

Assured and Assured Shorthold Tenancies

A guide for landlords



housing

Assured and Assured Shorthold tenancies

Who should read this booklet?

You probably need to read this booklet if you are letting, or thinking of letting, a domestic property and the letting began on or after 15 January 1989. However, if you are sharing or are going to share part of your home, you should read our separate booklets called *Letting Rooms in Your Home – a guide for Resident Landlords* and *Renting Rooms in Someone's Home – a guide for people renting from resident landlords*.

This booklet does not deal with agricultural lettings, or lettings by housing associations, local authorities or other social landlords.

This booklet explains the most important features of tenants' and landlords' rights and responsibilities but it is only a general guide.

This booklet does not provide an authoritative interpretation of the law; only the courts can do that. Nor does it cover every case. If you are in doubt about your legal rights or obligations you would be well advised to seek information from a Law Centre, Housing Advice Centre or Citizens Advice Bureau or to consult a solicitor. The addresses and phone numbers of advice organisations are listed in the telephone directory or can be obtained from your local library or local authority. Help with all or part of the cost of legal advice may be available under the Legal Aid Scheme.

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1. Introduction to assured and shorthold tenancies

1.1 What are assured and 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 (sometimes called “full” or “ordinary” assured tenancies by landlords) and assured shorthold tenancies. For clarity, this leaflet will refer to *assured* tenancies and *shorthold* tenancies to highlight the important differences between the two.

An **assured** or **shorthold tenancy** is the usual form of letting if:

- you are a private landlord and your tenant is a private tenant
- the tenancy began on or after 15 January 1989
- the house or flat is let as separate accommodation and is the tenant’s main home.

A tenancy will **not** be an assured or shorthold tenancy if:

- the tenancy began before 15 January 1989
- it is a business or holiday let
- no rent or a very low or very high rent is charged
- you are a “resident landlord” (see section 1.2).

Appendix A gives a more detailed list of tenancies or agreements which cannot be assured or shorthold tenancies.

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 property for a short period only and to get it back if they wish after six months.

The changes in the Housing Act 1996 make it easier to set up a shorthold tenancy and quicker and simpler to evict tenants who fail to pay their rent or cause a nuisance and annoyance to other local people. These are the most important changes. A summary of all the changes is at Appendix B.

1.2 If the tenant does not have exclusive use of the accommodation or I let part of my home, am I covered by the law on assured and shorthold tenancies?

Different rules apply if the tenant does not have exclusive use of the accommodation or you let part of the house or flat you live in to someone.

If you agree to let accommodation for a period at a rent and the occupier will have exclusive use of the accommodation, the agreement will almost certainly be an assured or shorthold tenancy. If the occupier does not have exclusive use of any part of the accommodation, he or she is likely to have a **licence** to occupy, not an assured or shorthold tenancy. The agreement will probably be a licence where you have specified that you require unrestricted access to the occupant's room to provide services such as cleaning.

If you grant a tenancy but are a "resident landlord", then the tenancy will not be an assured or shorthold tenancy. This rule generally applies to converted houses. So if your only or main home is a flat in a building which has been converted into flats and you then let another flat in that same building, the arrangement will not be an assured or shorthold tenancy. You do not need to share any accommodation with the occupier to be held to be a resident landlord. It is enough that you live in the same building.

However, if you live in a purpose built block of flats and you let one of the other flats in the same block, you will not be a resident landlord and the tenant will be an assured or shorthold tenant. If you live in a purpose built block, you will only be a resident landlord if you let a part of a flat which you yourself occupy as your home.

If the tenant has exclusive use of part of the accommodation but can also use another part of the accommodation, such as a communal living room or kitchen, with someone other than you, he or she is likely to have an assured or shorthold tenancy.

It is important to establish whether an agreement is a tenancy or a licence as this will affect your rights and responsibilities and those of the tenant or licensee. For further details, read the Department's booklets *Letting Rooms in Your Home: A Guide for Resident Landlords* and *Renting Rooms in Someone's Home: A Guide for People Renting from Resident Landlords*, listed at the end of this booklet.

If you are in any doubt about what sort of agreement you have, you should seek advice from a solicitor or Citizens Advice Bureau.

1.3 Where can I get more information?

The Department produces a range of booklets to help you. They are listed at the end of this booklet and all are available via the Department's website.



2. The differences between an assured and a shorthold tenancy

2.1 What are the main differences between an assured and a shorthold tenancy?

If you let on a **shorthold tenancy**, you **can regain possession of your property six months after the beginning of the tenancy**, provided that you give two months' notice that you require possession. Sections 6.1 to 6.12 explain how to get possession of a shorthold tenancy.

If you let on an **assured tenancy**, **your tenant has the right to remain in the property** unless you can prove to the court that you have grounds for possession. You do not have an automatic right to repossess the property when the tenancy comes to an end. Sections 6.7 to 6.12 explain how to get possession of an assured tenancy.

You can charge a full market rent for an assured or a shorthold tenancy.

2.2 Should I choose an assured or a shorthold tenancy?

If you think you may need to regain possession of your property at some time, you should consider a shorthold tenancy. If you have a mortgage, your lender may require the tenancy to be a shorthold tenancy. If you are sure that you want to let the property indefinitely, you should consider an assured tenancy. If you are unsure which type of tenancy to offer, you should seek legal advice.

2.3 Are there any tenancies which cannot be shorthold tenancies?

If you already have an existing assured tenant, you cannot replace his or her tenancy with a shorthold tenancy. Appendix A gives a list of tenancies which cannot be shorthold tenancies. You should seek legal advice if you are in any doubt whether the tenancy can be a shorthold tenancy.



3. How to set up a tenancy

3.1 How do the procedures for setting up assured and shorthold tenancies differ?

An important change was made in the Housing Act 1996. The change means that tenancies starting on or after 28 February 1997 are automatically shorthold tenancies unless special steps are taken to set up an assured tenancy. Tenancies which started or were agreed before 28 February were automatically assured tenancies unless a special procedure was followed to set up a shorthold tenancy.

3.2 How do I set up a shorthold tenancy?

For tenancies starting on or after 28 February 1997

There is **no special procedure** for creating a shorthold tenancy. A tenancy will automatically be a shorthold tenancy. If you wish to set up an assured tenancy, follow the procedure described in section 3.3.

For tenancies which started or were agreed before 28 February 1997

A tenancy will be a shorthold tenancy only if you informed the tenant before the tenancy began, using a **special form – a Section 20 notice** – that the tenancy was to be a shorthold tenancy.

If you are replacing an existing tenant's shorthold tenancy, see sections 5.1 and 5.2.

3.3 How do I set up an assured tenancy?

For tenancies starting on or after 28 February 1997

You must either **give the tenant a notice** which says that the tenancy is not a shorthold tenancy before the beginning of the tenancy, **or include a simple declaration in the tenancy agreement** to this effect. If you decide after the tenancy has started that it should be on assured terms, you can serve the notice after the tenancy has started. There is no special form for giving this notice – you simply need to state clearly that the tenancy will not be a shorthold tenancy.

For tenancies which started or were agreed before 28 February 1997

If the tenancy began, or was agreed in a contract before this date and you did not serve a Section 20 notice before the tenancy started, then the tenancy is **automatically** an assured tenancy in law even if you had an oral agreement with the tenant that it was a shorthold tenancy.

If you are replacing your existing tenant's assured tenancy, see sections 5.4 to 5.6.

3.4 Does a tenancy have to run for a set period or can it run indefinitely?

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 you agree a fixed term tenancy, you will only be able to seek possession during the fixed term if one of grounds for possession 2, 8, 10 to 15 or 17 in Appendix C apply and if the terms of the tenancy make provision for it to be ended on any of these grounds. If you agree a periodic tenancy, you can seek possession at any time on any of the grounds in Appendix C. Furthermore, if you agree a shorthold tenancy on a periodic basis, you have an automatic right to possession at any time after the first six months, provided you have given two months' notice that you require possession. You cannot seek possession from an assured tenant without grounds when the fixed term ends. Section 6 explains in detail the procedures for seeking possession of a tenancy.

Shorthold tenancies which started or were agreed before 28 February 1997 had to have an initial fixed term of at least six months. Shorthold tenancies starting on or after 28 February do not.

3.5 Does the initial period of a shorthold tenancy have to run for a fixed period?

Important changes were made in the Housing Act 1996.

For tenancies starting on or after 28 February 1997

You do not have to agree an initial fixed term although you may do so if you wish. You may agree a fixed term for 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 property for a minimum period of 6 months. This means that even if you agree a fixed term of less than 6 months or a periodic tenancy from the outset, you do not have a guaranteed right to possession if the tenant refuses to leave during the first six months of the tenancy. However, you can seek possession during this period on one of the grounds for possession set out in Appendix C.

For tenancies which started or were agreed before 28 February 1997

These had to have an initial fixed term of at least six months. You can only seek possession of the property during the fixed term of the tenancy if one of the following grounds for possession in Appendix C apply – 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.

3.6 Can I let my property if I have a mortgage or if I hold the property on a long lease?

It is essential to get your mortgage lender's agreement to let the property before you do so. You must check the terms of your lease to ensure that you can let the property and get your landlord's agreement if necessary first. You should also check first with your insurers whether your building insurance policy will provide cover if the property is let and make arrangements to extend the cover if it does not.

3.7 Does the tenancy agreement have to be in writing?

This is only required by law for fixed-term tenancies of greater than three years. However you are strongly advised 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. You cannot use the accelerated possession procedure operated by the county courts (see section 6.4) without a written tenancy agreement. Tenancies for a fixed term which is greater than seven years should be registered with the local Land Registry. This is the responsibility of the tenant.

A tenant with a shorthold tenancy starting on or after 28 February 1997

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

If you have only an oral agreement with the tenant, you 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 you agreed with the tenant that it was a different form of tenancy.

3.8 Is there a standard tenancy agreement?

You may draw up your own agreement but you must make sure that the terms are fair and do not conflict with the duties on landlords imposed by legislation which will automatically override what you agree with your tenant. If you do decide to draw up your own agreement you 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.

3.9 Do I need to consider the Office of Fair Trading's Guidance on unfair terms in tenancy agreements?

Yes. 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 downloaded from the Office of Fair Trading's website at www.oft.gov.uk.

3.10 What does this Guidance mean in practice?

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.

3.11 What should I do to ensure my 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 tenant's 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.

3.12 Do I need to agree the proposed terms with my tenant?

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

3.13 Do I have to pay Stamp Duty?

Prior to 1 December 2003 a tenancy agreement was a stampable document and should have been sent or taken to the Stamp Office for stamping in order for it to have validity if it was subsequently used in court.

Stamp Duty Land Tax (SDLT) was introduced on 1 December 2003 to replace Stamp Duty. Details are in the HM Revenue and Customs leaflet: *A guide to leases*. This is available at www.hmrc.gov.uk, or by Orderline 0845 302 1472.

You can also ask for more advice about Stamp Duty Land Tax (SDLT) by ringing the HM Revenue and Customs Helpline on 0845 603 0135.

3.14 What if I don't want to let the property or manage the tenants myself?

Letting agents and some estate agents will find tenants for you and start up the tenancy. Some will also collect the rent and provide a full management service so that you will not have to deal directly with the tenants yourself at all. They will charge a fee for their services. Agents who are members of the Royal Institution of Chartered Surveyors, the Association of Residential Letting Agents, the Incorporated Society of Valuers and Auctioneers, and the National Association of Estate Agents are required to operate to standards recognised by their organisations. In addition, letting agents who are accredited with the National Approved Letting Scheme have also agreed to abide by NALS' standards.

The principles of the Unfair Contract Terms legislation, referred to in section 3.9 regarding tenancy agreements, apply to *any* contract between a trader and a consumer, including the contract you may enter into with a letting agent. The OFT's general guidance document *Unfair Contract Terms Guidance*, available from the address in section 3.9, may be useful reference. If you are concerned about terms in the contract between yourself as landlord and a letting agent, you should contact your local authority Trading Standards Department.

Some housing associations will lease property from you for a period of at least two years or manage the property for you, for people in housing need. They will charge a fee to cover their management costs or deduct the costs from the rental income. They may be able to provide a grant towards the cost of repairs to bring the property up to standard for letting. Your local authority may have an Empty Property Officer who will be able to give you advice on these matters.

3.15 Can I charge a deposit?

You may ask the tenant to pay a deposit before moving into your property to act as security in case he or she leaves the property owing rent or to pay for any damage or unpaid household bills at the end of the tenancy. You should negotiate the amount with the tenant. However, if you charge a deposit of more than two months' rent, it could be regarded as a premium which may give the tenant a right to give the tenancy to someone else or sublet (see section 8.3).

You should state clearly in the tenancy agreement 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 (but see section 3.16 for important new rules for assured shorthold tenancies entered into on or after 6 April 2007).

It is advisable to agree a list of furniture, kitchen equipment and other items in the property with the tenant at the outset of the tenancy. If the tenant cannot afford the deposit, you can check with your local authority's housing department or housing advice centre whether there is a rent or deposit guarantee scheme in the area which would guarantee rent or the costs of damage for a specified period.

3.16 What are Tenancy Deposit Schemes?

Under the Tenancy Deposit Protection legislation introduced by the Housing Act 2004, landlords are required to protect the deposits for all assured shorthold tenancies that have been created since 6 April 2007 in a government-approved scheme. It is the responsibility of whoever holds the deposit – whether it is the landlord or agent – to ensure that the money is properly protected in an authorised scheme. However, if you are using a letting agent, you are advised to ask for documentary evidence that the deposit has been properly protected (e.g. scheme reference number).

There are three authorised tenancy deposit schemes. Two are insurance based and the third is custodial. All three schemes provide a free dispute resolution service in the event of a dispute about the return of the deposit.

Under all three schemes, the tenant pays the deposit to the landlord or agent in the usual way. Under the insurance-based schemes, the landlord or agent retains the deposit and pays a premium to the insurer. Under the custodial scheme the landlord or agent pays the deposit into the scheme.

Within 14 days of receiving a deposit the landlord or agent must give the tenant details about how their deposit is protected including:

- the contact details of the tenancy deposit scheme being used
- the landlord or agent's contact details
- how to apply for the release of the deposit
- information explaining the purpose of the deposit
- what to do if there is a dispute about the deposit.

Under the insurance schemes at the end of the tenancy:

- if an agreement is reached about how the deposit should be divided, the landlord or agent should return the agreed amount to the tenant
- if no agreement can be reached, the landlord or agent must hand over the disputed amount to the scheme for safekeeping until the dispute is resolved
- if for any reason the landlord fails to comply, the insurance arrangements will ensure the return of the deposit to the tenant if they are entitled to it.

Under the custodial scheme at the end of the tenancy:

- if an agreement is reached about how the deposit should be divided, the scheme will return the deposit, divided in the way agreed by both parties
- if no agreement can be reached, the scheme will hold the deposit until the dispute resolution service or courts decide what is fair.

3.17 Resolving tenancy deposit disputes

If there is a dispute about the return of the deposit and you are unable to reach agreement with the tenant, a free service offered by the scheme protecting the deposit can help to resolve the dispute. This is called an Alternative Dispute Resolution (ADR) service. If you and the tenant both agree to use the service to resolve the dispute you are both bound by its decision. This does not prevent you or the tenant deciding to take the matter to the small claims court instead of using ADR.

Under the custodial scheme, the scheme will continue to hold the disputed amount until the ADR or courts decide what is fair. Under the insurance schemes, you (or the agent) must hand over the disputed amount to the scheme for safekeeping until the dispute is resolved. If you (or the agent) fail to transfer the disputed amount into the scheme, the scheme will pay the amount due to the tenant as a result of the ADR service's or court's decision. The scheme will then seek to recover the money from you or the agent.

The scheme administrator will divide the disputed amount in accordance with the ADR service's, or court's decision.

Further advice on tenancy deposit schemes can be found on the DirectGov website at www.direct.gov/tenancydeposit.

3.18 Should I provide a rent book?

You are only legally obliged to provide a rent book if the rent is payable on a weekly basis. This must by law contain certain information; you can obtain standard rent books for assured and assured shorthold tenancies from law stationers' and larger general stationers'. However, you should keep a record of rent payments or provide receipts for rent paid for all tenancies to avoid any disagreements later.



4. Landlord and tenant responsibilities and rights

4.1 What is the landlord responsible for?

Repairs

Unless the tenancy has a fixed term of more than seven years, you are responsible under the Landlord and Tenant Act 1985 for repairs to:

- the structure and exterior of the property
- baths, sinks, basins and other sanitary installations
- heating and hot water installations
- if you are renting a flat or maisonette, other parts of the building or installations in it which you own or control and whose disrepair would affect your tenant.

Responsibility for other repairs depends on what you agree with the tenant. You are not responsible for repairing damage caused by him or her.

The rent you can charge can include a sum to cover the cost of repairs but you cannot pass the costs on to the tenant in the form of a separate service charge.

For further details, read the Department's booklet Repairs listed at the end of this booklet.

Safety of gas and electrical appliances

You are required by the Gas Safety (Installation and Use) **Regulations 1998** to ensure that all gas appliances are maintained in good order and that an annual safety check is carried out by a recognised engineer – that is an engineer who is approved under Regulation 3 of the Gas Safety (Installation and Use) Regulations 1998.

You must keep a record of the safety checks and issue it to the tenant within 28 days of each annual check. You are not responsible for maintaining gas appliances which the tenant is entitled to take with him or her at the end of the letting.

Further guidance is contained in the leaflet *Gas appliances – get them checked, keep them safe*, available, free of charge, from the Health and Safety Executive (HSE): telephone 01787 881165 or www.HSE.gov.uk.

You should ensure that the electrical system and any electrical appliances that you supply such as cookers, kettles, toasters, washing machines and immersion heaters are safe to use.

New rules for electrical safety in the home came into effect on 1 January 2005 in England and Wales. From this date people carrying out electrical work in kitchens, bathrooms or outdoors or adding new circuits to any part of their house will have

to follow the new rules in the Building Regulations. The alternative is to get the work carried out by a suitably qualified electrician. Landlords have a duty of care towards their tenants and as good practice we would recommend that you commission a Periodic Inspection Report on the electrical installations every five years and or on a change of tenancy.

There is further guidance in the leaflet *New rules for electrical safety in the home* or visit: www.communities.gov.uk/electricalsafety.

Fire safety of furniture and furnishings

You must ensure that any furniture and furnishings you supply meet the fire resistance requirements in the Furniture and Furnishings (Fire) (Safety) Regulations 1988, unless you are letting on a temporary basis whilst, for example, working away from home. The Regulations apply if the let is for a longer period or for a series of lets, where the property is regarded primarily as a source of income rather than your home. If you are not sure whether the regulations apply to you, seek advice from the Trading Standards Department of your local authority.

The regulations set levels of fire resistance for domestic upholstered furniture. All new and second hand furniture provided in accommodation that is let for the first time, or replacement furniture in existing let accommodation, must meet the fire resistance requirements unless it was made before 1950. Most furniture will have a manufacturer's label on it saying if it meets the requirements. Further guidance is contained in the booklet *A Guide to the Furniture and Furnishings (Fire) (Safety) Regulations*. This can be downloaded from www.bis.gov.uk.

HMO Licensing

If tenants in your property share facilities then your property could be classed as a House in Multiple Occupation (HMO). If the property is of three or more storeys and houses five or more people forming two or more households then you will require a mandatory licence from your local council. The local council also has the power to additionally licence other types of HMO that do not meet the mandatory criteria. Please contact your local council for further information on HMO licensing.

Other

A tenancy is a contractual agreement, even if there is no written agreement, so you must supply whatever you agreed to supply.

4.2 What is the tenant responsible for?

Council Tax

The tenant will normally be responsible for paying Council Tax. However, if the property is a house in multiple occupation, you will be responsible for paying it although you can include the cost in the rent. A house in multiple occupation, for

Council Tax purposes, is a property which is constructed or adapted for occupation by individuals who do not form a single household or who have separate tenancies or who pay rent for only part of the property. If you are in any doubt as to who will be liable to pay Council Tax, contact your local authority. To avoid confusion, the tenancy agreement should set out who is responsible for paying Council Tax.

Water and sewerage charges

The tenant will normally be responsible for paying water and sewerage charges if the accommodation is self-contained. If you wish to have responsibility for these charges, rather than the tenant, you should contact the water utility company for the area. To ensure that you, rather than the tenant, is liable for the charges, you will need to make a specific agreement with the water utility company. Once this agreement is in place, you should set out in the tenancy agreement that you are responsible for payment and that this cost will be included in the rent.

Other bills

You should agree with both the tenant and the utility company concerned, by way of a written agreement, who will be responsible for the payment of other bills (gas, electricity, telephone etc) and then state this clearly in the tenancy agreement.

Digital Television

Digital Television is being introduced across the UK between 2008 and 2012. If you let accommodation that has a communal TV system, this may need to be adapted to receive digital television. You should therefore check what needs to be done and carry out the necessary adaptations. More information is available from the Digital UK website, www.digitaluk.co.uk

Energy Performance Certificates (EPCs)

From 1 October 2008, an Energy Performance Certificate (EPC) will be required whenever a dwelling in the social or private rented sectors is let to a new tenant. The purpose of the EPC is to show prospective tenants the energy performance of the building they are planning to occupy. The EPC shows the energy efficiency rating (relating to running costs) and the Environmental Impact rating (relating to CO₂ emissions rating) of the property. They are shown on an A – G rating scale similar to those used for fridges and other electrical appliances. The certificate will be accompanied by a recommendation report that contains recommendations on how to improve the building's energy efficiency. However, there is no statutory requirement to carry out any of the recommended measures. The Energy Saving Trust estimates that the average household could save up to £300 a year by making energy saving improvements.

Other

The tenant has a duty to take proper care of the property and use it in a responsible way, pay the rent as agreed and keep to the terms of the tenancy agreement, unless the terms are in contravention of his or her rights in law.

4.3 What rights does the landlord have?

Access

You, or your agent, have the legal right to enter the property at reasonable times of day to carry out the repairs for which you are responsible and to inspect the condition and state of repair of the property. You must give 24 hours' notice in writing of an inspection. It is also helpful to set out the arrangements for access and procedures for getting repairs done in the tenancy agreement.

You should seek legal advice if the tenant will not give you access.

4.4 What rights does the tenant have?

Quiet enjoyment

The tenant has the legal right to live in the property as his or her home. You must ask the tenant's permission before you enter the premises.

You cannot evict the tenant without a possession order from the court.

If you sell the freehold of the property, the tenant will retain any rights he or she has to remain in the property, as the tenancy will be binding on any purchaser.

Matters such as whether the tenant can keep pets and so on, should be negotiated and included in the terms of the tenancy agreement.

4.5 Should these responsibilities and rights be included in the tenancy agreement?

Statutory responsibilities and rights will apply to you and the tenant even if they are not included in the tenancy agreement. However, it is useful to include them in the tenancy agreement to prevent misunderstandings later.



5. What to do when a tenancy ends

5.1 What happens when a shorthold tenancy comes to the end of a fixed term?

When a shorthold tenancy comes to the end of the fixed term, any replacement tenancy you agree will automatically be on shorthold terms unless you choose to set up a replacement tenancy on an assured basis. To do this you should follow the new procedure for setting up an assured tenancy from 28 February 1997, outlined in section 3.3. If you do nothing, the tenancy will automatically run on from one rent period to the next on the same terms as the preceding fixed term shorthold tenancy – called a **statutory periodic tenancy**. The tenancy will continue to run on this basis until you replace it, the tenant leaves or you seek possession from the tenant.

5.2 How do the changes in the Housing Act 1996 affect shorthold tenants whose tenancies started or were agreed before 28 February 1997?

Any replacement tenancy which you agree with a shorthold tenant whose tenancy started or was agreed before 28 February 1997 will automatically be on shorthold terms – you do not have to serve a new Section 20 notice before the start of the replacement tenancy.

5.3 What do I have to do when a shorthold tenancy ends?

You can:

- 1) agree a replacement fixed term shorthold tenancy
- 2) agree a replacement shorthold tenancy on a periodic basis – called a contractual periodic tenancy
- 3) agree a replacement assured tenancy, provided you give written notice or state clearly in the tenancy agreement that the tenancy will not be a shorthold tenancy
- 4) do nothing and allow the shorthold tenancy to run on with the same rent and terms – called a statutory periodic tenancy
- 5) end the tenancy – but you must have given two months' notice that you require possession (see sections 6.1 to 6.5).

If you think you may need to regain possession of the property at short notice, you should consider options (2) or (4) which will allow you to regain possession after giving the tenant two months' notice. Option (4) is useful if you and the tenant agree that he or she should move out a few weeks after the fixed term has ended. If you choose option (1), you will only be able to regain possession during the fixed term on one of grounds for possession 2, 8, 10 to 15 or 17 in Appendix C. Once the fixed term has ended, you will be able to regain possession after

giving the tenant two months' notice. If you choose option (iii), you will not have an automatic right to regain possession at the end of the fixed term. Sections 6.1 to 6.12 explain in detail how to end a shorthold tenancy using the possession procedure.

5.4 What happens when an assured tenancy comes to the end of a fixed term?

Any replacement tenancy you agree with an existing assured tenant will automatically be on assured terms whatever the tenancy agreement says. However, 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 you do nothing, the tenancy will automatically run on from one rent period to the next on the same terms as the preceding fixed term assured tenancy. The tenancy is called a **statutory periodic tenancy**. It will continue to run on this basis until you replace it, the tenant leaves or you seek possession from the tenant on one of the grounds in Appendix C.

5.5 How do the changes in the Housing Act 1996 affect assured tenants whose tenancies started or were agreed before 28 February 1997?

Any replacement tenancy you agree with an existing assured tenant on or after 28 February 1997 will automatically be on assured terms whatever the tenancy agreement says. However, to avoid any misunderstandings with the tenant, it is helpful to state in the replacement tenancy agreement that the tenancy is not a shorthold tenancy.

5.6 What do I have to do when an assured tenancy ends?

You can:

- 1) agree a replacement fixed term shorthold tenancy
- 2) agree a replacement assured tenancy on a periodic basis – called a contractual periodic tenancy
- 3) do nothing and allow the assured tenancy to run on with the same rent and terms – called a statutory periodic tenancy.

If you choose option (1), you will only be able to regain possession during the fixed term on one of grounds for possession 2, 8, 10 to 15 or 17 in Appendix C although after the fixed term has ended, possession may be applied for on one of the grounds in Appendix C. Sections 6.7 to 6.12 explain in detail how to end an assured tenancy using the possession procedure. You do not have an automatic right to regain possession of an assured tenancy at the end of a fixed term.

5.7 Can the tenant leave during the tenancy?

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 you agree 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 you do not agree that he or she can break the agreement, the tenant will be contractually obliged to pay you the rent for the entire length of the fixed term. You should ensure that the tenant has the same opportunities as you to end the tenancy agreement.

If the tenancy has no fixed term, the tenant must give you notice in writing of his or her intention to leave. He or she must give at least four weeks' notice where rent is paid on a weekly basis and at least a month's notice where rent is paid on a monthly basis.



6. How to end a tenancy

6.1 Can I get my property back when the fixed term of a shorthold tenancy has ended?

If the tenancy started on or after 28 February 1997

You have a right to regain possession without giving any grounds for possession at any time after any fixed term which you agreed with the tenant comes to an end or at any time during a contractual or statutory periodic tenancy, provided it is at least six months since the start of the original tenancy. For example, if you initially agreed a tenancy of four months, and subsequently issued a replacement tenancy to follow it, you cannot regain possession until two months after the start of the replacement tenancy. However, if the original tenancy was for more than six months, you can regain possession at any time during the replacement tenancy.

If the tenancy started or was agreed before 28 February 1997

When the initial fixed term (which must have been for at least six months) or any subsequent fixed term ends, or if the tenancy is on a contractual periodic or statutory periodic basis, you can regain possession at any time without giving any grounds for possession.

6.2 How do I get my property back when the fixed term of a shorthold tenancy has ended?

You must give the tenant **at least two months' notice that you require possession**. You can give the notice at any time during the fixed term, but the date you state you require 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 you give notice on or after 28 February 1997 that you require possession, the notice must be in writing. You do not have to use a special form for this.

6.3 Can I evict a shorthold tenant if he or she does not move out when the notice requiring possession expires?

A tenant should leave at the expiry of a notice requiring possession under Section 21 of the Housing Act 1988. However, if the tenant refuses to leave, you cannot evict him or her without a possession order from the court. You can apply to the court to start possession proceedings as soon as the notice requiring possession expires. You will not have to give any grounds for possession. You should consider using the accelerated possession procedure.

6.4 What is the accelerated possession procedure?

This is a straightforward and inexpensive procedure for getting possession of your property without a court hearing. The court will make its decision by looking at the documents which you and the tenant provide, unless it considers that a hearing is required. You can only use this procedure if you have 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 you have given the tenant the required notice in writing that you are seeking possession.

You should apply to the county court for accelerated possession proceedings. For more information, you can get from the court the leaflet *Landlords leaflet – Assured shorthold tenancies – An assured shorthold tenancy – There is a quicker possession procedure you can use*.

6.5 Can I evict the tenant as soon as I have a possession order?

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

6.6 Can I get my property back during the fixed term of a shorthold tenancy?

You can only seek possession during a fixed term of the tenancy if one of the following grounds for possession in Appendix C apply – 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.

6.7 Can I get my property back from an assured tenant?

You can only seek possession during a fixed term of the tenancy if one of the following grounds for possession in Appendix C apply – 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, you can seek possession from the tenant if one or more of the 17 grounds for possession in Appendix C apply. It is for the court to decide whether one or more of the grounds for possession apply.

6.8 What are the 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 you 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 you 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 you notified the tenant in writing **before the tenancy started** that you intended one day to ask for the property back on one of these grounds. 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.

6.9 If I think I have grounds for possession, what do I do?

You must first give written notice to the tenant that you 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 you are using. The notice periods for each ground are given in Appendix C. You must give notice on a special form called *Notice seeking possession of a property let on an Assured Tenancy or an Assured Agricultural Occupancy*, which can be obtained from a law stationers or downloaded respectively from the Communities and Local Government or National Assembly for Wales websites. You should also use this form if the tenancy is a shorthold tenancy and you are relying on one of the grounds for possession. The form asks you to state which of the grounds for possession you are using, **and you should write each as it appears in the legislation.**

You can apply to the court to start court proceedings as soon as the notice expires. You will usually have to wait at least a month for a court hearing.

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

6.10 Can I evict the tenant as soon as I have a possession order?

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 he or she meets certain conditions – for example, paying back an amount of rent arrears each week. This is called a **suspended possession order** and the tenant cannot be evicted provided that he or she meets the conditions.

You cannot evict the tenant yourself. If he or she still refuses to leave after the date specified in the order, you must seek a warrant for eviction from the court. The court will arrange for bailiffs to evict the tenant.

6.11 What happens if the tenant breaches the conditions of a suspended possession order?

You may apply to the court for an absolute possession order or a warrant for possession, depending on the terms of the suspended order.

6.12 Can I ask the tenant to pay rent after I have served a notice seeking possession?

You 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 you ask 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). You should seek legal advice in these circumstances.

6.13 Can the court order the tenant to pay back all the rent he or she owes?

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.

6.14 What can I do if the tenant owes me money?

If the amount of money the tenant owes is £3,000 or less, you could make a claim through the Small Claims Court which 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 he or she does, there will be an arbitration hearing unless your case is too difficult to be dealt with under the small claims procedure in which case it will be transferred to the open court. You should apply to the county court to make an application for Small Claims Court proceedings.



7. Increasing the rent and varying the terms of a tenancy

7.1 How frequently can I put up the rent?

You should agree with the tenant the rent and arrangements for paying it and, if you wish, arrangements for reviewing it, before the tenancy begins and include the details 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.

7.2 Can I put the rent up by more than I agreed in the tenancy agreement?

Only if the tenant agrees.

7.3 What happens if the tenancy agreement does not say when the rent will go up?

If the tenancy is a **fixed term** tenancy, you can only put the rent up if the tenant agrees. If he or she does not agree, you will have to wait until the fixed term ends before you can raise the rent.

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

When a fixed term tenancy ends and the tenancy lapses into a **statutory periodic tenancy**, you can agree a rent increase with the tenant. Alternatively you 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.

7.4 What is the formal procedure for proposing a rent increase for contractual or statutory periodic tenancies where this is not covered in the tenancy agreement?

You must notify the tenant on one of two special forms called *Landlord's notice proposing a new rent under an Assured Periodic Tenancy of premises situated in England* 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 Communities and Local Government or National Assembly for Wales websites. The forms can be used for assured or assured shorthold tenancies.

You must give at least a month's notice of the proposed increase if the rent is paid on a weekly or monthly basis (more if the rent period is longer). More details are in Appendix D.

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.

7.5 What is a rent assessment committee?

Rent assessment committees are made up of two or three people – usually a lawyer, a property valuer and a lay person. They are drawn from rent assessment panels – bodies of people with appropriate expertise appointed by government ministers. There are six rent assessment panels in England and Wales, for information on the panel representing your area please go to: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/residential-property/index.htm. 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.

7.6 When can assured and shorthold tenants apply to a rent assessment committee for a decision on the rent?

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 (see section 7.3).

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 (see section 7.9).

7.7 How does the rent assessment committee decide on a rent for a contractual periodic or statutory periodic tenancy?

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.

7.8 Can I propose a further rent increase after the committee has made a decision?

You can propose that the rent is increased a year after the date on which the rent decided by the committee was payable (but see Appendix D), 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.

7.9 What additional rights do shorthold tenants have to apply to a rent assessment committee for a decision on the rent?

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.

For tenancies starting on or after 28 February 1997

The tenant may only apply to the committee once within six 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 six months have elapsed since the date the original tenancy started.

For tenancies which started or were agreed before 28 February 1997

The tenant may apply to the committee once during the initial fixed term of the original tenancy. The original fixed term had to be for six months but may be for longer.

7.10 How does the committee decide on a rent for a shorthold tenancy?

The committee will only fix a rent 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.

7.11 Can a shorthold tenant refer the rent a second time to the committee?

Not under the procedure described in sections 7.9 to 7.10.

7.12 What if I want to change the terms of an assured or a shorthold tenancy?

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.

7.13 How does this procedure work?

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 three 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 (see www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/residential-property/index.htm).

7.14 How does the committee fix the terms?

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.

7.15 If the committee sets new terms, can I propose further changes?

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.



8. Succession rights, joint tenancies, subletting

8.1 Can joint tenancies be agreed with assured and shorthold tenants?

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 your agreement and you cannot recover the rent due from him or her, the remaining tenant will be responsible for paying the full rent. Under a joint tenancy, all tenants have equal rights under the tenancy.

8.2 Can a member of an assured or shorthold tenant's household succeed to the tenancy?

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

If the tenant was a sole tenant, the right to succession will depend on whether the tenant had a fixed term tenancy or a periodic tenancy. If he or she had a fixed term tenancy and the fixed term has not expired, his or her executors will arrange for it to be passed onto whoever the tenancy has been left to in the tenants will. If it was a contractual periodic tenancy or a statutory periodic tenancy, the tenant's husband or wife or a person who lived with the tenant as husband or wife, has an automatic right to succeed to a periodic tenancy unless the tenant who died was already a successor to the tenancy. Only one succession is allowed. No one else in the family has an automatic right to succession.

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

If the tenancy is a shorthold tenancy, you have an automatic right to repossess the property at the end of any fixed term, even if the tenant had a right to succession, provided that you give two months' notice that you require possession.

8.3 Can the tenant give the tenancy or sublet to someone else?

If the tenancy is a fixed term tenancy, you should agree with the tenant whether or not he or she can sublet the tenancy. If you do not want the tenant to sublet, you should state this clearly in the tenancy agreement.

If the tenancy is a contractual periodic tenancy, or a statutory periodic tenancy which has arisen at the end of a fixed term, the tenant cannot by law give the tenancy or sublet to someone else unless you agree 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 two months' rent), he or she will be able to do so unless there is a term in the tenancy agreement preventing this.



9. Housing benefit

9.1 Can the tenant get housing benefit to help with the rent?

From 1 April 2008, anyone who rents their home from a private landlord and makes a new claim for and is entitled to Housing Benefit, will have their benefit worked out using the Local Housing Allowance rates. Entitlement to benefit depends on both the tenant's income and savings and whether anyone living with the tenant is expected to contribute to the rent.

The Local Housing Allowance rules will only affect tenants who make a new claim, move address to new private rented accommodation or have a break in their claim on or after 1 April 2008. Any tenant who is getting Housing Benefit on 1 April 2008 will continue to be paid the old way until there is a change in their circumstances which would affect their entitlement to benefits.

More information on the Local Housing Allowance is available from the Department for Work and Pensions.

9.2 Can housing benefit be paid direct to me?

Housing benefit, under the new Local Housing Allowance rules, will automatically be paid to tenants rather than to landlords. If a tenant feels that they may have difficulty in managing their financial affairs and may be entitled to direct payment to their landlord, the local authority will consider any request they make.

Other circumstances in which housing benefit can be paid to the landlord include where a tenant is in rent arrears of eight weeks or more or where the tenant is unlikely to pay the rent based on evidence of past, or likely, failure to pay rent. You should contact your local authority before there are eight weeks' rent arrears or where you have concerns about the tenant's ability to manage their financial affairs. In cases where the situation is likely to be temporary, or where rent arrears of more than eight weeks have been repaid, the situation will be reviewed.

If you are receiving housing benefit payments direct on behalf of your tenant(s), these will continue to be paid to you until such time as the tenant(s) circumstances change.

9.3 Can I find out how much rent will be covered by housing benefit before I sign the tenancy agreement with the tenant?

The new Local Housing Allowance rates will apply equally across specified areas and will be revised in April each year. The local authority in the area in which you let property will be able to provide you with information about the LHA rates for that area.

The rates are based on the median value of rents in that rental area for each property type (ie number of bedrooms the property has). The maximum amount of rent that a tenant can claim assistance for will depend upon the designated rates for the type of property that meets their needs (e.g. a couple will not be entitled to the same amount of benefit as a family of five). Before you sign the tenancy agreement, therefore, you will be able to assess whether or not the maximum amount of housing benefit that the tenant is eligible for is likely to meet the costs of their rent. The actual amount of benefit payable will still depend on the claimant's financial circumstances.



10. Tax on rental income

10.1 Will I have to pay tax on the rental income I receive?

You will normally be charged tax if you receive rent from letting property. However you can set against the rent for tax purposes most business expenses arising from renting out your property such as legal and professional costs, the cost of renewing fixtures in the property and, if the property is let furnished, the cost of replacing furniture and furnishings. Your local tax office or an accountant can give you detailed advice on your tax position. Advice leaflets are available from your local Tax Office.

11. Getting advice

11.1 How can I get further advice on things like getting insurance cover, dealing with difficult tenants?

You can get advice on legal issues from a solicitor or Citizens Advice Bureau.

You could consider joining a landlords' association which will be able to give you advice on a wide range of issues. Some associations can help landlords to obtain lower insurance premiums through block arrangements they have negotiated with insurance companies.

Your local authority's housing advice centre or housing department may be able to tell you how to contact the landlord's association in your area and should be able to give you some advice or tell you where you can get advice on letting issues.

Appendix A

Tenancies which cannot be assured or shorthold tenancies

The following tenancies 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 business tenancy or tenancy of licensed premises (where alcohol is sold or consumed)
- a tenancy of a property let with more than two acres of agricultural land or a tenancy of an agricultural holding
- 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 – see section 1.2
- a tenancy where the property is owned by the Crown or a government department: however, lettings by the Crown Estates Commissioners, the Duchy of Cornwall or the Duchy of Lancaster may be assured tenancies
- a tenancy where the landlord is a local authority, a new town, a development corporation, a housing action trust, or a fully mutual housing association.

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.



Appendix B

Summary of changes introduced by the Housing Act 1996

The Housing Act 1996 made the following changes to the Housing Act 1988 from 28 February 1997:

- to set up a shorthold tenancy with a new tenant on or after 28 February 1997, you no longer need to serve a Section 20 notice on your tenant before the tenancy starts saying that it will be on shorthold terms. All tenancies are automatically shorthold tenancies unless you follow the procedure for setting up an assured tenancy (see section 3.2)
- to set up an assured tenancy with a new tenant on or after 28 February 1997 you must either serve a notice on your tenant saying that the tenancy is not a shorthold tenancy or include a statement to that effect in the tenancy agreement. The notice does not have to be given on a special form (see section 3.3)
- a shorthold tenancy set up on or after 28 February 1997 no longer has to have an initial fixed term. The tenancy can be on a contractual periodic basis from the outset. However, shorthold tenants retain the right to stay in the property for an initial six months (see section 3.5)
- tenants with shorthold tenancies starting on or after 28 February 1997 have a right to ask you to provide a written statement of the main details of the tenancy agreement if they have no existing written agreement or statement (see section 3.7)
- if you serve notice on or after 28 February 1997 requiring possession of a shorthold tenancy at the end of the fixed term, the notice must be in writing. It does not need to be on a special form (see section 6.2)
- tenants with shorthold tenancies starting on or after 28 February 1997 can only refer their rent to a rent assessment committee within six months of the beginning of the original tenancy. Tenants with shorthold tenancies which started or were agreed before 28 February 1997 can still refer to a committee at any time during the initial fixed term of the tenancy which may be for longer than six months (see section 7.9).

The following changes to the grounds for possession apply from 28 February 1997 to all assured and shorthold tenancies regardless of when they started:

- you can now seek possession under ground 8 if the tenant has at least two months' rent arrears (rather than three months) if the rent is paid monthly or eight weeks' rent arrears (rather than 13 weeks) if the rent is paid weekly;
- ground 14 has been strengthened so you can now seek possession where 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
 - 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 the locality.
- you can start court proceedings as soon as you have served notice that you intend to seek possession under ground 14
- a new ground, ground 17, allows you to seek possession if you were persuaded to grant the tenancy on the basis of a false statement by the tenant or someone acting at the tenant's instigation.

See Appendix C for full details of the grounds for possession.

Appendix C

Grounds for possession

This appendix provides a summary of the grounds for possessing an assured or shorthold tenancy. During the fixed term of an assured or shorthold tenancy, the landlord 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, possession can be sought on any of the grounds. When the fixed term of a shorthold tenancy ends, the landlord does not have to give any grounds for possession (see section 6.1).

Mandatory grounds on which the court must order possession

(A prior notice ground means that the landlord must have notified the tenant in writing before the tenancy started that he or she might seek possession on this ground – see section 6.8).

Prior Notice Grounds:

Ground 1:

Not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground or the court is of the opinion that it is just and equitable to dispense with the requirement of notice and (in either case)-

- (a) at some time before the beginning of the tenancy, the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them occupied the dwelling-house as his only or principal home; or
- (b) the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them requires the dwelling-house as his or his spouse's only or principal home and neither the landlord (or, in the case of joint landlords, any one of them) nor any other person who, as landlord, derived title under the landlord who gave the notice mentioned above acquired the reversion on the tenancy for money or money's worth.

Ground 2:

The dwelling-house is subject to a mortgage granted before the beginning of the tenancy and-

- (a) the mortgagee is entitled to exercise a power of sale conferred on him by the mortgage or by section 101 of the [1925 c. 20.] Law of Property Act 1925; and
- (b) the mortgagee requires possession of the dwelling-house for the purpose of disposing of it with vacant possession in exercise of that power; and
- (c) either notice was given as mentioned in Ground 1 above or the court is satisfied that it is just and equitable to dispense with the requirement of notice;

and for the purposes of this ground “mortgage” includes a charge and “mortgagee” shall be construed accordingly.

Ground 3:

The tenancy is a fixed term tenancy for a term not exceeding eight months and-

- (a) not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground; and
- (b) at some time within the period of twelve months ending with the beginning, of the tenancy, the dwelling-house was occupied under a right to occupy it for a holiday.

Ground 4:

The tenancy is a fixed term tenancy for a term not exceeding twelve months and-

- (a) not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground; and
- (b) at some time within the period of twelve months ending with the beginning of the tenancy, the dwelling-house was let on a tenancy falling within paragraph 8 of Schedule 1 to this Act.

Ground 5:

The dwelling-house is held for the purpose of being available for occupation by a minister of religion as a residence from which to perform the duties of his office and-

- (a) not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground; and
- (b) the court is satisfied that the dwelling-house is required for occupation by a minister, of religion as such a residence.

Other, mandatory grounds on which the court must order possession:

Ground 6:

The landlord who is seeking possession or, if that landlord is a registered housing association or charitable housing trust, a superior landlord intends to demolish or reconstruct the whole or a substantial part of the dwelling-house or to carry out substantial works on the dwelling-house or any part thereof or any building of which it forms part and the following conditions are fulfilled-

- (a) the intended work cannot reasonably be carried out without the tenant giving up possession of the dwelling-house because-
 - 1) the tenant is not willing to agree to such a variation of the terms of the tenancy as would give such access and other facilities as would permit the intended work to be carried out, or

- 2) the nature of the intended work is such that no such variation is practicable, or (3) the tenant is not willing to accept an assured tenancy of such part only of the dwelling-house (in this sub-paragraph referred to as "the reduced part") as would leave in the possession of his landlord so much of the dwelling-house as would be reasonable to enable the intended work to be carried out and, where appropriate, as would give such access and other facilities over the reduced part as would permit the intended work to be carried out, or
- (iv) the nature of the intended work is such that such a tenancy is not practicable; and
- (b) either the landlord seeking possession acquired his interest in the dwelling-house before the grant of the tenancy or that interest was in existence at the time of that grant and neither that landlord (or, in the case of joint landlords, any of them) nor any other person who, alone or jointly with others, has acquired that interest since that time acquired it for money or money's worth; and
- (c) the assured tenancy on which the dwelling-house is let did not come into being by virtue of any provision of Schedule 1 to the [1977 c. 42.] Rent Act 1977, as amended by Part I of Schedule 4 to this Act or, as the case may be, section 4 of the [1976 c. 80.] Rent (Agriculture) Act 1976, as amended by Part II of that Schedule.

For the purposes of this ground, if, immediately before the grant of the tenancy, the tenant to whom it was granted or, if it was granted to joint tenants, any of them was the tenant or one of the joint tenants under an earlier assured tenancy of the dwelling-house concerned, any reference in paragraph (b) above to the grant of the tenancy is a reference to the grant of that earlier assured tenancy.

For the purposes of this ground "registered housing association" has the same meaning as in the [1985 c. 69.] Housing Associations Act 1985 and "charitable housing trust" means a housing trust, within the meaning of that Act, which is a charity, within the meaning of the [1960 c. 58.] Charities Act 1960.

Ground 7:

The tenancy is a periodic tenancy (including a statutory periodic tenancy) which has devolved under the will or intestacy of the former tenant and the proceedings for the recovery of possession are begun not later than twelve months after the death of the former tenant or, if the court so directs, after the date on which, in the opinion of the court, the landlord or, in the case of joint landlords, any one of them became aware of the former tenant's death.

For the purposes of this ground, the acceptance by the landlord of rent from a new tenant after the death of the former tenant shall not be regarded as creating a new periodic tenancy, unless the landlord agrees in writing to a change (as compared with the tenancy before the death) in the amount of the rent, the period of the tenancy, the premises which are let or any other term of the tenancy.

Ground 8:

Both at the date of the service of the notice under section 8 of this Act relating to the proceedings for possession and at the date of the hearing-

(a) if rent is payable weekly or fortnightly, at least eight weeks' rent is unpaid

(b) if rent is payable monthly, at least two months' rent is unpaid

(c) if rent is payable quarterly, at least one quarter's rent is more than three months in arrears; and

(d) if rent is payable yearly, at least three months' rent is more than three months in arrears

and for the purpose of this ground "rent" means rent lawfully due from the tenant.

Note: this ground was amended by the Housing Act 1996 and applies from 28 February 1997

Discretionary grounds on which the court may order possession:**Ground 9:**

Suitable alternative accommodation is available for the tenant or will be available for him when the order for possession takes effect.

Ground 10:

Some rent lawfully due from the tenant

(a) is unpaid on the date on which the proceedings for possession are begun;

(b) except where subsection (1)(b) of section 8 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

Ground 11:

Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

Ground 12:

Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

Ground 13:

The condition of the dwelling-house or any of the common parts has deteriorated owing to acts of waste by, or neglect or default of, the tenant or any other person residing in the dwelling-house and, in the case of an act of waste by, or neglect or default of, a person lodging with the tenant or a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

For the purpose of the ground, "common parts" means any part of a building comprising the dwelling-house and any other premises which the tenant is entitled under the terms of the tenancy to use in common with the occupiers of other dwelling-houses in which the landlord has an estate or interest.

Ground 14:

The tenant or a person residing in or visiting the dwelling-house

(a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality, or

(b) has been convicted of-

(i) using the dwelling-house or allowing it to be used for immoral or illegal purposes, or

(ii) an arrestable offence committed in, or in the locality of, the dwelling-house.

Note: This ground was amended by the Housing Act 1996 and applies from 28 February 1997.

Ground 15:

The condition of any furniture provided for use under the tenancy has, in the opinion of the court, deteriorated owing to ill-treatment by the tenant or any other person residing in the dwelling-house and, in the case of ill-treatment by a person lodging with the tenant or by a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

Ground 16:

The dwelling-house was let to the tenant in consequence of his employment by the landlord seeking possession or a previous landlord under the tenancy and the tenant has ceased to be in that employment.

Ground 17:

The tenant is the person, or one of the persons, to whom the tenancy was granted and the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by-

(a) the tenant, or

(b) a person acting at the tenant's instigation.

Note: This is a new ground added by the Housing Act 1996 and applies from 28 February 1996.

Notice periods

Where you want a tenant to leave a property on any of the grounds in Schedule 2, you must serve notice accordingly. The notice must be on a special form, entitled

“Notice seeking possession of a property let on an Assured Tenancy or an Assured Agricultural Occupancy” and must be served in accordance with the notice periods specified in the Housing Act 1988.

A tenant is expected to leave the property upon the expiry of any notice you serve unless they dispute your justification for serving that notice. Where a tenant does not leave at the expiry of the notice, you must start court proceedings immediately if you still wish the tenant to leave.

The notice periods for each of the grounds in Schedule 2 of the Housing Act 1988 are as follows:

- for grounds 3, 4, 8, 10, 11, 12, 13, 15 or 17 – **at least two weeks**
- for grounds 1, 2, 5, 6, 7, 9 and 16 – **at least two 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 three months’ notice must be given if it is a quarterly tenancy
- for ground 14 from 28 February 1997 – the landlord can start proceedings as soon as he or she has served notice.

Appendix D

Rules on timing of rent increases under the formal procedure in the Housing Act 1988

There are three rules on the timing of rent increases under this formal notice procedure:

1. The first rule, which applies in all cases, is that a minimum period of notice must be given before the proposed new rent can take effect. That period is:
 - one month for a tenancy which is monthly or for a lesser period, for instance weekly or fortnightly
 - six months for a yearly tenancy
 - in all other cases, a period equal to the length of the period of the tenancy – for example, three months in the case of a quarterly tenancy.
2. The second rule applies in most cases:
 - the starting date for the proposed new rent must not be earlier than 52 weeks after the date on which the rent was last increased using this statutory notice procedure or, if the tenancy is new, the date on which it started, unless
 - that would result in an increase date falling one week or more before the anniversary of the date in the notice, in which case the starting date must not be earlier than 53 weeks from the date on which the rent was last increased.

This allows rent increases to take effect on a fixed day each year where the period of a tenancy is less than one month. For example, the rent for a weekly tenancy could be increased on, say, the first Monday in April.

Where the period of a tenancy is monthly, quarterly, six monthly or yearly, rent increases can take effect on a fixed date, for example, 1 April.

The two exceptions to the second requirement, which apply where a statutory tenancy has followed on from an earlier tenancy, are:

- where the tenancy was originally for a fixed term (for instance, six months) but continues on a periodic basis (for instance, monthly) after the term ends; and
- where the tenancy came into existence on the death of the previous tenant who had a regulated tenancy under the Rent Act 1977 (see booklet Regulated Tenancies).

In these cases the landlord may propose a new rent at once. However, the first and third requirements must still be observed.

3. The third rule, which applies in all cases, is that the proposed new rent must start at the beginning of a period of the tenancy. For instance, if the tenancy is monthly, and started on the 20th of the month, rent will be payable on that day of the month, and a new rent must begin then, not on any other day of the month. If the tenancy is weekly, and started, for instance, on a Monday, the new rent must begin on a Monday.

Other booklets on landlord and tenant legislation

The following booklets are available, free of charge:

Letting Rooms in Your Home: A Guide for Resident Landlords

My landlord wants me out – protection against harassment and illegal eviction

Notice that you must leave – a brief guide for landlords and tenants

Regulated Tenancies

Renting Rooms in Someone's Home: A guide for people renting from resident landlords

Repairs – a guide for landlords and tenants

These leaflets are available from the Communities and Local Government website:
www.communities.gov.uk

Alternative formats can be requested from:
alternativeformats@communities.gsi.gov.uk

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