgiving of landlords mistakes. There are several firms who specialise in this work and who should be able to offer a fixed fee.

The tenant should leave the property on the date specified in the court order. However, if the tenant refuses to leave, you still cannot evict the tenant yourself. You must apply for a warrant for eviction from the court, which will involve an additional fee. The court will then arrange for bailiffs to evict the tenant. You will need to attend this appointment to receive possession from the bailiffs.

End of a fixed term assured tenancy

When an assured tenancy comes to the end of a fixed term, any replacement tenancy agreed with an existing assured tenant will automatically be on assured terms whatever the tenancy agreement says. To avoid any misunderstanding with the tenant, it is helpful to state in the replacement tenancy agreement that the tenancy is not a shorthold tenancy (make sure before doing this however that it really is an assured tenancy otherwise by adding this notice you will be creating one).

If you do nothing, the tenancy will automatically run on from one rent period to the next on the same terms as the preceding fixed term assured tenancy.

When an assured tenancy ends you can:

(i) Agree a replacement fixed term assured tenancy (if the tenant will agree to this)
(ii) Agree a replacement assured tenancy on a periodic basis called a contractual periodic tenancy
(iii) Do nothing and allow the assured tenancy to run on with the same rent and terms called a statutory periodic tenancy.

If you choose option (i), you will only be able to regain possession during the fixed term on one of grounds for possession in the Housing Act 1988 (as amended), grounds 2, 8, 10 to 15 or 17 although after the fixed term has ended, possession may be applied for on one of the grounds in the grounds for possession list. You do not have an automatic right to regain possession of an assured tenancy at the end of a fixed term.

Note that because they have security of tenure, if an assured tenant refuses to sign a new tenancy agreement, realistically there is nothing you can do to force them to sign.

6.10 Rent Act and common law 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 common law tenancies.

Rent Act tenants

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 the tenant is in arrears of rent, it is possible to bring proceedings for possession on the basis of forfeiture. If you do this you do not need to serve any form of

notice on the tenant first (although it is advisable to warn them that possession proceedings are immanent if they do not pay). Although for Rent Act tenants, there is no mandatory rent arrears ground, Judges will normally make an order for possession if the rent is greater than two months (8 weeks). However the Judge has unlimited powers to suspend or stay the order as he thinks fit.

If the tenant is not in arrears, 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 if you are considering using this ground it is advisable to seek legal advice, certainly before buying any replacement property.

Common law tenants

Provided the proper procedure is followed, evicting common law tenants is not difficult. As discussed in section 3.1.5 above, these are normally:

- Lets to companies
- Lettings by resident landlords
- Lettings at a rent of over £25,000.

You will not normally be able to evict during the fixed term unless there is a break clause in the tenancy agreement or the tenant breaches the terms of the tenancy agreement.

However after the fixed term has expired, you can end the tenancy at any time by serving an old style 'notice to quit, which can be obtained from most law stationers or online legal services. This must give a notice period of not less than four weeks. Once this has expired, if the tenant has not vacated, you can apply to the court for an order for possession which you are entitled to as of right. You do not need to give any reason for asking for possession.

During the fixed term the tenancy can be forfeited on the basis of rent arrears as described for Rent Act tenancies above. It is technically possible to forfeit the tenancy for other breaches of the tenancy agreement but this is not often done. If you wish to do this, you should seek legal advice from a solicitor experienced in eviction work.

6.11 Unlawful eviction

The Protection from Eviction Act 1977 makes it a criminal offence for any person to unlawfully deprive a 'residential occupier' of the right to occupation of the premises. This means that the only legal way you 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 and will certainly cover all tenants who rent from private landlords.

The act does specify certain classes of occupier where this does not apply, in particular lodgers who share living accommodation with their landlords, but even here eviction must not involve any force.

The procedures for lawful eviction of tenants are laid out in the various Housing and Rent Acts as detailed above.

To lawfully evict a tenant you must first serve the appropriate Notice, then obtain a Possession Order that must only be enforced by the County Court Bailiff.

Harassment

It is a criminal offence under the Protection from Eviction Act 1977 for any person to harass a residential occupier 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:

i. Acts likely to interfere with the peace and comfort of the Residential Occupier OR
ii. The persistent withdrawal of essential services

AND EITHER

i. Is committed by any person with the intention of causing the Residential Occupier to leave OR

ii. Is committed by any person with intent to stop the Residential Occupier pursuing their legal rights (for example, complaining about disrepair) OR

iii. 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 leaves, or causes them not to pursue their legal rights.

Common acts of harassment can include:

- Threats of violence or unlawful eviction
- Disconnecting gas, electricity or water
- 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. The penalties are the same as for unlawful eviction. If therefore you receive a letter from your local authority regarding alleged harassment by you of one

of your tenants, you should take this very seriously. Be very careful with your dealings with that tenant and keep a detailed record of all meetings and telephone conversations.

Tenants can claim special and general damages through the civil courts against landlords who harass them which can be substantial and costly.

Abandonment

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). You are advised to seek legal advice if you think the tenant has ceased to reside at the property.

Outstanding bills

If the accounts for gas, electricity, water, telephone etc. are in the name of the tenant, then payment is a matter between the tenant and the supplier, and the supplier cannot require you to pay. When the tenant moves in, you should notify all the suppliers of the name of the new tenant and the date when the tenancy started.

You 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. You can also state in the tenancy agreement that tenants must notify the landlord if they change the utility provider.

If you think there could be a problem for the tenant to pay quarterly bills, you can suggest they get pre-payment 'card' meters fitted, although this can be more expensive.

If the gas or electricity company is trying to charge you, when you have notified them of the name of the new consumer (tenant), you can contact Consumer Futures www.consumerfutures.org.uk or Citizens Advice Bureau www.adviceguide.org.uk

Meter readings

During the final inspection when the tenant is moving out, you should take meter readings yourself and agree it with the outgoing tenant, in case there is a dispute. You should also ask which companies are supplying gas and electricity etc.

6.12 Damage and return of deposit

Provide information to the tenant before they move out about the cleaning required to return the property in an acceptable condition. At the end of the tenancy you should go through the inventory and schedule of condition (preferably in the presence of the tenant) to identify missing items, breakages and any damages that the tenants will need to pay for out of their deposit.

The cost of such items should be assessed and a schedule drawn up. Tenants are not liable for fair wear and tear of the furniture, fixtures and fittings.

Fair wear and tear is defined as 'reasonable use of the premises by the Tenant and the ordinary operation of natural forces'. Factors to consider include:

- The original age, quality and condition of the item
- The average useful lifespan to value ration (depreciation)
- The reasonable expected usage of such an item
- The number and type of occupants
- The length of the tenants occupancy

Legally a landlord should not end up in a better position than he was in at the commencement of the tenancy or than he would have been at the end of the tenancy having allowed for fair wear and tear, this would constitute betterment. Apportionment of the cost to repair/replace the item solves this using:

a) Cost of replacement item
b) Actual age of existing item
c) Average useful lifespan of that type of item
d) Residual lifespan of item calculated as (c) less (b)
e) Depreciation of value rate calculated as (a) divided by (c)
f) Reasonable apportionment cost to tenant calculated as (d) times (e)

If the tenant is unhappy with the amount the landlord wishes to deduct from the deposit, the tenant is entitled to raise their dispute with the relevant tenancy deposit protection scheme. All schemes use Alternative Dispute Resolution, this is an evidence process, where each party submits their evidence to the adjudicator. A landlord must prove that he has a legitimate claim to retain all or part of the deposit. If he can't, the adjudicator must return the disputed amount to the tenant. A properly completed inventory is therefore very important in these cases.

Always check that excess rubbish has not been left. It should be the tenants responsibility to dispose of all rubbish before they vacate the property.

It's common for properties to remain vacant for weeks during the viewing process. During that time, if there are unpleasant products left in the bins (especially in the summer) this would be unpleasant for the neighbours and could attract rodents.

Deposits should be returned to tenants as soon as possible. *[See section 2.3, Tenancy Deposit Protection Schemes]*

7. EMPTY HOMES

7 Empty Homes

Empty properties are a wasted resource particularly when there is a housing shortage across the West of England region. Poor condition empty properties can blight an area and undermine sustainable communities. The West of England local authorities have developed a co-ordinated approach to tackling the problem of empty homes and aim to identify the most effective solutions to meet housing need in the region.
See www.no-use-emptywest.co.uk

7.1 Information for owners of empty homes

Where possible local authorities aim to work with owners of empty properties in an informal way. There are many options to help bring empty properties back into use, including the following:

- Renting through council leasing, Tenant Finder, private sector leasing or rent deposit schemes *[See Section 2.4, Bond Guarantee Schemes]*
- Private renting through a private agency - letting agencies will offer a range of management services *[See Section 1.2]*
- Private renting with the owner as landlord *[see Section 1.3]*
- Selling the property - on the open market through an estate agent or at an auction.
- Financial assistance may be available if the property requires refurbishment *[see below]*

Financial assistance

The West of England Local Authorities offer loans for essential repairs to owners of properties that have been empty for six months or more to bring them back into use. Each local authority runs a slightly different scheme but they are all administered by Wessex Home Improvement Loans. Check with the appropriate local authority for details of the scheme in your area or visit www.no-use-emptywest.co.uk

There is also a National Empty Home Loan Scheme that you can apply to independently, visit www.emptyhomes.com for more details.

7.2 Information for you as a member of the public

The West of England local authorities all encourage members of the public to report any properties to them that they think may be unoccupied. To report an empty property, as much detail as possible should be provided to the Empty Homes Officer who will follow it up, and contact the owner to advise of options available to them for re-occupying the property. *[See contact details in Appendix 2]*.

Most local authorities have a policy where it does not disclose lists of empty properties due to the Data Protection Act. However requests can be made in writing to the Empty Homes Officer under the Freedom of Information Act 2000 if information is required. Although unable to disclose information on owners of empty properties, local authorities may pass on details of interested purchasers to the owner. The owner can then contact you if they are interested in selling. Any agreement subsequently reached would be a strictly private arrangement in which the local authority would play no part.

7.3 Formal legal options available to the local authority

Where an owner persistently leaves a property empty which is in a poor condition or in an area of high housing need local authorities may take the following action:

- Serve Notices to improve the visual aspect of the property or make it safe, or prevent nuisance to neighbouring properties.
- **Compulsory Purchase Order (CPO):** Where a property is empty long term, is in an area of housing need and an owner cannot demonstrate that it will be brought back into use, local authorities can seek permission from central Government to acquire the property from the owner. They can then either bring it back into use themselves or sell onto someone else for use as residential accommodation.
- **Empty Dwelling Management Order (EDMO):** This was introduced in England in April 2006, it allows councils to take over the management of residential properties, where an owner of an empty property has turned down offers of help to bring the property back into use and can offer no good reason why the property should remain empty. The council would facilitate any capital works needed to allow the property to be leased and use the property to accommodate people in housing need for up to 7 years.

Appendix 1: Practical checklist for landlords

Preparation before letting:

Seek permission from mortgage lender and/or freeholder if necessary	
Planning or Building Control approval for major improvement work done to property	
Make sure the property is both a safe and healthy environment for any potential tenant or visitor. This can be done in general by ensuring the property: • Has adequate heating and insulation • Is free from tripping and falling hazards • Is free from significant disrepair and asbestos if present is in safe condition • Has good lighting and ventilation • Has good security • Has good sanitation, food preparation facilities and is hygienic	
Gas safety check by a Gas Safe registered installer	
Comply with electrical & furniture standards	
Provide fire alarm and/or smoke/heat detectors and emergency lighting as required	
Check whether HMO or other licence is needed from the council	
If letting as an HMO, comply with HMO regulations	
Obtain an Energy Performance Certificate	
Decide about the kind of tenant you are seeking, will you accept a tenant needing HB, and whether to let furnished or unfurnished	
Decide whether gas/electricity/water rates is included in the rent	
Decide whether or not to use an agent, and agree costs and level of service	
Obtain insurance (NB check policy is suitable for rented property)	
Consider any local council schemes such as deposit guarantees etc	
Decide on the likely market rent	
Obtain a tenancy agreement suitable for your letting.	
Decide on length of letting	
Advertise through agent, newspaper, internet or other means.	
Consider joining a Landlord Association and undertaking professional development.	

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 (although they can both sign them both).	
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)	
Give the tenant your (or agent's) contact details for repairs and other problems. name, address and telephone.	
Notify gas/electricity suppliers, council tax etc, the details of the new tenant and meter reading	
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 the tenants within 30 days.	
Keep tax records of income and expenditure, complete tax return ideally soon after the end of your tax year	
Provide receipts to tenant for 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:

Provide information before the tenant moves out about level of cleaning required	
Arrange a joint inspection of the property and agree on any damage or decoration that needs rectifying	
Agree final meter reading with tenant	
Make arrangement for the handover of keys	
Ensure all rubbish is removed	

Appendix 2: Useful contacts for landlords

Many of the most useful contacts are on the internet. If you do not have access to the internet yourself, most libraries will offer free internet access. Alternatively the library can provide telephone contact numbers for different services within your local area.

Central government:

Department for Communities & Local Government (DCLG)
Responsible for policy on housing, planning, regional and local government and the fire service a range of useful information and leaflets:

Department of Work and Pensions
Provides benefits and services for a wide range of people including Housing Benefit:

Gov.uk
Links to all government departments and local council websites.
www.gov.uk

West of England Authorities:

Bath & North East Somerset Council:
www.bathnes.gov.uk

The Guildhall
High Street
Bath
BA1 5AW
Switchboard: 01225 477 000

Bristol City Council:
www.bristol.gov.uk

City Hall
College Green
Bristol
BS1 5TR
Switchboard: 0117 9222 000

North Somerset Council:
www.n-somerset.gov.uk

Town Hall
Walliscote Grove Road
Weston-super-Mare
BS23 1TG
Switchboard: 01934 888 888

South Gloucestershire Council:
www.southglos.gov.uk

Civic Centre
High Street
Kingswood
BS15 9TR
Switchboard: 01454 868 009

West of England website

West of England Housing
www.privatehousinginformation.co.uk

Tenancy Deposit Protection Schemes:

My Deposits [Insurance based]
www.mydeposits.co.uk
Tel: 0844 9800290

The Deposit Protection Service [Custodial or insurance based]
www.depositprotection.com
Tel: 0844 4727000

The Tenancy Deposit Scheme [Insurance based]
www.tds.gb.com
Tel: 0845 226 7837

Landlords associations:

Landlords associations provide advice and information for member landlords. Some organisations provide information accessible to non-members.

National Landlords Association:
www.landlords.org.uk
tel: 020 7840 8937
email: info@landlords.org.uk.

The Westcountry Landlords Association:
www.wlainfo.co.uk
tel: 01752 242 980
email: landlords4landlords@hotmail.co.uk

The South West Landlords Association:
www.landlordssouthwest.co.uk
tel: 01752 510 913
email: info@landlordssouthwest.co.uk

Residential Landlord Association:
www.rla.org.uk
tel: 0845 666 5000
email: info@rla.org..uk

Agents' professional bodies:

The Association of Residential Letting Agents:
www.arla.co.uk

Bristol Association of Letting and Managing Agents (BALMA):
www.balma.co.uk

The Royal Institute of Chartered Surveyors
www.rics.org

The National Approved Letting Scheme
www.nalscheme.co.uk

SAFE Agent
www.safeagents.co.uk

Other sources of information:

The court service web-site
For court forms and information leaflets
www.justice.gov.uk

Health and Safety Executive
For information about gas safety
www.hse.gov.uk

The Association of Independent Inventory Clerks
www.theaiic.co.uk

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

Landlord Expo:
Annual exhibition for landlords
www.landlordexpo.co.uk
Tel: 0117 352 1853
Email: info@landlordexpo.co.uk

Law Pack 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

Mediation
Information about mediation services
www.justice.gov.uk/courts/mediation

West of England Landlord Manual Coordination:

Private Rented Sector Team
P O Box 595 (AC)
Bristol
BS99 2AW

Telephone: 0117 352 1853
Fax: 0117 352 5022
Email: private.housing@bristol.gov.uk

Notes:
The sponsorship advertisements throughout this Landlord Manual and any reference to commercial companies or other organisations should not be taken as an endorsement of any company or product by the West of England Group.

You may be able to access the information in this document in a different language or format. Please contact the Landlord Manual Coordination Team to discuss your needs.

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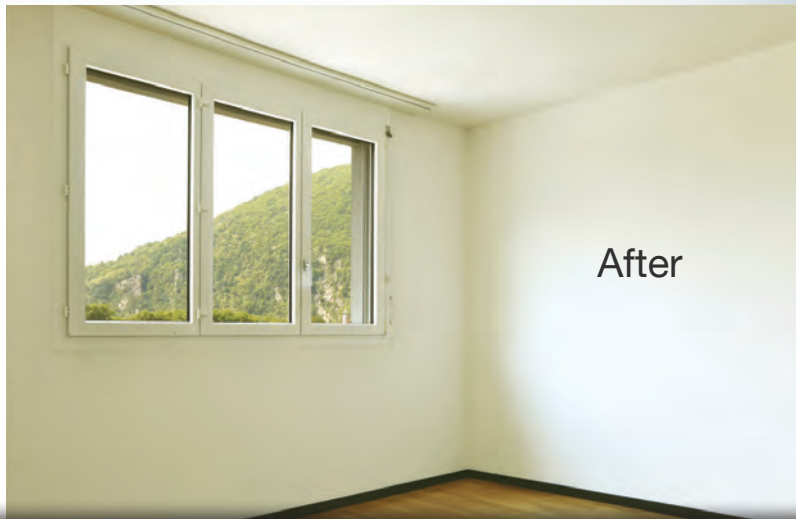

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