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Landlord Development Manual

ANUK
ACCREDITATION NETWORK UK

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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 [see section 1.1.1]
- 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 property and tenancies. The knowledge and skills needed to be a landlord are considerable.

1.1.1 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 four PRS markets:

1. renting to people on benefits
2. renting to students
3. renting to working tenants
4. renting to professionals & higher end market.

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
- 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 students is also likely to bring with it regulation pertaining to Houses in Multiple Occupation (HMOs) and 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. Where these are not clear it is advisable to seek assistance from a lawyer or the local Housing Advice service.

1.2 Letting options: means of managing property

There are a number of options you might consider for managing the property, depending on your experience, skills and time. Each option has advantages and disadvantages but you should carefully consider which option is best for your particular circumstances:

1.2.1 Self-managing landlords

This option is for landlords who are confident that they know their responsibilities and best practice in managing properties. This option saves you the cost of an agent, but can require a considerable investment in time. If problems arise, you may require advice from a professional such as a lawyer or accountant, which may come at a cost. Landlord associations are a good source of advice and assistance and can provide most of the information that a self-managing landlord would require.

1.2.2 Letting and use of managing agents

If you decide to get help with managing your property, there are three potential options:

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 one-off 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 if it is taken after 06 April 2007.

B) Letting and rent collection

The second 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 one-off fee and then a monthly fee (a percentage of the rent, perhaps 5%) for collecting the rent. This arrangement may be confusing for the tenant as it is not clear who is responsible for which areas of management.

C) Full management

The third option is for the agent to act as a full managing agent. 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. You will have to pay for the repairs, hopefully out of the proceeds of the letting.

1.2.3 The relationship between the landlord and 'agent'

The term 'agency' is used in law to describe the relationship between the principal, (in housing this is the landlord) and the agent. The principal agrees (expressly or impliedly consents) 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.

1.2.4 The liability of the landlord where an agent is used

Where an agent is used, actions carried out by the agent on the landlords 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 (in situations where the tenancy deposit scheme does not apply) 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.

1.2.5 The liability of the agent in agency agreements

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

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

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. See section 5.2.1 for more detail on possession notices.
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 [see section 5.2.1] 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.

Frequently, agents will offer landlords the opportunity to take out legal expenses insurance. If you decide not to take advantage of this or if it is not offered, then although your agent may assist you by recommending and liaising with suitable solicitors, 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.

1.2.6 Defining responsibilities in the contract

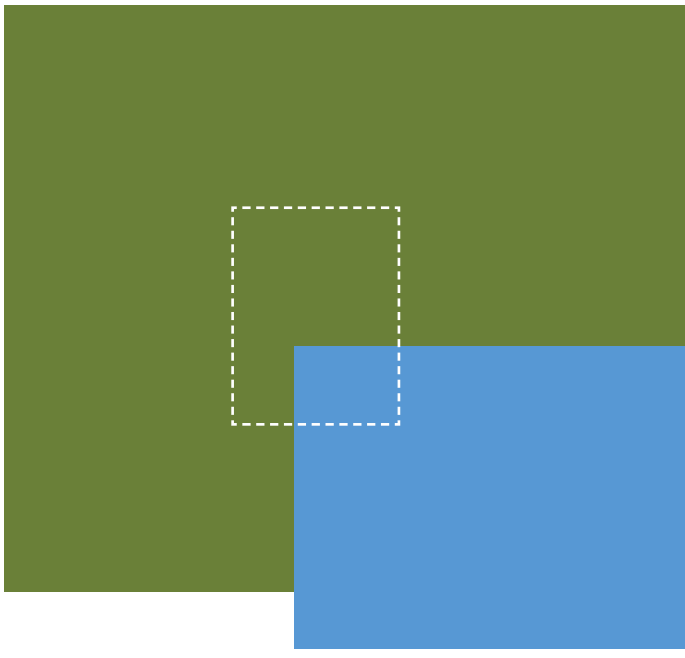
If you enter into an agreement with an agent, you should get a written contract with them indicating what level of service they are offering, and their agreed fees. It is important to read the whole contract and discuss any points you are not satisfied with before signing, so it can be varied or an alternative agent sought. You also need to agree how you can terminate the contract for any reason, including if you want to take over management yourself. As in many businesses, a small proportion of agents may not make a reasonable profit and can go out of business owing both the landlord and tenant money.

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)
- The National Association of Estate Agents (NAEA)
- Royal Institute of Chartered Surveyors (RICS)
- The Housing Ombudsman Service (HOS).

Fees and costs will vary, and cheapest is not always best if the agent is not an expert in good management practice and housing law.

It is also important to choose an agent who is familiar with the type of property you are letting, so take a look at the other properties they are dealing with. You could also get someone you know to contact them with enquiries about renting a property to see how they treat potential tenants.



1.3 Permissions to let property

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

Informing the mortgage lender
If you have a mortgage it will be a term of that agreement that you get the lender's permission before you let the property, even if you are just letting one room in it. This is because the mortgage lender will be concerned that you are not doing anything that may affect the value of their investment and their ability to recover the loan they paid you to buy the property.

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 3.1 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 would create a House in Multiple Occupation.

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.

Usually a lender will not object to one room being rented out to a 'lodger'.

1.4 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 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.

1.5 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.

1.5.1 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. 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 and 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. Further a special wear and tear allowance of approximately 10 per cent of the rents received can be claimed if the property is let furnished. This list is not exhaustive and can vary in individual circumstances.

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. There may however, be special cases where property improvements can be tax deductible.

1.5.2 Structure

Where properties are owned in joint names, then the profits can be shared between the joint owners or, in certain circumstances, can be wholly attributable to one or other of the joint owners. Where a husband and wife own a property jointly, the income is automatically assessed equally, even if the actual ownership proportion is not equal, unless they elect otherwise.

For Capital Gains Tax purposes, the proportionate ownership is important, and any Capital Gain would be shared between the joint owners in their respective proportions 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.

1.5.3 Capital gains tax

Capital Gains Tax (CGT) is one of the most important taxes to consider, as property prices have risen so much. As the amounts at stake are potentially very large, it is important to make sure you claim all of the available tax relief and allowances. Many of these offer scope for substantial reductions in the ultimate amount of tax to be paid.

The basic concept is quite simple. You need to look at how much is received for the property when you sell it (after deducting legal costs and agent's fees), compare this with what the property cost (including legal fees and stamp duty), and compute the profit made. There are then potential deductions and tax relief available, the most important of which are as follows:

- The cost of any improvements to the property whilst you owned it can be deducted.
- Taper Relief (a reduction in capital gains tax payable with reference to the length of time an asset has been owned) is available depending upon how long you have held the property allowing up to 40 per cent of the gain to be tax free.
- If you have lived in the property yourself at any time, then there are two additional very valuable reliefs:
  - lettings relief whereby up to £40,000 of any gain per owner can be tax free
  - a proportionate principal private residence relief.
- If you owned the property at March 1982, its value at that date is substituted for the original cost of the property in calculating the ultimate gain. In addition this can be uplifted by indexation of nearly 105 per cent in calculating the base cost for CGT purposes.
- If the property was owned prior to April 1998 (when indexation finished and taper relief started), you are able to claim indexation from the date of purchase to April 1998, and taper relief thereafter.
- In the current 2006/07 tax year the first £8,800 of any Capital Gains is tax free per individual.
- If you have two properties which you use as your own residence (e.g. one in London and one in the country), it is worthwhile making a principal private residence election on one of those properties to maximise Capital Gains relief. This will also reduce the potential CGT payable if one of the properties is let at any time in its ownership.

Problems can arise if the sale of a property takes place shortly after its purchase, or when HMRC can show that the property was purchased with a view to making a profit, rather than as an investment. You could be assessed as a property trader in such circumstances.

1.5.4 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, but IHT is inevitably payable. 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 should be drawn up to ensure maximum use of IHT allowances. A typical arrangement would be to include a Mini-Discretionary Trust within the Will.

1.5.5 Furnished holiday lettings

There are special rules for such properties, which benefit from additional Income Tax, Capital Gains and Inheritance Tax reliefs. The rules are complex and proper professional advice is essential.

1.5.6 Stamp duties

Stamp Duty Land Tax (SDLT) is payable by the purchaser on the cost of the property. The rates depend upon whether the property is in normal areas in the UK or in 'disadvantaged areas'. The list of areas which are included as disadvantaged is much wider than one would imagine, although this only applies to lower valued properties. A postcode search can be found at www.hmrc.gov.uk/so/dar/dar-search.htm to see if your property could qualify. The rates of SDLT for residential property are as follows:

The value of any fixtures, fittings or furniture included in the purchase can be excluded from the purchase price in calculating the SDLT payable, though the Stamp Duty office will look at any obvious overloading in this regard.

1.5.7 Value Added Tax (VAT)

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

A special VAT rate of 5 per cent is available on the renovation or alteration of a single household dwelling that has not been lived in for three years or more, so that this is a useful saving over the normal 17.5 per cent rate.

More information on tax can be obtained from your tax office or visit the Inland Revenue website at www.hmrc.gov.uk You can also get copies of leaflets on taxation of rents and other tax matters from the website, or by phoning the Order Line on 08459 000 404.

Rate	Disadvantaged Areas	All Other Areas
0%	£0 - £150,000	£0 - £125,000
1%	£150,001 - £250,000	£125,001 - £250,000
3%	£250,001 - £500,000	£250,001 - £500,000
4%	£500,001 and over	£500,001 and over

1.6 Council Tax

In self-contained flats or houses, the tenant is liable for Council Tax. Landlords should notify the local council of the name of the tenant and when he/she moved in.

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

Properties occupied entirely by students under taking full time education courses are exempt from Council Tax, however the students must apply for the exemption.

In a House in Multiple Occupation containing bed-sits or rooms with shared facilities, the landlord is liable to pay Council Tax. Rent should be set to take account of the amount you must pay for council tax. If the council tax increases, this does not create an automatic right to increase the rent. Rents cannot usually be increased more frequently than once a year. A landlord can include a term allowing increase of council tax element in line with council tax rise in the tenancy agreement

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

It is helpful if landlords inform the council tax section of the local authority in writing whenever someone moves in or out of their property, or if it is empty.

1.7 Sources of legal advice

If you use a letting or managing agent, they should be able to give you some free basic advice about housing law as part of their service to you. Your local council or local Citizens Advice Bureaux can also give you some basic information about housing law.

Some excellent leaflets are available from the government: www.dclg.gov.uk (follow the links for Housing, then Renting & Letting, then Private Renting).

Publications are available free of charge from
DCLG Publications,
PO Box 236,
Wetherby. LS23 7NB.
Tel: 0870 1226 236,
Fax: 0870 1226 237,
Textphone: 0870 1207 405,
Email: communities@twoten.com.
For example quote reference 97 HC 228B for 'Assured and assured short-hold tenancies: A guide for landlords'.

If you have access to the internet, a search for landlord legal advice leads you to a number of sites giving free basic information and offering other services you can pay for. [see Appendix 5 - Useful Contacts for Landlords].

Landlords' associations usually offer members free basic legal advice.

If you need to get more detailed legal advice or representation you may need to consult a solicitor. Make sure the firm or solicitor you use is experienced in housing work. It is best to go by personal recommendation - your local Landlords' Association will be able to suggest suitable firms. Firms specialising in work for landlords often advertise on landlord related websites on the internet.

Remember to keep receipts for any payments you have to make to get legal advice, as you may be able to get tax relief for these payments.

1.8 Membership of a landlords association

There are a number of excellent Landlords Association [see Appendix 5 - Useful Contacts for Landlords] and it is worth considering paying to become a member.

As a member you will usually get a regular newsletter giving advice and an update on housing law or policy as it changes.

You can usually get discounts for services for landlords such as insurance. You will also learn of new services you may be interested in.

You might be able to get individual advice if you have a problem. Through the network of other members you may get ideas to resolve problems or how to manage your property more successfully. There are usually periodic meetings where you will have the opportunity to meet other landlords.

1.9 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. [See Appendix 5 - Useful Contacts for Landlords].

2 Responsibilities and 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:

- responsibilities for repair, both statutory and at common law [See Appendix 2 - A brief introduction to law]
- the new Housing Health and Safety Ratings System
- responsibilities for gas and electrical safety
- furnishings and fire safety
- responsibilities of managers of Houses of Multiple Occupation.

2.1 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 2.2 for more detail on Implied Terms]

Specific obligations to repair are set out in detail in the sections below [see also section 2.5 – 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.

2.2 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.

2.3 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.

2.4 Statutory implied terms

2.4.1 *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.

2.4.2 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.

2.4.3 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, [see Appendix 2 - A brief introduction to law] 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. If the property is properly insured most costly repairs and works should be covered by the insurance policy.

2.4.4 *Defective Premises Act 1972*

The landlord is not impliedly 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 [see Appendix 2 – A brief introduction to law]. 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.

2.4.5 Occupiers' duty of care

Section 2 of the *Occupiers' Liability Act 1957* provides that the occupier of a property has a duty of care to all visitors who come onto their premises. This applies to landlords where they are the legal occupier of some parts of their rented stock e.g. 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.

2.4.6 Local authority repair powers

Local authorities have statutory duties and powers to take enforcement action to deal with properties containing hazards identified under the new Housing Health and Safety Ratings System (HHSRS) [See Section 2.3 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.

2.5 Housing health and safety rating system (HHSRS)

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 Council 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 health and safety hazards.

The HHSRS is not a standard which the property must meet, as was the case with the previous fitness standard, 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. Unnecessary and avoidable hazards should not be present. 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 environmental health professionals undertake assessments and they must decide for each hazard what is:

i. The likelihood, over the next twelve months, of an occurrence e.g. falling down stairs, electrocution etc that could result in harm to a member of the vulnerable group; and

ii. The range of potential outcomes from such an occurrence e.g. death, severe injury etc.

There are 29 hazards associated with the system [see section 2.3.1 below].

When an assessment is made, the current occupiers are ignored and the assessment is based on the likely affect of the hazard on the relevant vulnerable age group. For some hazards there is no relevant group, but for many hazards it may be either the young or the elderly.

2.5.1 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 Injury.

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

2.5.2 Landlord responsibilities

As the HHSRS is not a standard there is no model guidance available to follow. 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.

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

In multi-occupied buildings the owner, or manager, is responsible for stair coverings e.g. carpets.

2.5.3 HHSRS enforcement

If a hazard presents a severe threat to health or safety it is known as a Category 1 Hazard. If a local housing authority considers that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard. Less severe threats to health and safety are known as Category 2 Hazards and a local authority may take appropriate enforcement action to reduce the hazard to an acceptable level. The circumstances in which local authorities will take action over Category 2 hazards will vary and will depend on the individual local 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 policy.

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

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

2.5.4 More information on certain hazards

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

- damp & mould growth
- excess cold
- radiation
- crowding and space
- entry by intruders
- falling on the level
- falling on stairs
- fire
- flames and hot surfaces
- collision and entrapment.

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.

2.5.5 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.

There are 40,000 excess winter deaths in the UK each year associated with the affects of cold. 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.

2.5.6 Falls on stairs

The most vulnerable age group is all persons aged 60 years or over. Men are more likely to die than women. 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.

2.5.7 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.

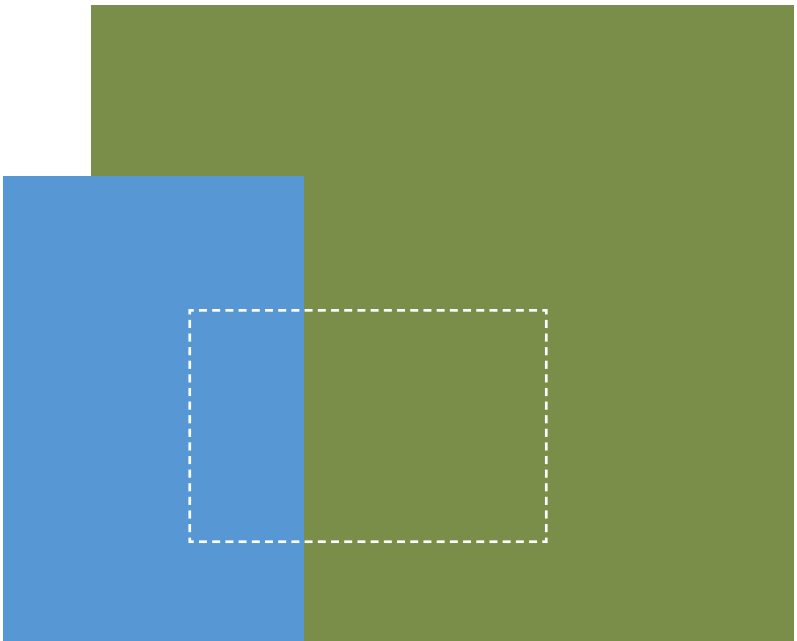
The hazard covers the health effects from house dust mites and mould or fungal growths resulting from dampness and/or high humidity. It includes threats to mental health and social well-being.

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 one-twentieth 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.



2.5.8 Fire

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

There are approximately 70,000 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 2005 there were 300 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 bedsit accommodation in a three or more storey building 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. 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 (DCLG) stated 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.

2.5.9 Natural and artificial lighting

There is no age group more vulnerable than others.

It covers the threats to physical and mental health associated with inadequate lighting and includes the psychological effect associated with the view from the dwelling through windows. Depression and psychological effects are caused by a lack of natural light or the lack of a window with a view.

The levels of natural lighting need to be sufficient to allow normal daytime activities to be carried out without the use of artificial lighting. It is generally accepted that an unobstructed external window of around one tenth of the size of the floor area is acceptable.

Although lighting on its own does not often produce a high hazard score, inadequate lighting may have a significant affect on the risk of falls, entry by intruders, food safety, personal hygiene, fire etc.

In addition to natural light, artificial lighting is required to all rooms at a level to enable occupants to carry out normal domestic activities without strain after dark. To prevent accidents, kitchen worktops and cooking areas should be particularly well lit. All staircases, passages and hallways must be provided with artificial lighting with convenient switches for use. Particular care should be given to lighting levels on stairs and where there are changes in floor level. Switches for lighting in these areas should be in convenient

locations. In the common stairways, switches may be timed and must be set to allow lighting to be available for a sufficient time to allow any person to negotiate the stairs and landings safely.

Additional information can be obtained from the Department of Communities and Local Government, in particular the two guidance documents:

- 'Housing Health and Safety Rating System - Guidance for Landlords and Property Related Professionals'
- 'Housing Health and Safety Rating System - Operating Guidance'.

2.6 Decent homes standard

The decent homes standard is a measure of general housing conditions introduced by the Government in 2000. Although private landlords are not directly required to take any action to bring their properties up to this standard, the Government has set targets for local authorities. This challenge has had a major affect on their approach to the private rented sector and is therefore likely to have a significant indirect affect on landlords.
The private rented sector currently has the lowest percentage of decent homes of all sectors.

Targets

The Government has set targets for the percentages of vulnerable households, i.e. those in receipt of a means tested benefit living in decent homes in the private sector should be:

- 65 per cent by 2006
- 70 per cent by 2010
- 75 per cent by 2020.

This proportion is to increase each year.

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 and 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 flat.

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.

A number of programmes have been established to encourage the private sector to meet these targets:

- in some regions significant funding has been made available by the Government
- many local authorities' Housing Renewal Assistance Policies, which provide grants and loans for those in the private sector, are targeted at the vulnerable
- the Energy Efficiency Commitment (EEC), whereby electricity and gas suppliers provide financial assistance to domestic consumers to install energy efficiency measures, provides a significant proportion of its assistance to vulnerable consumers
- the Warm Front scheme provides grants for insulation and heating improvements, including central heating systems, for vulnerable households in the private rented and owner occupied sectors.

2.7 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.

2.7.1 *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 CORGI (Council for Registered Gas Installers).

All CORGI 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 CORGI installers and to locate one local to you, see the CORGI web-site at http://www.corgi-gas-safety.com.

Once the inspection has been carried out, the installer will provide you with a gas safety certificate. A gas safety certificate 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 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 http://www.hse.gov.uk.

It is very important that the gas regulations are complied with and all necessary repairs carried out as soon as possible. Defective gas appliances are very dangerous and some tenants have died as a result. Culpable landlords face manslaughter charges and jail.

A landlord must:

i. Have gas appliances checked for safety by a CORGI registered gas installer within 12 months of their installation and then ensure further checks at least once every twelve months after that.

ii. Ensure a gas safety check has been carried out on pipe work, each appliance and flue every 12 months, except where the appliance was installed less than 12 months ago. The CORGI registered installer must take remedial action if an appliance fails a safety check.

iii. 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.

iv. Keep a record of the safety check made on each appliance for two years.

v. Ensure that gas appliances, fittings, and flues are maintained in a safe condition.

2.7.2 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.

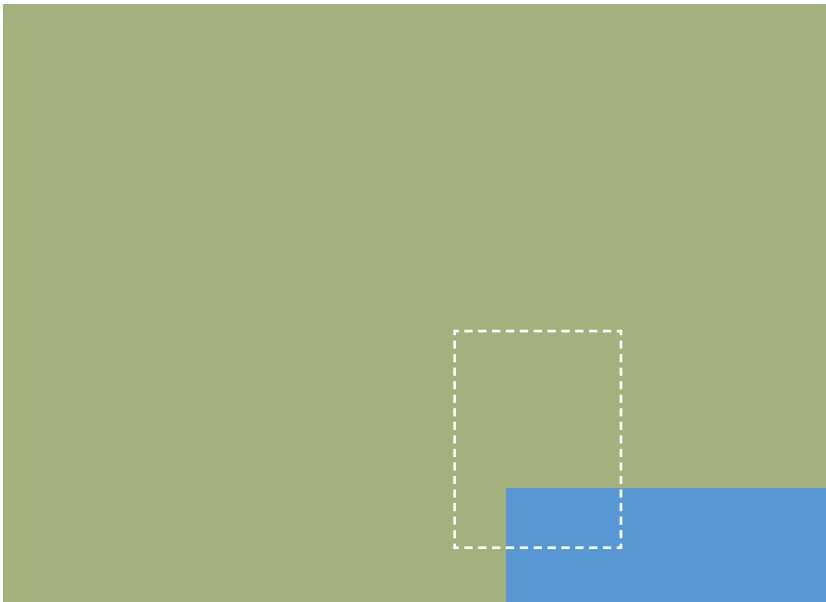
iv. Portable or mobile gas appliances supplied from a cylinder must be included in maintenance and the annual check; however they are excluded from other parts of the Regulations.

2.7.3 Room-sealed appliances

The regulations require that:

- a gas appliance installed in a bathroom or a shower room must be a room-sealed appliance (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.



2.7.4 Indications that an appliance is faulty or dangerous

Danger signs to look for are:

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

2.7.5 Tenants' duties

Tenants also have responsibilities imposed upon them by the Gas Safety (Installation and Use) Regulations 1998. They must report any defect that they become aware of and must not use an appliance that is not safe. 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.

2.8 Electrical safety and electrical goods

You should have a clear understanding of your responsibilities in relation to electrical installations and appliances and the duties and responsibilities placed on a landlord by the following Regulations:

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

This legislation places obligations on landlords to ensure that the fixed installation and all electrical appliances supplied by the landlord are safe.

2.8.1 Landlords' duties and responsibilities

You must ensure that the electrical installation and all electrical appliances are 'safe' with little risk of injury or death to humans, or risk of damage to property. This applies to when the tenancy begins and throughout the life of the tenancy.

This includes all mains voltage household electric goods supplied by the landlord such as cookers, kettles, toasters, electric blankets, washing machines etc. Any equipment supplied should be marked with the appropriate CE symbol.

The best course of action is either to supply new appliances or to get appliances checked by a qualified electrician before the property is let to new tenants. All paperwork regarding the item (i.e. receipts, warranties, certificates of inspection) should be kept for a minimum period of six years.

One way of helping to achieve safety is to undertake a regular formal inspection of the installation and appliances on an annual basis. The Electrical Safety Council advises that best practice is that as a minimum, you should:

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

Although there is no statutory requirement to have annual safety checks on electrical installations and appliances as there is with gas, the Institution of Electrical Engineers recommends a formal periodic inspection and test being carried out on the installation at least once every ten years or on a change of tenancy. It may be appropriate that where the risk is found to be greater, for instance where the installation is very old or where damage is regularly found, a more frequent regime will be necessary.

This periodic inspection and testing should only be undertaken by someone competent to do such work. On completion, a Periodic Inspections Report should be issued by the person carrying out the work and this should be retained by you as the landlord.

2.8.2 *Building Regulations Part P*

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

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

All work that involves adding a new circuit or is to be carried out in bathrooms and kitchens will need to be either carried out by an installer registered with a government-approved competent person scheme or alternatively notified to Building Control before the work takes place. Generally, small jobs such as the provision of a socket-outlet or a light switch on an existing circuit will not be notified to the local authority Building Control. High-risk areas such as bathrooms and kitchens are exceptions. All work that involves adding a new circuit or in 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.

2.8.3 Further guidance

The Building Regulations are enforced by local authority Trading Standards Officers and they can be consulted for further information about compliance with these Regulations.
Further information and details of your local trading standards office can be obtained from the website www.tradingstandards.gov.uk.

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.electricalsafetycouncil.org.uk.

2.9 Safety of furniture

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.

2.9.1 *Furniture and Furnishings (fire) (safety) Regulations 1988*

The Furniture and Furnishings (Fire)(Safety) Regulations 1988 apply to domestic items which contain upholstery, including beds, headboards, mattresses, sofa-beds, nursery furniture, garden furniture which can be used indoors, furniture in new caravans, scatter cushions, seat pads, pillows and loose and stretch covers for furniture.

Requirements of the regulations:

1. 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.

2. 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.

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

3. All furniture (new and second hand) must meet the Fire Resistance Requirements:

   - Furniture to pass a cigarette-resistance test
   - Cover fabric, whether for use in permanent or loose covers, to pass a match-resistance test
   - Filling materials for all furniture to pass ignitability tests.

The Regulations apply to persons who hire out furniture in the course of business which includes rented accommodation, and to the hiring of furniture which also includes furnishing let as part of a residential letting.

Further information can be obtained from the publication 'A Guide to the Furniture and Furnishings (Fire) (Safety) Regulations' available from Department of Trade & Industry website:www.dti.gov.uk

From 1st January 1997, all upholstered furniture provided in privately rented accommodation was required to comply with the fire- and flame-retarding requirements of the Regulations unless it was either: manufactured before 1950 or the tenancy commenced prior to March 1993.

Tenancies commencing prior to 1993 are exempt, but all additional or replacement furniture added after this time must comply with fire resistance requirements. A new tenant will mean that ALL furniture must comply.

2.10 Houses in multiple occupations [HMOs]

Special requirements apply to types of properties known as 'Houses in Multiple Occupation' (HMOs).

2.10.1 Definition of an HMO

An HMO [defined in ss.254 to 259 of the *Housing Act 2004*] is a building, or part of a building, such as a flat, that:

- is occupied by more than one household and where the occupants share, lack or must leave the front door to use an amenity, such as a bathroom, toilet or cooking facilities
- is occupied by more than one household in a converted building where not all the flats are self-contained (whether or not some amenities are shared or lacking) where the definition of being self contained is where all amenities such as kitchen, bathroom and WC are behind the entrance door to the flat
- is a converted block of self-contained flats, but does not meet as a minimum standard the requirements of the *1991 Building Regulations*, and less than two thirds of flats are owner occupied
- the households must occupy the building as their only or main residence and rent must be payable in respect of at least one of the household's occupation of the property
- generally a household is a family (including cohabiting couples and same sex couples) or other relationships, such as fostering, carers and domestic staff. It includes cousins, aunties and uncles and step-relatives. Each unrelated tenant sharing a property will be a single household
- properties which are shared by two individuals are exempt from the HMO definition as are those with a resident landlord with no more than two lodgers
- a self-contained unit is one which has inside it a kitchen (or cooking area), bathroom and toilet for the exclusive use of the household living in the unit. If the occupiers needs to leave the unit to gain access to any one of these amenities then the unit is not self-contained.

2.11 Duties upon the manager of an HMO

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 is a criminal offence. 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 such.

Duty to maintain common parts, fixtures, fittings and appliances

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

Duty to maintain living accommodation

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

Duty to provide waste disposal facilities

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

2.11.1 Duties of occupiers of HMOs

The Regulations also place a number of duties upon the occupiers (eg 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.

2.12 Licensing of HMOs

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

2.12.1 Purpose of licensing HMOs

Licensing is intended to make sure that:

i. a landlord of an HMO 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 HMO 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 under the HHSRS.

2.12.2 HMOs subject to mandatory licensing

Mandatory licensing applies to HMOs for which:

i. the HMO or any part of it comprises three storeys or more
ii. it is occupied by five or more persons
iii. it is occupied by persons living in two or more households.

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 DCLG website at www.communities.gov.uk.

For clarification of whether or not your property is licensable contact your local authority.

If you refuse to apply for a licence or cannot meet the criteria, yourself yet do not use an agent to manage the property, the local authority must intervene and manage the property.

Other HMOs may also require a licence through an additional local authority licensing scheme. (See section 2.12.3 below)

2.12.3 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 is 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.

2.12.4 Selective licensing

Local authorities have the power to selectively licence any privately rented properties in designated areas suffering from low housing demand and/or significant and persistent anti-social behaviour. A selective licensing scheme is not limited to HMOs.

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.

2.12.5 Transitional licensing

Prior to the introduction of HMO licensing, some local authorities operated HMO registration schemes locally with control provisions, to ensure that HMOs met certain standards. In those areas, all registered HMOs requiring a mandatory licence were automatically given one for the duration of the remaining registration period. At the end of that time you or the manager will have to apply for a new licence if the property continues to meet the criteria for mandatory HMO licensing.

Smaller registered HMOs that do not require a mandatory licence are also automatically given a licence as if an additional licensing scheme was in operation. This licence lasts for the remainder of the period they would have been registered.

This special arrangement for additional licensing schemes to replace registration for smaller HMOs will last until July 2009. After that if the local authority wishes to continue additional licensing they have to undertake the normal consultation and approval procedures. However, even if they drop the scheme any licences which are still running will remain in force until the end date on the licence. When the licence comes to an end, if there is no new additional licensing scheme in place, you will not need to apply for a new licence.

2.12.6 Applying for a mandatory licence

Anyone who owns or manages a licensable HMO has to apply to the local authority for a licence. The local authority must give a licence if it is satisfied that the:

- HMO is reasonably suitable for occupation by the number of people allowed under the licence
- the proposed licence holder 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.

2.12.7 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:

- any unspent convictions relating to violence, sexual offences, drugs and fraud
- whether the person has breached any housing or landlord and tenant law
- whether they have been found guilty of unlawful discrimination.

2.12.8 Licence conditions

A mandatory licence, which will normally last for the maximum five year period, may carry a fee to be charged by the local authority to cover their administration costs. 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.

2.12.9 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 an HMO is supposed to be licenced 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.

2.12.10 Temporary exemption from licensing

If the landlord or person in control of the property intends to stop operating as an HMO or legally reduces the numbers of occupants and can give clear evidence of this, then they can apply for a Temporary Exemption Notice.

This lasts for a maximum of three months and ensures that a property in the process of being converted from an HMO 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, become subject to an Interim Management Order, or cease to be a HMO.

Temporary Exemption Notices also apply where the licence holder dies. The property will be treated as if it is subject to an exemption notice for three months, during which time the estate can either apply for a new licence or cease to run the property as an HMO. If it takes longer than the initial three months the estate can apply for one further exemption notice.

2.12.11 Right of appeal against a local authority's decision

A landlord can appeal to the Residential Property Tribunal, 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 Residential Property Tribunal Service and the jurisdiction of Residential Property Tribunals under the Housing Act 2004 can be obtained from http://www.rpts.gov.uk

2.12.12 Offences

It is a criminal offence if you or the person in control of the property fails to apply for a licence for a licensable property or allows a property to be occupied by more people than are permitted under the licence. A fine of up to £20,000 may be imposed. In addition, breaking any of the licence conditions can result in fines of up to £5,000.

Note also, that no section 21 notice (see section 5.2.6 for more information about section 21 notices) may be given in relation to a short-hold tenancy of a part of an unlicensed HMO so long as it remains such an HMO. This means that unlicensed HMO landlords will be unable to evict their tenants by the notice-only section 21 procedure.

2.12.13 Rent repayment orders

The Local Authority may apply to the Residential Property Tribunal Service for a 'rent repayment order' allowing it to reclaim any housing benefit that has been paid during the time the property was without a licence up to a maximum of 12 months.

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

For more information about licensing go to www.dclg.gov.uk/licensing.

3 Setting up a Tenancy

3.1 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.

3.1.1 Assured and assured short-hold tenancies

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

3.1.2 The main differences between an assured and an assured short-hold tenancy

Assured short-hold tenancies

Assured short-hold 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 short-hold tenancy, without you having to do anything (although letting a property without a written agreement is most unwise).

An assured short-hold tenancy can be for any term (the rule requiring them to be for a minimum term of 6 months was abolished by the Housing Act 1996), although in fact the vast majority of tenancies are for terms of six months.

The main benefit of assured short-hold 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.

It is possible for tenants to challenge the rent during the first six months of the (initial) tenancy by referring it to the Rent Assessment Committee for review, but in fact they very rarely do this.

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 short-hold tenancy.

3.1.3 Choosing an assured or an assured short-hold tenancy

The vast majority of landlords will wish to create an assured short-hold tenancy. If the property is subject to a mortgage, most mortgage companies will also insist that all tenancies are assured short-holds. 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.

3.1.4 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 short-hold 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.

3.1.5 Tenancies which cannot be assured or assured short-hold tenancies (common law 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 £25,000 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 short-hold tenancy is that the procedures for recovery of possession are different.

3.1.6 Tenancies, which can be assured but not assured short-hold tenancies

The following tenancies cannot be assured short-hold tenancies:

- Where you have an existing tenant who holds an assured tenancy, you cannot convert an existing assured tenancy into an assured short-hold 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.

3.1.7 Fixed term tenancy

An assured or assured short-hold 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. After a fixed term has expired you can either allow it to run on (see Section 3.1.8 on Contractual Periodic Tenancy below) or give a new fixed term agreement.

3.1.8 Contractual periodic tenancy

An assured or assured short-hold tenancy may also be a contractual periodic tenancy that runs indefinitely from one rent period to the next. This can happen either from the start of the tenancy, or after the fixed term in a tenancy expires. In this case the 'period' will run from the date after the fixed term has ended and will be based on how rent is paid. So if rent is paid monthly and the fixed term ends on the 14 September, the period will then run from the 15th of the month to the 14 of the following month. It is perfectly acceptable for tenancies to run on in this way and many tenancies have operated for years as 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.

3.1.9 Initial period of an assured short-hold tenancy

The assured short-hold 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 short-hold 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 5.2 on possession].

During this initial six months period, assured short-hold 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 in 3.1.5 above.

3.1.10 Regulated tenancies

Most lettings by private landlords which began before 15 January 1989 are regulated tenancies under the Rent 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 DCLG website at www.communities.gov.uk

3.1.11 Licences

A licence is where someone is allowed to occupy property but does not have a tenancy. The 'licence' or permission of the owner prevents 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).

3.1.12 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.

3.1.13 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 then 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.

3.1.14 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 short-hold 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.

3.1.15 Unlawful discrimination

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 or disability. The specific legislation is as follows:

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

Direct discrimination is defined as treating a person less favourably than another on the grounds of their race, gender or disability.

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 Commission for Racial Equality (CRE) has published a revised 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 they can avoid it.

To find out more about the CRE code including a shortened summary for landlords or to download a copy go to the CRE website at www.cre.gov.uk/gdpract/housing_code.html

3.2 Tenancy Agreements

3.2.1 Written tenancy agreements

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

3.2.2 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 5.2.8) as this can only be used where the tenancy and its termination can be shown from the paperwork.

3.2.3 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.

3.2.4 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.

3.2.5 Preparing a written agreement

Although landlords may draw up their own agreements, this is not advisable. Drafting tenancy agreements is a highly skilled job and landlords doing this without legal advice may find that they have actually made their position worse in the very areas where they were seeking to protect their position (for further detail see 3.2.6 below).

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.

Following changes to stamp duty in 2004, tenancy agreements are no longer required to be stamped in order to have validity unless they are of very high rent value. However, more details can be found in the Inland Revenue leaflet 'Stamp Duty on Agreements Securing Short Tenancies' available from any Stamp Office. The Stamp Office Helpline can provide more advice on stamp duty on 0845 603 0135.

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 1985, rent will not fall 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.

3.2.6 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 (most recently in September 2005) on their effect on tenancy agreements.

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

A standard term is unfair if it creates a significant imbalance between the parties rights and obligations to the 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 excellent reasons for refusing permission for pets - that they damage the property, that some people are allergic to them, or that your own leave 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 by the OFT 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. In particular you should never use a tenancy agreement which was drafted before 2002.

See Office of Fair Trading website for Guidance on Unfair Terms in Tenancy Agreements www.oft.gov.uk

3.2.7 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 http://www.aiic.uk.com.

3.2.8 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.

3.2.9 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.

3.3 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 will be effective from April 2007.

3.3.1 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.

Note that the holding of a deposit in many cases is of limited value as tenants regularly leave without paying the final months rent, on the basis that this should be offset against the deposit held.

3.3.2 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.

3.3.3 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.

3.3.4 Tenancy deposit protection scheme

The Housing Act 2004 proposes specific requirements for any landlord requiring a deposit after April 2007 for an Assured Shorthold Tenancy, to join a Tenancy Deposit Protection Scheme. The scheme will only apply to Assured Shorthold Tenancies, and only to deposits which are taken after the scheme comes into effect, or (where a deposit is already held) where a new tenancy agreement is given to the tenant after that time.

The schemes will be of two types:

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

The regulations will provide for you to provide to the tenant, not less than 14 days after the taking of the deposit, details of the scheme under which it will be held.

To avoid disputes having to go to the courts, both schemes will be supported by an alternative dispute resolution (ADR) service - although the use of this will not be compulsory. The tenant will not have the option of choosing the custodial or insurance-based scheme. That will be for you, the landlord to decide.

If deposits are taken but are not protected by one of the statutory schemes, the tenant will be able to go to court to get an order requiring you to either provide information about the scheme under which the deposit is held or to return it to him, and the court will at the same time order that you pay the tenant a fine of three times the amount of the deposit. Also you will not be able to use the no fault section 21 procedure for obtaining possession of the property.

3.4 Bond guarantee schemes

Landlords should be aware of the operation of Bond Guarantee Schemes and their benefits.

There are various bond guarantee schemes operating across the country. These schemes generally replace the upfront cash deposit and instead guarantee to the landlord, the cost of any damage to the property/rent arrears etc.

If at the end of the tenancy the landlord finds that they need to make a claim they would do so via the bond bank.

These types of scheme are generally only available to certain 'vulnerable' groups.

For landlords the schemes can:

- provide a guarantee against damage or rent arrears
- provide assistance in getting Housing Benefit processed quickly
- 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.

As the tenant probably has no personal finance at risk there is less of an incentive to avoid the necessary use of the deposit, and less incentive to end the tenancy correctly.

3.5 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 [see Appendix 3 on Rent Assessment Committees]. 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.

3.6 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.

3.6.1 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.

3.6.2 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.

3.6.3 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. (See Appendix 3 on Rent Assessment Committees)

3.6.4 *Rent Act* (regulated) tenancies

Regulated tenancies are tenancies governed by the provisions of the *Rent Act 1977*. They will all have been created prior to 15 January 1989. *The Rent Act* provides for the tenant (or the landlord) to apply to have a 'fair rent' registered for the property and once this has been done the fair rent is the only rent the landlord can charge. These are rents fixed by the local office of the Rent Service.

The Rent Service does not take account of the impact of scarcity on the market value of rented accommodation. You or the tenant may apply to register a fair rent. Contact details for the local Rent Service can be obtained from your council's Housing Advice Service or the Rent Service website: www.therentservice.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*.

In the unlikely event that the rent has not already been registered, you can increase the rent if the tenancy agreement or contract allows for rent increases. If the agreement does not allow for increases you can only increase the rent if:

- you and tenant make a formal rent agreement which must follow special rules
- the Rent Officer registers a fair rent.

3.7 Housing benefit

Housing Benefit is for people on low incomes who have to pay rent. The tenant has to complete an application form, which is available from the local council, or in some areas application is initially by telephone to Jobcentre Plus.

Tenants have to provide information and proof of:

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

Most councils aim to process housing benefit claims within 14 days from receipt of all the appropriate documentation they have requested. They cannot pay a claim until they have all the information they need.

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

Sadly however some councils fall far short of the 14 day target, which can cause problems and hardship to tenants and their landlords.

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

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

All accommodation in the PRS where the tenant applies for housing benefit, is valued by the Rent Service. If the rent is more than the local reference

rent (average) for similar size accommodation in the locality, Housing Benefit will not be able to pay the full rent.

If the accommodation is larger than the tenant needs, for example if a couple rent a two bedroom flat, housing benefit will not pay the full rent.

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

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

In any event, the agreed contractual rent is the rent due, and any shortfall in housing benefit payments should also be collected.

Councils usually pay either by sending the tenant a cheque or crediting their bank account every two weeks or by paying the landlord every four weeks in arrears. This may be by cheque or on request; many local authorities will pay by BACS transfer.

Where a tenant is in receipt of Housing Benefit, and is more than eight weeks in arrears, the landlord can request the Housing Benefit be paid direct instead of to the tenant. The local authority should be contacted to arrange this. Note: the arrears need not have existed for a calendar eight weeks.

For example, if the contract requires payments per calendar month in advance, if two consecutive payments were missed, there would be more than eight weeks arrears after one month and one day.

Your local council will do its best to advise landlords, but all claims for benefit are confidential and information about your tenant's claim is unlikely to be discussed with you unless they have given written permission for their claim to be discussed with the landlord.

It is sometimes difficult to work out exactly what the situation is regarding the tenants rent account if rent is payable monthly, but benefit is actually paid on a weekly basis. It is important to remember that the method of payment by the benefit office, and the assessment of benefit due, does not alter your tenants contractual obligations. It is a good idea to record the payments in the context of the rent payment dates, for example as in this example:

Table 1

Date	Rent due	Rent paid	Arrears
15/01/2007	£400.00		£400.00
12/02/2007		£300.00	£100.00
15/02/2007	£400.00		£500.00
12/03/2007		£300.00	£200.00
15/03/2007	£400.00		£600.00
09/04/2007		£300.00	£300.00
15/04/2007	£400.00		£700.00
07/05/2007		£300.00	£400.00
15/05/2007	£400.00		£800.00
04/06/2007		£300.00	£500.00
15/06/2007	£400.00		£900.00

Here you will see that the tenant has not been making up the shortfall and their arrears will soon reach a level where he can be evicted under the serious rent arrears ground. Were you to do this, the court would require a schedule of arrears in this format.

(See Appendix 3 on Housing Benefit Procedures)

3.8 Local housing allowance

A new system for paying benefit for rent has been introduced in certain 'pathfinder' areas. Instead of deciding whether a rent for a particular property is reasonable, the household looking for property in a certain area will be awarded a standard amount depending upon the size of the family (and their income/savings). They will be given this whether the actual rent is higher or lower.

This new system will be phased in, being introduced on different dates in different councils eventually covering England, Scotland and Wales. Direct payments to private landlords will cease under the new scheme other than for vulnerable tenants, or where eight weeks arrears exist.
(See Appendix 3 on Housing Benefit Procedures)

3.9 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.

3.10 References & guarantors

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 can lessen the risk factor by taking up references from the prospective tenant's current or previous landlord, employer and bank.

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.

4 During Tenancy

4.1 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 comply with the law, for example 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 within a reasonable time
- you should give tenants as much advice as possible of inspection visits - at least 24 hours notice in writing, and never mislead them
- 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
- you should inspect the property at reasonable intervals - quarterly visits are normal.

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

4.1.1 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.

4.2 Rights of entry & refusal

It is the tenant's right not to be unreasonably disturbed or harassed whilst living in the landlord's property [See criminal harassment section 5.2.12]. The landlord is giving the tenant the right to occupy the property as their home, the landlord is not entitled to enter the tenant's living area 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.

4.3 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 – severe and/or flooding – contact the utility company responsible for water in your region, if closing the stopcock is ineffective
- suspicious circumstances relating to criminal activity – liase with the police.

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.

4.4 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 will have the option of serving a section 21 notice (see section 5.2.6) 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 (see 1.7 below), 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.

4.5 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. If the property is handed back, the landlord has 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.

If the tenancy has no fixed term, the tenant must give the landlord notice in writing of their intention to leave. The tenant must give at least four weeks' notice where rent is paid on a weekly basis and at least a month's notice where rent is paid on a monthly basis. Periodic notices should end at the end of a rent period for both landlords and tenants.

4.6 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.

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.

4.6.1 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.

4.6.2 Options to recover arrears, other than possession proceedings

Possession proceedings are potentially costly and 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 http://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 defendants salary to you on a monthly basis until the debt is settled.

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

4.6.3 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 [see section 5.2 on possession] or a section 21 notice [See section 5.2.6].

4.7 Landlord and tenant relations

Options for the resolution of problems in Landlord and Tenant relations:

- discuss problems with tenants and try to negotiate solutions.
- keep records/log books of all interactions with tenants.
- mediation
- legal action (by landlord or by tenant).

4.7.1 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 of 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 mediation UK who have a web-site at http://www.mediationuk.org.uk.

4.7.2 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, Anti-social Behaviour Orders 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 5.2 on possession].

Civil and criminal law is also relevant, the main Acts include:

- Anti-social Behaviour Act 2003
- Domestic Violence, Crime and Victims Act 2004
- Homelessness Act 2002
- Environmental Protection Act 1990
- Noise Act 1996
- Housing Act 1996

- Crime and Disorder Act 1998
- Human Rights Act 1998
- Protection from Harassment Act 1997
- Criminal Justice and Public Order Act 1994
- Civil Evidence Act 1995.

Note that in most cases it will be far better to obtain possession via the quick and simple section 21 procedure [see section 5.2.6], 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.

4.7.3 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 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 Department for Constitutional Affairs web-site at http://www.dca.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.

4.8 Nuisance and anti-social behaviour

4.8.1 Anti-social behaviour: definition

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

Anti-social Behaviour is the umbrella term which includes causing nuisance, harassment, racial incidents, neighbour disputes and includes noise complaints.

4.8.2 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 4.7.1 for information on mediation].

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

- where there are threats or violence or
- where the parties will not agree to mediation

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 5.2.6].

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 they 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.

4.8.3 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.

4.8.4 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 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 5.2 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.

5 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.

5.1 Termination of the tenancy by the tenant

5.1.1 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.

In practice tenants who do not meet these obligations may abandon the premises.

5.1.2 Termination of a periodic tenancy

If the tenancy has no fixed term, the tenant must provide 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, expiring at the end of a period of the tenancy.

5.1.3 End of a fixed term assured short-hold tenancy

When an assured short-hold tenancy comes to the end of the fixed term, any replacement tenancy agreed by you will automatically be on assured short-hold 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 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) will be void. However 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 short-hold 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 short-hold tenancy ends you can:

i. agree a replacement fixed term short-hold tenancy
ii. agree a replacement assured short-hold tenancy on a periodic basis called a contractual periodic tenancy
iii. do nothing and allow the assured short-hold 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 5.2 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 5.2.6].

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.

5.2 Possession

5.2.1 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 is relates to lets to 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. This can be used to recover possession after the death of the tenant where the tenancy has devolved under their will or intestacy.

Ground 8. This 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 (which if he has obtained legal aid could be substantial), 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 5.2.2 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.

5.2.2 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.

5.2.3 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 short-hold 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.

5.2.4 Possession prior to expiry of agreement

If you wish to obtain possession of the property during the fixed term of an assured or assured short-hold 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 1.1.4 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 short-hold 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.

5.2.5 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. Our landlords association will be able to recommend a suitable firm or many of them will advertise on the internet e.g. via online landlords services such as www.landlordzone.co.uk. 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 he or she meets 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 short-hold 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 [see section 4.6.2]

5.2.6 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:

1. that the tenancy is an assured short-hold tenancy
2. that any fixed term of the tenancy has expired
3. that a notice properly drafted in accordance with the provisions of section 21 has been served on the tenant, and
4. that the proper notice period was given to the tenant and has expired at the time proceedings are issued.

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 5.2.8).
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 the 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 short fixed term (certainly not longer than six months) and serve a section 21 notice on the tenant towards the start of the tenancy.

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. The notice:

- must be in writing
- must state that possession is required under section 21 of the *Housing Act 1988*
- must have a notice period of at least two months
- if the fixed term of the tenancy has not expired, the notice must not expire before the end of the fixed term
- if the tenancy is a 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 fixed term ended on 11 June and rent is paid monthly, the new period will run from 12 to 11 of the month and the date in the notice must be the 11 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. Try to use one of these forms if possible. Do not delete the special wording or alter it in anyway.

The notice should be served preferably by hand. Do not serve it by ordinary post as if the tenant denies having received it you will not be able to prove it was delivered by the mail. Recorded delivery is not always satisfactory as the tenant can refuse to accept delivery. The best method of service is to hand it to the tenant personally. If you think the tenant will lie and deny having been served, take an independent witness with you.

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

5.2.7 When an assured short-hold tenancy can be ended

If the tenancy started on or after 28 February 1997 it is automatically an assured short-hold 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.

5.2.8 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. Your landlords association will be able to recommend a suitable firm or many of them will advertise on the internet e.g. via online landlords services such as www.landlordzone.co.uk.

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.

5.2.9 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 short-hold 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.

5.2.10 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 short-hold 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.

5.2.11 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.

5.2.12 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:

1. Acts likely to interfere with the peace and comfort of the Residential Occupier OR

2. The persistent withdrawal of essential services

AND EITHER

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

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

3. 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 (see section 5.2.11). 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.

5.2.13 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.

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 complain to EnergyWatch on their dedicated helpline: 0845 906 0708, via Typetalk on 18001 08459 06 07 08, or via email at: enquiries@energywatch.org.uk. Their website is: www.energywatch.org.uk.

If you are paying the bills yourself, because you are renting out rooms, then you should include the estimated cost of the fuel in the rent. That way there should be no outstanding bills to worry about.

If for some reason you keep the supplies in your name but want the tenant to pay, you'll need to ask the suppliers to provide a bill promptly at the end of the tenancy so you know how much the tenant owes. This arrangement should be avoided, if at all possible. If you want to be able to offset the final bill against any deposit you may hold, you need to make it clear in the tenancy agreement that the deposit can be used in this way.

5.2.14 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.

5.2.15 Damage and return of deposit

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.

Under the Tenants' Deposit Protection Regulations you will be required to provide evidence of damage or breakages in order to make a claim against the tenant's deposit. Deposits should be returned to tenants as soon as possible.

Appendix 1 Practical checklist for landlords: obligations & considerations

Preparation before letting:

- permission from mortgage lender and/or freeholder
- planning or Building Control approval for major improvement work done to property
- make sure the property is both a safe and healthy for any potential
  - occupiers or visitors, including
  - adequate heating and insulation
  - free from tripping and falling hazards
  - free from significant disrepair and asbestos
  - good lighting and ventilation
  - good security
  - good sanitation, food preparation and is hygienic
- gas safety check by CORGI registered installer
- comply with electrical & furniture standards
- fire alarm and/or smoke/heat detectors
- emergency lighting
- check whether HMO or other licence is needed from the council
- if letting as an HMO, comply with HMO regulations
- 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
- calculate realistically whether the rental income (with void periods) will cover mortgage payments, repairs and all the other rental costs. If not, budget to set aside money from earnings each month (in the early years) to cover the shortfall.
- 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.
- inform tenant of gas, electric suppliers etc and read meter
- give receipt for deposit (if taken). Forward to Bond Bank when tenants deposit Protection Regulations begin (probably April 2007) and notify tenant.
- keep tax records of income and expenditure
- 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
- if rental income exceeds (allowable) expenditure, set an amount aside to cover future tax demands
- complete tax return ideally soon after the end of your tax year

Appendix 2 A Brief introduction to law

To understand landlord and tenant law properly you need to have a basic understanding of how the legal system works in England and Wales (there are different systems in Scotland and Northern Ireland). This is a very brief overview.

Criminal law and civil law
These are two separate systems.

Criminal law is where the state is punishing someone for some sort of wrong doing. Most criminal cases (such as burglary or assault) are brought by the Crown Prosecution Service on behalf of the police, but other organisations can also bring prosecutions. For example many shops will bring private prosecutions against shoplifters. Most housing related prosecutions are brought by local authorities (for example for harassment or breaches of the licensing regulations) but not always. For example breaches of the gas regulations will be prosecuted by the Health and Safety Executive, and the product safety regulations by Trading Standards Offices. In criminal cases actions are brought by the prosecution (generally on behalf of the Queen, hence the legal title of the cases will give the Latin Regina generally shorted to r.) against a defendant. The normal courts used are the Magistrates Court or, for the more serious cases, the Crown Court.

Civil law on the other hand is about the resolution of disputes between individuals. For example a landlord trying to evict a tenant for non payment of rent, or a tenant bringing a claim for recovery of his damage deposit. In civil law a claim is brought by a claimant against a defendant. Claims are normally made in the County Court, save for high value or complex cases, which can be brought in the High Court. The 'Small Claims Court' is the name for a special procedure which is used for claims with a value of under £5,000.

There are various types of civil law. Two areas relevant to landlord and tenant are contract and tort.

Contract law - this is where two parties reach an agreement where both sides exchange something of value (for example £1 for a bar of chocolate). Contracts are subject to terms and conditions, which will be either specifically agreed by the parties or will be implied into the contract, generally by statute. For example, a tenancy is a type of contract where the landlord agrees to provide the property in exchange for rent. The terms are generally set out in the tenancy agreement, but the tenancy will also include terms implied by statute, for example regarding the landlords repairing obligations, whether these are written into the tenancy agreement or not. Generally only the parties to a contract can sue on it, i.e. the landlord and the tenant.

Tort law - this is where someone commits a civil wrong. There are several types of tort. Perhaps the best known is the tort of negligence. Here in certain circumstances people or companies (such as manufacturers) are held to have a duty of care towards various classes of people. For example in the case of a manufacturer it will be the ultimate user of the goods they have manufactured. So someone who is harmed by manufactured goods can sue the manufacturer direct even though he may have actually bought the item from a shop and therefore have no direct contractual relationship with the manufacturer. So far as housing law is concerned, traditionally landlords do not owe a duty of care towards their tenants, and tenants need to sue on the contract. However there will be situations where a duty of care arises, for example under some statutes. In these cases the tenants family and visitors will normally be able to sue as well as the tenant. Other torts include public and private nuisance, trespass and defamation.

Common law- This is the name for law which does not come from an act of Parliament. Instead the law stems from decisions in cases made by judges over hundreds of years, which originally developed from the custom and practice of the people. Some areas of law consist almost entirely of case law, for example the law of negligence.

When deciding a case, if there is no statute, a judge will look to see what other decisions have been made on the same legal point. Generally decisions made will bind all future judges in an equal or lower court, save for the House of Lords which is allowed, in exceptional circumstances, to overrule its own past decisions. The part of the case which will bind the judge is what is called the 'ratio decidendi' or the (legal) reason for the decision. So cases with similar facts may actually be decided on different legal points.

Statute law- Although common law is very important, much of our law is now found in statutes or Acts of Parliament. This is particularly important in housing law, much of which is contained in statutes such as the *Housing Acts 1988, 1996 and 2004*, The Protection from *Eviction Act*, and the *Landlord and Tenant Act 1985*, to name but a few. Frequently nowadays statutes tend to only operate as a statement of intent, and do not come into force until after government has carried out consultation on their implementation, and issued statutory instruments setting out the detailed regulations for the law in question.
For example although the *Housing Act 2004* was passed in November of that year, the licensing and health and safety rating systems included in that act did not come into force until April 2006. Frequently statutes will commence at different times in England and in Wales as in Wales it is the National Assembly for Wales which will deal with the regulations/statutory instruments under its delegated powers, rather than Parliament.

Case law is still very important even where there is an Act of Parliament, as acts are sometimes difficult to interpret. If parties cannot agree how an act is to apply they will have to litigate and allow a Judge to decide. These cases are then used in future to help us interpret the act.

Conclusion

As mentioned at the start, this is only a very brief overview. The topics outlined here will generally involve a couple of years study by law students at University so this should only be taken as a rough guide. If you are interested and would like some further information on the English legal system, you will find general information books in the Law section of most good bookshops.

Appendix 3 Rent assessment committees

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

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

Rent assessment panels have the following functions for private lettings:

- tenants of assured short-hold tenancies can refer their rent for review during the first six months of their original tenancy, if they consider the rent is above a market rent
- tenants of assured/assured short-hold tenancies can refer a rent for review where the landlord has sought to increase it under the notice procedure under s13 of the *Housing Act 1988*
- tenants of assured/assured short-hold tenancies can refer for review a landlords notice of a change in the tenancy agreement terms under section 6 of the *Housing Act 1988* (this is very rare and therefore will not be discussed further)
- either landlords or tenants can refer a rent officers decision on a 'fair rent' under the *Rent Act 1977* if they disagree with it.

There is no appeal against a committee's decision except on a point of law.

The committee may make a decision by considering the relevant papers although you or the tenant can ask for an informal hearing, which you may both attend. There is no charge for a committee decision. When settling disputes on rent, the committee normally decides what rent you could reasonably expect for the property if you were letting it on the open market under a new tenancy on the same terms.

It does not take into account any increase in the value of the property due to voluntary improvements by the tenant or any reduction in the value of the property caused by the tenant not looking after the property.

The committee may agree the proposed rent or set a higher or lower rent.

More information on the work of the Rent Assessment Committees can be found from the Residential Property Tribunal Services web-site at http://rpts.gov.uk.

Appendix 4 Housing benefit procedures

There are presently two systems under which Housing Benefit is administered in England. Which of these is applicable will depend on the location of the property as this will determine the local authority administering the Housing Benefit Payments. The two systems of benefit payment are:

- Rent Allowance (Old)
- Local Housing Allowance (New).

Rent allowance (old system)
Rent allowance is often paid directly to the tenant but there are certain circumstances in which the local authority pays the landlords direct. These are:

- if the tenant asks them to do so
- if the landlord has informed the local authority in writing that their tenant has arrears of eight weeks or more
- if they think that it would be in the tenant's best interest
- if the tenant has left the property and has rent arrears of which the landlord has informed the local authority in writing.

Direct payments to landlords are made every four weeks, in arrears.If the local authority is going to pay the tenant's housing benefit direct to landlords they will inform the landlord in writing.

If the local authority is going to make direct payments they will ask the landlord to sign a form to show you are aware of your responsibilities.

The amount of a housing benefit award depends on:

- the income and savings of the claimant, and their partner (if they have one)
- the make-up of the claimant's household such as the number of people living in the household and their ages
- the rent level that the rent officer feels is reasonable for the property, this will not necessarily be the level of rent that the tenant pays on the property
- the local authority awards housing benefit after comparing the income and savings of the people in the household with the amount the government says they need to live on
- the rent service considers:
  - the average market rent for the locality
  - the open market value of the property
  - whether the property is suitable for the size of the household.

If the tenant does not agree with the rent level the local authority are using, they can appeal against it to the Rent Service, which is part of the DWP and independent of the local council. If the rent service believes the rent being charged is above the local reference rent, they will tell the council the maximum figure they can use to work out the tenant's housing benefit. The landlord cannot appeal against the decision of the rent service.

Some people may have charges included in their rent such as water rates, fuel charges and meals which housing benefit does not cover.

If a tenant wants to know the rent level that would be used to work out their housing benefit before they move, or before renewing a tenancy, they can request a pre-tenancy determination.
The local authority will then ask the rent service to tell them what a reasonable rent level would be for that tenant if they claimed housing benefit at that property.

The pre-tenancy determination will show the rent level that the council would use to work out the tenant's housing benefit at that address, which is guaranteed for twelve months (It does not however take into account matter like overpayments that are being recovered even from a previous tenancy which could affect the level of payment received.)

Change in circumstances affecting payments
The tenant must tell the local authority's benefit service immediately in writing of changes of circumstance that might affect the entitlement to housing benefit. The landlord must also inform the local authority of any change of circumstance he is aware of.

The types of changes are:

- the rent is going up or down
- the tenant has moved out, even if their tenancy has not ended
- the tenant has moved to a different room in your property
- the number of people in the tenant's household has changed
- any other changes which may affect the tenant's entitlement.

Any delay in informing the local authority about a change in circumstances might result in an overpayment that will need to be repaid.

Where the local authority makes direct payments to the landlord, they can provide the following information:

- how much they will pay
- the date the claim is paid from and when it will end
- details about any payments made and any payments to be made in the future.

If your tenant has given the local authority written permission to discuss the claim with the landlord, the local authority can provide information to enable the landlord to help them with the claim for housing benefit.

If housing benefit is not being paid direct then the landlord does not have the right to know anything about the tenant's claim, unless the tenant writes to council to allow this.

Overpayments

An overpayment is when a landlord or tenant is paid more housing benefit than the claimant is entitled to.

Most overpayments of housing benefit are recoverable, either from the tenant, or the landlord if housing benefit has been paid direct.

If the local authority overpays housing benefit the law allows them to recover the money in some cases, take official error for example. They will consider the circumstances that caused the overpayment before they decide whether to recover the overpayment and who should repay it.

If they decide to recover an overpayment from the landlord, they will write and explain how they have calculated the overpayment, the period it covers, the reason it occurred and how the landlord can appeal, and the timescale to do so.

Note that under The Housing Benefit (General) Amendment (No.2) Regulations 2001, payments cannot be reclaimed from landlords who have been paid direct, if the landlord has co-operated with the benefit office in reporting a suspected overpayment or the tenants changed circumstances.

Repaying overpayments
There are three recovery options local authorities can use:

1. invoice – they send the landlord an invoice for repayment in full or payment by instalments
2. direct deduction – If the landlord receives payments for other tenants, the local authority can make deductions from those payments until the overpayment is repaid. This is irrespective of whether the landlord receives payments as an agent for other landlords
3. register debt at county court – if they have been unsuccessful using other methods of recovery the local authority may register the debt at the county court and obtain a judgement to allow them to use the court bailiffs and attachment of earnings orders to recover the debt.

Appeals

The appeals process allows the local authority to reconsider a decision before submitting any appeals to an independent tribunal.

Landlords only have a right of appeal against decisions where an overpayment has occurred and where the recovery is to be made against the landlord. They cannot appeal against the amount of the tenant's housing benefit award.

The landlord can appeal against the local authority's decision that an overpayment has occurred, but only if it is being recovered from the landlord, and only on the following points:

- the amount of the overpayment
- whether the overpayment is recoverable.

The local authority can also consider any representations from the landlord on whether they should repay an overpayment and may accordingly change their decision.

If they do not change their decision in the landlord's favour the local authority will submit the appeal to the Appeals Service so it can be considered by an independent tribunal.

The Appeals Service will look at the decision again. The tribunal cannot make decisions about who should be the target for recovery but it can consider whether the local authority has made a decision they are entitled to make. It would only be able to overturn the decision to recover an overpayment if it found that the authority had acted outside the law.

Landlords wishing to appeal against a decision that they have been overpaid must do this in writing and give reasons for the appeal. It must be received by the local authority's benefit service within one calendar month of the date of the notification of overpayment.

Local housing allowance (LHA) [the new system]
Local Housing Allowance (LHA) is a change to Housing Benefit for people living in private rented accommodation. The changes affect how Housing Benefit is worked out and how it is paid. LHA is a new system of Housing Benefit Payment being introduced in particular 'Pathfinder' authorities.

If the landlord owns a property in a Pathfinder council area, the tenants' Housing Benefit will be based on a Local Housing Allowance (LHA). The level of the allowance will be determined by the Housing Benefit office. Your local Housing Benefit office will be able to tell you whether the council is a Housing Benefit Pathfinder. They will also have the LHA rates on their websites.

The new LHA is based on rent levels for the area in which a person lives and how many people live with them. There are no changes to the entitlement rules - this will be based on a person's income and savings and proof of a valid tenancy. Payment will normally be to the tenant, who will then be expected to pay the landlord.

Rent Officers will set individual LHA rates for each Broad Rental Market Area. The Pathfinder councils will publish these so that landlords and prospective LHA customers can be clear about the amount of rent that LHA will cover in any given circumstance. The fundamental aims of the LHA scheme are to promote fairness and choice.

The LHA should provide the tenant with greater flexibility. The tenant may choose to live in a larger home and pay more than the allowance, or the tenant could choose to live in a smaller home and keep the difference. It is proposed that cap of a maximum £15 per week will apply when LHA is rolled out nationally.

Fairness
Tenants with similar circumstances living in the same area will get the same amount of Housing Benefit. In the non-Pathfinder areas the amount of benefit is set according to the rent actually paid and the home they live in.

Choice
Tenants will be able to choose the quality and price of their accommodation. For example, tenants could choose to pay more than the allowance they receive for accommodation that is larger than they qualify for, or move to a less expensive house and keep the difference, subject to a possible cap.

Age of tenant
The age of the tenant will affect the amount of Housing Benefit received under both Rent Allowance and LHA.

There are special rules if the tenants are single and under 25 years old. Their Housing Benefit is limited to the shared-room allowance which is based on the rent for a room which has a shared living room, and which may have a shared bathroom or a shared kitchen. Some single people under 25 are exempt from this rule, for example if the tenant is disabled and the Severe Disability Premium is used in your benefit assessment.

Tenants over 25 years old, with or without a partner, and who do not have any children or dependants living with them, will be entitled to the two-room rate housing benefit unless they live in shared accommodation. If they live in shared accommodation then their Housing Benefit will be based on the shared-room allowance.
Your local authority can provide further advice or see the Department of Work and Pensions website for more information www.dwp.gov.uk

Appendix 5 Where to get help: 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 and local 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.
www.communities.gov.uk

Department of Work and Pensions
Provides benefits and services for a wide range of people including Housing Benefit.
www.dwp.gov.uk

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

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
For further information or to join over the telephone (by credit or debit card) the Membership Department is on 020 7840 8937 or e-mail info@landlords.org.uk. It is also possible to join via the website.

The Residential Landlords Association
Supporting landlords that own their own properties, it is owned and trusted by its members. For more information or membership enquiries call 0845 666 5000 or visit online at www.rla.org.uk

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

National Federation of Residential Landlords (NFRL) - www.nfrl.org.uk. National umbrella organisation for (amongst others) for The Southern Private Landlords Association (SPLA) - www.spla.co.uk.
For further information or to join over the telephone (by credit or debit card)
The member Department is on 0845 456 0357
or join on line via the website

Landlords UK - Links, forums and information
www.landlords-uk.net

Landlord Law
Legal information, forms and services for Landlords and Tenants
www.landlordlaw.co.uk

Landlord Zone
Information for landlords, tenants & agents.
www.landlordzone.co.uk
LLAS and London Landlord Day website
www.londonlandlord.org.uk

Decent and Safe Homes (East Midlands)
www.eastmidlandsdash.org.uk

Residential Landlord
Free information and advice for landlords and property investors
www.residentiallandlord.co.uk

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

The Residential Property Tribunal
For information about the work of the Rent Assessment Committees and their jurisdiction under the Housing Act 2004
http://www.rpts.gov.uk

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

Agents professional bodies websites:
The Association of Residential Letting Agents
http://www.arla.co.uk
The Royal Institute of Chartered Surveyors
http://www.rics.org

The National Approved Letting Scheme
http://www.nalscheme.co.uk/

The National Association of Estate Agents
http://www.naea.co.uk

The Association of Independent Inventory Clerks
http://www.aiic.uk.com

Mediation UK
Information about mediation service
http://www.mediationuk.org.uk/

Law Pack Publishing
Low cost forms for landlords
http://www.lawpack.co.uk

The Leasehold Advisory Service
For landlords of flats on long leases who may have problems with their freeholder
http://www.lease-advice.org

Improvement and Development Agency
Layden House
76-86 Turnmill Street
London
EC1M 5LG
tel 020 7296 6600
fax 020 7296 6666
www.idea.gov.uk

LACORS
Local Government House
Smith Square
London SW1P 3HZ
tel 020 7665 3888
fax 020 7665 3887
email info@lacors.gov.uk
www.lacors.gov.uk

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