

ANUK

LANDLORD'S

GUIDE &

TRAINING MANUAL

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ANUK LANDLORD'S GUIDE AND TRAINING MANUAL

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SECTION 1

MANAGING A TENANCY

1.1 TYPES OF TENANCY

1.1.1 Assured and assured shorthold tenancies

These are the names of the commonest forms of arrangement for the letting of houses and flats by private landlords. In their current form, they were introduced by the Housing Act 1988 but important changes were made by the Housing Act 1996 with effect from 28 February 1997.

In the legislation, the term assured tenancy covers both assured tenancies and assured shorthold tenancies. For clarity, this guide will refer to assured tenancies and *shorthold* tenancies.

The following list of tenancies or agreements cannot be assured or shorthold tenancies.

- a tenancy which began, or which was agreed, before 15 January 1989;
- a tenancy for which the rent is more than £25,000 a year;
- a tenancy which is rent free or for which the rent is £250 or less a year (£1,000 or less in Greater London)
- a tenancy granted to a student by an educational body such as a university or college;
- a holiday let;
- a letting by a resident landlord

1.1.2 Tenancies, which can be assured but not shorthold tenancies

The following tenancies cannot be shorthold tenancies:

- a tenancy replacing an earlier assured tenancy with the same tenant which has come to an end or a statutory periodic tenancy arising automatically when the fixed term of an assured tenancy ends;
- an assured tenancy which the tenant has succeeded to on the death of the previous regulated (pre-1989) tenant;
- 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.

Assured and shorthold tenancies were introduced to encourage lettings by allowing landlords to charge a full market rent, unlike previous forms of tenancy. Shorthold tenancies also allow landlords to let their premises for a short period only and to get it back if they wish after 6 months.

1.1.3 The main differences between an assured and a shorthold tenancy

In the case of a shorthold tenancy, possession of the premises can be regained 6 months after the beginning of the tenancy, provided that 2 months notice is given that possession is required

In the case of an assured tenancy, the tenant has the right to remain in the premises unless it can be proven to the court that there are grounds for possession.

There is not an automatic right for repossession of the premises when the tenancy comes to an end.

A full market rent can be charged for an assured or a shorthold tenancy.

1.1.4 Choice of an assured or a shorthold tenancy

If possession of the premises may be needed at some time, consideration should be given to a shorthold tenancy. If the premises is mortgaged the lender may require the tenancy to be a shorthold tenancy. Consideration should be given to an assured tenancy if it is certain that the premises will be let indefinitely.

1.1.5 Tenancies that cannot be shorthold tenancies

If the landlord already has an existing assured tenant, the landlord cannot replace his or her tenancy with a shorthold tenancy.

Under the 1996 Housing Act all new private sector tenancies are automatically be assured shorthold unless the landlord has made special arrangements to set up an assured tenancy.

Therefore most tenancies created after 28 February 1997 are assured shorthold tenancies.

1.2 SETTING UP A TENANCY

1.2.1 Types of tenancies

Tenancies starting on or after 28 February 1997 are automatically shorthold tenancies unless special steps are taken to set up an assured tenancy.

Tenancies that started or were agreed before 28 February were automatically assured tenancies unless a special procedure was followed to set up a shorthold tenancy using a special form a Section 20 notice.

To set up an assured tenancy either:

- the tenant is given a notice that says that the tenancy is not a shorthold tenancy before the beginning of the tenancy,
- or a simple declaration is included in the tenancy agreement to this effect.

If it is decided after the tenancy has started that it should be on assured terms, a notice can be served after the tenancy has started. There is no special form for giving this notice; it simply needs to state clearly that the tenancy will not be a shorthold tenancy.

An assured or shorthold tenancy may either:

- last for a fixed number of weeks, months or years called a **fixed term tenancy**; or
- run indefinitely from one rent period to the next called a **contractual periodic tenancy**.

If a fixed term tenancy is agreed, possession can only be sought during the fixed term if one of grounds for possession 2, 8, 10 to 15 or 17 in the list of grounds of possession provided below applies and if the terms of the tenancy make provision for it to be ended on any of these grounds.

If a periodic tenancy is agreed possession can be sought at any time on any of the grounds for possession listed below. Furthermore, if a shorthold tenancy is agreed on a periodic basis, there is an automatic right

to possession at any time after the first 6 months, provided that 2 months notice is given that possession is required. Possession cannot be sought from an assured tenant without grounds when the fixed term ends.

1.2.2 Initial period of a shorthold tenancy

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

However, the tenant has a right to stay in the premises for a minimum period of 6 months. This means that even if a fixed term of less than 6 months or a periodic tenancy is agreed from the outset, there is not a guaranteed right to possession if the tenant refuses to leave during the first 6 months of the tenancy. However, possession can be sought during this period on one of the grounds for possession set out below.

1.2.3 Written tenancy agreements

This is only required by law for fixed-term tenancies of greater than 3 years. However it is highly advisable to have a written tenancy agreement as it will make it easier to sort out any disagreements which may arise later, and if necessary, to evict the tenant. The accelerated possession procedure operated by the County Courts cannot be used without a written tenancy agreement.

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, and the length of any fixed term which has been agreed.

The tenant must apply for this statement in writing. The landlord must provide it within 28 days of receiving the tenant's request. If the landlord fails to do so, without a reasonable excuse, they will be liable to a fine.

If there is only an oral agreement with the tenant, the landlord and the tenant are bound automatically by the legislation applying to shorthold tenancies if the tenancy started on or after 28 February 1997 and by the legislation applying to assured tenancies if the tenancy started or was agreed before 28 February 1997, even if it was agreed with the tenant that it was another form of tenancy.

Landlords may draw up their own agreement. The terms must be fair and not conflict with the duties on landlords imposed by legislation, which will automatically override any agreement with the tenant. Landlords drawing up their own agreement are strongly advised to seek legal advice. For this reason it may be better to use standard tenancy agreements which are available from law stationers, the larger general stationery stores and some local authority housing advice centres.

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

A tenancy agreement is a stampable document this means that it should be sent or taken to the Stamp Office for stamping in order to have validity if it is subsequently used in court. Details are in the Inland Revenue leaflet *Stamp Duty on Agreements Securing Short Tenancies*. This is available from any Stamp Office; the landlord can also ask a Stamp Office for more advice about stamp duty, or ring their Helpline on 0845 603 0135.

1.2.4 Deposits

A deposit may be required from the tenant before moving into the property, to act as 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 2 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.

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. It is advisable to agree a list of furniture, kitchen equipment and other items in the premises and their condition with the tenant at the outset of the tenancy.

If the tenant cannot afford the deposit, the local authority's Housing Department or Housing Advice Centre may operate a rent or deposit guarantee scheme in the area, which would guarantee rent or the costs of damage for a specified period.

1.2.5 Rent book

A landlord is only legally obliged to provide a rent book if the rent is payable on a weekly basis. This 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 keep a record of rent payments or provide receipts for rent paid for all tenancies to avoid any disagreements later.

1.2.6 Unfair Terms in Tenancy Agreements

There is guidance, backed by legislation, which requires that landlords and agents deal fairly and equitably with tenants, respecting their legitimate interests and deal with them in good faith.

A summary of the written guidance is contained in [Appendix 1](#) OFFICE OF FAIR TRADING GUIDANCE ON UNFAIR TERMS IN TENANCY AGREEMENTS

1.3 WHAT TO DO WHEN A TENANCY AGREEMENT ENDS

1.3.1 Shorthold Tenancy

When a **shorthold tenancy** comes to the end of the fixed term, any replacement tenancy the landlord agrees will automatically be on shorthold terms unless the landlord chooses to set up a replacement tenancy on an assured basis.

If the landlord does nothing, the tenancy will automatically run on from one rent period to the next on the same terms as the preceding fixed term shorthold tenancy called a **statutory periodic tenancy**. The tenancy will continue to run on this basis until the landlord replaces it, the tenant leaves or the landlord seeks possession from the tenant.

When a shorthold tenancy ends the landlord can:

- (i) agree a replacement fixed term shorthold tenancy;
- (ii) agree a replacement shorthold tenancy on a periodic basis called a contractual periodic tenancy;
- (iii) agree a replacement assured tenancy, provided the landlord gives written notice or state clearly in the tenancy agreement that the tenancy will not be a shorthold tenancy;
- (iv) do nothing and allow the shorthold tenancy to run on with the same rent and terms called a statutory periodic tenancy;

(v) end the tenancy but the landlord must have given 2 months notice that possession is required (see sections 6.1 to 6.5).

If the landlord needs to regain possession of the property at short notice, the landlord should consider options (ii) or (iv) which would allow the landlord to regain possession after giving the tenant 2 months notice.

Option (iv) is useful if the landlord and the tenant agree that the tenant should move out a few weeks after the fixed term has ended.

If option (i) is chosen the landlord will only be able to regain possession during the fixed term on one of grounds for possession 2, 8, 10 to 15 or 17. Once the fixed term has ended the landlord will be able to regain possession after giving the tenant 2 months notice.

If option (iii) is chosen the landlord will not have an automatic right to regain possession at the end of the fixed term.

1.3.2 Assured Tenancy

When an **assured tenancy** comes to the end of a fixed term, any replacement tenancy agreed with an existing assured tenant would automatically be on assured terms whatever the tenancy agreement says. To avoid any misunderstanding with the tenant, it is helpful to state in the replacement tenancy agreement that the tenancy is not a shorthold tenancy.

If the landlord does 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.

The tenancy is called a **statutory periodic tenancy**. It will continue to run on this basis until the landlord replaces it, the tenant leaves or the landlord seeks possession from the tenant on one of the grounds of possession.

When an assured tenancy ends the landlord can:

- (i) agree a replacement fixed term shorthold tenancy;
- (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 the landlord chooses option (i), the landlord will only be able to regain possession during the fixed term on one of grounds for possession 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. The landlord does not have an automatic right to regain possession of an assured tenancy at the end of a fixed term.

1.4 ENDING A TENANCY

1.4.1 When a tenancy can be ended

If the tenancy started on or after 28 February 1997 the landlord has a right to regain possession without giving any grounds for possession at any time after any fixed term which the landlord agreed with the tenant comes to an end, or at any time during a contractual or statutory periodic tenancy, provided it is at least 6 months since the start of the original tenancy.

For example, if the landlord initially agreed a tenancy of 4 months, and subsequently issued a replacement tenancy to follow it, the landlord cannot regain possession until 2 months after the start of the replacement tenancy. However, if the original tenancy was for more than 6 months, the landlord can regain possession at any time during the replacement tenancy.

1.4.2 Notice that Possession is required

To obtain possession of the property back when the fixed term of a shorthold tenancy has ended the landlord must give the tenant **at least 2 months' notice that possession is required**.

The landlord can give the notice at any time during the fixed term, but the date stated for required possession cannot be before the end of the fixed term.

If the tenancy is on a contractual periodic or statutory periodic basis, the date on which the notice expires must be the last day of a tenancy period, and the notice must state that possession is required under section 21 of the Housing Act 1988.

If the landlord gives notice that possession is required, the notice must be in writing. The landlord does not have to use a special form for this.

If the tenant refuses to leave, the landlord cannot evict the tenant without a possession order from the court. The landlord can apply to the court to start possession proceedings as soon as the notice requiring possession expires. The landlord will not have to give any grounds for possession.

1.4.3 Accelerated Possession Procedure

The landlord could consider using the accelerated possession procedure.

The accelerated possession procedure is a straightforward and inexpensive procedure for getting possession of tenanted property without a court hearing.

The court will make its decision by looking at the documents that the landlord and the tenant provide, unless it considers that a hearing is required.

The landlord can only use this procedure if there is a written tenancy agreement (or, if the tenancy has lapsed into a statutory periodic tenancy, there was a written agreement for the original tenancy) and the landlord have given the tenant the required notice in writing that the landlord is seeking possession.

The landlord should apply to the county court for accelerated possession proceedings. For more information, you can get from the court the court Service's leaflet "*Landlords leaflet - Assured shorthold tenancies - An assured shorthold tenancy - There is a quicker possession procedure you can use*".

The tenant should leave the property on the date specified in the court order. However, if the tenant refuses to leave, the landlord still cannot evict the tenant. The landlord must apply for a warrant for eviction from the court. The court will arrange for bailiffs to evict the tenant.

1.4.4 Possession prior to expiry of Agreement

If the landlord wish to obtain possession of the property during the fixed term of a shorthold tenancy the landlord can only seek possession if one of the following grounds for possession applies - grounds 2, 8, 10 to 15 or 17 - and the terms of the tenancy make provision for it to be ended on any of these grounds. It is for the court to decide whether one or more of the grounds for possession apply.

The landlord can only seek possession during a fixed term of an assured tenancy if one of the following grounds for possession applies - grounds 2, 8, 10 to 15 or 17 - and the terms of the tenancy make provision for it to be ended on any of these grounds.

Once the fixed term of the tenancy has ended, the landlord can seek possession from the tenant if one or more of the 17 grounds for possession apply.

1.4.5 Grounds for Possession

The reasons or "grounds" for possession cover, for example, cases where the tenant has not paid his or her rent, or has broken another term of the tenancy agreement. Some are **mandatory** which means that if the landlord can prove that the ground applies, the court must grant you a possession order.

The others are **discretionary** which means the court will only grant the landlord a possession order if it thinks it reasonable to do so, based on all the facts of the case.

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

However, the court may grant possession on grounds 1 and 2 without the prior notice if it considers that there were good reasons for not serving the notice.

[See Appendix II Grounds for possession](#)

1.4.6 Procedure for Possession

If the landlord believes they have grounds for possession, they must first give written notice to the tenant that they intend to go to court to seek possession. The period of notice is usually 2 weeks or 2 months, depending on which ground for possession the landlord is using.

The notice periods for each ground are given in the list of grounds for possession. The landlord 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.

The landlord should also use this form if the tenancy is a shorthold tenancy and they are relying on one of the grounds for possession. The form asks the landlord to state which of the grounds for possession is being used, **each should be written as it appears in the legislation**.

The landlord can apply to the court to start court proceedings as soon as the notice expires. The landlord will usually have to wait at least a month for a court hearing. The tenant does not have to leave until there is a court order requiring him or her to do so.

The tenant does not have to leave the property until there is a court order requiring him or her to leave.

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**.

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.

The landlord cannot evict the tenant themselves, if the tenant refuses to leave after the date specified in the order, the landlord must seek a warrant for eviction from the court. The court will arrange for bailiffs to evict the tenant.

If the tenant breaches the conditions of a suspended possession order the landlord may apply to the court for an absolute possession order or a warrant for possession, depending on the terms of the suspended order.

After the landlord has served a notice seeking possession the landlord can ask the tenant to pay rent until the date of possession granted by the court. If the tenant refuses to leave after the date in the court possession order and the landlord asks him or her to pay rent, there is a danger that the court could rule that a new tenancy has arisen.

However the tenant is liable to pay you damages for continued occupation of the property (known as mesne profits). The landlord should seek legal advice in these circumstances.

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 his or her circumstances. If asked to consider it, the court may also award a sum to cover interest on the outstanding rent.

If the amount of money the tenant owes is £3,000 or less, the landlord can make a claim through the Small Claims Court that is cheaper than claiming formally through the main court. If the tenant does not contest the claim, there will be no need for a court hearing.

If the tenant contests the claim there will be an arbitration hearing unless the case is too difficult to be dealt with under the small claims procedure in which case it will be transferred to the open court. The landlord should apply to the county court to make an application for Small Claims Court proceedings.

1.5 VARYING THE TERMS OF A TENANCY AND INCREASING THE RENT

1.5.1 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 agreement should say either that the rent will be fixed for the length of the term or that it will be reviewed at regular intervals and how it will be reviewed.

If the tenancy is a **contractual periodic tenancy**, the tenancy agreement should say how often the rent will be reviewed and how it will be reviewed.

1.5.2 Raising the Rent

The landlord can only put the rent up by more than agreed in the tenancy agreement if the tenant agrees.

If the tenancy is a **fixed term** tenancy and the agreement does not say when the rent will go up, the landlord can only put the rent up if the tenant agrees. If the tenant does not agree the landlord will have to wait until the fixed term ends before the rent can be raised.

If the tenancy is a **contractual periodic tenancy**, the landlord can agree a rent increase with the tenant. This agreement should be in writing. Alternatively the landlord can use a formal procedure in the Housing Act 1988 to propose a rent increase to be payable a year after the tenancy began. The landlord can then propose further increases at yearly intervals after the first increase.

When the fixed term tenancy ends and the tenancy lapses into a **statutory periodic tenancy**, the landlord can agree a rent increase with the tenant. Alternatively the landlord can use a formal procedure in the Housing Act 1988 to propose a rent increase to be payable as soon as the statutory tenancy starts. You can then propose further increases at yearly intervals after the first increase.

The formal procedure for proposing a rent increase for contractual or statutory periodic tenancies where this is not covered in the tenancy agreement is for the landlord to notify the tenant of the proposed rent increase on a special form called "*Landlord's notice proposing a new rent under an Assured Periodic Tenancy of premises*" **or** "*Landlord's notice proposing a new rent under an Assured Periodic Tenancy of premises situated in Wales*" which can be obtained from a law stationers or downloaded respectively from the ODPM or National Assembly for Wales websites. The forms can be used for assured or assured shorthold tenancies.

If the tenant agrees with the proposed rent increase, he or she should simply pay it from the date given in the notice.

If the tenant does not agree with the proposed increase, he or she must apply to a rent assessment committee to decide what the rent should be. The tenant must do so before the date on which the new rent would be due.

[See Appendix III Rent Assessment Committees](#)

1.6 JOINT TENANCIES AND SUB-LETTING

1.6.1 Joint Tenancies

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

Each tenant is then responsible jointly and individually for meeting the terms of the tenancy in full, including paying the rent.

So if one joint tenant leaves the property before the end of the tenancy without the landlord's agreement and the landlord cannot recover the rent due from the tenant, the remaining tenant(s) will be responsible for paying the full rent. Under a joint tenancy, all tenants have equal rights under the tenancy.

1.6.2 Subletting a tenancy

If the tenancy is a fixed term tenancy, the landlord should agree with the tenant whether or not he or she can sublet the tenancy. If the landlord does not want the tenant to sublet this should be clearly stated in the tenancy agreement.

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.

However 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 2 months rent), the tenant is able to sublet unless there is a term in the tenancy agreement preventing this.

1.6.3 Termination of the Tenancy by the tenant

If the tenant has a fixed term tenancy but wants to move out before the end of the term, he or she can only do so if the landlord agrees or 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 leave 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 tenancy has no fixed term, the tenant must give the landlord notice in writing of his or her intention to leave. The tenant must give at least 4 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.

1.7 EQUAL OPPORTUNITIES

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'.

1.8 HARASSMENT AND ILLEGAL EVICTION

1.8.1 Harassment

It is a criminal offence under the 1977 Protection from Eviction Act 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

1. 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 illegal 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 illegal eviction (see below).

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

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

1.8.2 Illegal Eviction

The Protection from Eviction Act 1977 makes it a criminal offence for any person to unlawfully deprive a 'residential occupier' of his or her occupation of the premises.

'Residential occupier' is defined in the 1977 Protection from Eviction Act. It covers virtually everyone living in residential accommodation and will certainly cover all tenants who rent from private landlords.

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

In order to obtain possession the landlord must first service a valid Notice on the tenant, then obtain a Possession Order from the County Court that must be enforced by the County Court Bailiff when it has expired.

The only exception to this is when someone shares living accommodation with his or her landlord, for example a bathroom, living room or kitchen. In this instance the landlord only needs to give the person 'reasonable notice' to leave. Once the notice has expired the person can be excluded from the accommodation without the Court Order.

Examples of unlawful eviction include:

- Changing the locks.
- Removing tenants possessions.
- Physically throwing the tenant out.
- Moving someone else in.
- Deprivation of part of the accommodation, e.g. bathroom/kitchen.

The only defence a landlord has to a charge of unlawful eviction is if they can show that they had reasonable cause to believe that the tenant had left, and they can satisfy the Court that this is the case.

The local authority can prosecute a landlord who illegally evicts a tenant. The offence carries a maximum penalty of a £5000 fine or 6 months imprisonment in the Magistrates Court or an unlimited fine in the Crown Court and a custodial sentence of up to 2 years.

Tenants can also claim civil damages against landlords who illegally evict them which can be substantial, as the amount is based on the difference in the market value of the property as tenanted as compared with vacant possession.

1.9 BONDS AND DEPOSITS

1.9.1 Bonds

A bond is paid as a cover for the property against losses incurred. The amount charged for a bond is usually one months rent however, this should not be more than the equivalent of two months rent.

What bonds 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

Bond monies should ideally be kept in a separate account.

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 bond the landlord should account for this with invoices or receipts and send the balance of the bond to the tenant.

1.9.2 Bond guarantee schemes

There are various bond guarantee schemes operating across the country. These schemes generally replace the upfront cash deposit and instead guarantee the landlord to cover 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 they 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 region. For further information about the scheme operating in a specific area there is a useful numbers list at the back of this pack.

1.10 REPAIR AND MAINTENANCE

1.10.1 Landlords’ obligations

Unless the tenancy has a fixed term of more than seven years, the landlord is responsible for repairs to:

- the structure and exterior of the dwelling;
- basins, sinks, baths and other sanitary installations in the dwelling; and
- heating and hot water installations

Responsibility for repairs to other parts of the property not mentioned above depends very much on the terms of the agreement. If decorations are damaged during repair or maintenance work the landlord should make good the damage.

Ensure when including terms in the agreement about repairs to the property that these terms are not classed as ‘unfair’ as contained in guidance by the Office

Legal obligations on Landlords to maintain and keep properties in a satisfactory state of repair are contained primarily in

- The Landlord and Tenant Act 1985, Section 11
- The Defective Premises Act 1972, Sections 1 and 3

Failure to comply with repair obligations can result in civil proceedings in Court by a tenant against the landlord, and if successful they can result in the landlord having to pay compensation to the tenant as well as having to rectify defects.

In any case where the disrepair of a property is so severe as to render the premises “prejudicial to health or a nuisance”, the condition would be said in legal terms to be a “statutory nuisance”.

In such situations, a tenant can apply to a Magistrate's Court for a Nuisance Abatement Order to be made under the Environmental Protection Act 1990, Section 82, which would require the landlord to carry out whatever works are necessary to abate the health hazard or nuisance.

In addition, since these are criminal proceedings the Court can impose a fine and award the tenant compensation.

If the landlord requires access to the property they should allow 48 hours notice to the tenants. Where contact cannot be made directly then 24 hours notice in writing would be acceptable.

Except in special circumstances, such as compulsory purchase for redevelopment, or overcrowding, a regulated, secure or assured tenant can only be made to leave his or her home if the landlord obtains a court order on one of a number of specified grounds for possession.

You cannot repossess a property to carry out repairs.

However, the landlord may be able to obtain an order if they can provide suitable alternative accommodation.

[See Appendix IV Enforcement procedures](#)

1.10.2 Tenants' obligations

Under common law, a tenant must use the property in a responsible way and take care of it. For example turn off the water if there is a risk of burst pipes when they go away and unblock the sink when it is clogged up by waste.

Tenants should not damage the property and nor should their family and guests.

Under the Rent Act 1977, the Housing Act 1985 and the Housing Act 1988, the landlord can seek possession where the tenant or someone living with him or her has damaged the property.

If there is no written tenancy agreement then a verbal agreement is subject to the law on repairs just like a written agreement, and the same provisions will apply.

There is an implied term in tenancy agreements under the Rent Act 1977 and the Housing Act 1988 that a tenant will allow access to the property (at reasonable times of the day), to enable repairs to be carried out.

In some circumstances, if the right procedure is followed, a tenant can do necessary repair works and take the cost out of the rental payments.

1.11 INVENTORY

An inventory records information on the state of decoration, condition and contents of each room in the property.

The landlord should take an inventory at the start and at the end of the tenancy. It should include an itemised list of all the contents and their condition.

It is a good idea to include readings of gas and electricity on the inventory.

At the end of the tenancy the landlord should go through the inventory (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.

1.12 HOUSING BENEFIT

Housing benefit is a means-tested benefit to help people on low incomes pay their rent. It is a government scheme run by local authorities.

Payments are normally made directly to tenants. However tenants can instruct the local authority to pay the landlord directly.

Housing benefit cannot be used to cover the tenant's bond or rent paid in advance.

Anyone who rents his or her home can apply for housing benefit.

Housing benefit cannot be paid to those living with a member of their immediate family and paying them rent or board.

It may also be withheld if the council believes an arrangement has been created to take advantage of the housing benefit scheme.

A claim for housing benefit should be made immediately as any delay could mean the tenant loses benefit. It should be made as soon as the tenancy is agreed, or when the tenant thinks they may be entitled to help with their rent. Housing benefit will only be paid once the tenant moves in.

The tenant must complete an application form for housing and council tax benefit. Application forms are available from the local authority's housing benefit service.

To claim benefit tenants need written proof of the rental agreement, such as a copy of the tenancy agreement or a letter signed by the landlord confirming all the details of the agreement.

This must include the landlords name and address, the date the tenancy started, how much rent is paid, how often this is paid, and what the rent covers, including any service charges.

The benefit service must see original documents, not copies.

See [*Appendix V Housing Benefit procedures*](#)

1.13 COUNCIL TAX

The person who lives in a property normally pays the council tax, whether they own or rent it.

If the property is a house in multiple occupation (HMO) then the landlord is liable to pay the council tax for all residents.

If the property is empty the landlord will be responsible for paying the council tax at the following levels:

- If unfurnished – 90% council tax
- If furnished – no charge for the first 6 months
- If still empty after 6 months – full payment

Some dwellings are exempt from council tax, for example those that are only occupied by full-time students in higher education.

If a property is let to a tenant over 18 who lives alone, they will qualify for a 25% discount from their council tax bill.

Landlords must inform the council tax section in writing whenever someone moves in or out of their property, or if it is empty.

1.14 Anti-Social Behaviour

1.14.1 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.

1.14.2 Dealing with anti-social behaviour

Every day problems such as noise or lifestyle differences can usually be sorted out by mediation however, in more serious cases - where there are threats or violence - or if people can't agree to mediation it may be necessary to contact your local authority's Anti-Social Behaviour Unit.

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.

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.

If the Tenant is the victim they should keep an accurate record of the problem and events as they happen. If the ASB is not serious then the landlord may be able to sort out the problem.

However, if the problem is serious or persistent then the landlord should contact the local authority's Anti-Social Behaviour team or the Police for assistance.

1.14.3 If the tenant is causing the problem

Landlords have a legal right to get possession of the property if they can prove to a court that the tenants' behaviour has created a nuisance to neighbours.

However, this 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.

To take action landlords need evidence. This can be obtained by speaking to the people complaining and gathering evidence on names and addresses of people affected as well as dates/times/detail of incidents.

Additionally other neighbours and agencies such as the local authority's Environmental Health Services and the police may have details of complaints received by them.

If the evidence shows that the tenant has behaved anti-socially (the nuisance has to be substantial and persistent, not just a one-off incident), the landlord can take measured appropriate action. This may just require talking to the tenant.

However, where this doesn't solve the problem then the matter can be put to the tenant in writing and the tenant informed that the landlord will apply to the court to obtain possession of the property.

It is advisable to liaise with the local authority's ASB Unit for help and advice when taking possession action.

SECTION 2 HEALTH AND SAFETY

The Housing Act 2004 is bringing about changes in the way that health and safety standards are assessed in private rented houses.

The key change is a move away from the prescriptive standards contained in the Housing Fitness Standard to the assessment of hazards through a risk assessment methodology called the Housing Health and Safety Rating System (HHSRS).

There is a section at the end of this guide that covers the new legislation.

2.1 THE HOUSING FITNESS STANDARD

The Housing Fitness Standard is one of the most significant and important of all the legal standards relating to housing as it covers all aspects of health and safety inside and outside properties.

The information is largely an extract of the Department of Environment's Circular 17/96, which advises on the determination of fitness.

The following sections of unfitness cover disrepair, dampness, heating, lighting, ventilation, food preparation and w.c. and personal washing facilities.

The less-commonly occurring unfitness criteria are not covered in this guidance, but full detailed advice can be obtained from the Circular itself.

Section 604 of the Housing Act 1985 specifies a statutory standard of fitness that is applicable to all dwelling houses.

In order to be deemed fit for human habitation, a dwelling house must not fail one or more of certain requirements to the extent that it is not reasonably suitable for occupation.

These requirements are:-

- a) it must be **structurally stable**;
- b) it must be free from **serious disrepair**;
- c) it must be free from **dampness** prejudicial to the health of the occupants (if any);
- d) it must have adequate provision for **lighting, heating and ventilation**;
- e) it must have an adequate piped supply of **wholesome water**;
- f) there must be satisfactory facilities in the dwelling house for **the preparation and cooking of food**, including a sink with a satisfactory supply of hot and cold water.
- g) it must have a suitably located **water closet** for the exclusive use of the occupants;
- h) it must have, for the exclusive use of the occupants, a suitably located fixed **bath or shower and a wash-hand basin**, each of which is provided with a satisfactory supply of hot and cold water;
- I) it must have an effective system for the **draining of foul, waste and surface water**.

Repair

A dwelling house is unfit for human habitation if it is in serious disrepair or and for that reason it is not reasonably suitable for occupation,

In deciding fitness, consider whether the dwelling house is currently free from items of disrepair that either individually or due to their combined effect are so severe and/or extensive that they present a risk to health and safety, or cause serious inconvenience to any occupants

Serious disrepair may be due to the severity of one item of disrepair or to the combined effect of two or more items. A multiplicity of items, none of which, by themselves, would be sufficiently serious to provide grounds for unfitness, may well constitute serious disrepair when combined.

To be satisfactory, any element of the dwelling house or building should function in the manner in which it was intended.

Externally the elements of the building should be generally secured and maintained so as to withstand normal weather conditions and normal usage.

Internally for reasons of hygiene, walls, floors, ceilings and other surfaces, as well as fixtures and facilities, particularly in the kitchen and bathroom, should not be in such extensive disrepair as to prevent these surfaces and facilities from being properly cleaned.

Dampness

A dwelling house is unfit for human habitation if it suffers from dampness prejudicial to the health of any occupant.

In deciding fitness, consider whether the dwelling house is free from the occurrence of rising and penetrating damp, and from persistent condensation and mould growth.

Rising and penetrating damp can generally be attributed to design, inadequate construction or disrepair.

Dampness from condensation attributed to the inappropriate actions of tenants is not normally considered as constituting unfitness. Condensation may constitute unfitness if it is persistent and primarily attributable to the design, construction, modification, standard of amenities or state of repair of the dwelling.

Ventilation

As a general guide, the total size of ventilation openings in a habitable room and naturally ventilated kitchen, bathroom or W.C. compartment should not be less than 1/20th of the floor area and should open directly to the external air.

In living rooms and kitchens, some part of the opening should be at least 1.75 metres above floor level to enable good air circulation throughout the room.

Where ventilation is by mechanical means, it should provide at least one air change per hour in habitable rooms and kitchens, and three per hour in bathrooms and W.C. compartments.

Rooms containing fixed heat-producing combustion appliances (including cookers) taking air from inside the room should have provision for adequate permanent ventilation to ensure complete combustion of fuels and the removal of the products of combustion.

Non-habitable spaces in the building, such as cellars, sub-floor spaces, lofts and other roof spaces need to have adequate ventilation to prevent severe condensation and conditions suitable for timber decay.

Heating

For heating at least one main room intended for general living, there should be either a central heating radiator or a fixed heating appliance of sufficient capacity to maintain the room, after a warming-up period, at a temperature of 18 degrees C or more when the outside temperature is minus 1 degree C.

If no heating appliance is installed, then there should be provided for electric heaters a dedicated 13-amp power socket and for gas fires a fully connected gas point at a working flue.

For heating other habitable rooms, there should a fixed heating appliance or provision for heating as described above, of sufficient capacity to maintain most of the room at a temperature of 16 degrees C or more when the outside temperature is -1 degree C.

The construction of the dwelling and its condition shall not be such as to result in excessive heat loss. In that respect, a dwelling is not expected to be fully insulated to modern standards, but shall be constructed of such materials and in such a manner as to provide an adequate basic level of thermal insulation.

In assessing whether the provision for heating is adequate, the capacity, type and age of the provision should be considered in relation to the size of the room and likely heat loss.

Overall, the heating provided should be sufficient, when combined with adequate ventilation, to prevent severe or pervasive condensation and mould growth.

Lighting

In deciding fitness, consider whether the dwelling house currently contains provision for sufficient natural lighting in habitable rooms to enable the normal activities of a household to be carried out, safely and conveniently, without the use of artificial light during normal daytime conditions.

Consider also whether the dwelling house contains provision for sufficient artificial lighting in all habitable rooms, kitchens, bathrooms, W.C.s and circulation spaces, to enable the normal activities of a household to be carried out, safely and conveniently, and to permit the normal passage of the occupant without increasing the risk of accident.

The extent of natural lighting will depend on the size and height of windows, their location in the room and the size and proximity of external obstructions. As a general guide, the total size of glazed openings in a habitable room shall be not less than 1/20th of the floor area, and some part of the window shall be at least 1.75m above floor level.

All habitable rooms, kitchens or bathrooms and W.C. compartments shall have at least one ceiling or suitably located wall light with the capacity to enable normal domestic activities to be undertaken without strain after dark.

Circulation spaces shall also have at least one ceiling or suitably located wall light with the capacity of minimising accidents and allowing effective cleaning. With respect to potential accidents, particular care should be given to the location of lighting in relation to stairs and changes of level, especially if there are items of bad arrangement such as steep and winding stairs or trip steps.

Bathrooms shall have ceiling pull switches.

Facilities for the preparation and cooking of food

The following should be provided in order to comply:

- A sink and drainer with constantly available adequate supplies of hot and cold running water.
- An adequate fixed readily cleansable work surface
- A gas, electric or suitable fixed solid fuel cooker
- An adequate number of suitably located electrical power points for the safe use of kitchen appliances.

The sink, work surfaces and cooker should be located within reasonable proximity in a kitchen or kitchen area and sited so as not to be prejudicial to safety.

The dimensions and layout of the kitchen or kitchen area should be sufficient for the safe provisions of all the necessary facilities.

The supply of cold running water should be wholesome drinking water quality normally piped directly from the rising main.

For the installation of a cooker, the kitchen should have either an electric (30 amp) cooker point, a mains gas point or, failing that, a bottled gas installation or a solid fuel or oil-fired range permanently connected to a flue.

In unfurnished accommodation, where the landlord does not provide a cooker there should be a space available to safely locate a cooker and a suitable gas/electric point to connect to.

Water closet, washbasin and bath or shower

A dwelling house is unfit for human habitation if it lacks for the exclusive use of any occupants a suitably-located water closet and a suitably-located fixed bath or shower and a wash-hand basin, each with a satisfactory supply of hot and cold water, and for that reason it is not reasonably suitable for occupation.

A water closet, wash-hand basin (other than the kitchen sink) and bath or shower should be present and located normally inside the habitable part of the dwelling house, that is behind the main external doors of the particular house or flat.

It is to be expected that in all circumstances they should be capable of being reached under cover without entering the outside air.

The water closet, wash-hand basin and bath or shower should have surfaces which are reasonably smooth and capable of being cleansed.

The W.C. should be provided in a naturally or artificially ventilated bathroom or separate W.C. compartment, and should not open directly and immediately on to a space intended for the storage or preparation of food.

The wash-hand basin should normally be located in a bathroom or shower room. The w.c., wash-hand basin and bath should be readily accessible at all times without unduly compromising the privacy of the occupants.

2.2 HOUSES IN MULTIPLE OCCUPATION STANDARDS

The Housing Act 2004 is bringing significant changes to both the definition of HMOs and to the standards required in them.

Until the new legal requirements are implemented the existing legislation in earlier Housing Acts remains valid. This guidance therefore covers existing requirements and provides information on the proposed new HMO standards regime.

Section 352 of the Housing Act 1985 relates specifically to houses in multiple occupation, empowering local authorities to require such premises to be reasonably suitable for occupation by either the numbers of individuals or households being accommodated for the time being, or a smaller number as appropriate.

The requirements are as follows:

- a. Satisfactory facilities for the storage, preparation and cooking of food, including an adequate number of sinks with a satisfactory supply of hot and cold water.
- b. An adequate number of suitably located water closets for the exclusive use of the occupants.
- c. For the exclusive use of the occupants, an adequate number of suitably located fixed baths or showers and wash-hand basins, each of which is provided with a satisfactory supply of hot and cold water.
- d. Adequate means of escape from fire.
- e. Adequate other fire precautions.

These requirements are referred to as the HMO Fitness Standard. HMO accommodation therefore needs to comply with the fitness for human habitation standard as described earlier in this guidance, and the HMO fitness standard.

Certain elements of the fitness standard assume a greater importance in relation to multiply-occupied houses than if they were in single family use because of the different pattern of occupation, which results in individual rooms or parts of the house being subjected to a greater intensity of use.

The significance of, for instance, dampness affecting an attic room or a basement room in use as a principal room for 'bed-sitting' purposes is obviously greater than it would be if the rooms had a more limited use.

At any HMO where satisfactory standards are not provided and maintained, local authorities are empowered to take enforcement action in one of three ways on the person having control of the house or on the person managing the house:-

1. The Council may by notice require works to be undertaken to provide the adequate facilities referred to above, having regard to the current level of occupation.
2. The Council may seek to reduce the level of occupancy having regard either to the facilities generally available or to the size and location of rooms.
3. The Council may take Closing Order action for a part of or the entire HMO because of inadequacy of means of escape in case of fire

Should enforcement action not be complied with, the local authority may undertake work in default and recover costs plus administrative expenses and/or may prosecute.

The establishment of a house in multiple occupation is a 'change of use' for which planning consent would normally be required.

Where food is prepared and served for consumption by residents, as in Hostels and Lodging Houses providing meals, current Food Safety (General Food Hygiene) Regulations 1995 and the Food Safety Act 1990 would normally apply.

Management regulations

The Housing (Management of Houses in Multiple Occupation) Regulations 1990 apply to all HMOs, imposing duties in the main on Managers but with some requirements also on residents to ensure good conditions are maintained.

The Regulations require Managers to maintain in repair, good order and a clean condition:

a) Common Parts of the Accommodation including:

- Water, gas and electricity supplies and drainage facilities;
- Shared lighting and heating facilities, including hot water supplies;
- Shared toilets, baths, sinks and basins;
- Shared cooking, food storage and other installations;
- Staircases, halls and landings, including floor coverings;
- Outbuildings, yards and garden areas.

b) Residents' Living Accommodation, including:

- The internal structure, i.e. walls, floors, ceilings, etc;
- Heating and hot water facilities provided;
- Windows and ventilation.

The Manager must also:

- put up a notice giving the name, address and telephone number of the Manager so that residents have someone to contact whenever necessary;
- provide enough bins for refuse disposal and make sure rubbish does not accumulate;
- ensure rooms are in a clean condition before letting them to any new tenant;
- ensure that the means of escape from fire and fire precaution facilities such as fire extinguishers and alarms are in working order and not obstructed;
- display notices indicating means of escape from fire;
- generally safeguard residents having regard to the design and structural condition of the house;
- not disconnect unreasonably the water, gas or electricity supplies.

For their part, tenants are required to:

- take reasonable care to avoid damage and disrepair;
- co-operate in a reasonable way with the Manager, and provide information to allow him carry out his duties;
- comply with any reasonable arrangements made by the Manager or Landlord regarding means of escape from fire and refuse storage and disposal;
- allow the Manager access to their rooms to carry out his duties.

Means of escape in case of fire

The basic principle in HMO fire safety is “that all occupants of an HMO should be able to leave the premises safely in the event of a fire”.

This can be achieved by providing of a combination of the following key measures:

- a fire alarm system to ensure that occupants receive warning of a fire in sufficient time to make their escape before escape routes become impassable through smoke or flame.
- a minimum of 30 minutes fire separation between units of accommodation and the route of escape.
- a fire alarm system
- emergency lighting
- fire extinguishers and fire blankets

The design and extent of the fire precautions will be determined by the fire risk at a particular HMO.

Means of escape should be kept clear and fire precautions such as alarm systems, emergency lighting and fire extinguishers regularly serviced and maintained.

Fire doors and final exit doors should be openable from the inside without the use of a key.

Doors opening onto the route of escape should have a minimum of 30 minutes fire resistance and be fitted with a self-closing device.

Fire detection systems

Most victims of fire die or are injured by the products of combustion. The products of combustion often incapacitate victims well before the fire itself affects them.

Consequently it is essential that occupants of residential accommodation are made aware at the earliest opportunity of the existence of fire in the building.

A system of automatic detection and alarm is the most effective way of warning occupants of the existence of fire.

The type and extent of the system will be determined by the degree of fire protection existing or to be provided, and the level of risk in the premises.

General Management and Maintenance of Alarms

It is recommended that a service agreement be entered into following installation of an alarm.

An annual inspection and test of the full system should be carried out by a suitably qualified technical engineer, who will check in detail that the system is functioning correctly in accordance with its technical specification.

On completion of the prescribed test, the engineer will give the owner a certificate of testing. The testing and works carried out to remedy any defects should be noted in the logbook.

See [Appendix VI Alarm systems](#)

2.3 FURNITURE AND FURNISHINGS (FIRE) (SAFETY) REGULATIONS 1988.

The Furniture and Furnishings (Fire) (Safety) Regulations apply to all persons in the business supply chain who supply furniture and furnishings.

The Regulations also apply to any person who supplies furniture and furnishings, which are included in the letting or hiring out of residential accommodation, and therefore apply to landlords, estate agents and letting agents.

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.

The exception was tenancies in which the furniture was supplied before 1st March 1993. In this case, the Landlord does not have to comply with the Regulations from the 1st January 1997, but does have to comply with them when a new tenancy takes on the tenancy or for any replacement furniture provided.

The Regulations require:-

- 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 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

All new furniture (except mattresses and bed bases) and loose and stretch covers manufactured since 1988 have been 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.

See [Appendix VII Furniture and Furnishings Labels](#)

2.4 SECURITY

Security precautions should be designed to make getting into the house as difficult and time-consuming as possible.

Once they are inside an occupied house, no internal lock will make any difference to the burglar, and breaking through locked internal doors will simply increase the level of damage.

Houses should have secure external doors fitted with a quality locking system.

In HMOs, it will be necessary for final exit doors to have a locking system that does not require the use of a key to open the door from the inside; this will prevent occupants being locked in the house in the event of fire.

Ground floor and windows above the ground floor that are easily reached should be secure and lockable.

For properties fitted with burglar alarms, landlords should make arrangements to provide details of a 'nominated keyholder' to the Police, the Council, or a neighbour so that a prolonged sounding of the alarm in the absence of the occupying tenants can be stopped without the Council's having to resort to forcing an entry in order to abate a noise nuisance.

Alarm systems should be fitted with a 20-minute 'cut off' device.

2.5 THE GAS SAFETY (INSTALLATION AND USE) REGULATIONS 1998

These Regulations apply to rented property are enforced by the Health and Safety Executive.

The general requirements are:-

- gas appliances, fittings, and flues are maintained in a safe condition – (this does not apply to appliances owned by tenants)
- gas appliances fittings, and flues, are checked for safety at intervals of not more than 12 months by a CORGI registered gas installer
- keep a copy of the safety check for two years
- give a copy of the record to the tenant(s) within 28 days of the date of the check and a copy to new tenants before they move in.

A CORGI registered installer must take remedial action if an appliance fails a safety check.

Room-Sealed Appliances

- a gas appliance installed in a bathroom or a shower room must be a room-sealed appliance.
- a gas fire, other space heater or a gas water heater of more than 14-kilowatt heat input must be a room-sealed appliance if installed in a room used or intended to be used as sleeping accommodation
- 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 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.

This section applies to new installations but not to existing appliances.

The majority of gas or water heating appliances in domestic use are less than 14-kilowatt heat input, and therefore where new appliances are installed in a room intended for sleeping they should either be room-sealed or should have a shutdown system in the event of a build up of carbon monoxide in the room.

Danger signs to look for are:

- Stains, soot or discolouring around a gas fire or at the top of a water heater 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.

2.6 ELECTRICAL SAFETY

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.

Generally small jobs such as the provision of a socket outlet or a light switch on an existing circuit will not need to 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.

Existing installations

While there is no statutory requirement to have annual safety checks on electrical equipment as there is with gas, the Landlord and Tenant Act 1985 requires the landlord to ensure the electrical installation is safe when the tenancy begins and that it is maintained in a safe condition throughout that tenancy.

In addition, under the Electrical Equipment (Safety) Regulations 1994 and the Plugs and Sockets etc. (Safety) Regulations 1994, both of which come under the Consumer Protection Act 1987, there is an obligation to ensure that all electrical equipment is safe.

The following measures will assist landlords to comply.

- Annual visual inspections by the landlord or agent,
- Ensure that all fuses are of the correct type and rating
- Inspections on tenant changeovers, recording electrical equipment, its condition and fuses fitted.
- Periodic inspections of electrical equipment by a qualified electrician.
- 5 yearly inspections by a qualified electrician to ensure safety and that the electrical system complies with current electrical regulations.

All records of these inspections should be kept.

See [Appendix VIII Electrical Installations](#) also [Appendix IX Electrical test and inspection reports](#)

2.7 ENERGY EFFICIENCY

The following improvement measures can bring about significant energy savings in a cost-effective way:-

- cavity wall insulation
- loft and roof void insulation and including vertical sections of stud walling and loft hatch
- over-boarding sloping attic ceilings with insulated lining board with an incorporated vapour barrier
- internal dry lining of external walls with insulated lining-board
- insulation of external roof, including bay dormer and kitchen flat roofs during stripping and recovering refurbishment schemes
- fixing of insulated lining board to sub-standard dormer cheeks/ceilings
- replacement of an obsolete single-glazed skylight with double glazed modern skylight
- provision of efficient space and hot water heating appliances as part of any refurbishment or replacement work.
- pipe/tank lagging and general draught proofing
- thermally-efficient external door sets with draught proofing to joints, base and letter box openings
- replacement of singly glazed windows with double-glazed units
- installing efficient heating systems and effective control of heating and hot water systems

2.8 OVERCROWDING

The legal standards covering overcrowding are contained in the Housing Act 1985 and cover both singly and multiply occupied dwellings.

The occupancy level standards for singly-occupied dwellings are laid down in Part X of the 1985 Housing Act, which specifies maximum permitted occupancy levels in consideration of the total number of habitable rooms available and the number of persons liable to be occupying individual rooms for sleeping purposes.

The standards take account of age, babies under one year not being counted and children under the age of 10 being counted as half a unit, and do not permit persons of opposite sex over the age of ten years (twelve in the case of an HMO) to use the same room for sleeping purposes unless they are partners`.

The permitted number of persons in relation to the number of rooms available in the dwelling for sleeping purposes is whichever is the less of:

A) The number specified in table 1 in relation to the number of rooms in the dwelling available for sleeping purposes and

B) The aggregate for all such rooms in the dwelling of the numbers specified for each room of the floor area specified in column 1 of table 2

No account is taken of rooms with a floor area of less than 50 sq feet.

Table 1

<u>No. of rooms</u>	<u>No. of persons</u>
1	2
2	3
3	5
4	7.5
5 or more	2 for each room

Table 2

<u>Floor area of room</u>	<u>No. of persons</u>
110 sq. ft. or more	2
90 – 110	1.5
70 – 90	1
50 – 70	0.5

There are no statutory space standards laid down for HMOs. Local authorities are empowered to set their own local standards. For detailed advice landlords need to enquire with their local authority.

2.9 CHANGES IN LEGISLATION

The Housing Act 2004 will bring about a significant number of changes that will affect private landlords.

The most important three are the replacement of the housing fitness standard with the Housing Health and Safety Rating System (HHSRS) the introduction of HMO licensing (both are likely to be implemented by the end of 2005) and the introduction of bond guarantee schemes.

Housing, Health and Safety Rating System (HHSRS)

The HHSRS is an evidence based risk assessment process looking at all the common defects and problems, affecting the health and the safety of occupants within dwellings.

The HHSRS covers a wide range of categories and assesses the risk each hazard poses to the health and safety of the occupant. There are 24 categories, which are listed below : -

Cold	Fire
Falls	Hot Surfaces
Damp/mould growth	Radiation
Carbon Monoxide	Electrical
Noise	Poor ergonomics
Lead	Intruders
Overcrowding and space	Domestic Hygiene
Explosions	Food Safety
Personal Hygiene	Contaminated Water
Sanitation/drainage	Structural failure
Inadequate Lighting	Entrapment
Un-combusted fuel gas	Asbestos

Landlords will need to ensure any of these hazards in their properties are kept to a minimum acceptable level.

Local authorities will in future take enforcement action based on this new rating system.

The HHSRS assessment is based on the risk to a **potential** occupant (i.e. not necessarily the person who is living in the property at that time) who is most vulnerable to that risk. For example the very young and elderly are more prone to being affected by low temperatures.

Mandatory Licensing of Houses in Multiple Occupation (HMO'S)

The Housing Act will introduce a mandatory licensing scheme for certain high risk HMOs.

In addition, local authorities will have the discretion to extend licensing to smaller HMO's.

The Housing Act will require landlords operating certain specified higher risk HMO to have a licence from the local authority.

There will be a fee payable for the licence, the maximum being set by Government.

It will be a criminal offence, subject to a fine of £20,000 to operate a licensable HMO without a licence.

Additionally tenants can apply for compensation for up to one year's rent where a landlord has operated a licensable HMO without a licence.

In granting a licence, the local authority will have to be satisfied about the following :

- The HMO is suitable for the number of persons permitted under the licence, taking into account the amenities/facilities provided when compared with prescribed standards
- The licence holder must be a 'fit and proper' person. The local authority will consider any previous convictions relating to violence, drugs, fraud, housing offences, landlord and tenant offences and any successful prosecutions for unlawful discriminations.
- The licence holder is the most appropriate person to hold the licence (e.g. the landlord)
- The proposed manager is a fit and proper person and receives the rent for the HMO, or is an employee or agent of that person. (Cannot be someone who lives in the house)
- The proposed management arrangements are satisfactory, the manager is competent and the structures and funding for the management are suitable.

If the local authority is not satisfied that the above conditions are met, then they must refuse the licence application and make an Interim Management Order thereby taking over the management of the HMO.

The licence will be for 5 years, but may be granted for a shorter time.

It will specify the maximum number of people who may occupy the HMO, and may include other conditions relating to:

- The management of the house
- The condition of the house, furniture and amenity standards

- A requirement to carry out specified works or take actions within a specified time.

It will be an offence, with a maximum £5,000 fine, to breach licence conditions.

In addition, the local authority may revoke the licence and make an Interim Management Order.

Licences can be varied either with the agreement of the licence holder such as where there is a change of manager, or without agreement where there has been a change of circumstances and there is a need to provide additional amenities, carry out works or alter the maximum number of people who are permitted to occupy the property.

Bond guarantee schemes

The Government will in the future authorise some organisations to operate bond guarantee schemes. These may be custodial or insurance backed.

Landlords requiring a bond will need to be a member of and use a bond guarantee scheme.

The aim of the schemes will be to ensure that bonds are managed properly and not fairly withheld in full or part at the end of a tenancy.

APPENDIX I

OFFICE OF FAIR TRADING GUIDANCE ON UNFAIR TERMS IN TENANCY AGREEMENTS

This guidance, which is backed up by legislation, says that landlords and agents should deal fairly and equitably with tenants, respecting their legitimate interests and deal with them in good faith.

A copy of the guidance can be ordered (free of charge) from EC Logistics, Swallowfield Way, Hayes, Middlesex, UB3 1DQ. Tel: 0870 60 60 321 or can be downloaded from the Office of Fair Trading's website at www.offt.gov.uk

The guidance says that tenants are entitled to have tenancy agreements that strike a fair balance between themselves and landlords and contain fair terms in plain, intelligible language. The Unfair Terms in Consumer Contracts Regulations 1999 protect tenants from one-sided contracts favouring landlords.

Under these Regulations a tenant is not bound by a standard term in a contract with a landlord if that term is unfair. The only exception to this is for price setting terms such as the rent and those which give details of the property and the length of the tenancy, but these must still be in plain and intelligible language.

To ensure that your standard agreement complies with the Regulations you should review any standard tenancy agreement that you use to ensure that its terms are not balanced against the tenant, do not reduce the tenants legal rights and are jargon free. If you are in any doubt, check with the company that supplied the tenancy agreement and if necessary ask them to supply their latest version that complies with the OFT's guidance.

The OFT expects those who use or supply standard pre-formulated tenancy agreements to review their terms and conditions in the light of the guidance and amend or remove any unfair terms from these contracts. If a term in a tenancy agreement is found to be unfair it will not be enforceable against the tenant. Landlords need to be aware of this potentially serious problem.

This guidance helps you to understand what the Office of Fair Trading (OFT) believes to be, potentially unfair terms in assured and assured shorthold tenancy agreements.

The guidance represents the OFT's considered views and the basis on which it is likely to take enforcement action. However, it is ultimately for the courts to decide whether any term is unfair. The guidance deals with standard terms that are drawn up in advance, and not those that are individually negotiated with the tenant.

A 'test of fairness' should be applied to each of the terms in the tenancy agreement. This does not apply to 'core' terms such as those that set the rent or describe the main subject matter of the agreement, provided that they are in plain and intelligible language.

A standard term fails the test of fairness if:-

“Contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer”

The courts have held that: -

“The requirement of good faith in this context is one of fair and open dealing. Openness requires that the terms should be expressed fully, clearly and legibly, containing no concealed pitfalls or traps.”

The OFT has identified contractual imbalance as the main cause of unfairness. This is created wherever a term gives powers to the landlord that he would not otherwise have, or protects him in a way that puts the tenant at a disadvantage.

The Regulations require the use of plain and intelligible language. Contracts must be intelligible to ordinary tenants without legal advice. This means using normal words in their usual sense in short sentences, and avoiding legal jargon, statutory references, elaborate definitions and extensive cross referencing.

Analysis of unfair terms in schedule 2

These are the terms that the OFT consider may be unfair in this Schedule, some have more relevance to tenancy agreements than others. All groups are detailed below and those most relevant to the lettings industry have further notes.

1. Exclusion of liability for death or personal injury

2. Exclusion of liability

- (a) For state of the property or furnishings
- (b) For exclusion of liability for poor service
- (c) For call out charges to complete a landlord's repairing obligations
- (d) For unreasonably short reporting times for repairs
- (e) For excluding a tenant's right to set-off
- (f) For excessive delay in carrying out repairs
- (g) Excessive rights of entry by the landlord should not be provided

3. Binding consumers (i.e. the tenant) while allowing the supplier to provide no service

4. Retention of prepayments on consumer cancellation

A term which rules out the refund of a substantial prepayment is likely to be unfair. Where cancellation is the fault of the tenant, the landlord is entitled to hold back from a prepayment either the net costs or the net loss of profit.

5. Financial penalties

A term to pay unreasonable interest on arrears of rent, unless there are special circumstances, is likely to be unfair.

A term in a fixed term tenancy which requires a tenant who leaves early, without the landlord's agreement, to pay rent for the remainder of the period in full is likely to be unfair.

A term may be unfair if it allows the landlord's surveyor sole discretion to set the amount to be deducted from the rental deposit to cover damage caused by the tenant.

Whilst a term requiring a tenant to pay all the landlord's legal costs regardless of the outcome may be unlawful, a term may not be open to objection if it says that tenants who break the terms of the tenancy can expect to have to meet any reasonable legal costs properly incurred as a result.

6. Cancellation clauses

A term stating or implying that the tenant could be evicted at the landlord's discretion would be seriously misleading and open to challenge.

7. Supplier's (i.e. landlord's) right to cancel without refund

A term is likely to be unfair if it makes a substantial prepayment non refundable on a serious breach by the tenant, regardless of whether the landlord has suffered any loss. However it could be fair for the landlord to keep as much of the prepayment as is reasonably required to cover his legitimate expenses.

8. Supplier's right to cancel without notice

9. Excessive notice periods for consumer cancellation

An unreasonably long notice period for termination of an assured periodic tenancy agreement can lead to tenants paying for accommodation they no longer want or need.

10. Binding consumers to hidden terms

It is a basic requirement of contractual fairness that tenants should always have an opportunity to read and understand terms before becoming bound by them. Tenants need to be effectively alerted to important terms.

11. Supplier's right to vary terms generally

12. Right to change what is supplied

A term that allowed the landlord discretion to alter the building or remove or change furniture, during the currency agreement is likely to be unfair.

13. Price variation clauses

Rent variation clauses are more likely to be fair as follows where the amount and timing of any increases are specified and terms that permit increases are linked to a relevant published price index.

Also likely to be regarded as fair are rent review clauses which allow for an increase in rent to be determined in the light of objective factors by a person who is independent of the landlord.

14. Supplier's right of final decision

15. Entire agreement and formality clauses

Good faith requires that the parties be bound by their unwritten statements and those of their representatives. A term excluding liability for such statements could give considerable scope for misleading tenants regarding their rights and may as a result be considered unfair.

A tenancy agreement may contain a statement warning that it is a binding document. Such a warning needs to be sufficiently highlighted in some way in order to draw it to the tenant's attention.

16. Formality requirements

A term that makes renewal of a tenancy conditional on compliance with excessive costs or formality may be open to objection.

17. Binding consumers where the supplier defaults

18. Supplier's right to assign without consent

19. Restricting the consumer's remedies

Analysis of other terms considered potentially unfair

There are 8 in this group of potentially unfair terms:

1. Allowing the landlord to impose unfair financial burdens

Vague charges are likely to be unfair. A requirement to pay for cleaning at the end of the tenancy may be unfair if it is vague about the basis on which the money will be demanded or the extent of the cleaning involved.

2. Transferring inappropriate risks to tenants

A risk lies more appropriately with the landlord if it is within his control, or if it is a risk of which the tenant cannot be expected to be aware, or the landlord can insure against it more cheaply than the tenant.

Terms under which the landlord must be 'indemnified' for costs, which could arise through no fault of the tenant, are open to objection.

3. Unfair enforcement powers

The law recognizes that landlords may expressly reserve the right to forfeit in the tenancy agreement. However, terms that appear to reserve a right of forfeiture or re-entry for any breach of covenant (however minor) could potentially mislead the uninformed tenant. The fact that such terms have long been extensively used does not make them fair.

4. Excluding the tenant's right to assign or sublet

Terms that restrict a tenant's right to assign or sub-let may be considered unfair. The OFT considers that in fixed term tenancies an absolute ban on both assignments and subletting may be considered unfair. Expressly allowing a tenant to assign or sublet by consent that is not to be unreasonably withheld is considered a fairer balance. A prohibition on subletting may be acceptable if a tenant who leaves the property early is free to assign.

5. Tenant declarations

The OFT is likely to object to any standard declaration that appears to indicate that the tenant has been dealt with fairly and properly, for example in the establishment of the tenancy agreement, and to declarations that the tenant has received or seen documents stating that the landlord has discharged specific health and safety responsibilities. General declarations of understanding by the tenant are to be avoided, but clear and prominent warnings that the tenant should read and understand the terms before signing them are more likely to be acceptable.

6. Exclusions and reservations of special rights

Any term which could deprive tenants of normal protection under the law may be considered unfair. Tenants should not be required to contract out of the protection offered by legislation.

7. Landlord's discretion in relation to obligations

A term giving the landlord complete freedom to make arrangements to carry out repairs or maintenance allows the tenant's needs to be disregarded, and can have the same effect as an exclusion of liability for causing loss and inconvenience. Any term may be unfair if it gives the landlord, or his agent, excessive power to decide whether the tenant should be penalised, or obliged to make reparation, or deprived of any benefit under the tenancy agreement.

8. Unreasonable ancillary obligations and restrictions

Terms that put tenants at risk of incurring contractual penalties that are more severe than is necessary to protect the landlord's real interest in safeguarding his property generally will be considered unfair. Terms restricting a tenant's use of a property should be reasonable in relation to the type and location of the property. Other examples of unreasonable prohibitions include terms against keeping pets. Such a term has been considered unfair under comparable legislation in another EU state because it could prevent a

tenant from keeping a goldfish. A term prohibiting the keeping of pets that could harm the property or be a nuisance to other residents would be unlikely to meet the same objection.

Analysis of terms breaching regulation 7 concerning plain English and intelligible language

This concerns the requirement to use plain and intelligible language. Whilst recognizing that clarity in the agreements is desirable in itself, the regulations go further.

Their purpose is to protect tenants from one-sided agreements where the tenant is not given an opportunity to examine all the terms. The regulations therefore, demand ‘transparency’ in the full sense.

Terms must be intelligible to tenants as well as, and not only, lawyers. The OFT objects to legal jargon in all its forms so, for example the use of the term “indemnity” is frowned on. Ordinary words should be used as far as possible.

Sentences should be short and the text should be divided into easily understood sub-headings covering recognizably similar issues.

Whilst it is not required that the tenant understands every word used, they have to have a chance to learn, by the time that the contract is binding, about the terms that might otherwise disadvantage them. This can be achieved in a number of ways including, highlighting, explanatory material or brochures.

APPENDIX II

LIST OF GROUNDS FOR POSSESSION

This is a summary of the grounds for possessing an assured or shorthold tenancy.

During the fixed term of an assured or shorthold tenancy, you can only seek possession if one of grounds 2, 8, 10 to 15 or 17 apply and the terms of the tenancy make provision for it to be ended on any of these grounds.

When the fixed term of an assured tenancy ends, you can seek possession on any of the grounds. When the fixed term of a shorthold tenancy ends, you do not have to give any grounds for possession

Mandatory grounds on which the court must order possession

(A prior notice ground means that you must have notified the tenant in writing before the tenancy started that you might seek possession on this ground).

Ground 1: a prior notice ground You used to live in the property as your only or main home. Or, so long as you or someone before you did not buy the property after the tenancy started, you or your spouse require it to live in as your main home.

Ground 2: a prior notice ground The property is subject to a mortgage which was granted before the tenancy started and the lender, usually a bank or building society, wants to sell it, normally to pay off mortgage arrears.

Ground 3: a prior notice ground The tenancy is for a fixed term of not more than 8 months and at some time during the 12 months before the tenancy started, the property was let for a holiday.

Ground 4: a prior notice ground The tenancy is for a fixed term of not more than 12 months and at some time during the 12 months before the tenancy started, the property was let to students by an educational establishment such as a university or college.

Ground 5: a prior notice ground The property is held for use for a minister of religion and is now needed for that purpose.

Ground 6 You intend to substantially redevelop the property and cannot do so with the tenant there. This ground cannot be used where you, or someone before you, bought the property with an existing tenant, or where the work could be carried out without the tenant having to move. The tenant's removal expenses will have to be paid.

Ground 7 The former tenant, who must have had a contractual periodic tenancy or statutory periodic tenancy, has died in the 12 months before possession proceedings started and there is no one living there who has a right to succeed to the tenancy.

Ground 8 The tenant owed at least 2 months rent if the tenancy is on a monthly basis or 8 weeks rent if it is on a weekly basis, both when you gave notice seeking possession and at the date of the court hearing.

Discretionary grounds on which the court may order possession

Ground 9 Suitable alternative accommodation is available for the tenant, or will be when the court order takes effect. The tenant's removal expenses will have to be paid.

Ground 10 The tenant was behind with his or her rent both when you served notice seeking possession and when you began court proceedings.

Ground 11 Even if the tenant was not behind with his or her rent when you started possession proceedings, he or she has been persistently late in paying the rent.

Ground 12 The tenant has broken one or more of the terms of the tenancy agreement, except the obligation to pay rent.

Ground 13 The condition of the property has got worse because of the behaviour of the tenant or any other person living there.

Ground 14 The tenant, or someone living in or visiting the property:

has caused, or is likely to cause, a nuisance or annoyance to someone living in or visiting the locality; or

has been convicted of using the property, or allowing it to be used, for immoral or illegal purposes, or an arrestable offence committed in the property or in the locality.

Ground 15 The condition of the furniture in the property has got worse because it has been ill treated by the tenant or any other person living there.

Ground 16 The tenancy was granted because the tenant was employed by you, or a former landlord, but he or she is no longer employed by you.

Ground 17 You were persuaded to grant the tenancy on the basis of a false statement knowingly or recklessly made by the tenant, or a person acting at the tenant's instigation.

Notice periods

You must serve notice seeking possession of the property on the tenant before you start court proceedings. You must give the following amount of notice:

- for grounds 3, 4, 8, 10, 11, 12, 13, 15 or 17 **at least 2 weeks**
- for grounds 1, 2, 5, 6, 7, 9 and 16 **at least 2 months**. If the tenancy is on a contractual periodic or statutory periodic basis, the notice period must end on the last day of a tenancy period. The notice period must also be at least as long as the period of the tenancy, so that 3 months notice must be given if it is a quarterly tenancy.
- for ground 14 you can start proceedings as soon as you have served notice.

APPENDIX III

RENT ASSESSMENT COMMITTEES

Rent assessment committees are made up of 2 or 3 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 6 rent assessment panels in England and Wales. The committees are independent of both central and local government.

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.

Assured and shorthold tenants can ask a committee to set a rent under a contractual periodic or statutory periodic tenancy if you have given notice of an increase.

Shorthold tenants can ask a committee to set a rent at the beginning of a shorthold tenancy if they feel the rent is significantly higher than rents for comparable tenancies.

When settling disputes on rent, the committee 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.

The rent fixed by the committee is the legal maximum you can charge. The new rent will be payable from the date specified in your notice unless the committee considers this would cause the tenant undue hardship in which case it may specify a later date.

You can propose that the rent is increased a year after the date on which the rent decided by the committee was payable, unless the tenant agrees that you can put the rent up earlier. The tenant must apply to a rent assessment committee to decide what the rent should be if he or she does not agree with the proposed increase.

A shorthold tenant can also apply to a rent assessment committee at the beginning of the tenancy for a decision on the rent if he or she considers the rent to be significantly higher than the rent for comparable tenancies. The Housing Act 1996 made important changes to the deadline for applications.

The tenant may only apply to the committee once within 6 months of the beginning of the original tenancy. An application cannot be made if the original tenancy has ended and been replaced and more than 6 months have elapsed since the date the original tenancy started.

The committee will only fix a rent on a rent for a shorthold tenancy if it considers the rent to be significantly high compared with rents for similar properties let on assured or shorthold tenancies in the local area. It will not make a decision if there are not enough comparable properties. It will decide the amount of rent you could reasonably expect to get for the shorthold tenancy, taking into account those other rents.

The rent fixed by the committee is the legal maximum you can charge. The new rent will be payable from the date specified by the committee which cannot be earlier than the date the tenant applied to it for a decision.

If the tenancy is a fixed term or contractual periodic tenancy, you can only change the terms of the tenancy if the tenant agrees. It is best to agree any changes in writing.

However, if the fixed term of an assured or a shorthold tenancy has ended and the tenancy has automatically run on as a statutory periodic tenancy, it will continue on the same terms unless you, or the tenant, propose new terms.

You or the tenant may propose new terms, and any consequent change to the rent, within a year of the statutory periodic tenancy starting, using a special procedure under the Housing Act 1988.

You both have the right to apply for an independent decision by a rent assessment committee if you cannot agree new terms.

To use this procedure you, or the tenant, must propose the new terms, and any consequent change to the rent, on a special form called "*Notice proposing different terms for a Statutory Periodic Tenancy*", available from law stationers or rent assessment panels. If you both agree the new terms, they can be included in the agreement.

If the terms are not agreed, you or the tenant must apply to a rent assessment committee to settle the terms and any consequent change to the rent. You, or the landlord, must apply to the committee within 3 months of receiving the notice proposing changes, using a special form.

The form is called "*Application referring a notice proposing different terms for a Statutory Periodic Tenancy to a Rent Assessment Committee*" obtainable from law stationers or rent assessment panel offices.

The committee decides whether the proposed new terms are reasonable for the tenancy or whether other terms are more appropriate.

The committee may adjust the rent up or down to reflect the new terms, whether or not you or the tenant proposed a new rent to match the new terms.

The new terms and the new rent, if the committee decides that the rent should be changed, will apply from the date stated by the committee, but the committee cannot apply the new rent before the date proposed in the notice.

You can only make further changes to the terms of the statutory periodic tenancy if the tenant agrees. You can, of course, propose a new fixed term tenancy or a contractual periodic tenancy on new terms at any time.

APPENDIX IV

ENFORCEMENT PROCEDURE

Local authorities have a statutory duty to take remedial action in respect of properties in disrepair severe enough to be prejudicial to health and safety.

The power to require repairs is contained in the Housing Act 1985, Section 189, which relates to houses being fit for human habitation.

In circumstances where the disrepair is not so severe as to be prejudicial to health or safety but is still 'substantial and structural' in nature, the local authority has a discretionary power under the Housing Act 1985, Section 190, to require remedial repairs to be carried out.

This power can also be used in situations where the state of disrepair is not substantial but is still significant enough to affect adversely the material comfort of the tenant.

In many instances where the Council needs to undertake enforcement action to deal with sub-standard conditions, the first stage in the procedure is an informal approach to the Landlord.

This is termed a 'minded to take action' procedure, and involves the Council's informing the Landlord of the nature of the defect, why it should be remedied, and the works required to achieve that remedy. The Landlord then has 15 days in which to make to the Council any representations, which will be considered before formal enforcement action, if any, is taken.

Following the undertaking of routine repairs or replacements it would normally be expected that the Landlord would, where possible, make good decorations disturbed or otherwise renew the decorations entirely.

It is also expected that any occupying tenants be kept fully informed of the nature of works and the timescale for their completion, and that arrangements for the protection and security of personal possessions whilst work is being undertaken are adopted.

Tenants should be informed of the need for access for inspection, estimating and undertaking works as early as possible and at least 24 hours in advance (other than in emergency situations).

APPENDIX V

HOUSING BENEFIT PROCEDURES

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 age
- The rent level that the rent officer feels is reasonable for 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 amount of rent the tenant has to pay is not necessarily the rent level that the council will use to work out their housing benefit. In most cases the council will ask the rent officer to carry out a valuation to tell them if the rent is reasonable. The rent officer considers:

- The average market rent for the area
- Whether the property is suitable for the size of the household.

If the rent officer believes the rent being charged is too high, they will tell the council the maximum figure they can use to work out the tenant's housing benefit.

The rent officer works for the Rent Service. This is a government agency and independent from the local council.

If the tenant does not agree with the rent level the local authority are using, they can appeal against it. The landlord cannot appeal against the decision of the rent officer.

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

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 officer 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.

In most cases local authorities pay housing benefit to the tenant but there are certain circumstances in which the local authority can pay landlords direct. These are:

- if the tenant asks them to do so
- if the landlord have told 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 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 their responsibilities.

The landlord and 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 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 their claim with the landlord, they can provide information to enable the landlord to help them with their 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.

Overpayments

An overpayment is when a landlord is paid more housing benefit than they are 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. 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 you, 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.

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. 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.

An appeal tribunal 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.

APPENDIX VI

ALARM SYSTEMS

There are three main types of fire alarm systems.

Battery operated smoke alarms. These are not reliable and therefore not acceptable in houses in multiple occupation.

Unmonitored mains-wired interlinkable systems. Mains-wired interlinkable smoke and heat alarms are acceptable in many small H.M.O.s, and larger buildings consisting of self-contained flats when installed in combination with a fire alarm system of the third type referred to below.

Monitored fire detection and alarm systems complying with B.S. 5839 Part 1 1988 and Part 6 1995 Grade A. Systems complying with the above British Standards are acceptable in all types of H.M.O.

The main components of fire alarm systems are:

- a. Smoke detectors. (B.S. 5446 Part 1 1990)

There are two types, optical and ionisation.

Optical detectors are more sensitive to slow smouldering fires of the type frequently associated with burning foam-filled furniture. Ionisation detectors are more sensitive to rapidly flaming fires such as chip pan fires.

Ionisation detectors are generally more prone to false alarms from the effects of cooking fumes and steam from showers and bathrooms.

To avoid false alarms, optical detectors are recommended as being suitable for most locations.

Smoke detectors should be sited so that the sensing element is not less than 25 mm., nor more than 600 mm, below the ceiling.

- b. Heat Detectors. (B.S. 5446 Part 5 1977)

There are two types, fixed temperature and rate-of-rise detectors.

The former is preset to react to temperatures above a certain level and the latter reacts when the rate of temperature increase is rapid.

Rate-of-rise heat detectors are suitable for use in rooms other than kitchens and boiler rooms, where detection is required but smoke detectors would result in too many false alarms, e.g. common rooms where a number of persons may be smoking. Fixed temperature heat detectors are suitable for kitchens, boiler rooms and laundries.

- c. Break Glass Call Points

These should be positioned by each final exit and with one on each landing. As the name implies, smashing the glass can trigger the alarm.

- d. Alarm Sounders

These may be individual sirens or bells or may be integrated into the smoke or heat-detector heads.

They should be capable of reaching sound levels of 75 decibels (dB(A)) in each bedroom at the bedhead. This is the sound level regarded as being necessary to wake an 'average' person from sleep.

e. Control Panel

In monitored systems, a control panel is required which receives information from detectors or call points and activates remote alarm sounders.

The Control panel should be situated where all occupants have access to it and, ideally, close to the main entrance of the building so that the fire brigade can determine the location of the fire.

The control panel contains the back-up battery supply, which is continuously charged from the mains.

Choice of Detectors

Detectors should be selected so as to give the earliest possible warning in the event of fire, but also so as to minimise the risk of false alarms. Smoke detection will nearly always provide an earlier warning of fire than heat detection, and should usually be the first choice.

Multiple choice detector/sounders

Modern fire alarm systems are available that have detectors with variable settings for heat or smoke detection and with sensitivity control. These can have alarms built into the detector head which enables a sounder to be provided in all rooms containing a fire detector.

These systems provide good flexibility in their use.

Commissioning of System

Following the installation of a system, it should be thoroughly inspected and tested, and certified in writing as compliant with B.S. 5839 - Code of Practice for the design and installation of fire detection and alarm systems in buildings.

APPENDIX VII

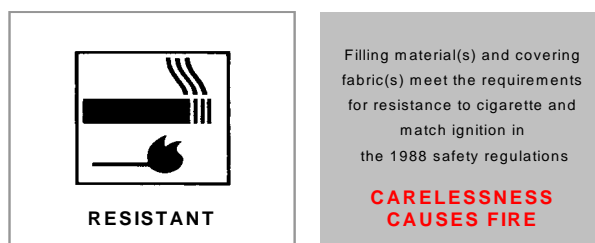
FURNITURE AND FURNISHINGS LABELS

When buying new or second-hand furniture for a rental property, you should always check to see that there is an appropriate label. Furniture or furnishings purchased after March 1st 1990 from a reputable supplier should all have attached labels. There are two types of labels:

DISPLAY LABELS: - all furniture will carry the appropriate display label at point of sale.

PERMANENT LABELS: - all new furniture (except mattresses and bed-bases) and covers for furniture must carry a permanent and non-detachable label.

DISPLAY LABEL



CARELESSNESS CAUSES FIRE

This article contains CM Foam which passes the specified test.
All upholstery is cigarette resistant.
Cover fabric is cotton and is match resistant.

The Regulations are complex and any detailed enquiries should be made to local Trading Standards Office.

The DTI has produced a Guide to the Furniture and Furnishings (Fire) (Safety) Regulations which is obtainable to the public free of charge from:

Department of Trade and Industry Publications
ADMAIL 528
LONDON
SW1W 8YT
Tel: 0870-1502-500

APPENDIX VIII

ELECTRICAL INSTALLATIONS

There are two routes to ensure compliance:

1. The installation work is undertaken by a person registered with a Government authorised electrical self-certification scheme, in which case a building Regulations application will not be required.

2. Submit a Building Regulations application to the local authority.

A. Where a competent person i.e. an electrician registered with a recognised trade body such as NICEIC or ECA and NAPIT who need not be registered under a competent persons self-certification scheme tests the work and issues a design, installation and test certificate under BS 7671. Building Control will accept the certificate and test results as evidence that the work complies with Part P. Additional inspections by Building Control may also be carried out in conjunction with the acceptance of a certificate.

B. Where the work is carried out by a person who is not competent i.e. a DIY installation, the applicant is required to have the work tested by a registered competent person as in A above, or the local authority on payment of an additional fee.

There are currently five self certification schemes in operation, who can carry out any electrical work and five self certification schemes for other trades who can carry out a limited amount of electrical work only if necessary when undertaking other works.

SELF CERTIFICATION SCHEMES	SELF CERTIFICATION – OTHER TRADES
BRE Certification Ltd	CORGI
British Standards Institution	NIC Certification Ltd
ELECSA Ltd	ELECSA Ltd
NAPIT Certification Ltd	NAPIT Certification Ltd
NICEIC Certification Services Ltd	OFTEC Ltd

Information on Part P can be found on the following websites:

ECA – www.eca.co.uk

NICEIC - www.niceic.org.uk

IEE – www.iee.org

APPENDIX IX

ELECTRICAL TEST AND INSPECTION REPORTS

There are, in the main, three designs of inspection certificates you are likely to come across:-

1. National Inspection Council for Electrical Installation Contracting (NICEIC)
2. Electrical Contractors' Association (ECA)
3. Prescribed Forms direct from the I.E.E. Regulations

In the main, all the inspection forms contain similar information but in slightly different formats.

The three main types of inspection forms are:-

1. Completion and Inspection Certificate for an Electrical Installation
2. Periodic Inspection Report for an Electrical Installation
3. Minor Works

The most commonly required for existing properties is the Periodic Inspection Report. The reports include recommendations on works that:

1. require urgent attention
2. require improvements
3. require further investigation
4. are not in compliance with I.E.E. Regulations

The inspection report also contains a schedule of items inspected, a schedule of tests carried out and the results and provides a recommended future inspection period

All new remedial work carried out on the recommendations of the periodic inspection report will need to comply with Part P of the Building Regulations.

Landlords who provide electrical appliances for use by tenants are under an obligation to ensure that they are safe to operate. For that purpose, such appliances can be subject to a periodic Portable Appliance Test (PAT).

Portable appliances are generally defined as equipment that has a lead (cable) and plug, and which is capable of being moved from one place to another.

A refrigerator connected to a dedicated socket would be regarded as a portable appliance, whereas a wall-mounted electric heater would be regarded as an installation as it would not normally be moved.