Exeter City Council

Landlords' Handbook

A Guide to Good & Responsible Practice

ANUK ACCREDITATION NETWORK UK

Foreword

This guide is designed to help landlords in Exeter improve their services to tenants and, as a result, enable tenants to live in good quality, well managed accommodation.

There is high demand for housing across all sectors of the market in Exeter and the City Council recognises the importance of the private rented sector in helping to meet local housing needs. One of the Council's key policy objectives is therefore to promote high standards of management in the private rented sector to ensure it provides an appropriate and viable housing option for individuals and families.

We know there are many excellent landlords in the city who share our aim of driving up the quality and standard of private rented housing. However we also know that there are a minority who are either not aware of their responsibilities and obligations or simply choose not to fulfil them. This minority can adversely affect the reputation of other landlords and the private rented sector as a whole.

As a Council we are keen to use our role as the local housing authority to help all landlords understand their responsibilities, the legal & regulatory framework in which they have to operate, and the key issues that impact on the landlord/tenant relationship. The aim of this Handbook is therefore to provide a resource that draws together information that landlords need to know, encourages good practice and provides reassurance to tenants that their accommodation is being well managed and properly maintained.

We hope landlords and tenants alike will find this publication useful.

Cllr Emma Morse – Portfolio Holder for People

Jo Yelland – Director

Exeter City Council

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1.1 Investing in a property

This guide is not a financial guide to housing investment, but there are a few key points worth highlighting and considering.

It is important that an investor (and all landlords should see themselves as investors), before investing in a property, undertakes a proper business plan that takes into account:

- The value of the property and the loan to asset ratio of any loan finance obtained.
- The cost of any loan finance and over what period that loan finance has to be repaid.
- The level of interest being paid on the loan, taking into account that interest rates are likely to fluctuate over the duration of the loan.
- The level of investment needed to renovate the property and meet with statutory standards.
- The cost of any management or specialist services to get the property up to standard and into the lettings market, letting expenses, advertising and professional fees.
- The level of rent to be charged.
- The cost of ongoing services to keep the property in good condition: repairs, gas and electrical servicing, annual maintenance, cleaning, garden maintenance and so on.
- The ongoing investment that will be required to maintain the fixtures, fittings, decor and services (boiler, white goods, grey goods and furnishings - if let furnished) in good condition.
- Responsibility for the property while the landlord is away on holiday, business or is unavailable because of illness.

Whilst property investment thrives on optimism, it is also important to be realistic about the level of rent that can be charged and to allow for some period when the property might be unoccupied between lets (voids) and to make some allowance for bad debts. Every landlord should allow not less than a 7% void rate for vacancies and turnaround times between occupants.

Landlords basing their business plans on low interest rates, short and risky variable loan rates, charging high rents and not allowing enough funding to keep the property in tip-top condition, frequently come unstuck.

It is also important to consider cash flow. Just like buying a house for owner-occupation, most expenditure takes place at the beginning and, as the loan progresses, repayments become less onerous. Consider what might happen if outgoings continue but rent is not forthcoming or it is necessary to fund an unexpectedly large repair. Is the cash available to keep the business or investment running?

Investors thinking about purchasing a property to let should consider the financial and management implications very carefully. Some things to be considered are:

- The demand for rented accommodation in the area in which the house is located. In many areas, including popular inner city locations, there may already be an oversupply of rented accommodation and it could be difficult to find suitable tenants

- The sort of market that the property is intended to serve. Each has its own characteristics, benefits and problems.

- The potential investment return. It is important to be realistic about the returns that can be achieved. When investing in property, it is more realistic to expect lower short-term gains and higher long-term profits

- Remember that although over time the capital value of property tends to rise, in the shorter term property prices can go down as well as up and that capital gains made over time on a property that has appreciated in value are taxable.

- The level of experience in managing property and tenancies required. The knowledge and skills needed to be a landlord are considerable and the penalties for getting it wrong can be serious.

1.2 Private rented sector markets

Private renting is increasingly popular and of growing importance as part of the country's housing stock.

Data from the Department for Communities & Local Government (DCLG) shows how the housing market has altered. It shows that owner-occupation has declined as mortgages have become harder to get. As a consequence private renting has seen a dramatic increase.

When deciding to let a property it is important to consider what market that property is entering. Broadly speaking there are five private rented sector markets:

- Renting to those in receipt of welfare
- Renting to students
- Renting to working professionals
- Luxury lets or corporate lets at the higher end market.

Different markets will command different rent levels and will require different standards and types of letting and management. Some of the issues to be considered are:

- Professionals will insist on high standards and will expect showers and sometimes en-suite facilities.

- Housing Benefit renters, whilst commanding a lower rent, are likely to be more stable tenants.

- Young professionals tend to be more mobile and this may lead to higher voids and increased re-letting expenses.

- Renting to sharers or students results in higher occupancy rates which can maximise rental income although student lets may not extend to a full year. However, the wear and tear on a property will be substantially higher with a greater number of occupants. Renting to sharers and students is also likely to bring with it the need to meet regulatory standards that have been set by the Government in respect of Houses in Multiple Occupation (HMO) and property licensing. These additional regulatory standards acknowledge and seek to address the high risks associated with HMOs.

- All tenants will expect a high level of customer care from landlords and expectations generally rise in line with the amount of rent paid.

1.3 Permission to let a property

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

If there is a mortgage on the property, one of the terms of that agreement may be that the owner obtain the lender's permission before the property is let, even if only one room is being let. This is because the mortgage lender will want to ensure that nothing is done that may affect the value of their investment and their ability to recover the loan that was made when the property was purchased. It is important to check the terms of any mortgage. The lender may increase the cost

of the mortgage or change its terms if permission to let the property to tenants is given.

For many buy-to-let mortgages permission to rent the property may be automatic, but even in buy-to-let mortgages there may be conditions on the type of let permissible e.g. 'assured shorthold tenancies only' or a restriction on Housing Benefit/Local Housing Allowance tenants. If it is proposed to let the property as 'rooms' or bedsits, which may create a House in Multiple Occupation (HMO), special permission may need to be sought for this and conditions may be imposed. Usually a lender will not object to one room in an owner-occupier's home being let to a lodger.

If the owner is a leaseholder then the lease may contain a clause which states either that sub-letting is not permitted or that the freeholder's permission must be obtained prior to sub-letting. It is important that this permission is obtained, because if the property is let to tenants without it (even if permission is sought later) then the conditions of the lease will already have been breached and the freeholder can take legal proceedings against the leaseholder. The freeholder's permission will generally be a formality and this permission cannot be unreasonably withheld.

1.4 Insurance

Buildings insurance covers the risk of damage to the structure and permanent fixtures and fittings of a building. If the property is leasehold, then the freeholder will normally arrange the buildings insurance and re-charge the cost to lessees.

Tenants are usually responsible for providing their own contents insurance to cover their personal belongings. This is a matter for the tenants. It is not possible to require them to do this.

The landlord should take out contents insurance to cover loss or damage to household goods that have been supplied by them, e.g. white goods, carpets, curtains and, in the case of furnished lets, other furniture and fittings.

Insurance for rented property is usually more expensive than for owner occupied accommodation and insurance aimed at owner-occupiers will not necessarily be suitable for rented property. The Association of British Insurers produces guidance for owners which explains how insurers assess risks and what can be done to secure cover. If the insurance company is not informed that a property is occupied by tenants (instead of being owner occupied) this is likely to invalidate the insurance. Like a mortgage, insurance cover may come with conditions attached governing the type of tenant that can let a property.

There are special policies for landlords that provide cover for additional risks such as the loss of rental income and the cost of temporary accommodation where a property has been made uninhabitable as a result of one of the insurable risks. Insurance can also provide additional cover for the landlord in case the tenant is injured as a result of an accident in the property together with other elements not necessarily covered by normal household insurance.

The tenancy agreement should take account of any implications of the type of insurance cover there is: for example, if the insurance places an upper limit on the cost of temporary accommodation it may be worth, within the tenancy agreement, limiting liability to the insured amount.

The insurance market is extremely competitive and it is worth shopping around to find the best value for money. Landlord organisations often offer lower-cost insurance to members.

1.5 Taxes

The ownership of letting properties gives rise to various issues in taxation and accounting including:

- Value Added Tax (VAT)
- Income Tax
- Stamp Duty Land Tax
- Inheritance Tax
- Capital Gains Tax (CGT)
- Council Tax

It is your responsibility, as a landlord, to seek appropriate professional advice where necessary.

1.5.1 Value Added Tax (VAT)

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

A special VAT rate of 5% is available on the renovation or alteration of a single household dwelling that has not been lived in for two years or more, so that this is a useful saving over the normal 20% rate. You do not need to be registered for VAT. You do need to show your contractor confirmation that the property qualifies for this exemption. The Empty Homes team at Exeter City Council can

assist you. The contractor can then provide you with a 5% vat invoice to you for his work.

More information on tax can be obtained from a local tax office or visit HM Revenue & Customs website at www.hmrc.gov.uk. Copies of leaflets on taxation of rents and other tax matters can be downloaded from HMRC's website, or can be requested by phoning the Order Line on 08459 000 404 between 8am and 10pm.

1.5.2 Income Tax

If a landlord is a new property investor HM Revenue & Customs (HMRC) should be notified immediately of the new source of income which the owner is now receiving. The tax is computed through an annual tax return sent to HMRC. Click here for more information.

Income tax is payable on profits made from the property-renting business by working out the total of rents received less expenses. Tenants' deposits do not count as income. Typical expenses which can be deducted include:

- Repairs and maintenance (though not initial expenditure needed to bring the property up to a letting standard, or improvements)
- Costs of services including the wages of gardeners and cleaners
- Ground rents
- Service charges
- Insurance such as landlords' policies for contents, building and public liability
- Managing agent's fees
- Legal fees for tenancy agreements
- Advertising
- HMO licence costs
- Water rates
- Council Tax
- Heating and lightning
- Security
- Accountancy fees
- Subscription to a landlord association
- Motor and travelling expenses for visiting the property only and for attending to matters relating to let properties

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

On the question of repairs and maintenance, it is important to distinguish between items of repair and items of improvement. Redecorating rooms, changing windows from single to double-glazing, or replacing a defective roof are examples of repairs which will be allowable. The addition of another floor to the building, or a new conservatory would be considered improvements that would

not qualify and tax relief would only be received on the eventual sale of the property, being set against the eventual capital gain.

Changes to be noted.
a) The amount of Income tax relief available to a landlord has been reduced from 6 April 2017 onwards, tapering to no relief from 6 April 2020

b) Wear and tear allowance isn't available for Income Tax purposes from 6 April 2016. You may be able to claim Replacement Domestic Item relief instead.

Case studies are available here.

1.5.3 Stamp Duty Land Tax (SDLT)

From 6 April 2016 new rates of SDLT came into effect on the purchase of buy to let property and seconds homes costing more than £40,000. These properties are subject to a 3% surcharge. Therefore if the rate of SDLT is normally 2%, for a buy to let property it will be 5% from the 6 April 2016.

Stamp Duty Land Tax (SDLT) is payable by the purchaser on the cost of the property. The rates of SDLT for residential property were revised with effect from 4 December 2014. Under these rules, no tax will be paid on the first £125,000 of a property, followed by;

Brackets	Standard rate SDLT	Buy to Let rate
Up to £125,000	0%	3%
£125,001 to £250,000	2%	5%
£250,001 to £925,000	5%	8%
£925,001 to £1.5 million	10%	13%
over £1.5 million	12%	15%

The new stamp duty rates apply to the part of the property price that falls within that band, so there will no longer be a huge jump in stamp duty in different bands.

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

Stamp Duty Land Tax (SDLT) is payable by the purchaser within 30 days of the purchase, so this should be taken into account when budgeting for a purchase.
You can claim relief when you buy multiple dwellings (where a transaction or a number of linked transactions include freehold or leasehold interests in more than one dwelling).

1.5.4 Inheritance Tax (IHT)

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

There are ways of reducing the Inheritance Tax liability. A tax-efficient will should be drawn up to ensure maximum use of IHT allowances. Wills and trusts are specialist areas where it is important to obtain professional advice. Advice will vary depending on the individual's circumstances.

1.5.5 Capital Gains Tax

Capital Gains Tax (CGT) is a tax on the gain or profit made when shares or property are sold, given away or otherwise disposed of. There is a tax-free allowance and some additional reliefs that can reduce a Capital Gains Tax bill. You may get tax relief if you sell property that you use for business. This may reduce or delay the amount of Capital Gains Tax you pay.

Capital Gains Tax is one of the most important taxes to consider as the amounts at stake are potentially significant. It is important to make sure that all of the available tax relief and allowances are taken advantage of. Many of these offer scope for substantial reductions in the ultimate amount of tax to be paid.

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

There are then potential deductions and tax relief available, the most important of which are as follows:

- The cost of any improvements to the property whilst under ownership can be deducted (but not the cost of repairs which has previously been set off against Income Tax).

- If the property has been occupied by the owner as an owner-occupier at any time, then there are two additional valuable reliefs:

    - lettings relief whereby up to a certain amount of any gain per owner can be tax free
    - a proportionate principal private residence relief (PPR)

- If the property was owned at March 1982 its value at that date is substituted for the original cost of the property in calculating the ultimate gain.

- The set value of any capital gains in a single tax year is tax-free per individual (not per property), tax only being charged on any gain above that value.

- If there are two properties which have been used as a residence (e.g. one in London and one in the country), it is worthwhile making a principal private residence election on one of those properties to maximise capital gains relief. This will also reduce the potential CGT payable if one of the properties is let at any time in its ownership.

The Government have produced an e-learning tax tutorial package for landlords. It covers the basic information a landlord will need in terms of tax obligations. It includes topics such as keeping records, business expense claims, Capital Gains Tax and self-assessment tax returns.

1.5.6 Council Tax

In self-contained flats or houses, the tenant is liable for Council Tax. Landlords should notify the Council Tax department of the name of the tenant and when they moved in.

If the property is empty, the landlord will be liable for Council Tax, but an exemption or discount may be sought if the property is unfurnished or undergoing renovation works.

Students undertaking full-time education courses are exempt from Council Tax. If the tenancy agreement extends over the summer vacation, the exemption also covers that period. However, if one of the sharers graduates or finds a job the property may become liable for partial or full Council Tax.

If the students are not studying at Exeter or Plymouth University the Council Tax team will need to see proof of study from their education institution.

If there is more than one tenancy agreement for the property (e.g. it is divided into bedsits), then traditionally the landlord is responsible for payment of Council Tax and collects this through the rent or service charge charged to tenants.

Recent Valuation Tribunal rulings have stated that the liability for Council Tax depends upon the location and number of kitchens and not whether it is self-contained. A bedsit with its own kitchen, but sharing a bathroom and WC, may still be rated as an individual unit for Council Tax purposes making the tenant liable for the Council Tax. However, a bedsit with an en-suite bathroom, but sharing a kitchen, the liability would lie with the landlord. A bedsit type house with two shared kitchens may be rated for Council Tax purposes as two separate units, three kitchens – three units etc. Each case is treated individually on its own

facts. The VOA (Valuation office Agency) can be contacted for advice or for an opinion on how a property would be rated if it were to be divided into self-contained units.

Rent should be set to take account the amount payable for Council Tax. If the Council tax increases, this does not create an automatic right to increase the rent. Rents cannot usually be increased more frequently than once a year. A landlord can include a term allowing increase of Council Tax element in line with Council Tax rise in the tenancy agreement.

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

1.5.7 Wear & Tear Allowance

Landlords of fully furnished residential property used to be able to claim a tax relief for wear and tear on furnishings of 10% of the net rent received for that property. It was a 10% allowance even if expenditure was not incurred or was less or more than 10% in that year.

In April 2016, the allowance was abolished and replaced with a deduction allowance based on the actual costs incurred by the landlord, not including the cost of original furnishings. Therefore, from 6 April 2016, under the new replacement furnishings tax relief, landlords can claim a deduction for the capital cost of replacing furniture, furnishings, appliances and kitchenware provided for a tenant's use such as beds, TVs, fridges and freezers, carpets, curtains, linen and crockery.

For more information see Reform of the wear and tear allowance on the government's website.

1.5.8 Mortgage Interest Relief

In April 2017 a restriction on this tax relief was introduced and phased in over 4 years. This restricts relief to the basic rate of income tax of 20% for all residential landlords.

Landlords who paid tax at the higher or additional rate would have received relief at 40% or 45%, as applicable. However from April 2017 the following restrictions apply:

- 2017/18 – relief at higher/additional rate will be restricted to 75% of finance costs and 25% will be subject to basic rate relief
- 2018/19 – relief at higher/additional rate will be restricted to 50% finance costs and 50% will be subject to basic rate relief

- 2019/20 – relief at higher/additional rate will be restricted to 25% finance costs and 75% will be subject to basic rate relief
- 2020/21 – all finance costs will be subject to basic rate relief

For more information see the Restricting finance cost relief for individual landlords on the government's website.

1.6 Letting options – means of managing your property

Consideration must be given to how a rented property will be managed. The decision should be based upon experience, skills, time and even the distance between the rental property and the landlord's home.

1.6.1 Self-managing landlords

This option is for landlords who are confident that they know their responsibilities and what constitutes best practice in managing properties. Many landlords within Exeter successfully manage property they own and this option will certainly save the cost of employing an agent. However, self-management may not be suitable for landlords who do not live close to their properties or who are away from home for significant periods of time. It will usually require a considerable amount of time and effort in the day to day management of the property.

Landlord associations are a good source of advice and assistance and can provide much of the information that a self-managing landlord requires. However, if problems arise, self-managing landlords might require advice from a professional adviser such as a solicitor or accountant, which will come at a cost.
In addition, self-managing landlords will also have to promote their own properties and this may entail paying a fee for advertising.

1.6.2 Use of letting and managing agents

If help is required to find a tenant or manage a property, there are at least three options:

Letting only

This is where an agent markets the property, advises on rent levels, finds a tenant, and undertakes credit and reference checks (if required), provides a tenancy agreement and moves the tenant in. Once the tenancy has started, the letting agent's job is done and the landlord then undertakes the ongoing management of the property. The agent generally charges the landlord a one off fee for this, often equivalent to one month's rent. The agent may also charge the tenant an administration fee.

Landlords using a letting agent need to agree if they wish to charge a deposit, what it is for, how much the deposit is to be and if the agent is to collect it. Any deposit taken for an assured shorthold tenancy (AST) must be protected in one of the three Government-approved tenancy deposit protection (TDP) schemes. It is the landlord's legal responsibility to ensure their tenants receive the relevant scheme's terms and conditions (known as the Prescribed Information) which details how the deposit has been protected.

Letting and rent collection

This is where the agent finds a tenant but also collects the rent on behalf of the landlord during the tenancy. The landlord is still responsible for repairs, management and possession of the property as and when necessary. The agent is likely to charge a one-off letting fee and then a monthly fee for collecting the rent, which is usually a percentage of the rent. With this type of arrangement, it is important to avoid confusion and to make sure that the tenant is absolutely clear about who is responsible for which areas of management.

Full management

This is where the agent acts as a full letting and managing agent. The agent deals with all management issues; letting and starting the tenancy, rent collection and repairs. The managing agent will also take some steps towards ending the tenancy but will not take court action.

This service is obviously more expensive, usually costing between 8-14% of the rent, but it is probably worthwhile if the property owner either does not have the time to manage the property or lacks the expertise. It is important that the owner agrees with the agent what type and cost of repairs they are authorised to carry out without seeking further authorisation, and what the division of repair responsibilities will be between the owner and the manager. The agent will usually agree to use the rent they collect to pay for repairs, but if repair costs exceed income, then the owner will have to pay any shortfall.

1.6.3 The relationship between the landlord and agent

The term 'agency' is used in law to describe the relationship between the principal (in housing this is the landlord) and the agent. The principal agrees that the agent should act on their behalf in legal relations with any other party that the agent needs to deal with in managing a property, for example contractors undertaking repairs. The agent also agrees to act on the landlord's behalf. The agreement of the agent and principal may be set out explicitly in a document, or may be inferred from the way they do business together.

Where an agent is used, actions carried out by the agent are treated as if they had been done by the landlord when they are acting on his/her behalf. If, for example, the agent fails to carry out a statutory duty, such as ensuring that an annual gas safety check is undertaken, the landlord will be held liable for the failure as well. A landlord is bound by any agreement or contract made by the agent with a tenant. As a result care should be taken when choosing a managing agent. It is of paramount importance to choose one who will undertake their responsibilities properly.

1.6.4 Guaranteed rent agents

In recent years there has been an increase in the availability of companies offering a guaranteed rent to landlords, irrespective of whether the property is rented out or not. In many cases these are not normal landlord agent relationships. The landlord assigns (transfers) the property and all the rights over the property, subject to the terms of the contract, to a company or individual who pays an agreed fee for the duration of the agreement. Any tenant renting the property is the tenant of the company and not of the 'landlord' who becomes the superior leaseholder. There is normally no legal relationship between the original landlord and any tenant. Because of the variety of schemes it is very important that landlords carefully read the contract with the 'agent' - expert advice will be needed.

1.6.5 The liability of the landlord where an agent is used

Where an agent is used, actions carried out by the agent on the landlord's behalf are generally treated in law as if they had been done by the landlord. Landlords are bound by any agreement or contract made by their agent on their behalf with a third party (i.e. a tenant), providing the agent is acting within the authority they have been given.

If the agent agrees to something which the landlord has not authorised, the agent will be liable to the landlord and tenant for any losses. The landlord may not be bound by the agent's action, and the tenant might therefore seek compensation from the agent.

If the agent is acting as managing agent for the property and fails to carry out a statutory duty, such as ensuring that an annual gas safety inspection is carried out, the landlord may be held liable for the failure as well. Such responsibilities should be clearly defined in the Terms of Business between the landlord and agent.

A landlord will also be ultimately liable to the tenant for the return of the damage deposit, whether it is a deposit taken before 6 April 2007 or where the deposit is protected using an insurance-based scheme.

In view of this, landlords should be very careful when choosing an agent, making sure they choose one who will carry out their responsibilities properly. The landlord should also be very clear when giving agents any special instructions (such as 'no pets') to ensure that these are put in writing. Landlords should consider whether an agent's standard Terms of Business protect their interests as well as the agent's and should take care to consider any clauses that exclude or limit an agent's liability for negligence.

1.6.6 The liability of the agent in agency agreements

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

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

Agents and possession notices

Agents can validly serve possession and other notices on behalf of their landlords. A notice of intention to seek possession served on a tenant by a landlord's agent will normally be considered validly served if service by the agent is stipulated in the tenancy agreement.

Agents and court claims

Although agents can deal with the notice element of recovering possession, agents are not legally entitled to initiate legal proceedings on behalf of landlords. Only claimants or their solicitors are able to sign the statement of truth on the court forms. The fact that a claim form for possession is signed by a letting agent is a common reason for the rejection of possession claims by the County Court.

Frequently, agents will offer landlords the opportunity to take out legal expenses insurance. If a decision is made not to buy this or this option is not offered, then it is generally best for the landlord themselves to deal with any court proceedings which may arise, instructing solicitors directly, if needed. Although the agent may assist by recommending and liaising with suitable solicitors, and even if much of the work related to any claim is delegated to the agent to deal with, it is prudent, as the landlord, to keep involved and remain aware of what is happening.

1.6.7 Defining responsibilities in the contract

When a landlord enters into an agreement with an agent, a written contract should be drawn up indicating what level of service the agent is offering, and the agent's agreed fees. It is important to read the whole contract and discuss any points that are unclear or where there is disagreement before signing, so it can either be varied or an alternative agent sought.

The contract should also state how it can be terminated and for what reasons, including what happens if the landlords wants to take over the management of the property themselves.

As in many businesses, a small proportion of agents can go out of business owing both the landlord and tenant money. As the agent may be acting in the landlord's name, it is important to know that the agent is reliable and experienced. Check how long the agent has been in business, how many premises they manage, what training their staff have received, and whether they are a member of a professional or trade organisation such as:

- The Association of Residential Letting Agents (ARLA Propertymark)
- UK Association of Letting Agents (UKALA)
- The National Association of Estate Agents (NAEA Propertymark)
- Royal Institute of Chartered Surveyors (RICS)
- National Approved Lettings Scheme (NALS)

Fees and costs for services will vary and the cheapest is not always best if the agent is not an expert in good management practice and housing law. If the agent does not do the job well, this will reflect on the landlord, and it can have potentially serious implications.

1.6.8 Agent redress schemes

From 1st October 2014 letting and managing agents must become a member of a redress scheme. The purpose of these schemes is to deal with complaints made by tenants or landlords about agents. It is a legal requirement that anyone who engages in lettings agency or property management work must be a member of one of the three approved redress schemes. These are:

- The Property Ombudsman (TPO)
- Ombudsman Services Property
- The Property Redress Scheme

Essentially these are Ombudsman Schemes who provide a free, independent service for resolving disputes between letting agents and their customers. The decision made by an independent redress scheme is binding on all parties. The

letting agency has to comply with any orders to pay compensation or a fine or to put something right.

You can check which scheme a letting agent is registered with using:

- The Property Ombudsman member search
- Ombudsman Services Property member search
- The Property Redress Scheme member search

It's a criminal offence for a letting agent not to be a member of a redress scheme. Exeter City Council can issue a fixed penalty fine of up to £5,000 to a letting agency branch that is not a member of a scheme. If a letting agent has multiple branches it could face multiple fines.

The rules for each redress scheme vary, but there are common features and typically redress schemes require letting agencies to:

- have an in-house complaints procedure
- follow a code of practice
- cooperate with any investigation and agree to pay compensation promptly if the redress scheme awards it

The schemes deal with breaches of letting agency codes of conduct and issues including:

- lack of transparency about fees for tenants
- disputes about refunds or holding deposits taken to reserve a property
- inaccurate property descriptions
- slow or poor service
- inaccurate accounting and not passing rent to a landlord

The schemes won't cover complaints about the amount of fees charged or their reasonableness, tenancy deposits or issues relating to a landlord's responsibility.

The first step is always to make a complaint direct to the letting agent and the agent should resolve the dispute within 8 weeks. If it does not, you can complain to your letting agent's redress scheme however you must complain within the time limit set by the scheme.

1.6.9 Exeter City Council's new Rental Support Service

Exeter City Council has created a new Rental Support Service that will help people into private rented accommodation.

Based at the Civic Centre the Rental Support Service will provide support to both landlords and tenants in order to help reduce homelessness by improving access to rented accommodation.

The Rental Support Service does not offer a property management service, but does provided a range of services and support, such as:

- Provision of deposits and rent in advance paid directly to the landlord.
- Move-in support, and ongoing tenant support by a dedicated support worker if needed.
- Tenancy ready clients who have been 'Right to Rent' assessed.
- Tenants who have undergone a full affordability assessment to ensure any potential property is affordable.
- Housing Benefit paid directly to the landlord.
- Free tenancy and letting advice to landlords.
- Free health and safety inspections of properties.
- Help in compiling Assured Shorthold Tenancy agreements if needed.
- Advice, support and problem-solving if required for both tenant and landlord.
- Fully accompanied viewings with potential tenants.
- Absolutely no fees, costs or charges.
- No obligation to accept any potential tenants that may be put forward.

The scheme is currently looking for available accommodation in the city and surrounding area and landlord and letting agents who are:

- happy to accept tenants in receipt of Housing Benefit
- compliant with all legal requirements including gas safety certificate, electrical safety certificate, EPC and free from cat 1 hazards
- not resident in the property or providing B&B accommodation
- free from conviction for harassment or illegal eviction

If you are interested in housing clients through this scheme please contact Exeter Renting Support Service on Housing.Access@exeter.gov.uk or call Dana Kurtovic 01392 265693 or Duncan Brownlie 01392 265727.

1.6.10 Private Sector Leasing (PSL)

The Private Sector Leasing scheme is ideal for owners who are not experienced landlords but wish to rent out their property but do not wish to be involved in the day-to-day management of the property.

The property is leased to the Council, who then sub-let it to those in housing need. The owner of the property has no direct dealings with tenants as this is managed by the Council. Rent is guaranteed throughout the period of the lease, whether

the property is occupied or not, and is paid to the owner in advance every quarter. Repairs can be arranged on the owner's behalf.

The owner can have peace of mind that their property is providing a financial return whilst requiring no direct involvement from them.

Please contact the Housing Development Team on 01392 265685 or email empty.homes@exeter.gov.uk for the further information and details of the authority's current need.

1.7 Sources of advice

If a letting or managing agent is being used, they should be able to provide some free basic advice about housing law as part of their services. Exeter City Council's Private Sector Housing Team or the local Citizens Advice Bureau can also provide simple information on housing law.

There are some excellent leaflets on improving the rented housing sector available from the CLG website.

Most landlords now have access to the internet, and a search for landlord legal advice can lead to a number of sites giving free basic information and offering other services for a charge. Be careful when reading blogs as there is a lot of urban myth out there and other landlords are not always a reliable source of information.

There are a number of landlord associations and it is worth considering paying to join and become a member. Membership normally includes:

- A regular newsletter giving advice
- Updates on housing law or policy as they change
- The chance to make representations on proposed changes to regulations, the law or tax
- Discounts for services such as insurance
- Individual advice if there is a problem.

Landlord associations normally hold periodic meetings where there is an opportunity to meet other landlords and discuss issues and problems. Through the network of other members ideas and procedures can be obtained to resolve problems on how to manage more successfully.

If more detailed legal advice, representation or advocacy is needed then it may be necessary to consult a solicitor. Make sure the solicitor used is experienced in landlord and tenant law.

The local landlord association will be able to suggest suitable firms. Firms specialising in work for landlords often advertise on landlord-related websites on the internet. Remember to keep receipts for any legal costs incurred because it may be possible to obtain tax relief against these payments.

2.0 The responsibilities & liabilities of the landlord/letting agent

2.1 Landlords' responsibilities for repair and maintenance

In addition to any repair responsibilities explicitly set out in a tenancy agreement, common law and statute will imply terms to the agreement. These terms form part of the contract, even if they have not been specifically agreed between the tenant and the landlord.

Specific obligations to repair are set out in detail in the sections below. As a general rule the building and the immediate surroundings should be able to withstand normal weather conditions, and normal use by tenants and their visitors. The property should be in a reasonable state of repair both internally and externally and fit for human habitation at the start of the tenancy.

There should be no dampness, either in the form of rising or penetrating damp. Condensation may be a result of the tenant's behaviour but it may also have implications for the landlord if the ventilation is inadequate or some structural problem is causing it.

Statute and common law requires that there should be no unacceptable level of risk to the health or safety of the occupiers or their visitors. If the tenant or visitors have an accident or suffer injury due to the poor condition of the property (for example a fall caused by a broken handrail or respiratory diseases caused by damp conditions), the landlord may be liable for damages for personal injury.

2.2 Implied terms in tenancy agreements

Implied terms are those that are considered to be part of a legal lease, tenancy agreement and/or licence even though they are not actually written down in that document. Implied terms can arise from common law and/or statute.

Any attempts to evade statutory or common law rights and responsibilities by way of any standard term in the tenancy agreement, may result in the relevant term being found void under the Unfair Terms in Consumer Contracts Regulations 1999. For example the tenancy agreement cannot contain a clause requiring the tenant to be responsible for repairs to the gas appliances as this is the landlord's statutory responsibility.

2.3 Common law implied terms

The main terms implied by common law are detailed below.

2.3.1 The right of a tenant to quiet enjoyment of a rented property without intrusion or disturbance by a landlord

This right is implied into all tenancies which entitles the tenant to live in the property without disturbance from the landlord or people acting on the landlord's behalf. Generally a landlord does not have the right to turn up unannounced to check on a property or tenant. Where the landlord wishes to enter for a specific purpose, such as repairing a window, it must be agreed mutually beforehand. It has been held that breach of the repairing covenants can also be considered to be breach of the covenant of quiet enjoyment. A right of quiet enjoyment is often written into the tenancy agreement because then the landlord can limit or widen the scope of the implied obligation, or even make the covenant for quiet enjoyment conditional on the tenant complying with their own obligations.

2.3.2 Tenant must use the property in a tenant-like manner

This has been defined in case law as 'to do the little jobs about the place which a reasonable tenant would do' such as unblocking sinks when blocked by the tenant's waste, keeping toilets and drains clear, regular cleaning including windows, putting refuse out for collection and gardening if applicable.

2.3.3 The tenant shall not permit waste

The tenant has the responsibility to ensure the property is not damaged deliberately and is kept clean and free from rubbish during the course of the tenancy.

2.3.4 Fair wear and tear

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

2.4 Statutory implied terms

The main terms implied by statute are detailed below.

2.4.1 Landlord and Tenant Act 1985

Section 11 (as amended by Section 116 of the Housing Act 1988) of the Landlord and Tenant Act 1985 implies a term into tenancy agreements (less than seven years) that the landlord shall keep in repair the:

- Structure and exterior of the dwelling.
- Installations for the supply of water, gas, electricity and sanitation.

- Installations for the supply of space heating and water heating.

- Communal areas and installations associated with the dwelling where these are controlled by the landlord.

The Act also provides that the standard of repair necessary will vary depending on the 'age, character, and prospective life of the property and its location'.

2.4.2 Access to property

Irrespective of what maybe written in the agreed contract between a landlord and a tenant in respect of rights of entry the law will ultimately always take precedence. There is an implied term in tenancy agreements under the Rent Act 1977 and the Housing Act 1988 that a landlord does have the right to 'reasonable' access to carry out repairs, for which the landlord is responsible, but the tenant's permission is still needed, and at least 24 hours notice must be given.

The only exception to this is where emergency repairs are required such as a gas leak or flooding when immediate access in order to repair these problems can be expected.

In the case of tenancies where the landlord is responsible for repairs, the landlord (or an agent authorised by the landlord) may in writing, at reasonable times of the day, enter the property to inspect its condition and state of repair. In this case 24 hours notice in writing must be given before such an inspection is carried out. However, it is good practice to give at least 7 days notice of a routine inspection.

If the tenant refuses to allow the landlord access to carry out the repairs, the tenant will not be able to claim for damages for disrepair or for personal injury caused by the disrepair for as long as they continue to deny access. If the tenant's failure to allow the landlord access to do the works results in further deterioration or damage to the property, the tenant may be liable to the landlord. This could entitle the landlord, for example, to deduct the additional costs incurred from the damage deposit.

If the tenant refuses to allow the landlord access at all, the tenant will be in breach of their tenancy agreement, because the right of access is an implied term of the agreement). In some circumstances (for example if the property is clearly in disrepair) this may entitle the landlord to apply for an order from the court requiring the tenant to allow access to the property by the landlord or for possession of the property.

Generally, landlords should be wary about entering the property when the tenant is not there. Where a tenant has given permission, but has advised they will not

be at the property themselves, it is recommended that landlords/agents are best accompanied by a witness.

2.4.3 Breach of repair obligations

The landlord will be able to pass on the cost of works or repairs to the tenant if work is needed because of the tenant's breach of their obligations under the tenancy.

Action can be taken by the tenant in the County Court for breaches of the landlord's repairing obligation. This is a civil action and tenants can claim compensation for damage and inconvenience resulting from the breach. However, to trigger the landlord's obligation to repair, the tenant must give notice of the need for repairs to the landlord, and some tenancy agreements will clearly state that it is for the tenant to notify the landlord of the need for repairs to the property. Once the landlord has notice of the need for repairs, the landlord will then have a reasonable period of time to complete the works. If the works are not completed within that reasonable period of time, then the tenant will be able to claim damages for breach of contract.

Where a tenant wishes to bring a claim for damages (and or an order for works to be carried out), the landlord should receive notice in advance of any claim being brought, as tenants are now obliged to comply with the 'Pre-action Protocol for Housing Disrepair'. Please note that amendments were made to the Housing Pre-Action Protocol for Housing Disrepair Cases on 6 April 2015. The changes to this (and other Pre-Action Protocols) can be found on the justice.gov.uk website with the detail for Housing Disrepair Cases on page 87 of this document. The protocol gives full details of the information to be provided and specimen letters. If the tenant does not comply with the protocol, the landlord can ask the court to stay the claim until the provisions of the protocol have been complied with.

Section 17 of the Landlord and Tenant Act 1985 requires specific performance (the landlord will have to carry out the repair) where there has been a breach, therefore the payment of compensation may not be sufficient remedy.

The County Court can make an order requiring the landlord to fulfil the express or implied repairing terms of the tenancy agreement. The County Court can also make an injunction requiring the landlord to do repair work which may or may not be within the terms of the contract. If the landlord fails to carry out the works required by the court order, the landlord, or his agent, can in very extreme situations be committed to prison for contempt. The County Court can alternatively direct that the repairs be undertaken by, or on behalf of, the tenant at the landlord's expense.

Damages (compensation) can still be claimed even if the works have been carried out by the time the case reaches court.

In practice it is rare for these extreme measures to be used. However, it is important to be aware that these penalties exist, and every care should be made to respond promptly to repairing obligations when they arise.

2.4.4 Defective Premises Act 1972

Section 4 of the Defective Premises Act 1972 places a duty of care on the landlord in relation to any person who might be affected by a defect, 'to take such care as is reasonable in all the circumstances to see that they are reasonably safe from personal injury or from damage to their property caused by a relevant defect'.

A defect is relevant if the landlord knew about it or should have known about it - the fact that a defect has not been reported or there has been a failure to inspect (e.g. rotten floorboards or joists) does not remove liability (which contrasts with 2.4.3 above). It is for this reason that it is important that landlords (or their agents) carry out regular checks on the property.

In this case the premises include the whole of the letting which includes gardens, patios, walls, etc. and applies to the communal areas of estates or multi-occupancy buildings, including lifts, rubbish chutes, stairs and corridors.

Section 4 provides tenants or other affected persons with the right to seek compensation for personal injury or damage to property.

2.4.5 Occupiers' duty of care

Section 2 of the Occupiers' Liability Act 1957 provides that the occupier of a property has a duty of care to all visitors who come onto their premises. This applies to landlords where they are the legal occupier of some parts of their rented stock, e.g. shared-use areas such as lifts, staircases and entrance lobbies – in some cases even grounds and car parks.

The duty means taking such care as would be reasonable in all circumstances to see that the visitor is reasonably safe in using the premises for its purpose. The landlord is liable for any injury caused to a visitor as a result of defects in the part of the building occupied by the landlord.

2.5 Right to Rent

As of 1 February 2016 all private landlords in England are required to monitor the immigration status of their tenants and lodgers. A landlord can face penalties of

up to £3,000 for each tenant living in a property who does not have a 'Right to Rent'.

From 1 December 2016 landlords and agents who fail to carry out right to rent checks, or fail to take steps to remove illegal migrants from their properties, can be charged with a criminal offence. These landlords and agents could face a fine and/or up to five years imprisonment.

From 1 December 2016, landlords are able to evict illegal migrant tenants more easily, and in some circumstances without a court order. The Home Office will issue a landlord with a notice which will confirm that the tenant is disqualified from renting in the UK due to their immigration status. Once the landlord is in receipt of this they will be expected to take action to ensure that the illegal migrant vacates the property. Further guidance can be found on the gov.uk website on:

- when an offence is committed
- some of the factors which would be considered appropriate as reasonable steps to end a residential tenancy agreement involving an occupier who is disqualified from renting as a result of their immigration status
- what timescales would be considered reasonable in taking these steps

Those with a Right to Rent in the UK are:

- British citizens
- European Economic Area (EEA) nationals
- Swiss nationals
- those present lawfully in accordance with immigration laws

The intention of the Right to Rent scheme is to restrict illegal immigrants accessing private rented accommodation and in turn establishing a settled life in the UK.

In order to check a tenant's immigration status, landlords and letting agents will need to view original immigration documents in the presence of the applicant (or via live video link), make copies of the documents, and keep the copies for 12 months after the tenancy expires. The checks can take place no more than 28 days before the commencement of the tenancy agreement.

Landlords will also be required to monitor if a sitting tenant loses their right to rent during a tenancy and have a duty to inform the Home Office.

In June 2016 The Home Office issued a revised version of their A short guide on right to rent, which helps landlords, letting agents and tenants understand right to rent checks. There is also a Code of Practice which sets out a list of acceptable

documents to prove a tenant's right to rent, including UK, Swiss or EEA passports (current or expired), a biometric immigration document, or a residence card.

For applicants whose immigration documents are held by the Home Office and are therefore not available, the Home Office has created a free Landlord Checking Service. This online tool will provide an answer as to the applicant's right to rent. If no answer is received from the service within 48 hours, the landlord will have a statutory excuse against liability for a penalty.

The Home Office has produced a video explaining how landlords can make right to rent checks. The video is available to watch here**.**

2.6 General Data Protection Regulations (GDPR)

The GDPR come into force on 25 May 2018. The regulations bring significant changes around obtaining consent to process personal data. Personal data includes:

- Names
- Addresses
- Telephone numbers
- Dates of birth
- Credit searches
- NI number
- Utility bills

Data does not have to be confidential and even a list of your tenants constitutes personal data. It means landlords need to ensure that they are:

- Safeguarding tenant's data
- Only sharing data with those they are legally entitled to do so
- Not retaining personal data for longer than is necessary

Landlords should:

- Register with the Information Commission's Office. The cost is currently £35 and takes approximately 15 minutes online. Failure to notify the ICO, when required, is a criminal offence.
- Provide tenants with a privacy notice explaining how they will process and use the tenant's data

There are common situations when a landlord does have to share a tenant's information e.g. informing a utility company that they have moved into a property. It is important to issue the tenant with a privacy statement or include a clause in the tenancy agreement detailing how you will process data.

The Information Commissioner's Office have information for landlords and tenants on their website here.

2.7 Housing Health and Safety Rating System (HHSRS)

The law and landlords' obligations

The Housing Act 2004 replaced the previous housing fitness standard with the Housing Health and Safety Rating System (HHSRS). This is the method of assessing risks in residential accommodation, the aim is to provide a system, not a standard, to enable risks from hazards to health and safety in dwellings to be removed or minimised.
The Housing Act 2004 places a statutory duty on local authorities to identify hazards and to assess tenants' risks to health and safety. Local authorities are required to use the Housing, Health and Safety Rating System (HHSRS) to identify and assess risks. Section 3(1) of the Act states 'A local housing authority must keep the housing conditions in their area under review with a view to identifying any action that may need to be taken by them under any of the provisions mentioned in sub-section (2).'

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

Although not a general legal obligation, it is useful for landlords to be able to identify and risk-assess health and safety hazards at their properties and take remedial action where necessary. Most local authorities are keen for landlords to be aware of the local authority's responsibilities, powers and duties under the Act and a prudent landlord will be proactive in seeking to ensure that their properties are of a standard that does not attract the interest of the local housing authority.

2.6.1 The 29 Hazards

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

Physiological

- Damp and mould growth
- Excess cold
- Excess heat
- Asbestos and manufactured mineral fibre
- Biocides (e.g. damp and timber treatment products)
- Carbon monoxide and fuel combustion products
- Lead
- Radiation

- Uncombusted fuel gas
- Volatile organic compounds.

Psychological

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

Infection

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

Accidents

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

2.6.2 Risk assessment

The HHSRS is a technical system and is best used by persons with a technical health and safety or building construction background.

Click here for the HHSRS Operating Guidance

There are also a number of landlord HHSRS guides available on the internet which provide an overview of HHSRS without going into its full details. One such guide is the Housing Health and Safety Rating System - Guidance for Landlords and Property-related Professionals

In practice it is very challenging to acquire the skills necessary to use the HHSRS to accurately risk-assess hazards as category 1 or 2.

To help landlords to identify potential category 1 hazards and prioritise them for action a simple guide to risk-assessing hazards is provided below:
The risk from a hazard is a combination of:

- The likelihood of a hazard, over a 12-month period, causing harm sufficient to require some medical attention and

- The potential seriousness of harm from that hazard, should harm occur.

A risk assessment of a hazard that indicates high likelihood of harm, and high potential seriousness of that harm, means that the hazard may potentially be high risk and therefore in need of remedial action to reduce the risk to a more acceptable level.

Step 1 - Familiarise yourself with the 29 HHSRS hazards, especially the most commonly occurring.

Step 2 - Ask yourself whether the likelihood of harm occurring over a 12-month period from an identified hazard is high.

Step 3 - Ask yourself whether the potential seriousness of that harm would be high.

If the answers to steps 2 and 3 are YES, then the hazard is likely to be a high-risk hazard.

Example - Assessing the risk of falling down a staircase.

If a staircase is long, steep, in disrepair, has a loose worn covering, has varying sizes of treads and risers, does not have a handrail or adequate lighting along its length, then the likelihood over a 12-month period of someone falling will be high.

If at the bottom of the stair there is a hard floor surface, a wall mounted radiator with sharp corners and a non-safety glazed door then the seriousness of a fall is likely to be high.

The combination of high likelihood of an accident and high potential seriousness of harm means that the risk of the hazard of falling down the stair is high, liable to be a category 1 hazard and in need of high priority remedial action.

2.6.3 Vulnerable groups

Young and elderly persons are more at risk from particular hazards than young able bodied adults e.g. cold, falls, fire, hot surfaces, dampness, food safety and entry by intruders.

Landlords should be particularly mindful of vulnerable groups when carrying out risk assessments and should provide additional protective means where necessary.

2.6.4 Property inspection

Although not a legal requirement it is recommended that an inspection form is completed for each property and a copy kept on file. The form should provide, room by room, a list of potential defects and deficiencies that can give rise to hazards.

In the event that a property is inspected by a housing standards enforcement officer, then providing the officer with a copy of the property inspection form will provide a strong indication that the landlord takes their health and safety responsibilities seriously.

2.6.5 HHSRS enforcement

Local authorities have statutory duties and powers to take enforcement action to deal with properties containing hazards identified under the HHSRS. If a hazard presents a severe threat to health or safety it is known as a category 1 hazard. Less severe threats to health and safety are known as category 2 hazards.

Local authorities have a duty to take appropriate enforcement action in relation to category 1 hazards, and discretion to act in relation to category 2 hazards. Although statutory action is mandatory for category 1 hazards and discretionary for category 2 hazards, the choice of what course of action is appropriate is also a matter for the local authority and it will depend on the individual local authority's enforcement policy.

2.6.6 Hazard Awareness Notice

This type of notice is likely to be served where a less serious hazard exists and where there is no imminent risk to health of an occupying tenant. The notice will specify the nature of the hazard or the 'deficiency' and will also prescribe the most appropriate course of action to remedy the deficiency. There is no charge for this notice and there is no legal requirement to carry out the works, although based on the principle that is served as a 'best practice' option, it is a recommendation that the works are carried out.

2.6.7 Improvement Notice

This type of notice is likely to be served where a more serious hazard exists and where there is no imminent risk to health of an occupying tenant. The notice will specify the nature of the hazard or the 'deficiency' and will also prescribe the most appropriate course of action to remedy the deficiency.

The recipient of an improvement notice may appeal to the Residential Property Tribunal within 21 days from the date of the notice.

Failure to make satisfactory progress or to complete on time may result in works being carried out in default, and/or prosecution for non-compliance with the notice.

2.6.8 Prohibition Order

A Prohibition Order may prohibit the use of all or part of a house for some or all purposes. For example, the use of a room for sleeping purposes maybe prohibited on the grounds that it is too small or lacks natural daylight. This does not imply that the room cannot be used for purposes other than a bedroom.
A Prohibition Order may also be served to prohibit the occupation of the whole house; this action may be taken on the grounds that the work cannot be carried out to remedy a serious hazard where there is a tenant in residence and for this reason, an Order may be deferred.

The recipient of a Prohibition Order may appeal to the Residential Property Tribunal within 28 days from the date of the notice. The order will specify the nature of the hazard or the 'deficiency' and will prescribe the most appropriate course of action to remedy the deficiency. A Prohibition Order can be revoked and the house re-occupied when works to remove the hazard, as specified on the notice, have been carried out.

2.6.9 Emergency Prohibition Order

Where the City Council is satisfied that a Category 1 hazard exists and is further satisfied that the hazard involves an imminent risk of serious harm to the occupiers, the Council have the authority to enter a house to make an Emergency Prohibition Order. The order may prohibit the use of all or part of a house with immediate effect.

Action of this type may be taken where for example the electrical installation is antiquated and dangerous and cannot be made safe without extensive remedial works or rewiring.

The recipient of an Emergency Prohibition Order may appeal to the Residential Property Tribunal within 28 days from the date of the notice. The order will specify the nature of the hazard or the 'deficiency' and will prescribe the most appropriate course of action to remedy the deficiency. An Emergency Prohibition Order can be revoked and the house re-occupied when works to remove the hazard, as specified on the notice, have been carried out.

2.6.10 Emergency Remedial Action

Where the City Council is satisfied that a Category 1 hazard exists and is further satisfied that the hazard involves an imminent risk of serious harm to the occupiers, the City Council have the authority to enter a house to carry out emergency remedial action and remove the hazard.

Action of this type may be taken where for example the electrical installation is dangerous but works to make it safe can be carried out immediately by an electrician.

A person served with a Notice of Emergency Remedial Action can appeal against such an order to the Residential Property Tribunal within 28 days from the date of the notice.

Emergency remedial action should reduce the hazard to a level whereby imminent risk of harm is removed, allowing the continued occupation of the property, but depending on the circumstances further action may be necessary to remove the hazard completely.

2.7 The Decent Homes Standard (applicable to England only)

The Decent Homes Standard is a measure of general housing conditions introduced by the Government in 2000. Although private landlords are not directly required to take any action to bring their properties up to this standard, it has had a major effect on the local authority approach to the private rented sector and is therefore likely to have a significant indirect effect on landlords.

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

- It meets the current statutory minimum standard for housing and the property must be free of all Category 1 hazards under the Housing Health and Safety Rating System.

- It is in a reasonable state of repair. It would fail this if:

  - One or more key building components are old and because of their condition need replacing or major repair.

- Two or more other building components are old and because of their condition need replacing or major repair.

- It has reasonably modern facilities and services. It would fail here if it lacks three or more of the following facilities:

  - A kitchen which is 20 years old or less.
  - A kitchen with adequate space and layout.
  - A bathroom which is 30 years old or less.
  - An appropriately located bathroom and WC.
  - Adequate external noise insulation.
  - Adequate size and layout of common entrance areas for blocks of flats.

- It provides a reasonable degree of thermal comfort. The property must have both efficient heating and effective insulation.

2.8 Gas safety

It is vital that landlords clearly understand their responsibilities and obligations in relation to gas supply and appliances and the duties and responsibilities placed on them by the gas safety regulations.

Obligations between landlords and agents need to be specific in relation to the gas safety regulations and neither party can seek to evade or exclude themselves from those obligations. Any clause in the tenancy agreement which attempts to evade the regulations will be invalid. A breach of the regulations is a criminal offence, enforced by the Health & Safety Executive.

2.8.1 Gas Safety (Installation and Use) Regulations 1998

The Gas Safety (Installation and Use) Regulations 1998 make it mandatory that gas appliances are maintained in a safe condition at all times.

A landlord must:

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

  The Gas Safety (Installation and Use) (Amendment) Regulations 2018 are due to come into force on 6 April 2018. This MOT-style change will allow landlords to carry out their annual gas safety check in the two months before the due date and retain the existing expiry date. The changes do not relax regulatory requirements or reduce the safety standards.

- Ensure a gas safety check has been carried out on each appliance and flue every 12 months, except where the appliance was installed less than 12 months ago. Gas pipe work should also be inspected to ensure it is not leaking. The registered gas installer must take action to leave the appliance safe, if it fails a safety check. This could be remedial action, disconnection and/or a warning notice attached.

- Give a copy of the landlord's gas safety record (also known as a CP12) to any new tenant when they move in or to an existing tenant(s) within 28 days of the check.

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

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

The Gas Safety (Installation and Use) Regulations also state that a landlord must only use a Gas Safe Register engineer for maintenance and safety checks on gas equipment they own and provide for tenants' use in domestic premises. From March 2009 the Gas Safe Register has replaced CORGI gas registration in Great Britain and is now the official industry stamp for gas safety.

All gas installers should carry identification cards which will state the type of work they are authorised to carry out. For further information about registered gas installers and to locate a service that is local, see the Gas Safe Register website.

Any necessary repair or remedial work identified should be carried out straightaway by the landlord who cannot place responsibility for this onto the tenant. If the need for any work is caused by the tenant's behaviour, then the tenant can be charged for the cost of the repair work afterwards. For further information about responsibilities and obligations, contact the Health & Safety Executive (HSE) for advice.

It is very important that the gas regulations are complied with and all necessary repairs carried out as soon as possible. Defective gas appliances are very dangerous and some tenants have died as a result. The Health and Safety Executive (HSE) gives gas safety a high priority and will take the appropriate action to ensure compliance with the regulations; this could result in a substantial fine and/or a custodial sentence.

The Deregulation Act 2015 introduces that a Section 21 notice will be invalid if a landlord or agent fails to provide, and evidence, that they supplied a tenant with an up to date Gas Safety Certificate (and EPC) at the start of the tenancy.

2.8.2 Exceptions to the regulations

The regulations do not apply to gas appliances which are owned by the tenant. Any gas appliance provided by a landlord for the tenant's use is included in the legal duty. If a tenant has their own gas appliance that has not been provided, the landlord still has a responsibility for the associated installation and pipe work, though not for the actual appliance.

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

The regulations do not apply to leases for terms of more than seven unless the landlord has a break clause which entitles the landlord to end the lease during the first seven years.
The regulations allow a defence for some specified regulations where a person can show that they took all reasonable steps to prevent the contravention of the regulations.

2.8.3 Room-sealed appliances

The regulations require that:

- A gas appliance installed in a bathroom or a shower room must be a room-sealed appliance (i.e. sealed from the room in which it is located and obtaining the air for combustion from the open air outside the building, discharging the products of combustion direct into the open air).

- A gas fire, other gas space-heater or a gas water-heater of 14 kilowatt heat output or less in a room used or intended to be used as sleeping accommodation must either:

    - Be a room-sealed appliance

    - Incorporate a safety control designed to shut down the appliance before there is a build-up of a dangerous quantity of the products of combustion in the room concerned.

2.8.4 Indications that an appliance is faulty or dangerous

Danger signs to look for are:

- Stains, soot or discolouring around a gas appliance indicating that the flue or chimney is blocked, in which case carbon monoxide can build up in the room.

- A yellow or orange flame on a gas fire or water heater.

The most effective indication of a combustion problem would be the activation of a properly installed carbon monoxide detector.

2.8.5 Tenants' duties

Tenants also have responsibilities imposed upon them by the Gas Safety (Installation and Use) Regulations 1998.

They must report any defect that they become aware of and must not use an appliance that is not safe. Tenants should be informed of this in writing and a clause explaining their duties should be included in their tenancy agreement.

2.8.6 Carbon monoxide detectors

Carbon monoxide (CO) is a colourless, odourless, tasteless, poisonous gas produced by incomplete burning of carbon-based fuels such as gas, oil, coal and wood. When these fuels do not burn properly excess CO is produced. Levels that do not kill can cause serious harm to health if breathed in over a long period.

Carbon monoxide is a bi-product of the burning of fuel in household appliances such as boilers, cookers, wood burners and open fires. If you have one of these you should make sure that it is serviced and maintained by a competent person and any chimneys in use are regularly swept.

New regulations are expected to come into force in October 2015 that will require landlords to install carbon monoxide (and smoke) alarms in their properties. The proposed changes to the law would require landlords to install carbon monoxide alarms in high risk rooms – such as those where a solid fuel heating system is installed.

It is the British Standard BS EN 50292:2013 that it regarded as the standard to adhere to when fitting carbon monoxide (CO) alarms in domestic premises. This defines the type of alarm that is required and where it should be sited when complying with Building Regulations. Those who fail to carbon monoxide alarms would face sanctions and could face up to a £5,000 civil penalty.

This would bring private rented properties into line with existing building regulations that already require newly-built homes to have hard-wired smoke alarms installed.

2.9 Electrical safety and electrical goods

2.9.1 Landlords' duties and responsibilities

Landlords should have a clear understanding of their responsibilities in relation to electrical installations and appliances and the duties and responsibilities placed on a landlord by the following regulations:

- Landlord and Tenant Act 1985
- Consumer Protection Act 1987
- Electrical Equipment (Safety) Regulations 1994
- Building Regulations 2010

Failure to comply with the Electrical Equipment (Safety) Regulations 1994 and the Consumer Protection Act 1987 is a criminal offence and may result in:

- A fine of £5,000 per item not complying
- Six months imprisonment
- Possible manslaughter charges in the event of deaths
- A claim by the Tenant against the Landlord for civil damages
- Invalidation of Property Insurance

Landlords need to ensure that the electrical installation and all electrical appliances are 'safe' with little risk of injury or death to humans, or risk of damage to property. This includes all mains voltage household electric goods supplied by the landlord such as cookers, kettles, toasters, electric blankets, washing machines etc. Any equipment supplied must also be marked with the appropriate CE marking (Conformité Européene / Declaration of Conformity).

In order to meet these obligations it is important to either supply new appliances or get any appliances provided checked by a qualified electrician before the property is let to new tenants. In-Service Inspection and Testing of Electrical Equipment, also commonly known as PAT testing, is the testing of electrical equipment consisting of a visual inspection and various electrical checks. A sticker is attached to the equipment showing either a pass or fail and the next test date, which is normally every 12 months.

Although testing of electrical equipment is not a legal requirement, as a landlord you are required by law to ensure that any electrical equipment supplied as part of the tenancy is safe. All paperwork regarding the items (i.e. receipts, warranties, records of inspection) should be kept for a minimum period of six years.

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

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

Although there is no statutory requirement to have annual safety checks on electrical installations as there is with gas, the Institution of Electrical Engineers recommends a formal periodic inspection and test being carried out on the installation at least once every 5 years or on a change of tenancy. It may also be appropriate that where any risk is found to be enhanced, for example where an installation is old or where damage is regularly found, a more frequent inspection regime will be necessary.

There is, however, a statutory requirement that all HMOs (both licensable and not licensable) must have their mains installation inspected every five years.

Periodic inspection and testing and any necessary remedial work must only be undertaken by someone competent to do such work. On completion, an Electrical Installation Condition Report (also known as a Periodic Inspection Report) is issued which indicates whether the installation is satisfactory (or why it is not) and this should be acted upon and retained by the landlord.

2.9.2 Building Regulations - **Approved Document P - Electrical safety**

These regulations relating to electrical installations affect existing installations and new work.

The design, installation, inspection and testing of electrical installations is controlled under Part P of the Building Regulations (updated 2013) which applies to houses and flats and includes gardens and outbuildings such as sheds, garages and greenhouses.

All work that involves adding a new circuit or is to be carried out in bathrooms and kitchens will need to be either carried out by an installer registered with a Government-approved competent person scheme or alternatively notified to building control before the work takes place.

On completion of any new electrical installation work an Electrical Installation Certificate or Minor Works Form should be issued by the electrician or installer carrying out the work and this should be retained by the landlord.

Generally, small jobs such as the provision of a socket outlet or a light switch on an existing circuit will not be notified to the Building Control team.

More details can be found in the CLG's guidance leaflet Rules for Electrical Safety in the Home.

2.9.3 Further guidance

Building regulations are enforced by ECC Building Control Officers and they can be contacted for further information about compliance with these regulations.

For further guidance about electrical safety and the competency of electricians and installers to carry out new work or undertake the formal Electrical Installation Condition Report (EICR) and test of an existing installation, refer to the information provided on the Electrical Safety Council's website.

2.10 Fire Safety

In England the principle pieces of legislation which cover fire safety in housing are:

- Housing Health and Safety Rating System (HHSRS)

Fire is one of the 29 hazards under the HHSRS. The HHSRS Operating Guidance explains how to make an assessment of the fire hazard in a residential dwelling which is assessed according to certain risk factors including:

- number of storeys
- layout of house
- distance to travel from farthest point to final exit
- number of occupiers in the dwelling
- type of occupation
- structural for precautions already in place
- fire detection and alarms systems provided.

- Regulatory Reform (Fire Safety) Order 2005

The fundamental requirement under this Order is that the responsible person for a HMO (usually the landlord) must carry out and maintain a suitable and sufficient fire risk assessment in communal areas. They must identify and supply adequate fire precautions and procedures to ensure safety. The Fire Safety Order does not apply to individual flats themselves.

- The Furniture and Furnishings Act 1988

Devon & Somerset Fire & Rescue service have a fire safety advice leaflet for landlords on their website for further information.

2.10.1 The Furniture and Furnishings (Fire) (Safety) Regulations 1988

The Furniture and Furnishings (Fire Safety) Regulations 1988 (as amended in 1989 and 1993) set levels of fire resistance for domestic upholstered furniture, furnishings and other products containing.

If furnished accommodation is being provided it is important to understand the need to provide safe furniture and furnishings, particularly in relation to fire safety.

Since 1 January 1997 persons who hire out furniture in the course of a business (and this includes furniture provided with rented accommodation) are required to comply with the Furniture and Furnishings (Fire) (Safety) Regulations 1988, which set safety standards for fire and flame-retarding requirements for upholstered furniture manufactured after 1950 or where the tenancy commenced after March 1993. The regulations relate to:

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

Tenancies that commenced prior to 1993 are exempt, but all additional or replacement furniture added after 1993 must comply with fire resistance requirements. A new tenant after 1993 means that all relevant furniture must comply.

The regulations require that:

All new furniture (except mattresses, bed bases, pillows, scatter cushions, seat pads and loose and stretch covers for furniture) must carry a display label at the point of sale. This is the retailer's responsibility.

All new furniture (except mattresses and bed bases) and loose and stretch covers are required to carry a permanent label providing information about their fire-retardant properties. Such a label will indicate compliance, although lack of one in second-hand furniture would not necessarily imply non-compliance as the label might have been removed. Generally, if second-hand furniture has not been bought from a reputable dealer and is not labelled, then it should be assumed that the furniture will fail to meet the regulations.

The regulations apply to any of the following that contain upholstery:

- Furniture
- Beds, headboards of beds, mattresses
- Sofas, sofa beds, futons and other convertibles
- Scatter cushions and seat pads
- Pillows
- Loose and stretch covers for furniture

The regulations do not apply to:

- Sleeping bags
- Bedclothes (including duvets)
- Loose covers for mattresses
- Pillowcases
- Curtains
- Carpets

The regulations relate only to items provided by the landlord and do not apply to items provided by the tenants for which the landlord is not responsible.

2.11 Smoke detectors

New regulations came into force on 1 October 2015 that require landlords to install at least one smoke alarm on every storey of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire, wood burning stove). The landlord must make sure the alarms are in working order at the start of each new tenancy.

The requirements will be enforced by local authorities who can impose a fine of up to £5,000 where a landlord fails to comply with a remedial notice.

The Smoke and Carbon Monoxide Alarm (England) Regulations (2015) brings private rented properties in line with existing building regulations that already require newly-built homes to have hard-wired smoke alarms installed.

The government have issued a Question & Answer Booklet for landlords and tenants on the regulations with further information about the requirements and who they apply to.

2.12 Legionnaires' disease

Legionnaires' disease is caused by inhaling Legionella bacteria. The potentially fatal, pneumonia-like disease can occur from exposure to Legionella growing in systems that maintain water at temperatures that encourage growth.

Landlords are under a legal duty of care to ensure that the risk to tenants, residents and visitors of exposure to Legionella is adequately assessed and controlled. Landlords are not required to obtain Legionella testing certificates provided that they have adequate knowledge of their property's water system and carry out a risk assessment and subsequently mitigate and control conditions which could lead to exposure.

The Health and Safety Executive's (HSE) website has specific guidance on Legionella and the legal responsibilities of landlords.

2.13 General Product Safety Regulations 2005

Some equipment and items may not be covered by specific regulations however they must comply with the General Product Safety Regulations 2005. You must ensure that all items you supply with the property are safe to use. This includes supplying warnings and instructions for the safe use of specific items. For example:

- Lawn mowers, strimmers, etc. must be provided with the necessary guards
- Chairs and stepladders must be strong enough to support a person's weight
- Glass in furniture should satisfy British Standards (where applicable)
- Ironing boards, clothes dryers, etc. should not have sharp edges that could cause injury in normal use

It is advisable to regularly check all items supplied with a property, and keep a record of your checks, to ensure they remain safe to use.

The maximum penalties for non-compliance depend on the specific piece of legislation, but fines of up to £20,000 and a prison sentence of up to six months can be imposed. If a product causes injury or damage, substantial compensation may be payable, whether or not criminal proceedings are brought.

2.14 Energy efficiency

Buildings produce nearly half of the UK's carbon emissions. This is almost twice that of cars and planes. The way a building is constructed, insulated, heated, ventilated and the type of fuel used, all contribute to its carbon emissions.

2.14.1 Energy Performance Certificates (EPCs)

Since October 2008 EPCs are required whenever a building is built, sold or rented out. The EPC contains information on the property's energy use and carbon dioxide emissions alongside an associated report which suggests improvements to make a building more energy efficient.

The recommendations in the report don't have to be acted upon. However, it could make a property more attractive for sale or to rent by making it more energy efficient.

The certificate provides 'A' to 'G' ratings for the building, with 'A' being the most energy efficient and 'G' being the least.

A building will need an EPC if it has a roof and walls and uses energy to 'condition an indoor climate'. This means it has heating, air conditioning or mechanical ventilation. For example, a garden shed would not need an EPC if it doesn't have any heating.

The building can either be a whole building or part of a building that has been designed or altered to be used separately. If a building is made up of separate units, each with its own heating system, each unit will need an EPC.

The Deregulation Act 2015 provides that every prospective tenant should be given a copy of the EPC free of charge at the point of enquiry. This is because the EPC is part of the tenant's decision making process. Furthermore, the landlord is required to evidence that a tenant was supplied with a copy of the EPC at the start of tenancy in order to ensure that their ability to serve a valid Section 21 notice is not compromised.

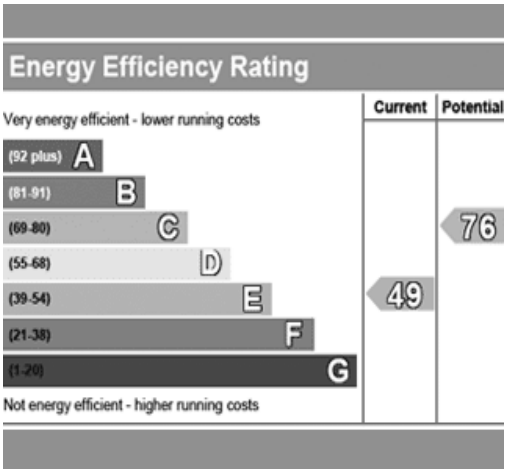
The Energy Act 2011 contains a number of provisions which will affect owners and occupiers of property. From 1 April 2016 you cannot reasonably refuse a tenant's request for a relevant energy efficiency improvement in their home if it is wholly funded by central or local government, the tenant or another person, i.e. at no cost to the landlord.

Also from 1 April 2018 privately rented properties will need to meet a minimum energy efficiency rating of 'E' for all new tenancy agreements and renewals. A landlord can seek exemption to let a property below the minimum standard by

providing evidence to the PRS Exemptions Register. From 1 April 2020 the regulation will apply to all new and existing tenancies. A civil penalty of up to £4,000 will be imposed for a breach of the legislation.

An EPC lasts for 10 years and there is no need to get a new one for each new let. If you carry out changes to the property which may affect the energy performance such as an extension, loft conversion, installing extra installation, new double glazing etc. it may be worth renewing the EPC.

Only an accredited energy assessor can produce an EPC. An accredited assessor can be found on the EPC Assessor website www.epcregister.com.



EPCs and HMOs

If you rent a HMO to a number of tenants who each have their own bedroom, but share bathroom and/or kitchen facilities an EPC is not required, unless you sell the house or let it as one whole dwelling.

Letting houses to a group of sharers with just one contract, is different. In this case you will need to provide an EPC for the whole property when you let to new tenants after 1 October 2008.

EPCs are required for self-contained flats (with their own kitchen and bathroom facilities).

2.14.2 The MEES (Minimum Energy Efficiency Standards) Regulations

The MEES (Minimum Energy Efficiency Standards) Regulations came into effect on 1 April 2018. This means that properties will normally have to have a minimum Energy Performance Certificate Rating (EPC) of E. This applies to new lets and renewals from 1 April 2018 and all existing tenancies by 1 April 2020. It will be unlawful to rent a property which breaches these requirements, unless the landlord can apply for an exemption.

The aim of the regulations is to improve the energy efficiency of the most inefficient properties. Landlords can face a penalty of up to £4,000 for breaches of the regulations.

Government guidance for landlords is available here and provides guidance and advice on:

- The scope of the regulations
- Relevant appropriate energy efficiency improvements a landlord could make
- How a landlord can investigate availability of no-cost funding to cover the cost of improving a domestic property
- The exemptions framework and the steps a landlord should take to register a valid exemption
- The enforcement framework
- The appeals framework

If a landlord believes their property qualifies for an exemption it must be registered on the National PRS Exemptions Register. As the register service is currently running as a pilot, landlords should e-mail the BEIS minimum standards team at PRSregisteraccess@beis.gov.uk to register an exemption.

2.14.2 Improving energy efficiency

The good news is that for anyone who wants to improve the energy efficiency of their house, there is a wide range of advice and information available. Below are a few suggestions on how to improve energy efficiency:

- Use low energy light bulbs to reduce the energy used on lighting by up to 80%.

- If a property was built after 1930 it probably has cavity walls which can be insulated by a professional installer. Heating bills can be reduced by 30% and a house may be kept cooler in the summer.
- Internal wall insulation is ideal if considering redecoration, or if one particularly cold area requires insulation.

- External wall insulation is ideal to minimise internal disruption. This will require Building Regulations approval and may require planning permission in conservation areas.

- Loft insulation should be at least 270mm (11') deep. A poorly insulated loft accounts for 25% of heat lost from a home. A DIY job will cost around £150, and professional installation about £275.

- Draught-proof windows, doors and loft hatch. Brushes and strips are available from all good local DIY and hardware stores. A £10–£20 outlay could save 10–15% on the gas bill. Make sure airbricks and vents aren't draught-proofed otherwise gas appliances won't be properly ventilated.

- Replacing old single-glazed windows with double (or triple) glazed "low-emissivity" glass could reduce heat loss from a property by 10%. This can be

installed by a Fenestration Self-Assessment Scheme (FENSA) registered installer or can be certified by the Building Control department.

- Fitting thermostatic radiator valves (TRVs) to radiators could help reduce central heating bills by up to 17%. TRVs monitor and respond to the temperature in each room, ensuring no rooms are over or under-heated.

- Replace an old boiler with an ultra-efficient condensing boiler; it'll be about 20% more efficient. The Energy Saving Trust gives advice on replacement boilers.

2.14.4 Grants for energy efficiency

The Energy Saving Trust is an impartial organisation that can help you search for the best deals in grant assisted insulation. Energy efficiency grants are available to all homeowners, landlords and tenants, and include loft and cavity wall insulation.

Contact the Energy Saving Trust for free on 0800 512 012 or visit them online.

2.14.6 Home energy generation

Renewable energy technologies like wind turbines, solar panels and biomass heaters offer an alternative to fossil fuels and can help reduce a home's CO_2 emissions.

2.14.7 Renewable Heat Incentive

The Renewable Heat Incentive (RHI) is the world's first long-term financial support programme for renewable heat. RHI is designed to provide financial support that encourages individuals, communities and businesses to switch from using fossil fuel for heating, to renewables such as wood fuel. By increasing the generation of heat from renewable energy sources (instead of fossil fuels), the RHI helps the UK reduce greenhouse gas emissions and meet targets for reducing the effects of climate change.

There are two parts to the RHI:

- Domestic RHI – launched 9 April 2014 and open to homeowners, private landlords, social landlords and self-builders.

- Non-domestic RHI – launched in November 2011 to provide payments to industry, businesses and public sector organisations.

The Domestic RHI scheme

It is a financial incentive scheme designed to encourage uptake of renewable heating among domestic consumers. The domestic RHI is targeted at, but not limited to, homes off the gas grid. Those without mains gas have the most potential to save on fuel bills and decrease carbon emissions. The scheme will cover single domestic dwellings and will be open to homeowners, private landlords, social landlords and self-builders. It will not be open to new build properties other than self-build.

The domestic RHI will pay a tariff per unit of heat generated for seven years with payments made on a quarterly basis.

If you are thinking about installing a renewable heating system then an online tool has been developed to help you calculate how much you might receive through the Domestic RHI Scheme. You can visit it here.

If you have any questions about the domestic RHI scheme please contact the Energy Saving Advisory Service on 0300 123 1234. Factsheets and guidance on applying for RHI are available from Ofgem.

2.14.8 The Feed in Tariff Scheme

If you install an electricity-generating technology from a renewable or low-carbon source such as solar PV or wind turbine, the UK Government's Feed-in Tariffs scheme (FITs) could mean that you get money from your energy supplier.

You can be paid for the electricity you generate, even if you use it yourself, and for any surplus electricity you export to the grid. And of course you'll also save money on your electricity bill, because you'll be using your own electricity.

Feed-in Tariffs were introduced on 1 April 2010 and replaced UK government grants as the main financial incentive to encourage uptake of renewable electricity-generating technologies. Most domestic technologies qualify for the scheme. The UK Government's Department for Energy and Climate Change (DECC) makes the key decisions on FITs in terms of government policy. The energy regulator Ofgem administers the scheme.

Your energy supplier will make the FITs payments to you. The large energy suppliers are required by law to provide them however smaller suppliers are not, but many have opted to offer them anyway. Visit Ofgem for a list of FITs-licensed suppliers.

For you to qualify for FITs, the installer and the products you use must both be certified under the Microgeneration Certification Scheme (MCS), except hydro

and anaerobic digestion which have to go through the ROO-FIT process. The tariffs you receive depend on both the eligibility date and, for solar PV, your property's Energy Performance Certificate (EPC) rating.

For more information go to The Energy Saving Trust website.

2.15 Planning control

Planning approval is essentially about controlling the use of land and is required to:

- Alter, extend or change the use of existing properties
- Make changes to a listed building
- Make changes to a property in a conservation area
- Change a previously singly occupied property into multiple occupancy, bedsit units or flats.

2.15.1 Exeter's Article 4 Direction

Exeter City Council have obtained what are known as Article 4 powers, which means that planning permission is required for any new HMOs in certain areas of the city. HMOs that existed before these powers came into effect on 1 January 2012 retain their use whilst being used as HMOs.

Exeter City Council's Article 4 Direction restricts home owners 'Permitted Development' rights to use their property as houses in multiple occupation (HMOs) within Class C4 of the Use Classes Order. This applies to about 7,000 properties to the north and east of the city centre. Further information on the Article 4 Direction can be found on ECC's website.

Further planning controls were needed due to the continued growth of student houses in the area which is leading to imbalanced communities. In some streets up to 80% of properties are entirely occupied by students. In the St James Ward as a whole approximately a third of homes are entirely occupied by students.
The planning restrictions came into effect on 31 December 2011 and will not affect properties used as HMOs before that date as long the use class has remained the same since that date.

If an existing HMO is being purchased, the purchasers should ask for confirmation from the seller (normally in the form of a letter from the relevant planning authority) that the house is currently registered as a HMO.

2.15.2 Obtaining planning approval

To obtain planning approval, an application with detailed drawings and payment of a fee is made to the City Development Team. The authority will consider the application, may consult with local residents and will then issue a decision with the reasons for that decision. The approval may have conditions attached. Further information is available from the Applying for Planning Permission pages on Exeter City Council's website.

An applicant aggrieved by the decision can appeal against it to the Planning Inspector or may negotiate with the City Development Team and amend and resubmit the application.

Enforcement action can be taken against unapproved developments requiring the reinstatement of the property back to its original condition.

2.15.3 Certificate of Lawful Use

Unapproved conversions of singly occupied houses to HMOs and flats are outside the time limits for enforcement action by planning authorities if established use can be proved for 10 interrupted years in the case of bedsit properties, and four years for dwellings.

After the above time periods an application can be made to the planning authority for a Certificate of Lawful Use (CLU). This means that the use of the property is lawful despite the use not having planning approval.

2.16 Building regulations approval

New 'building work' must comply with Building Regulations and includes:

- Installation of a service, e.g. washing or sanitary facilities and new drainage
- New structure or alterations to the existing structure
- Conversions to flats
- Loft conversions
- Extensions
- Replacement glazing
- Creation of new rooms or occupancies
- Some major repairs.

2.16.1 Obtaining Building Regulations approval

There are two optional procedures available to carry out works with Building Regulations approval for which a fee is payable.

1. Full Plans Application

This is the normal procedure for most works, whereby the Building Control team approves plans and details of the proposed works as being compliant before works commence. The application can be approved with or without conditions, or refused or have amendments requested.

A Commencement Notice is sent to the Building Control Inspector when works start. At pre-determined critical stages the contractor notifies the Inspector that certain works are being carried out so that those works can be inspected to check compliance before being covered over.

A Completion Certificate is issued by the Inspector at the end of work stating that the works have been carried out in compliance with Building Regulations.

2. Building Notice procedure

This procedure is suitable for small-scale works that need to progress quickly and where pre-approval of plans is not essential.

The contractor gives a Building Notice to the Building Control team works are about to start and which will then be inspected as they progress.

The contractor will be advised if any works are not likely to be Building Regulations compliant so corrective action can be taken.

‘‘Unapproved’ building works are liable to enforcement action. Further information is available from the Building Control team.

3.0 Houses in Multiple Occupation (HMOs)

3.1 Definition of a HMO under the Housing Act 2004

Under the Housing Act 2004, the following types of building are Houses or Flats in Multiple Occupation:

- An entire house or flat which is let to three or more tenants who form two or more households, and who share a kitchen, bathroom or toilet.

- A house which has been converted into bedsits or other non self-contained accommodation and is let to three or more tenants who form two or more households, and who share kitchen, bathroom or toilet facilities.

- A converted house which contains one or more flats which are not wholly self-contained (i.e. the flat does not contain within it a kitchen, bathroom or toilet) and which is occupied by three or more tenants who form two or more households.

- A building which is converted entirely into self-contained flats, but the conversion did not meet the standards of the 1991 Building Regulations, and less than two thirds of the flats are owner occupied

To be a HMO, the property must be used as the tenant's only or main residence, and it should be used solely or mainly to house tenants. Properties let to students and migrant workers are treated as their only or main residence and the same will apply to properties which are used as domestic refuges.

A 'household' is defined as either a single person or members of the same family who are living together. People who are not related to each other by blood or marriage will each form a separate household.

Certain buildings such as those occupied by a religious community or managed by an educational establishment are exempt from the HMO definition.

3.2 HMOs subject to licensing in Exeter

Mandatory HMO licensing

Mandatory licensing of HMOs is required by law, and is operated by all local authorities in England and Wales. Mandatory licensing applies to HMOs that are:

- Three or more storeys high, and

- Let to five or more persons who form more than one household who share an amenity such as kitchen, bathroom or toilet

The government have confirmed an extension to the mandatory licensing of HMOs (Houses in Multiple Occupation).

Currently a landlord is required to licence a property that is:

- comprised of 3 or more storeys, and
- there are 5 or more people, from 2 or more separate households living there

However, as from 1 October the 3 storey rule will be removed and other changes to the regulations mean that some flats, including those over shops, will also require a licence if they are occupied by 5 or more people, from 2 or more separate households.

All properties for which the extension to mandatory licencing now applies must apply for a licence by 1 October 2018.

Please contact the Private Sector Housing Team on 01392 265147 or privatesectorhousing@exeter.gov.uk for more information.

For more detail the order can be read here.

Additional HMO licensing

Additional licensing is a discretionary power that a council may decide to use to extend the licensing requirements to HMOs not already covered by mandatory licensing.
Exeter City Council has decided to use this power and, as of 23 February 2015 an Additional HMO Licensing Scheme covering specific types of HMO is being operated throughout the city.

Additional HMO Licensing will apply to all HMOs in Exeter which are:

Flats or maisonettes in multiple occupation which:

- are above, or connected to, commercial premises (shops, offices etc.) which are let to three or more people forming more than one household who share a kitchen, bathroom or toilet.

And to:

- those buildings which have been converted entirely into self-contained flats, where the conversion does not meet the standards set by the 1991 Building Regulations, and less than two thirds of the flats are owner occupied. Buildings

which have been converted into only two flats will only require a licence if both flats are tenanted.

The 1991 Building Regulations introduced a number of requirements for buildings being converted into self-contained flats, particularly in respect of fire separation. If you require further information about the specific requirements and changes introduced in the 1991 Building Regulations, you can read the document in full here.

There is no need to apply for a licence if you can provide the Council with documentary evidence that the conversion was undertaken to the standards required by the 1991 Building Regulations. If you do not have the necessary paperwork you will need to contact the Private Sector Housing Team or the Building Control Section in order to obtain copies of any records they may hold.

3.3 Why do some HMOs need to be licensed?

HMOs often have poorer physical and management standards than other privately rented properties.

The people who live in HMOs are often amongst the most vulnerable and disadvantaged members of society. As HMOs are the only housing option for many people, the government recognises the importance of these properties being properly regulated.

Licensing is intended to make sure that:

- Landlords of HMOs and/or property managers are fit and proper persons
- Each HMO is suitable for occupation by the number of people allowed under the licence.
- The standard of management of the HMO is adequate.
- High risk HMOs can be identified and targeted for improvement

Where landlords fail to meet these criteria the Council can intervene to ensure that:

- Vulnerable tenants can be protected.
- HMOs are not overcrowded.

3.4 Who will need to apply for a licence?

The Council has a duty to licence the person it believes to be the most appropriate person to be the licence holder. In the majority of cases this will be the owner or one of the owners if the property is in joint ownership.

The proposed licence holder must live in the UK and is expected to have the power to:

- let to and evict tenants; and
- access all parts of the premises to the same extent as the owner; and
- authorise any expenditure necessary to ensure the health safety and wellbeing of the tenants and others who may be affected by the property (including neighbours, passers-by, visitors etc.).

Organisations, e.g. management companies that are landlords, must nominate an appropriate person to be the licence holder. This person will be responsible for ensuring that there are no breaches of the licence and therefore should hold a responsible position in the company (e.g. company secretary).

Since a licence cannot be transferred to another person within a company, it is advisable that the nominated person has a permanent position. Alternatively, if a manager is employed that person could be the licence holder if they have management responsibility and sufficient control of the property.

In the case of a converted block of flats, only one licence will be required to cover the building. There will not be a requirement for each individual flat to be licensed separately. The licence holder must be the person having control of the building which, in most cases, will be the freeholder, the managing agent or the management company (if one is in place). In the case of multiple freeholders, one would need to be designated as the licensee, the other freeholders being bound by the licence conditions.

3.5 How to apply for a Licence

If you are operating or intend to operate a licensable HMO you must apply to the Council for a HMO licence. The application process may vary in certain circumstances, for instance if information requires clarification or the application form is incomplete.

If no application is received in respect of a building which appears to be licensable, but is not licensed, and supporting documentation cannot be provided when requested, there will be a presumption that an offence has taken place and appropriate enforcement action will be taken.

3.5.1 Which licence application form?

There are 2 versions of the HMO licensing application form:

HMO Licence Application Form 254

This form is to be used for HMOs that involve sharing of facilities, such as kitchens, bathrooms or toilets (for example, shared houses, bedsits, hostels etc.). It is the form to use when applying for a mandatory HMO licence for a flat in multiple occupation above commercial premises, i.e. one subject to Additional Licensing.

HMO Licence Application Form 257

This form is to be used for HMOs that are buildings converted entirely into self-contained flats.

If you are unsure which version you need or you would like a hard copy of the forms, please contact the Private Sector Housing team for advice.

Complete the application form giving as much information as possible. You must ensure that the form is signed by the proposed licence holder, and any other person or agent who you are proposing to manage the property.

3.6 Licence documentation required

Annual Gas Safety Certificate

If you provide any gas appliances you must have an annual inspection carried out by a Gas Safe Register engineer.

Electrical Installation Condition Report

All electrical installations must be inspected by a competent person every five years by an engineer recognised by the Institute of Electrical Engineers as being competent to undertake such testing. A report showing the installation to be safe and when the next inspection is required will need to be submitted with your application.

In-Service Inspection and Testing Certification

Also known as Portable Appliance Tests (PAT testing) is needed for any 'portable' electrical appliances (i.e. fridge, freezer, microwave oven, kettle, heater etc.) supplied with a property. These should be inspected annually by a competent person (e.g. an engineer recognised by the Institute of Electrical Engineers as being competent to undertake such testing) unless all the appliances are under one year of age (this will need to be evidenced).

Energy Performance Certificates

Energy Performance Certificates are required in respect of self-contained flats which are rented out.

From April 2018 it will be illegal, in most cases, for a property with an energy rating of F or G to be let. As of April 2016 tenants can request energy efficiency improvements to a property, which can't be refused.

You should enclose copies of the above mentioned certificates with your application. If you have not included the certificates we can still issue the licence but it will be a condition of the licence to provide these documents. The documents will be required within 12 weeks of the licence being issued.

3.7 Fit and proper person test

In deciding whether the person proposed to be the licence holder or (as the case may be) the manager of the house is a 'fit and proper person', the local housing authority must be satisfied that s/he has not:

- committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (c. 42) (offences attracting notification requirements).

- practiced unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business.

- contravened any provision of the law relating to housing or of landlord and tenant law.

In those very rare cases, where, for example, the proposed licensee is not considered 'fit and proper' or where the property is wholly unsuitable to be a HMO, an application will be refused.

3.8 Licence fees

The cost of a licence depends on the type of HMO being licensed, and the number of persons, or units, in the property. For more information please contact the Private Sector Housing.

9 Licensing conditions

When a licence is issued for a HMO, it will contain a schedule of conditions, which the licence holder and manager must comply with. These conditions will vary according to property type, but typically will require the licence holder to:

- Produce annually to the City Council the gas safety certificate obtained in respect of the property.
- Keep electrical appliances and furniture which he or she provides in a safe condition.
- Supply to the City Council on demand a declaration as to the safety of electrical appliances and furniture.
- Ensure that smoke alarms are installed in the house and kept in proper working order.
- Supply to the City Council on demand certificates from a competent person showing that the HMOs fire warning system has been installed and/or maintained and /or tested by him and that it is in proper working order.
- Supply to the City Council on demand a declaration as to the condition and positioning of such smoke alarms.
- Supply every occupier of the HMO with a written statement of the terms on which they occupy it (a standard tenancy agreement containing clauses which amongst other things impose reasonable duties and responsibilities on occupiers will satisfy this requirement). It should also include a requirement that the occupier:
    - Comply with the Manager's reasonable written instructions for the storage within the property of refuse and household waste; and
    - Present the property's refuse containers on collection days at the specified location on its boundary for emptying by the Council
- Display the following in a prominent location within the HMO:
    - The HMO licence
    - The current gas safety certificate
    - The manager's name, address and contact telephone number

3.10 Issue of licence proposal

Once the application is complete Exeter City Council will usually issue a 'Proposal to Grant a Licence'. This is a pack of documents which includes a draft copy of the licence, specifying the number for which the HMO is to be licensed, together with the proposed conditions, and a statutory Notice of Proposal. Copies of this proposal will be sent to the proposed licence holder, the manager (if applicable), and any other persons who have an interest in the property. The proposal gives 14 days for interested parties to make representations to the Council.

3.11 Issue of a full licence

At the end of the representation period a full Licence Pack will be issued to all interested parties. The HMO will then be licensed for a period of 5 years.

3.12 The penalties in relation to HMOs and licensing

It is an offence if the landlord or person in control of the property:

- Fails to apply for a Licence for a licensable property.
- Allows a property to be occupied by more people than are permitted under the Licence.
- Breaches a condition of the licence.
- Breaches a provision in the Management Regulations for HMOs.

3.13 Fines

A fine of up to £20,000 may be imposed if a licensable HMO is allowed to operate without a licence. In addition, breaches of any of the licence conditions or Management Regulations can result in fines of up to £5,000 (Level 5 on the standard scale).

3.14 Rent Repayment Orders

A tenant living in a property that should be licensed, but which is not, can apply to the Residential Property Tribunal to claim back any rent they have paid during the unlicensed period (up to a limit of 12 months). Councils can also reclaim any Housing Benefit that has been paid during the time the property was without a licence.

3.15 Restrictions on termination of tenancies

Landlords cannot use the grounds laid out in Section 21 of the Housing Act 1988 to obtain possession where a HMO is licensable but not licensed.

3.16 Temporary exemption from licensing

If a landlord or person in control of a property intends to stop operating a property as a HMO to reduce the numbers of occupants and can give clear evidence of this, they can apply for a Temporary Exemption Notice.
This lasts for a maximum of three months and ensures that a property in the process of being converted from a HMO does not need to be licensed.

If the situation is not resolved, then a second Temporary Exemption Notice can be issued. When this Notice runs out the property must be licensed, become subject to an Interim Management Order, or cease to be a HMO.

3.17 What standards will apply to my HMO?

As a landlord or freeholder of a licensable HMO, there are number of standards and regulations you will need to comply with. You need to have regard to all of the following standards or enforcement measures:

- All licensed HMOs must have amenities such as heating, washing facilities, kitchen facilities and toilets. The number and type of amenities required will depend on the type and size of the house and the level of occupancy.

- The fire precaution standards for the different types of HMO.

In deciding whether a HMO is suitable for the occupation by the proposed number of persons or households, the Council must have regard to Regulations made under the Housing Act 2004. These are:

- The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 as amended by the Licensing and Management of Houses in Multiple Occupation (additional provisions) (England) Regulations 2007.

The Councils own standards for amenities and room sizes can be found online.

3.18 HMO Management Regulations

All HMOs, whether licensable or not, must comply with HMO Management Regulations. These impose duties on both the person having control of the HMO and in some cases, the person occupying.

There are two distinct sets of Management Regulations depending on the type of HMO concerned. These are:

- Statutory Instrument No 372 (2006) – The Management of Houses in Multiple Occupation (England) Regulations 2006

This set covers HMOs that contain shared accommodation such as house sharers, bedsits, hostels and other non self-contained accommodation. These types of HMOs are defined under Section 254 of the Housing Act 2004.

- Statutory Instrument no 1903 (2007) – The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007

This set covers HMOs that are buildings converted into self-contained flats, as defined under Section 257 of the Housing Act 2004.

3.19 HMOs and the Housing Health and Safety Rating System (HHSRS)

As with all residential properties, HMOs are subject to the HHSRS which is a risk based scoring system we use to assess whether there are deficiencies in a dwelling/occupancy/unit that present a hazard to the occupants. The system is broken down into 29 prescribed hazards, which cover a range of different issues such as excess cold, damp, fire and electrical safety, trips and falls, food hygiene, collision and entrapment etc.

Where a sufficiently serious hazard is identified in a dwelling, the Council has a duty to take action to remedy it and can serve a statutory Improvement Notice requiring that specified works are carried out to remove it. In extreme cases, where there is imminent risk to the safety of the occupants, the Council may take Emergency Remedial Action or even prohibit all or part of a building for habitation if necessary.

More information can be found about the HHSRS on the Exeter City Council website.

3.20 Responsibilities of tenants

A tenant of a HMO has responsibilities to the landlord of the property and the property itself as outlined in the The Management of Houses in Multiple Occupation (England) Regulations 2006. The Act specifically states that “every occupier must conduct himself in a way that will not hinder or frustrate the manager of a HMO”. This covers areas such as:

- Providing information about the relationship between occupants in the property to enable the manager to determine whether the tenancy being created will result in an HMO.

- Respecting the number of occupants allowed on the tenancy agreement, and to not allow any others to occupy the property.

- Co-operate with the landlord and the Local Authority Inspectors when they are carrying out a HMO assessment.

- Co-operate and allow the landlord to access the property at a reasonable time to carry out repairs, or any other duty he is bound by under the Housing Act 2004 and HMO standards.

- Compliance with all reasonable instructions regarding the prevention of fire and the use of fire equipment.

The tenant also has responsibilities in other areas including:

Acting in a "tenant-like manner" which means:

- Performing the smaller tasks around the house such as changing light bulbs, unblocking the sink when blocked with waste, cleaning the windows when necessary, taking out the rubbish.

- Not damaging the house, if they do then they and their guests are responsible for the repairs.

- Securing the property when they go away - i.e. locking all doors and windows.

- Being reasonable about noise

- Reporting all repairs needed (preferably in writing). The landlord's responsibility to repair begins only when they are aware of the disrepair. A landlord is responsible to take remedial action within a reasonable period of time (dependent upon the nature of the disrepair).

3.21 Exeter's Student Landlord Accreditation Scheme

The Unipol Code is a voluntary accreditation scheme which gives accredited landlords the opportunity to highlight their properties to students. This national student landlord accreditation scheme, intended specifically for landlords with student properties to rent in Exeter, is endorsed by both the University of Exeter and Exeter City Council.

Code-accredited properties must meet national and local legal standards, plus a set of specifically student friendly requirements.

The standards set by the accreditation scheme are upheld through the following checks carried out by Unipol:

- Randomly sampled verification inspections (which may include all the properties in a landlord's portfolio) by local inspectors at 3-yearly intervals
- Interviews with existing tenants
- Checks of tenancy terms and marketing
- Safety and security
- Checks on levels of amenities

These checks ensure that Unipol accreditation continues to be a status which is highly regarded by both students and their families.

The Unipol code is different from other accreditation schemes and HMO licensing checks by the council, as it includes:

- Online training and tests for landlords, with links to legislation, downloadable templates, good practice examples and manuals that can be used to build a professional business
- Independent arbitration panel to deal with complaints – without hazarding deposits.

Landlords who join the Exeter Accreditation scheme enjoy significant benefits. In addition to the above, benefits also include:

Advertising and promotion within the University at all stages of undergraduate and postgraduate life, including:

- Advertising and promotion within the University at all stages of undergraduate and postgraduate life, including:
    - Prime position in the annual Student Guild Housing Fair, held on the University of Exeter Streatham campus and attended by large numbers of students
    - Early display on Studentpad (a week before all other landlords) and automatic top billing. Studentpad is the University of Exeter managed advertising service, promoted to students as the property search engine of choice
    - Window stickers for accredited properties.

- Accredited landlords forum hosted by the University, to meet and influence decisions

- Reduced price:
    - Advertising and promotion Licensing fees for certain HMOs (£125 reduction)
    - Studentpad advertising fees
    - Admission to the annual Housing Fair

A **discount** is available on the published accreditation fees of 10% if the landlord can demonstrate membership of another accreditation scheme or landlord association.

- Pre-checking for compliance with Exeter City Council's requirements (as part of verification). Any property that is subject to HMO licensing is also normally required to have an HHSRS assessment by the Council within 5 years of the licensing – this is checked as part of the verification inspection.

Any work that needs to be done to comply with the Code or legal standards is done (by agreement) to a timescale that fits in with the landlord's normal tenancy and cyclical maintenance requirements.

Joining and Information about the scheme

In order to become accredited, landlords will need to complete the online training course and pay the relevant fee. After signing the Unipol Code declaration form, Unipol will contact the landlord to arrange an inspection.

Detailed information about the scheme can be found on Unipol's dedicated Exeter page, including a full price list and access to the online training course.

Please contact Unipol with any accreditation queries in the first instance, further information can also be provided by the University of Exeter Accommodation Office.

3.22 Erasmus and Exchange Students

Some students spend part of their curriculum in universities in other countries, or may even exchange with students from the other countries. In these cases the landlord should check their immigration responsibilities, and it is also important to consider whether to include the foreign student as a named tenant on the lease, or whether to have a sub-lease (or other tenancy terms) for the exchange student.

This has important implications for both parties when it comes to liability for damage, contents insurance and deposits, and may also be relevant to whether the property is considered to be a shared house.

The University of Exeter is able to provide proof of a student's status, however please note that this can only be provided directly to the student. Please ask prospective student tenants to make a request via SID to confirm their student status if required.

Erasmus, Exchange, PGCE and some other post-graduate students may be studying in Exeter on a short term basis. These students may be seeking accommodation with a host family, or lodgings. If you are interested in advertising a spare room in your own home on a temporary basis to a student, this can be advertised on Studentpad.

4.0 Setting up a tenancy

4.1 Types of tenancies

It is important to be aware of the different types of tenancies that exist, as the differences between them can have a profound effect on the rights and obligations of both landlords and tenants. This will have particular relevance should possession of the property be sought.

4.1.1 Assured and assured shorthold tenancies

These types of tenancies are governed by the statutory code set up in the Housing Act 1988, which was amended slightly by the Housing Act 1996. The vast majority of tenancies today will be assured shorthold tenancies.

4.1.2 Assured shorthold tenancies (ASTs)

Assured shorthold tenancies (ASTs) are now the 'default' type of tenancy. If a property is let, and it does not fall into one of the exceptions outlined below, it will automatically be an AST. If a property is let without a written agreement, which is most unwise, then that too will be an AST by default.

The main benefit of ASTs for landlords is that they can recover possession of the property without needing a reason, provided any fixed term has expired and the proper form of notice has been properly served. The notice is known as a Section 21 notice, as the landlord's right to recover possession and the notice procedure is set out in Section 21 of the Housing Act 1988.

An AST can be for any term as the rule requiring them to be for a minimum term of six months was abolished by the Housing Act 1996. However, the vast majority of tenancies are for terms of at least six months.

4.1.3 Assured Tenancies

The non-shorthold version of the assured tenancy gives tenants long-term security of tenure, and tenants are entitled to stay in the property until either they choose to go, or the landlord can gain possession on one of the 17 grounds listed in Schedule 2 of the Housing Act 1988. Possession under the 'no fault' Section 21 procedure is not available for assured tenancies.

Before 28 February 1997 assured tenancies were the 'default' type of tenancy, and some of the assured tenancies in existence today were created by mistake, through landlords not following the proper procedure required at that time to create an assured shorthold tenancy. Landlords should seek advice if they are unsure which type of tenancy applies.

4.1.4 Choosing an assured or an assured shorthold tenancy

The vast majority of landlords will wish to create an assured shorthold tenancy. If the property is subject to a mortgage, most mortgage companies will also insist that all tenancies are assured shorthold tenancies. A landlord might consider letting a property under an assured (not shorthold) tenancy where recovery of possession will not be required, and the landlord wishes the tenant to have security of tenure (e.g. a tenancy agreement with a family member).

Landlords should proceed with care and seek legal advice before agreeing an assured tenancy, as it will hinder the right to recover possession as these tenancies can be passed on.

4.1.5 Tenancies which cannot be assured or assured shorthold tenancies

In some circumstances the statutory codes set up by the Housing Act 1988 will not apply. The tenancy may be governed by some other Act of Parliament, or simply be subject to the agreed terms of the contract (usually called contractual tenancies) and/or the underlying 'common law'.

Tenancies excluded from being assured or assured shorthold tenancies are:

- Tenancies that began, or which was agreed, before 15 January 1989 (this will normally be governed by the provisions of the Rent Act 1977)
- The property is not the only or principal home of the tenants
- The rent is more than £100,000 a year
- The rent is £250 or less a year (£1,000 or less in Greater London)
- A company let
- The tenancy has been granted to a full-time student by an educational body such as a university or college
- A holiday let
- A letting by a resident landlord (i.e. where the landlord and tenant live in the same building as originally constructed, most commonly where landlord and tenant share some part of the accommodation, this is usually a licence/lodger situation not a tenancy)

In the circumstances set out above the tenancy will be governed by the contractual agreement or if there is no agreement, the common law.

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

4.1.6 Tenancies which can be assured but not assured shorthold tenancies

The following tenancies cannot be assured shorthold tenancies:

- Those where there is an existing tenant with an assured tenancy. An existing assured tenancy cannot be converted into an AST, for example by issuing a new form of tenancy agreement. This applies whether or not the fixed term in the tenancy agreement has expired
- An assured tenancy which the tenant has succeeded to on the death of the previous regulated (pre-1989) tenant under the 'succession' rules
- An assured tenancy following a secure tenancy as a result of the transfer of the tenancy from a public sector landlord to a private landlord
- An assured tenancy arising automatically when a long leasehold tenancy expires

4.1.7 Fixed-term Tenancies

An assured or assured shorthold tenancy may be a fixed-term tenancy, which lasts for a fixed number of weeks, months or years. The length of the fixed term will be set out in the tenancy agreement.

Most tenancies have a fixed term of either six months or a year, but the fixed term can be of any length although advice should be sought if agreeing a fixed term of more than three years as particular procedures apply. Over three years the agreement would have to be signed as a deed and witnessed. After a fixed term has expired it can be allowed to run on to a statutory periodic tenancy or a new fixed-term agreement can be entered into.

4.1.8 Periodic Tenancies

An assured or assured shorthold tenancy may be a periodic tenancy that runs indefinitely from one rent period to the next (also known as a rolling tenancy).

There are two types of periodic tenancy.

- The contractual periodic tenancy is one that is periodic because the contract says it is periodic, typically because the initial letting was set up as a periodic tenancy.

- The second type is a statutory periodic tenancy and this exists because a fixed-term tenancy has expired, the tenant has remained in the property and no new agreement has been set up.

Periodic tenancies can exist either from the start of the tenancy, or after the fixed term in a tenancy expires.

The periods of the tenancy are defined by the rent payment periods. This is the period of time for which the tenant pays rent, typically a week or a month. If the tenant moves in on the fifteenth of the month and then pays the rent in advance on the fifteenth of each month, the periods will be the fifteenth of one month to the fourteenth of the next month.

It is important when setting up an AST that landlords clearly identify what dates the rent is payable, and whether rent is payable in advance or in arrears. This clarity ensures that if a fixed-term AST does roll over into a statutory periodic tenancy, both landlords and tenants know what the periods of the tenancy are, and can give the correct periods of notice.

4.1.9 Regulated Tenancies

Most lettings by private landlords which began before 15 January 1989 are regulated tenancies under the Rent Act 1977 unless the landlord and tenant live in the same house. Regulated tenants have greater security of tenure and are subject to rent control.

A tenant whose tenancy is regulated by the Rent Act 1977 is unlikely to be evicted unless significant rent arrears have been accumulated or the landlord is able to provide suitable alternative accommodation. More information can be found in the leaflet *Regulated Tenancies* available from the CLG website at www.communities.gov.uk

4.1.10 Sub-letting/assigning tenancies

A landlord who has taken care to select a tenant by proper referencing and verification of suitability is unlikely to allow that chosen tenant to sub-let (assign or transfer the tenancy) to another, without the landlord's permission. In the past, tenancy agreements always tended to prohibit subletting or assignment.

Now, standard terms in residential tenancy agreements are subject to the Unfair Terms in Consumer Contracts Regulations 1999, administered by the Competition and Markets Authority (CMA). The guidance says in effect that absolute prohibitions on assignment and sub-letting could be considered unfair and, therefore, void in terms of the regulations.

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

Even if the tenancy agreement does not provide for it, it is suggested that the landlord should always agree to re-let the property to a suitable new tenant, allowing the original tenant to terminate their agreement early if they wish. If the prospective new tenant is considered suitable, and there is only a short period remaining of the original agreement, the landlord might consider offering a longer term to help prevent a void period.

If the tenancy is a contractual periodic tenancy, or a statutory periodic tenancy that has arisen at the end of a fixed term, the tenant cannot by law give the tenancy or sub-let to someone else unless the landlord agrees that he or she can. A periodic tenant can end their tenancy by serving notice to quit.

If the tenant has paid a premium for the property (a lump sum, possibly in addition to a small rental payment or a sum paid as a deposit which is greater than two months' rent), the tenant is able to sub-let unless there is a term in the tenancy agreement preventing this.

4.1.11 Joint and several tenancies

Joint tenancies can be agreed with two or more people from the outset of the tenancy. Each can then be responsible jointly and severally (individually) for meeting the terms of the tenancy in full, including paying the rent. This is known as 'joint and several liability'. Joint and several liability only arises where it is agreed. If nothing is agreed they will simply be jointly liable.

For example, if a property is let jointly and severally to four tenants A, B, C and D for a monthly rent of £400 (with each agreeing to pay £100 each), and C decides to leave, they will all each still remain liable under the contract for all the rent. So C is still liable for rent even though he or she may not be living there, and A, B and D will each be liable to the landlord, for all the rent, including the £100 share from C. This situation will continue until either vacant possession is given back to the landlord or a new tenancy is signed, for example with A, B, D and perhaps E.

If one of the joint tenants wishes to vacate, it is best to regularise the situation as soon as possible by signing a new tenancy agreement with the remaining and new tenant(s), so long as any replacement tenants can be referenced satisfactorily. A landlord should not allow the situation to drift. Instead, a proactive approach should be taken to ensure the remaining tenants sign a new tenancy agreement.

Failure to do so could cause the landlord difficulties in repossessing the property. If the tenants provided a guarantee with the original tenancy, the landlord should ensure that a new guarantee is provided with any new tenancy, or that the old guarantee will apply to any new tenancy granted to the same tenant.

Technically a tenancy can only be in the names of four tenants, as in land law only four people can hold a legal interest in land. However, if there are more than four tenants who wish to share, the additional tenants will still be liable for the rent and everything else under the contract, and their co-tenants will be deemed to be holding the tenancy on trust for themselves and the others. Practically therefore the four-name rule is not a problem.

4.1.12 Succession rights and rights of survivorship

If a joint tenant dies, the remaining joint tenant(s) are entitled to remain in the property (having a right of survivorship) and remain liable for the rent.

If a sole tenant dies, the right to succeed to the tenancy will depend on whether the tenant had a fixed-term or periodic tenancy.

For fixed-term tenancies where the term has not expired the executors will arrange for the tenancy to be passed on to the person to whom it is left in the will (or whoever inherits it under the intestacy rules if there is no will). In practice, the executors will usually agree to surrender the property, and the landlord will agree to seek another tenant.

In a shorthold tenancy, the landlord is entitled to repossess the property at the end of any fixed term, or at the end of a period of a periodic tenancy, even if the tenant is entitled to succeed provided that the landlord gives the proper form of two months' notice under Section 21.

If a periodic tenancy the tenant's spouse, or a person who lived with the tenant as husband, wife or civil partner, has an automatic right to succeed to a periodic assured tenancy unless the tenant who died had already succeeded to the tenancy. Only one succession is allowed. No one else in the family has an automatic right to succession (Section 17 Housing Act 1988). Other members of the family could negotiate a new tenancy with the landlord.

In a periodic assured tenancy, if someone is living in the property that does not have a right to succeed to the tenancy, the landlord can claim repossession under Ground 7, provided the proceedings for recovery of possession are commenced within a year of the death of the original tenant.

4.1.13 Licences

A licence is where someone is allowed to occupy property but does not have a tenancy. The 'licence' or permission of the owner prevents the occupier from being a trespasser. Some of the protective legislation for occupiers does not apply to licences.

The three main tests for a tenancy are:

1. Exclusive possession
2. A fixed or periodic term
3. The payment of rent.

If these three factors are present, there will be a tenancy.

If the occupier does not have exclusive possession, i.e. they share a bedroom, they will only be a licensee. The essential difference between a tenant and a licensee will be having exclusive possession. A person who has exclusive possession of residential premises for a definite period is a tenant unless there are exceptional circumstances. The rules around how much of the property they have to have exclusive occupation of differ between Housing Act 1988 tenancies and non-Housing Act 1988 tenancies.

Other circumstances where a tenancy will not occur are 'serviced' accommodation where the landlord needs to have frequent access for cleaning and meals are provided, e.g. a hotel, and where the occupier shares living accommodation with the landlord (here the occupier is normally referred to as a lodger).

4.1.14 Other "excluded licenses"

Other licences which are excluded from some of the provisions of the Protection from Eviction Act 1977 so that no court order is needed to evict the licensee once notice to quit has expired are:

- Holiday lets (e.g. hotel guests)
- Hostels (within the meaning of the Housing Act 1985) run by registered charities, registered housing associations or other specified bodies
- Licenses granted for no money or "moneys worth" such as friends staying over
- Licenses granted as temporary expedients to people who entered as trespassers
- Licences granted to provide accommodation under Part 6 of the Immigration and Asylum Act 1999

4.2 Resident landlords

The most common form of excluded licence is the resident landlord arrangement. Resident landlords have greater freedom to end a licence agreement because it is acknowledged that should the relationship break down between landlord and lodger, the landlord can be vulnerable in his/her own home.

Resident landlords can charge market rents and do not have to protect their deposits in a government deposit scheme.

4.2.1 Who qualifies as a resident landlord?

A landlord will only be considered resident if they or a member of their immediate family share essential facilities such as kitchen or bathroom with their lodger and if the house is their only or principal home.

A landlord may move out of the property for short periods and still be considered to be resident provided they intend to return and this is apparent. Simply keeping an empty room for your use at the property will not ensure resident landlord status.

Ultimately only the courts can decide whether a landlord has maintained enough residence in the property to get resident landlord status. If there is likely to be a dispute about this, it is recommended you seek legal advice.

4.2.2 Eviction of lodgers by resident landlords

If no notice period has been agreed or specified in the contract then “reasonable” notice may be given. As “reasonable” notice is not defined in law it is ultimately a decision for the courts. However the conduct of the lodger and how easily the lodger could find alternative accommodation should be taken into account when setting a notice period. Where no notice period is agreed the general guideline is the rental period. For example if the rent is payable monthly you should give 1 months notice.

Although there is no legal requirement for a resident landlord to serve notice in writing, for the avoidance of doubt it is strongly recommended that they do so. Once the notice to quit has expired, a resident landlord can evict a lodger without a court order.

However, resident landlords should be aware that it is a criminal offence for a person to use or threaten violence for the purpose of securing entry to premises where someone who is present is opposed to entry (Section 6, Criminal Law Act 1977). It is also an offence to change locks to exclude any occupier before the licence has been properly brought (or come) to an end.

Problems between a landlord and tenant or licensee can be particularly awkward when both parties live in the same house. Sometimes the trouble is due to a clash of lifestyles (e.g. loud music) rather than one person deliberately setting out to cause difficulties for another. If this is the case, it may be worth talking over the problem in the first instance.

4.2.3 Do HMO regulations apply to resident landlords?

If rooms in the house are let to several people, it may be classed as a house in multiple occupation (HMO) and subject to management regulations even where there is a resident landlord.

If there are only two lodgers residing in the building in addition to the resident landlord and his family, it will not be defined as a HMO. For the purpose of calculating the number of persons living in the HMO the resident landlord and his household (if any) count as one person.

4.3 Tenancy agreements

Landlords should be aware of the benefits of written tenancy agreements and the procedures necessary for obtaining such an agreement. Although many short-term tenancies (three years or less) can be created without a written agreement, it is generally not advisable for landlords to allow occupation without first having secured a signed formal tenancy agreement.

4.3.1 Written tenancy agreements

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

It is far better to use one of the many standard tenancy agreements which are available from landlord associations, law stationers, the larger general stationery stores, and the many online services available for landlords. Landlords wishing to alter the terms of a standard agreement should seek specialist advice.

A model assured shorthold tenancy (AST) agreement and accompanying guidance is available from the gov.uk website. There is guidance on its use and clauses contained within the agreement.

The tenancy agreement is available free of charge and can either be completed online or downloaded and completed manually. However, if the agreement is completed online, it will need to be printed off for signature. Copies of the

agreement should be made for the landlord and the tenant. It is the responsibility of both parties to keep the agreement in a safe place as it will need to be referred to during the tenancy.

The agreement has been developed with longer tenancies in mind (2 or more years) however some landlords and tenants will find that an agreement with a fixed term of 6, 12 or 18 months will better suit their needs. If an agreement with a shorter fixed term period is required the rent should be fixed for the whole period and the break clauses removed (see the guidance notes for further details). The agreement can either then be renewed at the end of the agreed period for another fixed period or the tenancy can simply continue after the fixed term on a periodical agreement until terminated by either party.

The preparation of a written agreement is the key opportunity for both landlord and tenant to agree the formal terms of their relationship. Both parties should have every opportunity to read and understand the terms of the tenancy which is being created before becoming bound by them. Two copies of the tenancy agreement should be signed by both parties with each keeping their own copy.

If the tenant occupies the property immediately, the agreement does not need to be witnessed. If the tenant does not intend to occupy until a later date (for example students signing a tenancy agreement in June and taking occupation in September) it could be better to have the agreements formally drawn up and independently witnessed. Landlords should seek advice on this (particularly if tenancy agreements are being created online) as the legalities of the situation are complex.

Both parties should be careful when completing the agreements. Make sure they are legible and that they can be read without difficulty in the event of a dispute. Landlords should provide a full, valid and current address in England or Wales. This could be the address of the landlord's agent or his registered business address. If a landlord does not give an address, this might cause difficulties should any dispute arise.

If no address for the landlord is given at all, apart from being bad practice, this will cause the landlord difficulties later if there is a need to evict a tenant for arrears of rent.

4.3.2 Benefits of written tenancy agreements

A written agreement is required by law for fixed-term tenancies of greater than three years, when the tenancy must be produced by deed, with signatures being witnessed. Even in tenancies of three years or less, landlords are strongly advised to have a written tenancy agreement, which the tenants should sign before occupation. The benefits of having a written agreement are:

- It can prevent disputes later over what was agreed
- If there is a dispute, it can help to resolve the dispute more quickly
- A well drafted tenancy agreement will help protect the interests of all parties

Landlords should note:

- After moving in, occupiers cannot be required to sign a tenancy agreement.
- It will be difficult to evict a tenant without a valid tenancy agreement.
- The accelerated procedure for recovery of possession will not be available unless the tenancy and required notices can be evidenced from valid paperwork.

4.3.3 Tenant's right to a written statement

A Housing Act 1988 tenant who does not have a written agreement has a right to ask for a written statement of any of the following main terms of the tenancy:

- The date the tenancy began
- The amount of rent payable and the dates on which it should be paid
- Any rent review arrangements
- The length of any fixed term which has been agreed.

The tenant must apply in writing to the landlord for this statement. The landlord must provide it within 28 days of receiving the tenant's written request. A landlord who fails to provide a statement of tenancy particulars without reasonable excuse, is committing a criminal offence and could be prosecuted and fined.

4.3.4 Implications of oral agreements

In law, a tenancy can be created by oral agreement. If a person occupies a property and pays rent, a tenancy will have been created even though there has been no written agreement.

A landlord cannot allow a tenant to live in a property 'on approval', on the basis that a tenancy will be granted later. The tenancy will have been created by the initial acts of occupation and payment of rent.

A person exclusively occupying a property and paying rent will legally be regarded as a tenant and be entitled to all the statutory protections provided to tenants under the law.

4.3.5 Unfair terms in tenancy agreements

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

These are the Unfair Terms in Consumer Contracts Regulations 1999. It has been confirmed that they apply to tenancy agreements. The regulations are administered and enforced by the Competition and Markets Authority (CMA) which offers guidance on the effect of the regulations on tenancy agreements.

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

A standard term is unfair if it creates a significant imbalance between the parties' rights and obligations to the detriment of the consumer and it is contrary to the requirement of good faith. If a term is found to be unfair it will be void and not enforceable – but the rest of the contract will stand.

So far as tenancy agreements are concerned:

- Any clauses which attempt to limit or exclude rights (e.g. legal rights) which tenants would otherwise have had, are likely to breach the regulations and be deemed unfair, unless there is a very good reason for them (which should be apparent from the agreement) clauses which impose any penalty or charge on a tenant must provide for or state that the charge should be both reasonable in amount and reasonably incurred.

- Where a clause states that a tenant may only do something with the landlord's written consent, this should be followed by the words '(consent not to be unreasonably withheld)' or similar.

Any clauses which are difficult to understand, or which use legal terminology, or words which have a specific legal meaning which may not be understood by the ordinary person (such as 'indemnity' or 'jointly and severally liable'), will also be vulnerable to being found invalid under the regulations.

Here is an example of how this can work

Many landlords would prefer to prohibit pets from their properties and would like a clause in the agreement saying this. However, if the clause just says, 'The tenant

is prohibited from keeping any pets whatsoever', this clause is likely to be void (ultimately only a court can decide what is or is not fair), and it will not stop the tenant from keeping pets if it is found unfair.

To make the clause more acceptable, it should say something like 'the tenant is prohibited from keeping pets, save with the landlord's written permission which shall not be refused unreasonably'.

A clause in this format is not saying a landlord has to give permission. There are many excellent reasons for refusing permission for pets – that they damage the property, that some people are allergic to them, or that the lease with the freeholder may also prohibit pets. If any of these reasons were given it would be difficult for the tenant to argue that the landlord was being unreasonable in refusing permission for a pet. The same words may be a fair term or an unfair term, depending on the context in which they are used.

It is easy to breach the regulations and render clauses invalid by inexpert adaptations. Professionally drafted tenancy agreements sold by reputable publishers and landlord associations will be drafted with these regulations in mind. Note also, that from time to time new cases may be decided or new guidance issued by the CMA which will need to be reflected in the form of tenancy agreements.

Make sure that the agreements in use are the most recent versions and do not use old versions.

4.4 Making an inventory/schedule of condition

Having an inventory (also known as a statement or schedule of condition) is essential if the property is let furnished, and a very good idea even if it is unfurnished. An accurate and current inventory will help to protect the position of both parties and can provide evidence to prove the condition of the property at the time it was let.

Care should be taken when preparing an inventory. Make a detailed list of all the belongings and furniture provided when a tenant first moves in. It is also essential to record the condition of such things as walls, doors, windows, and carpets etc. The inventory should be agreed with the tenant before they move in and a separate copy of the list held by each party. This should then be checked again at the time the tenant moves out. The inventory will only provide protection if it is agreed by both parties and if it is thorough and detailed. If the inventory simply records 'four chairs', that says nothing about whether they match, or about their quality or condition. The condition of the furniture, including existing damage to the furniture and fittings, decorations and other contents should be noted on the inventory and agreed with the tenant.

Photographs are often a good idea, particularly with high value furnishings. The use of digital photographs is not always accepted by the courts as evidence so it is advisable to print the photographs and for both the landlord and tenant to sign and date the photographs as an accurate image. With some properties, landlords and agents are now also taking videos but this has more limited value in dispute resolution as they are much harder to work with.

A thorough and detailed inventory will help avoid disputes, particularly those involving the return of a deposit. It is advisable to keep all receipts and to make a record of the meter readings in the inventory.

Taking an inventory is a long job and many landlords now use professional inventory clerks to do this for them. The advantage of this is that, if a dispute over the condition of the property ever happens, they will be able to give independent evidence to the judge. If a dispute about the condition of a property goes to court or to a deposit scheme adjudicator, generally it will be for the landlord to prove the claim that the deposit (or part of the deposit) should be withheld.

Inventory clerks can be found via the website of the Association of Independent Inventory Clerks.

4.5 Deposits and tenancy deposit schemes

4.5.1 Requiring a deposit

Landlords often feel that holding a deposit means a tenant is less likely to abandon a property and instead terminate the tenancy correctly. Also a deposit can act as an incentive to ensure that the property is properly cleaned and cleared at the end of the tenancy and help to protect against any unpaid rent at the end of the tenancy.

The amount of the deposit to be levied is part of negotiating a contract or agreement with the tenant. The amount of the deposit can vary significantly and depends on how much 'risk' the landlord perceives they are taking by letting the property to that tenant. Large deposits, however, can deter prospective tenants and there is considerable judgement to be exercised in setting a market-friendly, but practical, deposit level.

Many landlords take a deposit from tenants to hold for the duration of the tenancy. When the tenant moves out the deposit is returned minus deductions for any damage (above fair wear and tear), cleaning and unpaid rent.

4.5.2 Withholding part of the deposit

A deposit (or part of it) can only be withheld if it is stipulated within the contract what the deposit is being held against.

Deposits can cover:

- Damaged items
- Outstanding debts attached to the property
- Failure of the tenant to carry out obligations set out in the tenancy agreement such as cleaning
- Non-payment of rent
- Other breaches of the tenancy

In assessing any damage, allowance must be made for fair wear and tear, the cost of which is not deductible from the deposit. Fair wear and tear is paid for in the rent charged. Wear and tear arises from normal living in a property. Landlords should not expect to receive a property back in the same condition it was let at the start of the tenancy. Tenants should be expected to return the property in a clean and tidy condition. But after, say, a tenancy of two years' normal living, a landlord will just have to accept that paintwork might be looking tired and carpets might be looking worn.

At the end of the tenancy the inventory should be checked and an assessment made of the condition of the property - taking into account reasonable wear and tear.

If a claim is going to be made from the deposit the landlord should account for this with invoices or receipts and try to reach agreement with the tenant about the proposed deposit deductions. The landlord should promptly send any unclaimed balance of the deposit to the tenant. The landlord should not keep the full deposit as a way of getting the tenant to agree to deductions about part of the deposit.

Because a small minority of landlords wrongly withheld or did not return deposits the Government introduced in the Housing Act 2004 a statutory deposit protection scheme. This safeguards all deposits taken under an assured shorthold tenancy after 6 April 2007 or assured shorthold tenancies that have been renewed since that date. Deposits relating to other types of tenancies are not covered.

4.5.3 Betterment

Betterment is an insurance principle, and it essentially means that you cannot claim for more than you have lost.

A good example of betterment is if you write off a brand new car after driving it for 12 months you will not be entitled to replacement brand new car. A new car would be worth more than the value of your car after 12 months of use. You can only claim for what you have lost.

The deposit protection schemes, in accordance with industry best practice, will employ the principle of betterment when assessing a claim.

It is good practice to calculate an annual depreciation value which is calculated as the cost of a new replacement item divided by the number of years of a reasonable lifespan. This is then multiplied by the number of years use you have been deprived of.

Therefore a claim for an £1,000 carpet, ruined after 2 years that would have a normal lifespan of 10 years in a rental property would be valued at £800.

4.5.4 Protecting a deposit

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

- A deposit must be dealt with in accordance with an authorised tenancy deposit protection scheme from the moment of receipt.

- Landlords must comply with their chosen scheme's initial requirements within 14 days of receiving the deposit.

- Landlords must give the Prescribed Information to the tenant, and to anyone who paid the deposit on the tenant's behalf, within 14 days of receiving the deposit.

Section 184 of the Localism Act 2011 (which came in to force on 6 April 2012) extends the 14-day time limits for initial requirements and Prescribed Information to 30 days. Although the Localism Act means more time to comply, it also means less opportunity for retrospective compliance. Tenants can claim compensation if the deadlines are missed.

The Localism Act also makes it clear that tenants (or someone who paid the deposit on the tenant's behalf) can still take a landlord to court after the tenancy has ended, if the landlord failed to protect a deposit or give the Prescribed Information within the 30-day deadline.

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

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

There are two types of deposit protection scheme:

1. Custodial

The custodial scheme is open to all landlords and letting agents and is free to use. The landlord or agent must pay the deposit to the scheme administrator within 30 days of receipt. The scheme is funded from the interest the scheme operator makes on the deposits they hold. This scheme tends to be used mainly by smaller landlords.

2. Insurance

Landlords and/or agents pay a fee to join insurance schemes. Insurance schemes operate on the basis that the deposit continues to be held by the landlord or agent during the tenancy. If there is a dispute about the deposit at the end of the tenancy, the deposit-holder must pay the disputed amount to the scheme. The scheme will make an award either based on the decision of the scheme's adjudicator, or an order by the court, or if the parties are subsequently able to reach agreement. The deposit money is insured, so that if the landlord or the agent does not pay the correct amount to the scheme when requested, the scheme can claim on the insurance and pay the tenant's award, and then try to recover the tenant's award from the landlord or agent. If there is no dispute about the proposed deductions from the deposit, tenants can often receive their deposits (or the balance due to the tenant) more quickly under these schemes because the landlord/agent can simply pay it back (rather than wait for the custodial scheme to refund the money).

Currently there are three schemes authorised by under the Housing Act 2004. It is for the landlord to decide under which scheme the deposit will be held, either the custodial or an insurance-based scheme.

There are two insurance-based schemes:

The custodial scheme is run by The Deposit Protection Service (DPS).

MyDeposits is a partnership between the National Landlords Association and Hamilton Fraser Insurance. Mydeposits is aimed principally at private landlords.

The Tenancy Deposit Scheme is run by the Dispute Service and aimed principally at agents. It now only accepts members of specified professional bodies.

Different membership options are now available through the schemes. For example, managing agents may pay a membership fee which then covers that agent for all deposits they receive. Alternatively a landlord with only one or two properties who does not use an agent may be able to pay a flat fee per deposit, and this may be more cost-effective.

Landlords or their agents should familiarise themselves with the rules of their chosen scheme. The rules may direct landlords and agents to include special clauses in their standard tenancy agreements, for example. If tenancy agreements or other documents are not in the form required by the scheme, or if timescales are ignored, the adjudicator may award the full deposit to the tenant by default – whatever the merits of the landlord's claim.

Prescribed Information

The Prescribed Information, also known as a Section 213 notice, which landlords or agents must give to tenants includes information about the chosen deposit protection scheme. This information must be given to the tenant (and anyone who may have paid the deposit on the tenant's behalf – known as a Relevant Person) in less than 30 days after the taking of the deposit. Each scheme will have its own requirements for what the prescribed information should include but the tenant should be passed a copy of the signed deposit protection certificate as well as written confirmation of:

- details of the tenancy deposit scheme used
- the scheme's information leaflet
- how to get the deposit back when the tenancy ends

- what to do if there is a dispute about the return of the deposit
- the landlord's name, address and contact details (or the agent's details)
- the amount of deposit paid
- the address to which the deposit relates

The Deregulation Act 2015, which came into force in March 2015, amended the prescribed information rules to allow agents to serve the prescribed information on the landlord's behalf and with the agent's details listed as the contact information.

To avoid disputes about deposits having to go to court, all the schemes have an alternative dispute resolution (ADR) service which seeks to resolve disputes that have arisen about deposits. Use of a deposit protection scheme's ADR service is not compulsory. Both landlords and tenants still have the option of going to court but they cannot do both. In some cases, landlords who took their case to court were ordered by the judge to use the ADR service. There is a general obligation in the Civil Procedure Rules (the court rules) to try other means of resolving disputes before going to court – because court proceedings are often time-consuming and expensive all round.

4.5.5 Relevant Person

Where a third party provides the deposit, i.e. money changes hands as opposed to the guarantee schemes listed below, then under the Housing Act 2004 that person is a 'Relevant Person' and needs to be provided with a copy of the prescribed information. This is very common in student letting where parents often provide the deposit and some local authorities will provide a physical monetary deposit rather than a guarantee. The Relevant Person should also be provided with a copy of the tenancy agreement, as it could help to avoid or resolve disputes later if they are told up front what the deposit might be used for.

Just like tenants, Relevant Persons can claim against landlords or agents if they are not given prescribed information or if the landlord/agent fails to comply with the chosen deposit protection scheme's initial requirements.

4.5.6 Lead Tenant

The custodial scheme (DPS) and the Mydeposits insured scheme both use a 'Lead Tenant' system. This applies in any situation where more than one person has an interest in the deposit. This could be where there are joint tenants, parents of students or local authorities providing the deposit. In setting up the Lead Tenant all parties with an interest in the deposit need to agree who that will be and then only that person will have authority to deal with the deposit at the end of the tenancy. This may cause problems with students signing a joint tenancy trying to get six parents who have not met to agree which of them will be the only one with

the right to argue about this at the move-out, or if they choose a Lead Tenant who leaves the property before the end of the tenancy.

If a local authority had provided the deposit, the Lead Tenant may not be a tenant at all but the local authority which paid a deposit on behalf of the tenant.

4.6 The Deregulation Act 2015 – tenancy deposits rules

The Deregulation Act 2015 received Royal Assent on 26 March 2015 and the changes in the Act in relation to tenancy deposit rules came into force immediately.

If a deposit was taken before 6 April 2007 and the tenancy became periodic after that date, the deposit must now be protected and the Prescribed Information issued to the tenant. A 90 day grace period has been granted for this amendment to the tenancy deposit rules. Therefore, if this applies to one of your tenancies you need to comply by 23 June 2015. If you protect the deposit and serve the Prescribed Information, the deposit will be treated as if it has always been protected. However, if you don't you will be in breach of the legislation and you will be unable to evict the tenant using a Section 21 notice. You may also face a fine of up to three times the value of the deposit.

If you have a deposit taken before 6 April 2007 and which became periodic before that date you do not have to protect the deposit. However, if you wish to issue the tenant a Section 21 notice you will need to return the deposit or protect it before the Section 21 notice can be served.

In addition, for tenancies started after April 2007 where the deposit was protected and the Prescribed Information passed to the relevant parties during the fixed term there is now no need to reissue the Prescribed Information at the end of the fixed term or on tenancy renewal. This is on the proviso that the deposit remains protected with the same deposit protection scheme and the tenancy details have not changed. If the tenancy deposit is moved into another scheme or any of the tenancy details (i.e. tenants, landlord, property information) change you will need to re-serve the Prescribed Information.

The Prescribed Information rules have been amended to allow for agents details to be given instead of the landlord's details where the agent is managing the deposit on the landlord's behalf. Previously the landlord's direct contact details had to be given as part of the Prescribed Information irrespective of whether they employed an agent to manage the property.

4.8 Rent setting

Before the tenancy begins, the landlord and tenant should mutually agree the rent, including arrangements for when to pay and review it. The details of these matters should be included clearly in the tenancy agreement. If the tenancy is for a fixed term, the rent given in the agreement will last for the whole of the fixed term unless there is a rent review clause.

During the first six months of a tenancy, tenants have rights to refer the rent to the First-Tier Tribunal for review if they consider the rent to be above the market rent. This is, however, very rarely done.

Where the annual rent is greater than £25,000, the tenancy cannot be an assured or assured shorthold tenancy under the Housing Act 1988 (see information above).

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

4.8.1 Rent book

A landlord is legally obliged to provide a rent book if the rent is payable on a weekly basis (failure to do so is a criminal offence). The rent book provided must, by law, contain certain information (Section 4, Landlord and Tenant Act 1985).

Standard rent books for assured and assured shorthold tenancies can be obtained from law stationers and larger general stationers. However, the landlord should also keep a record of rent payments and provide receipts for rent paid (particularly for cash payments) for all tenancies to avoid any disagreements later.

4.9 Raising the rent

Normally, it is not possible to review the rent during the fixed term of the tenancy unless either there is a valid rent review clause, or the tenant agrees to the review. If the tenant agrees, this should be recorded (perhaps by seeking the tenant's signature on a new tenancy agreement).

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

1. A rent review clause in the tenancy agreement

2. Agreement with the tenant

3. Notice under Section 13 of the Housing Act 1988

Rent review clauses in the tenancy agreement

A clause can also be included to review the rent after the fixed term has ended. The clause must comply with the provisions of the Unfair Terms in Consumer Contracts Regulations. Clauses allowing the landlord to review (and particularly to increase) the rent as he sees fit are likely to be unenforceable. Any increase upon a valid rent review is more likely to be enforceable if it can be justified by a recognised/established factor (such as significant improvements to the property or general cost increases reflected in the Retail Prices Index).

Clauses which provide for very large increases will normally be void. For example, where the rent increase is not to achieve a fair rent for the property but to increase the rent to a level where it would jeopardise the security of the tenant or by causing rent arrears or artificially raising it over £100,000.
A rent review clause could also be challenged by referring it to the First-Tier Tribunal.

Rent increase by agreement

It is also possible to review the rent by seeking the tenant's signature to a document (such as a copy letter to the tenant proposing the new rent) which confirms agreement. Landlords wishing to do this are encouraged to speak to the tenant first to gauge whether or not they are content with the proposed new rent.

Once agreement has been reached, the landlord should send a formal duplicate letter proposing the new rent and asking the tenant to sign, date and return one copy to confirm their agreement. If the tenant fails to return the letter or fails to pay the new rent, then the rent will not have been validly reviewed. The review will be less susceptible to challenge if the landlord gives the tenant something in exchange for any increase in rent – for instance improving the facilities or condition of the property. If this is to be the case, it should be recorded in a letter from the landlord to the tenant. It is not possible to increase the rent unilaterally by simply sending a letter to the tenant telling them that their rent will be increased from a specific date. If the tenant agrees to this and starts paying the rent the increase is agreed but if the tenant does not agree they can to refuse to pay the increase.

Rent increase by notice under Section 13 of the Housing Act 1988

If the tenancy is an assured or assured shorthold tenancy the landlord can use a formal procedure in Section 13 of the Housing Act 1988 to propose a rent increase. To do this a special form is needed, which is obtainable from law

stationers, some landlord associations, and some of the online services for landlords. It should be noted that the rent can only be increased by Section 13 after the fixed term has ended, and that this facility can only be used once every 12 months.

The form must be completed in full, and served on the tenant. At least one month's notice must be given to the tenant. If the tenant does nothing during this period, then the rent increase will take effect.

If the tenant feels the rent increase is too high then they can refer it to the First-Tier Tribunal for review. The application must be made no later than the last day of the notice period or it will be invalid and the increased rent will stand. If the rent is challenged the matter will be considered by the First-Tier Tribunal rent assessment committee who, if they consider the rent is not a market rent, will substitute what they consider is a market rent. The First-Tier Tribunal's view is not always in the tenant's favour and it is not unknown for them to consider that the proposed rent may be too low.

4.10 Housing Benefit

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

LHA entitlement is based on household size but makes no consideration of the value of a given property, which removes the previous need for the Rent Service to visit the property to make a valuation.

Housing Benefit is for people on low incomes, including unemployed people, who have to pay rent. An application form has to be completed online either through the local authority website or at Jobcentre Plus. There are PCs available in the Customer Service Centre at Exeter City Council to enable the completion of an online application.

There is a Housing Benefit Landlord Information and guidance section on Exeter City Council's website for more detailed information.

4.10.1 Tenants have to provide information and proof of:

- Their income and any savings
- Their identity and sometimes details of their immigration status in the UK

- The rent to be paid (usually a written tenancy agreement is sufficient)
- The name and address of the landlord/agent

Most local authorities aim to process Housing Benefit claims within 14 days from receipt of all the appropriate documentation they have requested. They cannot pay a claim until they have all the information they need.

Regrettably, some local authorities fall short of the 14-day target, which can cause hardship and problems for both tenants and landlords. Sometimes delays can occur if a tenant does not fully understand what is required or have the required documentation.

4.10.2 Conditions for Rent Allowance and Local Housing Allowance

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

Some tenants, such as most full-time students or people who have just arrived in the country, will not be eligible to receive Housing Benefit.

Usually Housing Benefit cannot be paid for a tenant who is a close relative of the landlord; the arrangement must be that of a genuine arms-length commercial transaction.

4.10.3 Setting the rent

When someone makes a claim for Housing Benefit the maximum they will receive is the Local Housing Allowance rate applicable to the size of their household within a particular locality known as a Broad Rental Market Area (BRMA). A BRMA is where a person could reasonably be expected to live taking into account access to facilities and services. There are over 150 BRMAs covering England and local authorities can have one or more BRMAs within their boundaries. Exeter only has one BRMA.

LHA rates within BRMA's are set by the Valuation Office Agency's Rent Officers who collect monthly market evidence of private sector lettings within every BRMA in order to set LHA rates. LHA rates are updated and published annually on 1 April and are available on the Council's website.

When the new system was introduced, the LHA rate was set at the median level or fiftieth percentile. This meant that in theory 50% of the properties within a given BRMA would be affordable to people claiming LHA. However, now the LHA rate is the 30th percentile on a list of rents in the Exeter BRMA.

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

Claimants are entitled to one bedroom for:

- Every adult couple
- Any other adult aged 16 or over
- Any two children of the same sex under 16
- Any two children under 10 regardless of sex
- Any other child
- A child with a disability
- An overnight carer

This would be the maximum LHA that a claimant could receive. However, what a claimant will eventually receive when their claim is assessed is also dependent on their household income.

Finally, there are different rules for single tenants aged under 35. Housing Benefit will only pay an amount based on the average rent for a room in a shared house, even if the tenant is living in a self-contained flat (this is called the single room rent). However, not everyone aged under 35 is affected by the single room rate. If a claimant has a disability or is a care-leaver the shared accommodation rate may not apply.

In any event, the agreed contractual rent is the rent due from the tenant, and any shortfall in Housing Benefit payments should also be collected. If there is likely to be a shortfall, it is advisable to check the tenant's ability to pay it before letting the property and agree how payment will be made.

4.10.4 Non-dependants

The Council may reduce someone's Local Housing Allowance if they share their home with adults who are not dependent on them – for example, adult sons or daughters, parents, relatives or friends. It is assumed that they should pay something towards the rent, whether they do so or not.

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

4.10.5 Revised guidance on direct payment of LHA to landlords

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

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

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

4.11 Housing Benefit Reform – Universal Credit

Universal Credit is a new benefit that is being introduced in stages between 2013 and 2017 across the UK. It is anticipated that Universal Credit will be rolled out in full in Exeter in autumn 2018.

4.11.1 What is Universal Credit?

Universal Credit (UC) is the new benefit for people of working age, designed to top up their income to a minimum level. It will eventually replace benefits for people who are out of work and tax credits for people in work. UC will replace the following benefits into a single payment:

- Housing Benefit
- Income Support (IS)
- Jobseekers Allowance (JSA)
- Employment and Support Allowance (ESA)
- Child Tax Credit and Working Tax Credit
- Budgeting Loans and Crisis Loans

Many other benefits will continue to exist. Some of these will count as income when UC payments are calculated and others will not.

4.11.2 Housing Benefit when Universal Credit is introduced

Tenants will claim UC instead of Housing Benefit if they need help with rental payments. UC will contain similar allowances towards rent, which are usually paid as part of a Housing Benefit claim.

4.11.3 Universal credit will be paid monthly

Benefits payments are currently paid every fortnight to the tenant and every four weeks to a landlord. UC payments will be paid every month in arrears. It may sometimes be possible under certain circumstances for payments to be made more frequently, or to be split and paid to more than one person in specific circumstances.

There may be some circumstances when rent payments can be made direct to a landlord via an 'alternative payment arrangement' that Jobcentre Plus can arrange. For example if a claimant would be at risk of losing their home because of existing rent arrears or will get into rent arrears if payments are not made direct to a landlord.

The DWP released guidance for private and social landlords in August 2015 with up to date information on what they can do to assist their tenants in preparing for the Universal Credit.

4.12 Tenant references

Landlords should interview prospective tenants carefully to help choose one who will be trustworthy and reliable. Taking up references from a prospective tenant's current or previous landlord, employer and bank can help to inform the tenant selection process.

Some landlords might also use a tenant referencing service, which will make checks and enquiries of a prospective tenant on a landlord's behalf. Many companies provide services such as this. They can be found online or via insurers or landlord associations.

As part of the pre-tenancy referencing/checks, it is suggested landlords ask the successful tenant to provide details of a close family member or friend who can be contacted in an emergency or if the tenant leaves without notice.

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

In some niche markets, such as letting to students, it is difficult to obtain references because this will be the first time that a tenant has lived away from home. To offset this risk, some landlords ask for guarantors where a parent or friend guarantees to meet the cost of unpaid rent and/or damage up to a given threshold if this is not met by the tenant.

4.13 Unlawful discrimination

There are legal obligations on to take reasonable steps to ensure that people are not discriminated against directly or indirectly due to their race, colour, gender or disability, known as 'protected characteristics'. The specific legislation is within the Equality Act 2010.

Direct discrimination is defined as treating a person less favourably than another on the grounds of their race, gender or disability. In some cases, discrimination may occur where there has been a failure to comply with a statutory duty. In relation to disability, it should be noted that the statutory definition has been widened to include those with certain long-term medical conditions.

Indirect discrimination consists of applying a requirement or condition that, although applied equally to persons whether male or female, black or white, is such that a considerably smaller proportion of a particular racial or gender group can comply with it than others, and it cannot be shown to be 'justifiable'.

With regard to issues pertaining to disability, a similar requirement exists that landlords do not impose criteria that could be identified as 'unreasonable'.

The landlord should note that tenants should not be chosen on the basis of race, religion, marital status, disability or sexuality. If the landlord discriminates against any tenant on these grounds, the landlord could be prosecuted. However, if the landlord is letting rooms in the landlord's home, the landlord may specify the sex of prospective tenants. Age discrimination is prohibited in employment but is allowed in housing. For example, housing might have to be let to those over 55 in order to comply with planning requirements.

5.0 During the tenancy

In managing a house, and providing a service to the tenant in exchange for rent, the landlord should make every effort to establish a good working relationship with the tenant. This is particularly important when dealing with access to the property or when undertaking repairs. Part of that relationship will be good communication with the tenant and ensuring that their expectations are both reasonable and accurate about the level of service that will be delivered.

5.1 Periodic and other visits

Landlords have a common law obligation to maintain a let property reasonably free from disrepair. The local authority may take enforcement action if they identify risks including, but not limited to, items of repair under the Housing Health and Safety Rating System (HHSRS). As conditions within residential premises are now risk- assessed under the HHSRS the person undertaking visits should also be looking out for hazards. Letting a house in multiple occupation (HMO) adds specific management obligations for landlords and occupiers.

The landlord, or some responsible person acting on the landlord's behalf, should visit the house regularly. Visits can also be carried out at any other reasonable time if the tenant reports a problem. This is both to identify and to prioritise repairs and other works which may need doing and to ascertain whether the tenancy conditions are being met. It is good practice to visit at least quarterly.

Some visits will need to be undertaken by a qualified and competent person, for example, a suitably qualified gas engineer for annual gas safety checks or a competent electrician for periodic fire alarm checks. Tenants must have a means of contacting the landlord or letting agent at all times and there must be a procedure in place to deal adequately with emergencies. Any works, however identified, need to be resolved within a reasonable time period depending on their seriousness.

It is good practice to keep a record of all visits and/or referrals from the tenant, including the proposed solution and outcome. Some landlords have a standard checklist, which provides a useful prompt of things to look for and a record of what was found. Some landlords give a copy to their tenants.

Receipts should be kept when repairs are undertaken, for which the cost may be recovered for tax purposes depending on their nature.

It is important to note that, unless the tenant agrees otherwise, a landlord must give at least 24 hours written notice of any visit and its purpose. Some landlords include a note saying they will change the appointment to a mutually convenient date if requested and that unless the tenant objects they will let themselves in to

conduct the inspection. If this procedure is used it should be incorporated into any tenancy agreement.

Visits must not be intrusive to the tenant as this could constitute harassment. Any terms included in the tenancy agreement regarding access must be reasonable and fair.

These conditions apply only to areas where the tenant or tenants (in the case of a joint tenancy) have exclusive possession. Landlords can access communal areas which remain under their control at all reasonable hours. It is normally courteous to give tenants notice of any works in these communal areas that may cause them inconvenience.

5.2 Entry and refusal

Tenants have a right to quiet enjoyment of their accommodation.

Even if the landlord gives proper notice of a visit, the tenant may still legally refuse access. If a tenant refuses access the landlord should try and find out why before resorting to legal action. It may simply be the timing of the appointment and the fact that the tenant is unable to get time off work - in which case an evening or weekend appointment could be arranged.

Only if the tenant will not make alternative arrangements or where the tenant persistently causes delays and in so doing compromises the landlord's ability to fulfil their legal obligations should the landlord seek a court order to secure access or consider terminating the tenancy using the prescribed legal process.

5.3 Tenant obligations

Landlords may impose reasonable obligations on the tenant which affect their behaviour (including anti-social behaviour), and that of their visitors, through the tenancy agreement.

In addition, occupiers of HMOs have specified legal obligations as detailed under The Management of Houses in Multiple Occupation (England) Regulations 2006.

5.4 Emergencies

There are times when the property may have to be entered as a matter of urgency. Statutory bodies are able to do this in appropriate circumstances:

- Gas - contact the National Grid emergency number 0800 111 999
- Water - sewer and/or flooding: contact South West Water who are responsible for water in the area if closing the stopcock is ineffective

- Suspicious circumstances relating to criminal activity - liaise with the Police.

Landlords who enter without the consent of the tenant or against their wishes must be able to demonstrate, if challenged, that it was reasonable to enter under the circumstances.

5.5 Tenancy renewal

There is no legal requirement for either a tenant or landlord to renew a tenancy agreement after the fixed term expires. After the fixed term of a tenancy has ended, assured and assured shorthold tenancies will automatically run on as a statutory periodic tenancy (or rolling agreement), on the same terms and conditions as the preceding fixed-term tenancy. Periodic tenancies continue rolling on from month to month or from week to week, depending on how often the rent is paid. Further information can be found in What to do if the tenancy is to continue.

If a letting agent has been used to source your tenant a tenancy renewal fee could be charged if you wish to renew the tenancy after the fixed term expires. Some letting agents will also charge the tenant with an admin fee to renew the tenancy as well as the landlord. It is worth understanding the reasons for a tenant giving notice at the end of a fixed term just in case this is linked to a high tenancy renewal fee.

5.6 Changing the terms of an assured shorthold tenancy and tenancy renewal

There is a procedure whereby the landlord or the tenant can propose new tenancy terms, including a new rent. This can be done, within a year of the statutory periodic tenancy starting, using a special procedure under the Housing Act 1988. There is a special form, called a Section 6 Notice, which needs to be used, and which has to be served on the tenant. This procedure may include a change in rent (up or down) but should not be used simply to change the rent alone. For rent-only changes see Section 13 of the Housing Act. Landlords can obtain the forms from law stationers and from some of the online services for landlords.

Although rarely exercised, the landlord and the tenant both have the right to apply for an independent decision by a First-Tier Tribunal if the new rent cannot be agreed.

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

Normally any changes are made by getting the tenant to sign a new tenancy agreement, incorporating the new terms and conditions. If the tenancy is an

assured shorthold tenancy, and the tenant refuses to co-operate you will have the option of serving a Section 21 notice and ending the tenancy at the end of the fixed term.

5.7 When the tenant can leave during the tenancy

A tenant in a fixed-term tenancy can only end the tenancy before the end of the term with the landlord's agreement (accepting the tenant's offer to 'surrender' the tenancy), or if this is allowed for by a 'break clause' in the tenancy agreement.

Where a 'break clause' exists the tenant must follow any requirements for giving notice specified in the tenancy agreement.

If the agreement does not allow the tenant to end the tenancy early and the landlord does not agree that the tenant can surrender the agreement, the tenant will be contractually obliged to pay the landlord the rent for the entire length of the fixed term.

If the tenant wishes to surrender the property (end the letting before the end of the agreement), the landlord should try to mitigate their loss (future rent) by re-letting the property. Quite often a landlord will reach an agreement with the tenant to accept their surrender if they find a suitable replacement tenant, which will ensure that the landlord suffers no loss of income.

Reasonable re-letting costs can be charged, but these and any other conditions attached to the landlord's agreement to accept the surrender should be recorded in writing before the surrender takes place. Once a new tenant is found, the landlord cannot re-let without first accepting the surrender of the first tenancy so there is no 'double charging' of rent for the same period.

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

5.8 Preventing, controlling and recovering rent arrears

Proper and reasonable enquires before letting should reduce the risk of rent arrears.

It is the tenant's responsibility to make sure rent is paid in full, on time and in the manner agreed in the tenancy agreement.

Although it is not the landlord's responsibility to issue reminders or chase payments, effective procedures for managing arrears should be established because late payment is not unusual.

Landlords letting to a tenant who claims Housing Benefit as a means of helping them pay their rent should make themselves familiar with the Housing Benefit system and particularly the new system of Local Housing Allowance and its effects on new tenancies. Arrears can occur where a landlord and/or tenant fail to complete paperwork properly and on time and claims may then not be back-dated.

In times of hardship, tenants not initially claiming benefits may need to resort to Housing Benefit (HB) to help pay their rent. The landlord should be sensitive to such situations and offer support to the tenant to help them submit a claim. Offering productive support can help to reduce arrears, even though this is not a legal requirement.

Arrears can occur for a variety of reasons and sometimes this can be resolved between the landlord and their tenant. If the tenant is unable or unwilling to pay, or is habitually late in paying, then the landlord may end the tenancy using the appropriate method.

Unless trained and skilled in the procedures to terminate a tenancy early legal assistance should be sought. Failure to follow procedures properly may mean any action will fail in court. It is important not to inadvertently harass or illegally evict the tenant as both are criminal offences.

Section 8 of the Housing Act 1988 can be used to recover possession and claim arrears owed. In general, if landlords make an error, the courts will be entitled to reject the application. Sometimes the court does not have to agree with a landlord's request to terminate a tenancy even if they agree the facts claimed are true.

Arrears may also be recovered through the County Court including the 'small claims' procedure and the court will be able to give details on how to do this. Further information is available here.

A County Court Judgment (CCJ) can affect a tenant's credit rating which in turn can affect their ability to rent in the future and can act as a deterrent to running up arrears. Obtaining a CCJ against a tenant does not mean that the landlord will automatically receive what is owed. If the tenant does not pay, the judgement (or order) can be enforced but this will involve further costs.

In incurring any court or enforcement costs landlords need to consider how likely they are to be able to recover any monies owed. Bailiffs cannot take possession

of a tenant's belongings if they are on hire purchase, so a tenant's apparent lifestyle may not be a true reflection of their ability to pay. As an alternative to using bailiffs, the judgment can be enforced by means of an Attachment of Earnings Order (AEO) where the tenant is employed, or by a Third Party Debt Order where someone else who owes the tenant money pays it to the landlord instead. A CCJ can also be used to recover money from a bank account when it is in credit.

5.9 Nuisance and anti-social behaviour

Anti-social behaviour (ASB) is any behaviour which causes or is likely to cause a nuisance and annoyance to others. Examples include, but are not limited to, noise, violence, abuse, threats and use of the property for illegal drugs. Adequate checks prior to letting should minimise the risk of letting to someone who is likely to behave anti-socially and the tenancy agreement should include appropriate clauses about anti-social behaviour.

Some local authorities include a licence condition for premises which require a licence under the Housing Act 2004, stating that landlords must take reasonable action to prevent and, where necessary, to remedy anti-social behaviour.

Landlords should be mindful that tenants may be the perpetrator or the victim of ASB.

In some rare cases there is a risk of repercussions and landlords should consider their actions carefully and take advice before acting. Sometimes the police or the local authority may contact the landlord if there is a problem in one of their properties and it is important to try to work with them to resolve the situation.

A range of measures can be used including mediation, Closure Orders and or, injunctions under the Anti-social Behaviour Crime and Policing Act 2014 and/or eviction, depending on the circumstances and seriousness of the situation.

In cases of noise from the property contact the Environmental Health Department as they may be able to take enforcement action against the perpetrator including prosecution and seizing equipment.

If a landlord is aware of or suspects violence or drug-related activity, seek advice from Devon & Cornwall Police before acting. This is particularly important if the landlord is aware that the property is being used for illegal drug use, but yet fails to take any action, as a criminal offence may be committed by the landlord. In such circumstances it is very important to speak to the police about any concerns, so that they can either support, advise or initiate, the best form of action to take in any particular case.

If evidence of the anti-social behaviour is needed, the police or the antisocial behaviour co-ordinator may be able to help.

5.10 Smoking and the Health Act 2006

Since 1 July 2007 it has been illegal to smoke or allow smoking in enclosed public areas of properties. The Health Act 2006 which bans smoking imposes obligations to take action to implement the ban and creates a number of criminal offences for those who choose to ignore or break the law.

Tenants of individually let rooms and their guests are only permitted to smoke in bedrooms with the door closed. Smoking is not permitted in the common areas of the building, which are defined as public areas and smoking is not permitted in kitchens/living rooms, corridors or shared toilets or bath/shower rooms. It does not matter if all the tenants and guests agree that smoking in the common areas is acceptable – it is still not legal – because the shared areas are not part of any individual tenant's 'dwelling'. The 'dwelling' is confined to the room that has been let to them.

Where tenants are renting the entire dwelling – including tenants who are renting on a joint tenancy and jointly renting the entire premises – then there are no 'public areas' within their premises. The Health Act ban allows smoking in their shared living space, because it forms part of their dwelling.

Common stairwells and entry lobbies serving flats will be public areas. Where public areas are involved appropriate 'no smoking' signs should be clearly displayed at the entrances to and within premises in required areas. Signs must meet a number of minimum requirements. They must:

- be at least A5 size
- display the 'no smoking' symbol
- contain, in characters that can be easily read by persons using the entrance, the words 'No smoking. It is against the law to smoke in these premises'.

Inside buildings, for example at an entrance to smoke-free premises from other smoke-free premises, signs can simply show the no-smoking symbol.

Enforcement

Enforcement can be difficult. People smoking tobacco products in prohibited areas should be politely asked to desist. Tenants who refuse to desist from smoking in a public area after being asked politely to do so should be provided with a letter from their landlord advising them that their failure to adhere to this

policy is also a criminal offence, and that unless the tenant complies with the law action will be taken against them. If a tenant continues to smoke then it is recommended that they should be sent a letter by a solicitor. If no positive response is received to the solicitor's letter and other tenants are complaining then the landlord should take legal advice in considering repossession proceedings. The landlord themselves can face criminal proceedings and a hefty fine if they fail to take action to stop unlawful smoking.

6.0 Ending a tenancy

The information in this chapter about terminating tenancies and eviction is, inevitably, legalistic, but it is worth emphasising that at the end of their agreements most tenants leave their property voluntarily and many landlords experience no problems either moving into a new agreement or getting possession of their property back. This chapter deals with:

- Practical tips for a pain-free handover at the end of the tenancy
- What to do if the tenancy is to continue
- What to do if the tenant wants to leave
- What landlords can do if they want the tenant to leave
- Powers and duties of District Judges
- Applying to Court for possession
- Applying to the Court for rent arrears only
- Unlawful eviction
- Unlawful harassment

6.1 Practical tips for a pain-free end of tenancy handover

The golden rule is: be prepared. If the tenancy is for a fixed term, make a diary note straightaway of when the tenancy is due to end, and another date around two months before that. Where appropriate, contact the tenant to see whether they would be interested in renewing their tenancy, or whether they plan to leave. If the tenant is going to leave, there are a number of practical matters that the landlord can help trigger which make for a smooth ending to a tenancy:

- Arranging a joint inspection of the property to agree on any damage that needs rectifying or decoration that might need undertaking. Landlords should take a checklist with them.
- Providing information about the cleaning required to return the property in an acceptable condition (it is often worth reminding the tenant of their obligations).
- Advising the tenant about taking final utility readings and liaising with suppliers about issuing and paying final bills.

- Making arrangements for the handover of any keys.

The more attention that is paid to ending the tenancy in an orderly manner the less likely it is that there will be any problems or misunderstanding about how the tenancy can best come to an end. It is usually a good idea to confirm anything that is agreed with the tenant in writing. Follow up any problems as quickly as possible – and record them in writing.

If the tenant does not hand the property back in the condition required by the tenancy agreement, the landlord may be entitled to withhold part of the deposit. The adjudication services operated by the tenancy deposit protection schemes rely heavily on comparisons of check-in and check-out reports, so the better the quality of any check-in and check-out reports, the more likely it is that the proposed deposit deduction will be awarded to the landlord. Make sure that all photographs are clearly labelled and dated.

If the accounts for gas, electricity, water and telephone are in the name of the tenant, then the payment of these bills is a matter between the tenant and the supplier, and the supplier cannot require the landlord to pay. When the tenant moves in the landlord should notify all the suppliers of the name of the new tenant and the date when the tenancy started. Some tenancy agreements state that tenants must not change the utility suppliers during the tenancy which could potentially be an unfair term. Other tenancy agreements state that tenants must notify the landlord of the new supplier and the account number if they change utility provider. Landlords can then contact the utility provider easily at the end of the tenancy.

Landlords need to pay the bills for any services used during a void period. As there are so many different suppliers, it is helpful to notify the new tenant of the name of the existing suppliers if known.

If the gas or electricity company is trying to charge the landlord when they have been notified of the name of the new consumer (tenant), information about how to proceed can be obtained from the Citizens Advice consumer service.

6.2 What to do if the tenancy is to continue

Most tenancies in the private rented sector start life as fixed-term assured shorthold tenancy. When the fixed term of an assured shorthold tenancy ends the landlord has the following options if they want the tenancy to continue to:

- Agree a replacement fixed-term shorthold tenancy with the tenant.

- Agree to a replacement assured shorthold tenancy on a periodic basis called a contractual periodic tenancy.

- To do nothing and allow the assured shorthold tenancy to run on with the same terms, under a statutory periodic tenancy.

6.2.1 Agreeing a replacement fixed-term AST

This is not something that the landlord has to do but a replacement fixed term tenancy is advantageous for landlords who want to know that the tenant's obligations are going to continue for at least the duration of the replacement tenancy.

If a property is let through an agent agreeing a replacement fixed-term AST is likely to be encouraged. The agent may charge the landlord and/or the tenant for this service but there is no requirement on either party to renew the agreement. Renting can be expensive for a tenant so if you have a good relationship be mindful that a tenancy renewal fee may put them off renewing the tenancy with you.

Remember to check whether the tenancy deposit protection scheme being used requires re-registration of the deposit if the tenancy is renewed, because the scheme requirements vary.

6.2.2 Agreeing a contractual periodic AST

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

6.2.3 Statutory periodic tenancy

If the landlord does nothing and the tenant stays on in the property, the tenancy will automatically run on from one rent period to the next on the same terms as the preceding fixed-term assured shorthold tenancy. This is called a statutory periodic tenancy. The tenancy will continue to run on this basis until a new fixed-term or periodic tenancy is agreed, the tenant leaves or the court awards the landlord possession. The terms of the existing tenancy agreement remain in force; a notice to gain possession of the premises can be served at any time. The period of notice is linked to the period for which rent was last payable under the tenancy. Take advice if there are doubts about which notice to serve.

6.3 What to do if the tenant wants to leave

6.3.1 Tenant termination of a periodic tenancy

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

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

6.3.2 Tenant termination of a fixed-term tenancy when it expires

There is no statutory requirement for a tenant to serve notice to end a fixed-term tenancy at the end of that fixed term. The tenant is generally entitled to leave without giving any notice. Any standard clause in the tenancy agreement requiring the tenant to give formal notice to leave at the end of the fixed term (and making the tenant liable for rent in lieu of notice if they fail to do this) may contravene the Unfair Terms in Consumer Contract Regulations 1999 and could be unenforceable. Only a court can decide if any given clause is fair or not. A clause asking the tenant to inform the landlord whether or not they will be leaving, so that arrangements can be made for the property to be checked and the damage deposit returned to them should not cause problems.

6.3.3 Tenant termination of a fixed-term tenancy before it expires

If the tenant has a fixed-term tenancy but wants to terminate it before the term expires, they can only do so legally:

- With the agreement of the landlord or if early termination is allowed for by a break clause in the tenancy agreement and the tenant has followed any requirements for giving notice specified in the tenancy agreement.

- In a few rare cases, if the landlord is in very serious breach of his obligations (but the breach must be 'fundamental' to the tenancy).

If the agreement does not allow the tenant to terminate early and the landlord has not agreed that he or she can break the agreement, the tenant will be contractually obliged to pay the rent for the entire length of the fixed term. If the

landlord accepts the return of the tenancy, it is possible that the tenancy comes to an end due to 'surrender by operation of law'. This occurs where the landlord and the tenant behave in a way that is inconsistent with the continuation of the tenancy. If the tenant offers to hand back the keys, make sure that at that stage any conditions connected with that return are agreed, and record them in writing. For example, are the keys only being accepted on the basis that the tenancy continues until a new tenant signs up at the same or a higher rent? Once a landlord accepts a surrender of the tenancy, the tenant's liability for future rent ends unless it has been agreed otherwise. Unlike a claim for compensation for damage, the landlord is not under a duty to mitigate his or her loss if the tenant is liable for rent. Payment of rent is a debt, and the rent is due for as long as the tenancy continues. However, once the tenancy comes to an end (e.g. if the landlord agrees to accept the property back) the tenant's liability to continue paying rent stops (but they remain liable for any arrears that accrued up to that point).

If a tenant wants to end their fixed-term tenancy early, landlords should explain to tenants that the fixed-term tenancy requires the tenant to pay rent for the duration of the agreement. Some tenants will wish to change their plans at that point and stay at the property until a new tenant is found.

Landlords may then agree with the tenant that both of them will try to find a new tenant. Landlords should ask the tenant to agree to pay reasonable additional costs arising from the tenant's proposed departure, such as re-letting fees. Landlords should also inform tenants that any early termination of the tenancy is conditional on the property being handed back in good order, with rent paid up to the date when the new tenancy starts. Write to the tenant setting out the conditions and ask them to write back confirming acceptance of the conditions. In the meantime, to avoid any inference of a surrender occurring 'by operation of law', do not do anything that would be 'inconsistent with the continuance of the tenancy'. Do not treat the tenancy as over until the new tenancy starts.

Once a new tenant is found, there should be no 'double charging' for the same period. If an agreement is not reached, a tenant may decide to abandon a property and a landlord will have to decide if it is feasible to take any enforcement action against the tenant. This would be by way of a small claim in the County Court.

6.4 What landlords can do if they want a tenant to leave

In most cases, the procedure will involve serving some kind of notice. The type and format of notice may vary depending on the circumstances of the case. Information about specific notices is given below, but as an introduction here are some general points about service of notice:

- The tenancy agreement may specify the method and manner by which notices may be served and if the landlord does not follow the required method, the landlord's claim for possession could be struck out by the court. Any specified method in the agreement should therefore be followed.

- In the absence of a specified method of service, service by hand, preferably with a witness, should be followed and this should be backed up by an alternative method. The alternative could be by post, with either a certificate of posting or recorded delivery. At the time of making the application to court a landlord will be required to supply the court with information about the service of the notice.

- If the notice is in the wrong form, or incorrectly served, it could mean that the landlord will lose the case. It is important that you take advice if unsure what to do.

6.4.1 To end a fixed-term tenancy before it is due to expire

There will be cases when a landlord has agreed a fixed term, but needs to end the tenancy early. This might be because of a change in the landlord's circumstances, or because things are not working out with the tenant. If a landlord wishes to obtain possession of the property during the fixed term of an assured shorthold tenancy, they can only seek possession:

- If one of the grounds for possession in Schedule 2 of the Housing Act 1988 (as amended) applies

  and

- If the tenancy agreement has a clause in it providing for this (this is sometimes known as a re-entry or forfeiture clause, even though forfeiture cannot be used for assured shorthold tenancies)
  or

- By activating a properly drafted break clause and then using the Section 21 procedure

For break clauses, to be valid they must be available for use by both the landlord and the tenant, not just the landlord alone. Although a landlord can re-take possession if it is obvious that the tenant has abandoned the property, in most cases the landlord will need to obtain an order from the court. Evicting a tenant without a court order is a criminal offence (with very few exceptions).

The grounds for possession are divided into mandatory grounds, upon which the court must order possession if the landlord proves the allegation, and

discretionary grounds, upon which the court may order possession if the allegations are proved and if the court considers it reasonable to make the order. The grounds must be specified in the notice, which must be a Section 8 notice. The notice is in a prescribed form. Section 8 of the Housing Act 1988 also specifies what minimum notice period must be given – and this depends on the ground(s) being used. Many landlords will need to take advice about service of notices and termination using Section 8, until they become familiar with the procedure.

A landlord will have to consider what it is that they wish to achieve by commencing legal proceedings to end the tenancy. They will have to take into account the time, effort and cost involved and also if they have used all other methods of resolving a problem.

It may be beneficial to obtain a possession order, even on discretionary grounds, as the terms of any order may assist the landlord to influence a tenant to change their behaviour or to pay the rent arrears by instalments or maintain the garden or whatever has been the problem.

Mandatory Grounds

Grounds 1-5 of the Housing Act 1988 require the landlord to serve notice prior to the commencement of the tenancy, warning the tenant that possession might be sought for the reason stated in that ground. In some circumstances the court may decide to waive the requirement of notice if it is just and equitable to do so. Grounds 1-5 are:

Ground 1 can be used if the property to be repossessed was, or after the let is intended to be, returned to the landlord as their own home. For this ground to be successful the landlord must have notified the tenant in writing before the tenancy started, that he or she intended one day to ask for the property back on this ground.

Ground 2 relates to a lender's right to possession. If the property is subject to a mortgage the landlord will often be required to serve this notice on the tenants.

Ground 3 requires that the fixed term is less than eight months and the property has been let as a holiday home within the preceding 12 months.

Ground 4 is for further and higher education providers only.

Ground 5 is where the dwelling is owned for the purposes of a minister of religion to better carry out their duties and the residence is needed for such a purpose.

The remaining mandatory grounds, grounds 6-8, do not require notice to be given in advance of the start of the tenancy.

Ground 6 relates to recovery of possession when the landlord needs to carry out substantial building works. It cannot be used by a landlord against a tenant who was already in the property when the landlord bought it. This is particularly important as a tenant may in fact be a regulated tenant and be protected by the provisions of the Rent Act 1977 rather than the Housing Act 1988. A landlord who purchases a property should check the date that the person moved into the property and not just accept that a shorthold contract supplied by the seller is in fact a shorthold.

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

Ground 8 relates to serious rent arrears and is the main ground used by landlords of Housing Act 1988 tenancies seeking possession for rent arrears. Both at the date of the service of the notice under Section 8 of this Act and at the date of the hearing ground 8 can be used if:

- Rent is payable weekly or fortnightly and at least eight weeks' rent is unpaid.
- Rent is payable monthly and at least two months' rent is unpaid.
- Rent is payable quarterly and at least one quarter's rent (more than three months) is in arrears.
- Rent is payable yearly and at least one quarter's rent (more than three months) is in arrears.

Discretionary Grounds

The court must consider the landlord's claim and, if proved, the judge has the power to make an absolute order or a suspended order, which is usually with conditions. In some cases the court may decide to adjourn the proceedings on terms that the tenant is directed to comply with conditions. The terms of the adjournment may allow the landlord to bring the matter back to court within a given period. To gain possession the landlord will have to prove the facts and that it is reasonable for the court to award possession on the facts of the case.

Grounds 9-17 are all discretionary grounds. They refer to 'dwelling-house' but this expression would include a flat.

Ground 9 can be used where suitable alternative accommodation is available for the tenant or will be available for him or her when the order for possession takes effect.

Ground 10 can be used where some rent that is lawfully due from the tenant:-

- is unpaid on the date on which the proceedings for possession are begun and

- except where subsection (1)(b) of Section 8 of the Housing Act 1988 applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

Ground 11 can be used in cases where the tenant has persistently delayed paying rent which has become lawfully due whether or not any rent is in arrears on the date on which proceedings for possession are begun.

Ground 12 can be used where any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed

Ground 13 is for use where the condition of the dwelling-house (or any of the common parts if the dwelling is part of a larger building) has deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any other person residing in the dwelling-house. In the case of an act of waste by, or the neglect or default of, a person lodging with the tenant or a sub-tenant of his or hers, the ground can also be used if the tenant has not taken such steps as he or she ought reasonably to have taken for the removal of the lodger or sub-tenant.

Ground 14 can be used in cases of anti-social behaviour committed by the tenant or any other person living with the tenant or visiting the property if that person:

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

- Has been convicted of:

    - Using the dwelling-house or allowing it to be used for immoral or illegal purposes, or

    - An indictable (Crown Court) offence committed in, or in the locality of, the dwelling-house.

Ground 15 can be used where the condition of any furniture provided for use under the tenancy has, in the opinion of the court, deteriorated owing to ill-treatment by the tenant or any other person residing in the dwelling house. In the case of ill-treatment by a person lodging with the tenant or by the tenant's sub-tenant, the tenant has not taken reasonable steps for the removal of the lodger or sub-tenant.

Ground 16 relates to where the dwelling-house was let to the tenant in consequence of his employment by the landlord seeking possession or a previous landlord under the tenancy, and the tenant has ceased to be in that employment.

Ground 17 can be used where the tenant is the person, or one of the persons, to whom the tenancy was granted and the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by either the tenant or a person acting on the tenant's instigation.

A landlord may use several grounds on an application for possession if several grounds apply to the facts of a case. For example, it is possible to use grounds 8, 10, and 11 at the same time. There is a good reason for specifying all grounds that apply. If a tenant reduces the rent arrears to below the specified sum at the date of the hearing, and the landlord has only pleaded ground 8, the claim could be dismissed. However, if the alternative grounds also apply, the court can still make an order for possession, which may be absolute or suspended.

If one of the mandatory grounds is used and proven then the judge must make an order for possession. The date of possession should normally be 14 days from the date of the hearing but the judge has discretion for it to be postponed to a period not longer than six weeks after the making of the order.

A landlord will not necessarily know if a tenant will be represented at court, as they may not seek advice until shortly before the hearing. Therefore, any landlord who is contemplating taking legal proceedings should seek advice before doing so. The Legal Aid Agency, in conjunction with the Court Service, now provides emergency legal advice and representation at most courts for unrepresented tenants facing possession proceedings based upon rent arrears. Therefore a landlord may find that they are at a disadvantage if the tenant is represented and the landlord is not.

6.4.2 Ending a periodic tenancy – The Section 21 Notice

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

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

If the landlord does not want the tenancy to continue as a statutory periodic tenancy the landlord will need to serve a Section 21 notice to bring the tenancy to an end. The notice is known as a Section 21 notice, as the landlord's right to recover possession and the notice procedure is set out in Section 21 of the Housing Act 1988.

The Section 21 procedure is considered to be a no-fault procedure as it is not necessary for the landlord to establish that there has been any wrongdoing by the

tenant. The landlord only has to prove that the tenancy is an assured shorthold, the tenant has lived in the property for a minimum of four months, that the appropriate notice has been validly served and that either six months, or the fixed period, has expired, whichever is the longer.

The Deregulation Act introduced a prescribed form for the Section 21 notice which must be used for all tenancies that started on or after 1 October 2015.

If a landlord is likely to require the property to be returned to them immediately after the fixed term expires, the Section 21 notice cannot be served at the beginning of the tenancy as previously allowed. The Deregulation Act 2015, introduced in April 2015, states that a Section 21 notice can only be served after a tenant has lived in a property for a minimum of 4 months.

The requirements for an order for possession, under Section 21, are that:

- The tenancy is an assured shorthold tenancy.
- Any fixed term of the tenancy has expired.
- The annual gas safety check has been undertaken and the certificate passed to the tenant.
- The tenant has received a copy of the Energy Performance Certificate
- Any deposit paid was duly protected under the appropriate regulations for tenancies created on or after 6 April 2007.
- Any licence required under the Housing Act 2004 (for example a mandatory House of Multiple Occupation licence) has been applied for.

If it is necessary to regain possession of the property quickly, it may be possible to use the accelerated possession procedure. If the above requirements are met, and the Section 21 notice and tenancy agreement are available in writing, the accelerated possession procedure may be used. The accelerated possession procedure may take up to six to eight weeks after submitting the application to court, depending on the case load of the court at the time. Otherwise, the standard procedure must be followed, which will involve a court hearing.

The court cannot grant an order for possession during the first six months of the tenancy using the Section 21 procedure. It follows that the accelerated possession procedure cannot be used during that time either.

This six-month ‘moratorium’ only counts from the first tenancy agreement with that particular tenant for a particular property, not any subsequent agreements.

But if a tenant is renting a room in a shared house and moves to another room, this will count as a new tenancy and the six-month moratorium will apply, even though he or she may have lived in another room in the house for some time.

It is not uncommon for landlords to think that they cannot issue an assured shorthold tenancy for less than six months. This is not true however it is not possible to get a Court to order repossession during the first six months of a tenancy.

6.4.3 The Deregulation Act 2015 – Section 21 notices

The Deregulation Act 2015 introduces amendments to the legislation for the valid service of Section 21 notices.

From 1 October 2015 a new standardised section 21 notice is required for all tenancies made or renewed after this date. The new form does not apply to statutory periodic tenancies started before this date. However, from 1 October 2018 these provisions will apply to all tenancies in existence. The government issued guidance on the new standardised section 21 notice on 1 October 2015.

The Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 contain a copy of the standardised form (Form No. 6A).

From 6 April 2015 a Section 21 notice served after the fixed term has expired will no longer be invalid if the date of possession does not end on the last date of the tenancy period. As long as a full 2 months' notice has been served to the tenant then the notice will be valid.

The introduction of the Act also means that it is no longer possible to serve a Section 21 notice at the start of a tenancy for use at a later date, and with no time limit on its use. Now a Section 21 notice can only be served after the tenant has lived at the property for a minimum of 4 months and the notice will also need to be used within 6 months of being served or it will lapse and a new one will have to be served.

Following serving a tenant with a Section 21 notice, all rent that has been paid for a period where the tenant ceases to live in the property must be returned to the tenant unless the tenant has continued to live in the property for more than one whole day of that period. If a tenant has paid their rent and decides to leave when they receive the Section 21 notice the landlord must refund the rent payment for any period that the tenant ceases to live in the property regardless of the 2 months notice given by the landlord.

Furthermore, a Section 21 notice will be invalid if the landlord cannot prove that they have shown tenants an Energy Performance Certificate, Gas Safety

Certificate and a copy of the Government's How to Rent Guide. This guide is for tenants and landlords in the private rented sector to help them understand their rights and responsibilities. The guide can be sent by email and there is no requirement on the landlord to re-serve the guide every time it is updated. However, if the tenancy is renewed the tenant must be supplied with the latest version of guide if it has been updated since the last time it was given. This only applies to tenancies started on or after 1 October 2015.

Tenants also receive six months protection from retaliatory eviction under the Section 21 procedure where a relevant repair notice has been served by the local authority.

6.5 Powers and duties of District Judges

Judges are directed by the terms of the legislation on which the application is made, and also by the Civil Procedure Rules and other regulations.

This means that there are some things that the judge must do and some things that they may do. Judges must act fairly and impartially, and their decisions will be based upon the facts that are proven, the rules that apply to the case and/or the wider social consequences of any decision that they make. Although a judge may strike out a claim if it is defective due to an error, they may also allow some errors to be corrected and allow a case to proceed.

6.6 Absolute Orders or Suspended (Postponed) Orders

A possession order granted by the court may be made as an absolute order or suspended on terms. For example, a landlord's allegations of anti-social behaviour (ground 14) may be found to be proven and the tenant may have produced no evidence to suggest that their conduct has changed or will change. In that situation the court may decide to make an absolute order. By contrast, an application made due to breach of contract on the basis of the tenant failing to pay rent (say ground 10) may be granted as a suspended order, if the tenant has shown that since the application was made, they have commenced making regular payments towards the arrears.

6.7 Applying to Court for possession – Standard Procedure

As soon as the relevant notice period expires it is possible for the landlord either to apply to the court in person or to instruct a solicitor to do so.

Only the landlord personally, or their solicitor, can sign the court papers. A common reason for possession claims being rejected by the court is that they are signed by a letting agent. A letting agent can help the landlord draft the paperwork, but they cannot sign on the landlord's behalf and they do not have a

right to represent the landlord at court in the landlord's absence. A landlord who is likely to be absent from the UK will need to instruct a solicitor to commence legal action if they wish to be represented in their absence.

After proceedings have been issued at court there is normally a waiting period of at least a month for a court hearing. The tenant is not required to vacate the property until there is a court order requiring them to do so (although they will sometimes simply leave during this period). If a landlord attempts to evict a tenant before the court order is made, they are likely to commit a criminal, and imprisonable, offence.

If the court orders possession, the tenant will have to leave on the date specified in the court order. This is called an absolute possession order.

If the court makes a suspended possession order and the tenant breaches the conditions of it, the landlord may apply to the court for an absolute possession order or a warrant for possession, depending on the terms of the suspended order. Frequently the tenant will then apply to the court for a 'stay of execution' which may be granted by the judge if the tenant is able to present sufficient evidence of their willingness and capability to comply with the original or revised terms of the order or that something has occurred that has led to the tenant being unable to comply with the original terms. This may have been caused because the tenant had been unable to obtain advice before the previous hearing.

6.8 Evicting a tenant using accelerated possession

You can make an online claim to evict your tenants using the accelerated possession procedure if they're on an assured shorthold tenancy.

You will need to:

- complete the form online
- print out the form and sign it
- post your form and tenancy agreement to the court
- pay £355

Or you can print and complete the N5B claim form.

The claim is dealt with through an exchange of papers without a court hearing. The court will issue the claim to the tenant who is then given 14 days to provide a response. The 14 days is from a designated date of service which may be slightly later than the date the papers are received. The tenant is given the opportunity to respond to the facts given in the claim. If there is any dispute about the facts the court may decide to hold an oral hearing at short notice to make a finding of fact. If, however, the facts are not disputed and the claim is in order the judge will

make a decision to award possession, normally 14 days after the date of the decision. The date may be later if the tenant has been able to establish that they will suffer undue hardship. The date cannot be later than 42 days after the decision was made.

A landlord association may be able to recommend solicitors who specialise in housing law and who can undertake this type of work for a fixed fee. Alternatively, the various landlord websites may provide guidance on the procedure. The forms issued by the court are reasonably easy to follow and perhaps after one application has been drafted professionally, a landlord should be able to follow the guidance.

6.9 After the Court Order and eviction

The court will normally award the costs of the application for possession against the tenant but they may allow them time to pay if they are on a limited income. A landlord may feel that it is not worth seeking to claim the costs once the property has been recovered, if it is going to be difficult to administer the instalments.

The landlord can continue to accept money from a tenant at any time during the possession process, from service of the notice to eviction. Indeed, the landlord must accept rent if it is offered to them. If a possession order is made, technically this ends the tenancy. However, the court will normally order that the landlord is entitled to receive 'damages for use and occupation' until the tenant actually vacates the property, calculated on a daily basis. If possession is ordered on the grounds of rent arrears, the court will normally order the tenant to pay back the rent owed at a rate appropriate to their circumstances. If asked to consider it, the court may also award a sum to cover interest on the outstanding rent and the court costs associated with obtaining the order. If a tenant is in receipt of Income Support and Housing Benefit the court will normally award the minimum expected deduction from benefit (and such an award against the Income Support will also entitle the landlord to direct payments, even under Local Housing Allowance). After the end of the tenancy the debt will merge with any other debts that the tenant has and it will cease to be a priority. This is also relevant to whether a landlord may feel it is viable to chase a debt after the end of the tenancy. It is common advice to landlords that they may be throwing good money after bad by pursuing the debt if the tenant is unlikely to be able to pay it.

The tenant should leave the property on or before the date of possession but if they do not do so, a landlord must apply to the County Court for a Warrant for Possession. A landlord cannot themselves evict a tenant, even if they have a court order. If the tenant refuses to leave after the date specified in the order, a warrant for eviction must be obtained from the court, using Form N325: Request for Warrant of Possession of Land.

The warrant is normally served on the property or the tenant by hand, and a time is booked by the court for the bailiff to return and carry out the eviction. The landlord should attend at the same time so that the bailiff can formally hand over the property and, if necessary, arrange for the locks to be changed. If the tenant still does not have anywhere to move to it may be necessary for the tenant's possessions to be retained for a reasonable time until they can be collected or disposed of.

If the tenant has not already done so, the landlord may wish to advise the tenant to apply to the Council's Housing Options & Advice team who may assist with the provision of storage of the possessions and or temporary and permanent accommodation. That will then mean that the landlord can make arrangements for the property to be re-let.

6.10 Applying to the Court for rent arrears only

If it is not necessary to obtain possession a landlord may wish to make a claim under the terms of the tenancy agreement for debt using the small claims procedure of the County Court. The amount awarded by the court will be determined at the date of trial. If a claim is being made for interest to be paid on the arrears this must be stated on the claim form because interest will not be added to the debt automatically. If the sum is cleared and then further arrears arise it will be necessary to submit a further claim. The court service has a simple form (N1) that can be completed at the local court or using moneyclaim online. The claim fees are based upon the amount of debt due at the date of the claim. Following an application to the court a claimant and defendant may be invited to reach an agreement to settle by negotiation or by using a free telephone mediation service.

It is always worth making an effort to establish any reason for non-payment of rent before taking action. Non-payment may be a result of delays by the local authority in processing a housing allowance claim, and liaison with the tenant and local authority may well be sufficient to resolve any problem.

If the amount of the arrears (and any other charges) is less than the tenancy deposit, it may be worth applying for the case to be adjudicated in accordance with the tenancy deposit protection scheme. Make sure that good paperwork is submitted to support the claim to the adjudicator. Simply declaring on the application form that the tenant did not make a payment will not usually be sufficient.

6.11 Unlawful eviction

The Protection from Eviction Act 1977 makes it a criminal offence for any person to unlawfully deprive a 'residential occupier' of their occupation of the premises. This means that, unless the tenant agrees to vacate, the only legal way a landlord can evict a tenant is by obtaining a court order. Any term in the tenancy agreement that says otherwise will be void.

'Residential occupier' is defined in the Protection from Eviction Act 1977. It covers virtually everyone living in residential accommodation including tenants who rent from a private landlord and any of their friends or visitors who have gained lawful access to the property. It is a common belief that this Act does not apply to licences. In almost all cases it does.

The Act does specify certain limited classes of occupier, in particular lodgers who share living accommodation with their landlords, but even here eviction must not involve any force. If considering evicting a lodger the landlord should still seek legal advice before evicting because getting it wrong could be a criminal offence.

6.12 Retaliatory Eviction

Under the Deregulation Act 2015 landlords will not be able to evict a tenant who has made a legitimate complaint about the condition of their property. For tenancies started on or after 1 October 2015 if the local authority has confirmed that repair work is required at a rented property the landlord will not be able to evict the tenant for six months. This will apply to all tenancies after 1 October 2018.

Therefore a tenant with an AST is provided with six months protection from eviction under the Section 21 procedure where a relevant improvement notice has been served.

A Section 21 notice is invalid under the Deregulation Act if:

- the tenant had made a complaint about the condition of the property to the landlord in writing before the Section 21 notice was served
- the landlord did not provide an adequate or timely response to the complaint
- the landlord served a Section 21 notice on the tenant following the complaint
- the tenant contacted the local housing authority about the matters raised with the landlord
- the council served a relevant notice in relation to the dwelling (a Hazard Awareness notice is NOT a relevant notice).

Furthermore, if the Local Authority serves a relevant notice after the Section 21 notice has been served it will be invalidated due to the service of the relevant notice. In turn, possession proceedings will be struck out. However, if the relevant notice is served after a possession order has been made the order cannot be set aside.

The protection from eviction also applies to disrepair in common areas in shared areas of a building if the condition of the common parts affects the tenants enjoyment of the dwelling as a whole.

Furthermore, landlords will not be allowed to evict tenants from their properties if they have failed to provide gas safety certificates or energy performance certificates.

The protection from eviction does not apply where:

- the notice is due to a breach by the tenant to use the property in a tenant like manner,
- a relevant notice has been revoked as a result of being served in error or quashed
- the decision of the local authority to take the action to which the notice relates has been reversed
- the property is genuinely on the market for sale
- the landlord is a registered provider of social housing
- the mortgagee is entitled to exercise the power of sale

6.13 Unlawful harassment

Harassment is a criminal offence under the Protection from Harassment Act 1997. There is also a special type of harassment relevant to residential premises. It is a criminal offence under the Protection from Eviction Act 1977 for any person to harass a residential occupier, or any of their friends or visitors who have gained lawful access to the property, in such a way that as a result they could be expected to give up their accommodation.

The key elements of harassment are defined as:

Acts likely to interfere with the peace and comfort of the residential occupier or the persistent withdrawal of essential services and either is committed by any person with the intention of causing the residential occupier to leave or is committed by any person with intent to stop the residential occupier pursuing

their legal rights (for example, complaining about disrepair) or is committed by a landlord or agent who knows or has reasonable cause to believe that a likely result of their acts is that the residential occupier will leave, or will not pursue their legal rights.

Common acts of harassment include:

- Threats of violence or unlawful eviction.
- Disconnecting gas, electricity or water.
- Breaking off the key in the lock.
- Deliberately disruptive repair works.
- Frequent visits, at unreasonable hours.
- Entering the property without the tenant's permission.

Local authorities may prosecute landlords who harass tenants. If a landlord receives a letter from their local authority regarding alleged harassment against the tenant or any of their friends or visitors who have gained lawful access to the property, this should be taken very seriously. Be very careful in any dealings with that tenant and keep a detailed record of all meetings and telephone conversations. A landlord should follow any advice given to them by the Council officer and they should also seek immediate advice from a solicitor experienced in landlord and tenant law.

A landlord or agent can be prosecuted in the magistrate's court or in very serious cases a case may be transferred to the Crown Court. A penalty on conviction may include a fine of up to £5,000 and/or a term of imprisonment.

Tenants may also make a claim to the County Court for an injunction to reinstate them to the property and can claim special and general damages which can amount to tens of thousands of pounds. In addition the landlord may have to take action to terminate a new tenancy and likewise pay further compensation if they have given the tenancy to a new tenant. If an injunction is granted to reinstate a tenant and the landlord fails to abide by the order, the court may commit the landlord to prison for contempt.

7.0 The Empty Homes Service

Engaging with the problem of empty properties is crucial to meeting the housing demands within Exeter. Long-term empty properties are an unacceptable waste of resources at a time of housing shortage and economic hardship. Returning these properties back into use can help to meet the need of those on the housing waiting list. It can stimulate the housing market within Exeter; provide decent accommodation to those who are struggling to find suitable homes; and make the most of the existing housing within the city, reducing the need to build more homes.

Exeter City Council has already been successful in reducing the number of long-term empty properties in the city. There is a wealth of advice and assistance available to owners who are struggling to decide how to make the most of their properties. And now, dedicated approval of an Enforcement Policy and recent changes to Council Tax by elected members means that the Council is better equipped to change the way empty homes are dealt with.

7.1 The Empty Homes Toolkit

The Council will always seek to work with the owners of long-term empty properties in the first instance, focusing on the assistance tools at its disposal with the goal of returning a property back to use. However, should such an approach be refused or frustrated, the Council may adopt enforcement action.

7.2 Assistance

The Council will always do its upmost to resolve an empty homes issue in the most cooperative way possible, finding a mutually beneficial solution which allows the owner to keep hold of the property.

In addition to offering bespoke advice to owners of long-term empty properties, Exeter City Council offers other schemes aimed at helping to incentivise owners of empty properties to make the most of their unused resource including the Private Sector Leasing and access to Exeter Empty Homes Loan.

7.3 Landlords' Forum

Exeter City Council and the National Landlords Association (NLA) have been holding regular landlords' forums in Exeter since 2009. This is a free event open to all private landlords, letting agents and anyone interested in letting property. The next event should take place in autumn 2018 at the Flybe Training Academy in partnership with the NAL and ARLA propertymark.

For more information and to register your interest in attending future forums please contact 01392 265685 or email empty.homes@exeter.gov.uk

7.4 Private Sector Leasing scheme (PSL)

The Private Sector Leasing scheme is ideal for owners who are not experienced landlords, wish to rent out their property but do not wish to be involved in the day-to-day management of the property.
The property is leased to the Council, who then sub-let it to those in housing need. The owner of the property has no direct dealings with tenants as this is managed by the Council. Rent is guaranteed throughout the period of the lease, whether the property is occupied or not, and is paid to the owner in advance every quarter. Repairs can be arranged on the owner's behalf.

The owner can have peace of mind that their property is providing a financial return whilst requiring no direct involvement from them.

To discuss the scheme with the Housing Development Team please call 01392 265685 or email empty.homes@exeter.gov.uk.

7.5 The Empty Home Loan

Empty Home Loans are provided to owners of long term empty homes by Wessex Resolutions CIC, a Community Interest Company working in partnership with Exeter City Council. The loan can provide financial assistance for the purpose of returning an empty property back to a decent standard to sell or let privately. This is an ideal solution for an owner who owns a property in need of renovation but who does not have the funds available to complete the works.

Loans are flexible and can be tailored to the needs of the owner, but typically are for between £1,000 and £15,000, (higher sums may be available in exceptional circumstances) at a low interest rate of approximately 4%. The loan can be repaid either monthly or in a lump sum on the sale of the property. It is a condition of the loan that sufficient equity exists in the property and the loan is subject to status and availability.

Once refurbishments have been completed the cost of the work is recouped through the rental income or sale of the property. To be eligible for the scheme the property must have been empty for at least 6 months. The Housing Development Team can be contacted for further information or the Empty Home Loan leaflet can be found online.

7.6 Enforcement

Where an owner of a long-term empty property refuses the assistance of the Council, or fails to return their property back into use within a reasonable timescale, firmer measures may be pursued which would require the owner to engage or risk losing their property. When such action is required, the Council undertakes to adhere to its enforcement principles, which provide for fair, practical and consistent enforcement:

The enforcement tools available to the Council are:

- Enforced Sale Procedure (ESP)
- Empty Dwelling Management Order (EDMO)
- Compulsory Purchase Order (CPO)

7.6.1 Enforced Sale Procedure (ESP)

The enforced sale procedure can be used when the owner of an empty property has outstanding debts with the Council. In situations where the Council is forced to carry out 'works in default' to ensure that an empty property is not unsafe or impacts negatively on the locality, the costs incurred will be charged against the owner. Should the owner not pay these debts, the Council will sell the property in order to recover the costs.

An enforced sale can also be used to recover Council Tax arrears. This process can be halted at any point if the owner decides to engage and pay off their debts with the Council. Please see the appendix for a list of legislation which permits the Council to carry out works in default.

7.6.2 Empty Dwelling Management Order (EDMO)

An EDMO involves the Council talking over the management of an empty property. The Council can take action against an empty property which has been unoccupied for over two years, bringing it up to the Decent Homes Standard before letting it at an affordable rate. Any costs incurred in renovation are recovered from the property rental. A full EDMO may be granted for seven years, after which time responsibility can be handed back to the owner.

7.6.3 Compulsory Purchase Order (CPO)

A CPO is a measure available to the Council which involves the Council acquiring an empty property but, unlike with the enforced sale, its use does not require debts to be initially owed to the Council by the owner.

Government guidance states that a CPO should only be made where there is a compelling case for doing so in the public interest. More recently the National Planning Policy framework encourages authorities to acquire empty properties under compulsory powers, where it is appropriate to do so.

The advantage of compulsory purchase is that the Council can return the properties to the social rented rather than the private rented sector.

7.7 Report an Empty Property

If you are the owner of an empty property, you should contact the Housing Development Team about how they can work with you to get the property back into use. They have information on estate agents, auctioneers and the Council's Private Sector Leasing and Exeter Renting Support Service.

If you are concerned about an empty private sector property in your neighbourhood, please report the property to the Housing Development Team.

7.8 Properties identified as Empty

Once an empty property has been identified, we will contact the owner to determine the reason why their property is empty. Where appropriate, a range of options to secure reoccupation will be discussed, and advice offered as to the most suitable.

7.9 What are the options?

Our objective is always to work with owners of empty properties to help the situation. There are many options which may assist the owner which include:

- Letting the property independently
- Letting via a letting agent
- Developing the site
- Selling the site

If these options do not work, Exeter City Council may use various enforcement powers to secure reoccupation.

8.0 Useful Contacts

Accommodation for Students (AfS)
www.accommodationforstudents.com
Tel: 0845 351 9911
Email:support@accommodationforstudents.com

Association of Residential Letting Agents (ARLA)
www.arla.co.uk
Tel: 0845 250 6001

Building Control
Civic Centre, Paris Street, Exeter, EX1 1RQ
Tel: 01392 265167
Email: building.control@exeter.gov.uk

Citizens Advice Exeter
Dix's Field, Exeter, EX1 1QA
www.exetercab.org.uk/
Tel: 03444 111 111 (Monday to Friday 9.30am to 4pm)

City Development
Civic Centre, Paris Street, Exeter, EX1 1RQ
Tel: 01392 265223
Email: planning@exeter.gov.uk

Council Tax
Civic Centre, Paris Street, Exeter, EX1 1RQ
Tel: 01392 265635
Email: council.tax@exeter.gov.uk

Department for Communities & Local Government (CLG)
www.communities.gov.uk

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

Deposit Protection Service
www.depositprotection.com
Tel: 0844 4727 000

Devon & Somerset Fire and Rescue Service
www.dsfire.gov.uk

Tel: 01392 872200
Email: comments@dsfire.gov.uk

Devon County Council Trading Standards
www.devonsomersettradingstandards.gov.uk
Tel: 0345 155 1015
Email: customer@devon.gov.uk

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

Electrical Safety Council (ESC)
An independent charity committed to reducing deaths and injuries through electrical accidents.
www.esc.org.uk

Energy Performance Certificate and Home Condition Report Registers
Search for Domestic Energy Assessors (DEAs)
www.hcrregister.com

Energy Saving Trust
Tel: 0300 123 1234 (Monday to Friday, 9am to 8pm and Saturday, 10am to 2pm)
Email: energy-advice@est.org.uk
www.energysavingtrust.org.uk

Environmental Health
Civic Centre, Paris Street, Exeter, EX1 1RQ
Tel: 01392 265193
Email: environmental.health@exeter.gov.uk

Equality and Human Rights Commission
Providing advice and guidance to promote equality and human rights.
www.equalityhumanrights.com

Exeter City Council
Civic Centre, Paris Street, Exeter, EX1 1RQ
www.exeter.gov.uk
Tel: 01392 277888

Gas Safe Register
www.gassaferegister.co.uk
Tel: 0800 408 5500

Guild of Residential Landlords

www.landlordsguild.com

Health and Safety Executive
Gas Safety Advice line
www.hse.gov.uk/gas/
Tel: 0800 300 363

HM Revenue & Customs
www.hmrc.gov.uk

Housing Development Team
Civic Centre, Paris Street, Exeter, EX1 1RQ
Email: housing.development@exeter.gov.uk
Tel: 01392 265685

Housing Options & Advice
Civic Centre, Paris Street, Exeter, EX1 1RQ
Tel: 01392 265726
Email: housing.advice@exeter.gov.uk

Landlord Law - Legal information, forms and services for landlords and tenants.
www.landlordlaw.co.uk

Landlord Zone - Information for landlords, tenants and agents.
www.landlordzone.co.uk

Lawpack Publishing - Low cost forms for landlords
www.lawpack.co.uk

Mydeposits
Tel: 0844 980 0290
www.mydeposits.co.uk

National Inspection Council for Electrical Installation Contractors (NICEIC)
www.niceic.org.uk
Tel: 0870 013 0382

National Landlords' Association
www.landlords.org.uk
Tel: 020 7840 8937
Email: info@landlords.org.uk

Planning (City Development)
Civic Centre, Paris Street, Exeter, EX1 1RQ
Tel: 01392 265223

Email: planning@exeter.gov.uk

Planning Portal
Online planning and building regulations resource.
www.planningportal.gov.uk

Private Sector Housing
Civic Centre, Paris Street, Exeter, EX1 1RQ
Tel: 01392 265147
Email: privatesectorhousing@exeter.gov.uk

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

Residential Landlords' Association - Supporting all private rented sector landlords.
www.rla.org.uk
Tel: 0845 666 5000

Residential Property Tribunal Service (RPTS)
Public body that can decide many rent and leasehold disputes.
Southern Rent Assessment Panel, 1st Floor, 1 Market Ave, Chichester, PO19 1JU
www.justice.gov.uk/tribunals/residential-property
Tel: 0845 1002617 or 01243 779394

Refuse Collection
Civic Centre, Paris Street, Exeter, EX1 1RQ
Tel: 01392 665010
Email: refuse.collection@exeter.gov.uk

Shelter
Shelter is a charity that can provide advice and information on housing matters.
www.shelter.org.uk/
Tel: 0808 800 4444

Tenancy Rescue Officer – Lorrayne Ferguson
Civic Centre, Paris Street, Exeter, EX1 1RQ
Tel: 01392 265893
Email: lorrayne.ferguson@exeter.gov.uk

The Accreditation Network UK (ANUK)
The national body that publicises, promotes and shares good practice in accreditation.
www.anuk.org.uk

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

The Courts & Tribunal Service - For court forms and information leaflets.
https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service

The Dispute Service
www.thedisputeservice.co.uk
Tel: 0845 226 7837

The Housing Ombudsman Service
The Housing Ombudsman Service deals with disputes about certain landlords or Housing Associations
www.housing-ombudsman.org.uk
Tel: 0300 111 3000
Email: info@housing-ombudsman.org.uk

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

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

The National Association of Estate Agents
www.naea.co.uk

The Royal Institute of Chartered Surveyors
www.rics.org

Unipol
www.unipol.org.uk
Tel: 0845 351 9911
Email: enquiries@afsunipolcode.com

Valuation Office Agency (Exeter)
Exeter Valuation Office, Longbrook House, New North Road, Exeter, EX4 4GL
www.voa.gov.uk
Tel: 03000 501501

Appendix A – Practical checklist for landlords: obligations and considerations

Preparation before letting

- ✓ Before investing, prepare a business plan that takes into account the cost of the investment, running costs, cash flow and rent level. Allow at least 7% for voids.
- ✓ If necessary obtain permission from mortgage lender and/or freeholder for renting the property.
- ✓ Consider what part of the private rented sector market the property is designed to serve.
- ✓ Decide on the kind of tenant to let to. Is a tenant needing Housing Benefit an issue? Is the property to be let furnished or unfurnished?
- ✓ Calculate realistically whether the rental income will cover loan or mortgage payments, repairs and all the other rental costs. If not, budget to set aside money from earnings each month (in the early years) to cover any shortfall.
- ✓ Decide on the likely market rent.
- ✓ Decide whether gas, electricity and water charges are included in the rent.
- ✓ Consider who will manage the property and the cost of this. If using an agent agree costs and levels of service.
- ✓ Ensure adequate levels of relevant insurance (check the policy is suitable for rented property).
- ✓ Consider joining a landlord association and undertaking professional development.
- ✓ Obtain planning or Building Control approval for major improvement work done to property.
- ✓ Make sure the property is both safe and healthy for any potential occupiers or visitors, including;
  - adequate heating and insulation
  - free from tripping and falling hazards
  - free from significant disrepair and asbestos
  - good lighting and ventilation • good security
  - good sanitation, food preparation and is hygienic
- ✓ Obtain a tenancy agreement suitable for your letting and avoid unenforceable unfair terms.
- ✓ Decide on length of letting.
- ✓ Advertise through the internet, agent, newspaper or other means.
- ✓ Obtain an Energy Performance Certificate (EPC).
- ✓ Undertake an annual gas safety check by a Gas Safe registered engineer.
- ✓ Comply with the electrical and furniture standards.

- ✓ Deal with the tax implications of the revenue stream and inform Revenue and Customs.

If the property is a House in Multiple Occupation (HMO):

- ✓ Ensure any electrical installation is inspected by a qualified person before letting and every five years subsequently.
- ✓ Contact your local authority to check whether a licence is needed and if it is apply for a licence and comply with the conditions of the licence and the HMO regulations.
- ✓ Ensure a fire risk assessment is carried out under the Fire Safety Order.
- ✓ Ensure that smoking does not take place in public areas in accordance with the Smoking and Health Act 2006.

When the tenant moves in

- ✓ Sign the tenancy agreement - two copies, landlords retain one signed by tenant and tenant should have one signed by landlord.
- ✓ Consider asking tenant to sign bank standing order form for rent payments, or letter of authority to the Housing Benefit office if tenant is on benefit.
- ✓ Ensure the property meets with the relevant fire safety standards with the fitting of alarms and/or smoke/heat detectors and emergency lighting.
- ✓ Inform the tenant/s of utility suppliers etc. and read any relevant meters.
- ✓ If charging a deposit and letting on an assured shorthold tenancy ensure that the deposit is protected under one of the schemes available and give the required information to tenants to confirm this.
- ✓ Consider any local council schemes such as deposit guarantees.
- ✓ Keep tax records of income and expenditure and if rental income exceeds (allowable) expenditure, set an amount aside to cover future tax demands. Complete a tax return ideally soon after the end of your tax year.
- ✓ Provide receipts to tenant for any cash rent payments.
- ✓ Keep detailed records of repair requests, inspections, safety checks, repairs done, other management issues and a rent statement.

When the tenant moves out

- ✓ Make a note of when a tenancy is due to end and see if the tenant wants to extend or renew their agreement.

- ✓ Complete and agree an Inventory and Schedule of Condition (consider using professional inventory clerk, if appropriate).
- ✓ Give the tenant the landlord's (or agent's) contact details for repairs and other problems - name, address and telephone.
- ✓ Notify the utility suppliers and the local authority (for Council Tax etc.) of the details of the new tenant/s.
- ✓ If leaving, arrange a joint inspection of the property and agree on any damage or decoration that needs rectifying.
- ✓ Provide information about any cleaning required.
- ✓ Advise the tenant about taking final utility readings for the final bill.
- ✓ Make arrangements for the handover of keys.

Appendix B – First-Tier Tribunal (Property Chamber - Residential Property)

First-Tier Tribunals (formerly known Rent Assessment Committees), are made up of two or three people - usually a lawyer, a property valuer and a lay person. They are drawn from rent assessment panels - bodies of people with appropriate expertise appointed by Government Ministers.

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

Rent assessment panels have the following functions for private lettings:

- Tenants of assured shorthold tenancies can refer their rent for review during the first six months of their original tenancy, if they consider the rent is above a market rent.

- Tenants of assured/assured shorthold tenancies can refer a rent for review where the landlord has sought to increase it under the notice procedure under Section 13 of the Housing Act 1988.

- Tenants of assured/assured shorthold tenancies can refer for review a landlord's notice of a change in the tenancy agreement terms under Section 6 of the Housing Act 1988 (this is very rare and therefore will not be discussed further).

- Either landlords or tenants can refer a rent officer's decision on a 'fair rent' under the Rent Act 1977 if they disagree with it.

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

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

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

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

More information on the work of the First-Tier Tribunal is available online.

Exeter City Council

ANUK
ACCREDITATION NETWORK UK

Do you have questions about the content of this handbook?

Contact us

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