

Newcastle City Council

Landlord Development Programme

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**Newcastle
Accreditation
Scheme**

If you would like this document in large print or Braille or on audio tape, please call 0191 2736103.

This document is part of a landlord development course. If you would like a copy in another language or you would like to talk to somebody about it in your own language, please come into the Civic Centre, East End or Outer West Customer Service Centre or the Kenton Centre where we have a telephone interpreting service or you can telephone 0191 2736103.

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A landlord can be defined as "a person who lets land or a house or a room etc. to a tenant". The majority of landlords in Newcastle upon Tyne only own one or two properties, however all landlords have responsibilities, whether they have one property or many.

This handbook intends to give general advice and guidance on many aspects of being a responsible landlord. You can help prevent many common problems occurring by preparing good documentation and following the correct procedures. This handbook will give you information on how to do that and have a successful let.

Liability and disclaimer

PLEASE NOTE THAT THIS HANDBOOK IS INTENDED FOR GUIDANCE ONLY AND SHOULD NEVER BE SUBSTITUTED FOR PROFESSIONAL LEGAL ADVICE.

The law is constantly changing so expert advice should always be sought. Some sections are sourced to Accreditation Network UK: landlord Development Manual, Government Circulars and Newcastle City Councils literature. You should check with the source for further information and regular updates. This handbook deals with housing law in England and Wales only.

Starting out to be a landlord

What Do You Need to Consider?

When you are first thinking about renting out a property there are many things you need to consider before you start to advertise for a tenant : -

- If you are about to purchase a property for the rental market, consider the size and location of the property for the market you are aiming at.
- Is there a demand for rented property in that location?
- Will you employ an agent to let or manage the property for you?
- Do you want to manage the property yourself, have you got the time?
- Can you afford to have the property empty if you cannot find a tenant?
- Can you cover all costs like repairs and letting expenses - advertising and professional fees

Consider your degree of experience managing property and tenancies. The knowledge and skills needed to be a landlord are considerable.

Seek out the views of local estate agents and other related professionals before you let out a property.

Who will manage your property?

Estate Agents and Letting Agencies

Some landlords prefer to employ an agent especially if their properties are out of their local area or they do not have time to find tenants and deal with emergencies.

When employing an agent you should consider their experience or qualifications and check if an agent is part of an organisation such as

- Association of Residential Letting Agents* (ARLA)
- National Association of Estate Agents* (NAEA)
- Royal Institution of Chartered Surveyors* (RICS)
- National Approved Lettings Scheme* (NALS)
- The Housing Ombudsman Service (HOS)

This means they have certain standards to achieve and that you have somewhere to refer to in case of a dispute.

You should be very careful when choosing an agent, and choose one who will carry out their responsibilities properly.

You should also be very clear when giving agents any special instructions (such as 'no pets') preferably putting these in writing.

Make sure you ask an agent which of the Tenancy Deposit Protection schemes they have registered with (for more information on these schemes see the deposits section)

Reputable agents will be willing to put you in contact with existing customers so you can get feedback on their services – don't be afraid to check them out!

What are the financial implications?

Buying a Property

A Buy to Let mortgage is designed for people who buy a property with the intention of letting it out. They are similar to other mortgages, but the maximum loan-to-value (LTV) is usually lower, meaning that a larger deposit may be required. Other restrictions may also apply, such as minimum letting terms and rental income.

Lenders will normally incorporate a proportion of the rental income when calculating how much money they are willing to lend you.

It is advisable to get independent advice before signing up to any loan. For more information, contact the Council of Mortgage Lenders*.

If you are considering buying a property with a sitting tenant you should make sure you know what type of tenancy that tenant has. You should always ask for a copy of the first tenancy agreement as well as the more recent ones when you purchase a property with a sitting tenant as the terms of the first tenancy agreement will have implications on the current tenancy, and may affect you if you want to make changes such as putting up the rent or ending the tenancy.

(See section on Tenancy Agreement for more information).

Tax Implications

When you let out rooms or a property you should be aware that there may be tax implications.

If you receive an income from a property then this will need to be declared with the Inland Revenue. As a Landlord you will also be eligible for some allowances on some aspects of your let.

More information on taxation can be obtained from the Inland Revenue* who have produced a comprehensive free guide – 'Taxation of rents – A Guide to Property Income'.

What help can you get?

Landlord Associations

There are a number of excellent Landlord Associations nationally and locally that give landlords support and advice. Many run discount schemes and hold regular meetings with invited speakers. They can also offer a very good information network and may provide a list of helpful local contacts.

There are also a number of organisations that have Landlord Associations affiliated to them, umbrella organisations such as the National Federation of Residential Landlords (NFRL)*, the National Landlords Association (NLA)* and the Residential Landlords Association (RLA).

Other Agencies in Newcastle

The Newcastle Private Rented Service offers free advice and support to private landlords and private tenants on all matters relating to the private rented sector and has access to a large section of related information.

The Tenancy Relations Service gives advice about housing law to private sector tenants and landlords, including housing associations.

The Public Health and Private Sector Housing team based in the Regeneration Directorate have responsibility for enforcing aspects of the law relating to property conditions, they will give advice to landlords, tenants and the general public regarding these issues, however where there are significant breaches they may also take action to ensure landlords meet their statutory obligations.

Newcastle Private Landlord Forum which is a partnership between Newcastle City Council, private landlords and agencies working in the private rented sector is open to all private landlords and letting agents in the city.

See useful contacts

Health and Safety Standards

Housing Health and Safety Rating System (HHSRS)

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

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

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

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

A deficiency is a variation from the ideal standard and may be due to an inherent design or manufacturing fault, or due to disrepair, deterioration or lack of maintenance. Unnecessary and avoidable hazards should not be present. It acknowledges, however, that some hazards may exist and provides a method of deciding whether or not the degree of risk is acceptable.

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

The Council's environmental health professionals undertake assessments and they must decide for each hazard what is:

- i. The likelihood, over the next twelve months, of an occurrence e.g. falling down stairs, electrocution etc that could result in harm to a member of the vulnerable group; and
- ii. The range of potential outcomes from such an occurrence e.g. death, severe injury etc.

There are 29 hazards associated with the system, in most cases when an assessment is made, the current occupiers are ignored and the assessment is based on the likely affect of the hazard on the relevant vulnerable age group. For some hazards there is no relevant group, but for many hazards it may be either the young or the elderly.

Hazards

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

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

Physiological requirements

- damp and mould growth
- excess cold
- excess heat
- asbestos and manufactured mineral fibre
- biocides
- carbon monoxide and fuel combustion products
- lead
- radiation
- uncombusted fuel gas
- volatile organic compounds.

Psychological requirements:

- crowding and space
- entry by intruders
- lighting
- noise.

Protection against infection:

- domestic hygiene, pests and refuse
- food safety
- personal hygiene, sanitation and drainage
- water supply for domestic purpose.

Protection against accidents

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

Landlord responsibilities

As the HHSRS is not a standard there is no model guidance available to follow. Each property will have its own hazards depending upon its location, age, construction, design, state of repair etc. but landlords must take steps to make sure that the dwelling provides both a safe and healthy environment.

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

- the exterior and structural elements of the dwelling - this includes all elements essential to the dwelling including access, amenity spaces, the common parts within the landlords control, associated outbuildings, garden, yard walls etc.

- the installations within and associated with the dwelling for:
 - the supply and use of water, gas and electricity
 - personal hygiene, sanitation and drainage
 - food safety
 - ventilation
 - space heating; and
 - heating water.

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

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

HHSRS Enforcement

If a hazard presents a severe threat to health or safety it is known as a Category 1 Hazard.

If a local housing authority considers that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard. Less severe threats to health and safety are known as Category 2 Hazards and a local authority may take appropriate enforcement action to reduce the hazard to an acceptable level.

The circumstances in which local authorities will take action over Category 2 hazards will vary and will depend on the individual local authorities' enforcement policy.

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

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

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

More information on certain hazards

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

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

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

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

Excess cold

The most vulnerable age group is all persons aged 65 years and over. This is by far the most likely hazard to affect a dwelling. For example, the hazard score for a pre-1946 property will on average mean that a category 1 hazard exists and action by local authorities is mandatory.

There are 40,000 excess winter deaths in the UK each year associated with the effects of cold. It is not hypothermia, but respiratory and circulatory diseases in the elderly which is responsible for most of these deaths.

'The increase in deaths from heart attacks occurs about two days following the onset of a cold spell; the delay is about five days for deaths from stroke, and about 12 days for respiratory deaths.'

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

British Standards state that a minimum standard of heating is a fixed space-heating appliance to each occupied room. It should be capable of efficiently maintaining the room at a minimum temperature of 18°C, in sleeping rooms, and 21°C in living rooms, when the temperature outside is minus 1°C and it should be available at all times. The adequacy of loft insulation and cavity wall insulation is important and would be considered as part of any HHSRS assessment.

Falls on stairs

The most vulnerable age group is all persons aged 60 years or over. Men are more likely to die than women. Although physical injury is the most likely outcome, death may occur several weeks or months after the initial fall injury, due to cardio-respiratory illness, including heart attack, stroke and pneumonia. Several factors can influence the likelihood of an accident including the following:

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

Damp and mould growth

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

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

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

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

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

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

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

Fire

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

There are approximately 70,000 fires each year reported to the fire authorities, but it is considered that only about 20 per cent of fires are reported. It has been estimated that fires occur in about 3 per cent of all dwellings per year. In 2005 there were 300 deaths with most deaths associated with being overcome by smoke and fumes. Over 80 per cent of accidental fires in dwellings result from occupier carelessness or misuse of equipment or appliances, etc.

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

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

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

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

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

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

For more information on HMOs see relevant section.

Natural and artificial lighting

There is no age group more vulnerable than others.

It covers the threats to physical and mental health associated with inadequate lighting and includes the psychological effect associated with the view from the dwelling through windows.

Depression and psychological effects are caused by a lack of natural light or the lack of a window with a view.

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

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

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

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

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

Gas safety

It is vital that you clearly understand your responsibilities in relation to gas supply and appliances and the duties and responsibilities placed on a landlord by the Gas Safety Regulations. There are additional responsibilities for managers of HMOs.

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

Gas Safety (Installation and Use) Regulations 1998

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

You are required by the Regulations to ensure that all gas appliances are maintained in good order and that an annual safety check is carried out by a tradesperson who is registered with CORGI (Council for Registered Gas Installers).

All CORGI installers should carry identification cards which will state on the back the type of work they are authorised to carry out. For further information about CORGI installers and to locate one local to you, see the CORGI website at <http://www.corgi-gas-safety.com>.

Once the inspection has been carried out, the installer will provide you with a gas safety certificate (CP12). A gas safety certificate must be provided to tenants of properties which contain gas appliances when they first go in, and annually thereafter. Failure to do this is a criminal offence.

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

For further information about your responsibilities, contact the Health and Safety Executive for advice. Additional information and details of your local Health and Safety Executive office can be obtained from the Health and Safety Executive website at <http://www.hse.gov.uk>.

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

A landlord must:

- i. Have gas appliances checked for safety by a CORGI registered gas installer within 12 months of their installation and then ensure further checks at least once every twelve months after that.
- ii. Ensure a gas safety check has been carried out on pipe work, each appliance and flue every 12 months, except where the appliance was installed less than 12 months ago. The CORGI registered installer must take remedial action if an appliance fails a safety check.
- iii. Give a copy of the safety check record to any new tenant before they move in or to an existing tenant(s) within 28 days of the check.
- iv. Keep a record of the safety check made on each appliance for two years.
- v. Ensure that gas appliances, fittings, and flues are maintained in a safe condition.

Exceptions to the regulations

- i. The Regulations do not apply to gas appliances, which are owned by the tenant.
- ii. The Regulations do not apply to leases of more than 7 years unless it can be ended before 7 years from the commencement of the term.
- iii. The Regulations allow a defence for some specified regulations where a person can show that they took all reasonable steps to prevent the contravention of the Regulations.
- iv. Portable or mobile gas appliances supplied from a cylinder must be included in maintenance and the annual check; however they are excluded from other parts of the Regulations.

Room-sealed appliances

The regulations require that:

- gas appliance installed in a bathroom or a shower room must be a room-sealed appliance (A room-sealed appliance is an appliance which is sealed from the room in which it is located and obtains the air for combustion from the open air outside the building and the products of combustion are discharged to the open air.)
- a gas fire, other gas space heater or a gas water heater of 14 kilowatt heat output or less in a room used or intended to be used as sleeping accommodation must either be: a room-sealed appliance or it must incorporate a safety control designed to shut down the appliance before there is a build-up of a dangerous quantity of the products of combustion in the room concerned.

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.

Tenants' Duties

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

They must report any defect that they become aware of and must not use an appliance that is not safe.

You should inform tenants of this in writing and should include a clause explaining the duties in the tenancy agreement.

This would include reporting any defect and not using an appliance that is not safe.

Electrical Safety and Electrical Goods

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

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

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

The requirements for managers of HMOs are significantly different since the Management of Houses in Multiple Occupation (England) Regulations 2006 as amended impose additional duties.

Landlords' Duties and Responsibilities

You must ensure that the electrical installation and all electrical appliances are 'safe' with little risk of injury or death to humans, or risk of damage to property. This applies to when the tenancy begins and throughout the life of the tenancy. This includes all mains voltage household electric goods supplied by the landlord such as cookers, kettles, toasters, electric blankets, washing machines etc. Any equipment supplied should be marked with the appropriate CE symbol.

The best course of action is either to supply new appliances or to get appliances checked by a qualified electrician before the property is let to new tenants. All paperwork regarding the item (i.e. receipts, warranties, certificates of inspection) should be kept for a minimum period of six years. One way of helping to achieve safety is to undertake a regular formal inspection of the installation and appliances on an annual basis.

The Electrical Safety Council advises that best practice is that as a minimum, you should:

- check the condition of wiring, and check for badly fitted plugs, cracks and chips in casings, charring, burn marks or any other obvious fault or damage
- check that the correct type and rating of fuses are installed where these are re-wireable
- ensure all supplied appliances are checked by a competent person at suitable periods and that any unsafe items are removed from the

property. Record details of all electrical appliances, including their condition and fuse rating

- ensure that instruction booklets are available at the property for all appliances and that any necessary safety warnings are given to tenants
- avoid purchasing second-hand electrical appliances for rented properties that may not be safe and energy efficient
- maintain records of all checks carried out.

The Institution of Electrical Engineers recommends a formal periodic inspection and test being carried out on the installation at least once every ten years or on a change of tenancy. It may be appropriate that where the risk is found to be greater, for instance where the installation is very old or where damage is regularly found, a more frequent regime will be necessary.

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

Building Regulations Part P

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

New Work

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

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

Generally, small jobs such as the provision of a socket-outlet or a light switch on an existing circuit will not be notified to the local authority Building Control. High-risk areas such as bathrooms and kitchens are exceptions.

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

More details can be found in 'Approved Document P' published by the DCLG and in their guidance leaflet 'Rules for Electrical Safety in the Home'.

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

Further Guidance

The Building Regulations are enforced by local authority Building Control Officers and they can be consulted for further information about compliance with these Regulations.

Further information and details of your local trading standards office can be obtained from the website www.tradingstandards.gov.uk.

For further guidance about electrical safety and the competency of electricians and installers to carry out new work or undertake the formal periodic inspection and test of an existing installation, refer to the information provided on the Electrical Safety and Electrical Goods.

Access to Carry Out Repairs

Under housing law you have the right to enter a property to carry out certain repairs, at reasonable times of the day. 24 hours written notice must normally be given before such an inspection. If a tenant refuses access you must get a court order to enter and carry out the works.

Remember that at all times the tenant has the statutory right to "quiet enjoyment".

A contract clause may allow access for urgent repairs such as leaking water. See the government publication 'Repairs' for more information.

Fire Safety

You should be aware of the potential fire risks within a property. A property should have at least one or two fitted and working smoke detectors that are regularly maintained and tested. These should preferably be wired into the mains since battery operated detectors can more easily be tampered with.

Other fire precautions to consider are:

- Fire alarm/early warning detection
- Log book for tenants
- Fire doors
- Emergency lighting
- Fire extinguishers/blankets
- A planned clear escape route.

You should always take steps to protect yourself and your tenant and reduce the risk of fire wherever possible.

If the property is a House in Multiple Occupation (see section on HMO) then there are special conditions that need to be taken into consideration.

Home Security

Fear of crime is a real problem. Properties offering more security features can be easier to let.

Consider the following –

- External doors are of a good quality
- Locks have a British Standard kite mark
- A burglar alarm fitted by a qualified installer, regularly serviced
- Security marking items with an Ultra Violet Security pen or having items treated with ‘smart water’*
- Keeping a list of items with make, model and serial number
- If the property is empty inform the local police
- Keep a set of keys with a local trusted person.

In addition empty properties are also often targeted by thieves who take fixtures and fittings such as boilers, pipes, fire places and even stair cases.

You should take care to protect your property when it is empty as well, try and make the property look tenanted and well looked after and check it regularly. For more information contact the Newcastle Private Rented Service

Furniture and Fittings

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

Furniture and Furnishings (fire) (safety) Regulations 1988

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

Requirements of the regulations:

1. All new furniture (except mattresses, bed-bases, pillows, scatter cushions, seat pads and loose and stretch covers for furniture) must carry a display label at the point of sale. This is the retailer's responsibility.
2. All new furniture (except mattresses and bed bases) and loose and stretch covers are required to carry a permanent label providing information about their fire-retarding properties. Such a label will indicate compliance, although lack of one would not necessarily imply non-compliance as the label might have been removed.

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

- furniture
- beds, headboards of beds, mattresses
- sofa beds, futons and other convertibles
- scatter cushions and seat pads
- pillows
- loose and stretch covers for furniture.

The Regulations do not apply to:

- sleeping bags
- bedclothes (including duvets)
- loose covers for mattresses
- pillowcases
- curtains
- carpets

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

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

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

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

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

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

Houses in multiple occupations (HMOs)

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

Definition of an HMO

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

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

Duties upon the manager of an HMO

This section highlights some of the key duties in the Regulations:

The Management of Houses in Multiple Occupation (England) Regulations 2006 place the following duties upon the manager of a house in multiple occupation (HMO). Failure to comply with the regulations is a criminal offence.

Duty to provide information to occupiers

The name, address and telephone number of the manager must be provided to each household in the HMO, and the same information must be clearly displayed in a prominent position in the HMO (in the common parts of the HMO).

Duty to take safety measures

- means of escape from fire must be kept free of obstruction and kept in good order and repair.
- fire fighting equipment, emergency lighting and alarms must be kept in good working order
- all reasonable steps must be taken to protect occupiers from injury with regard to the design of the HMO, its structural condition and the total number of occupiers. In particular, any unsafe roof or balcony must be made safe or all reasonable measures taken to prevent access to them. Safeguards must be provided to protect occupiers with windows with sills at or near floor level
- notices indicating the location of means of escape from fire must be displayed so they are clearly visible to all occupiers.

Duty to maintain water supply and drainage

- these must be maintained in proper working order - namely in good repair and clean condition. Specifically, storage tanks must be effectively covered to prevent contamination of water, and pipes should be protected from frost damage.

Duty to supply and maintain gas and electricity

- these should not be unreasonably interrupted by the landlord or manager
- all fixed electrical installations must be inspected and tested by a qualified engineer at least once every 5 years and a results certificate obtained
- the latest gas safety record and electrical safety test results must be provided to the council within 7 days of the council making a written request for such.

Duty to maintain common parts, fixtures, fittings and appliances

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

Duty to maintain living accommodation

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

Duty to provide waste disposal facilities

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

Duties of occupiers of HMOs

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

These duties include:

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

The Regulations require that the specified duties are met and maintained. If an occupier breaches their duties under the Regulations it is likely to put their tenancy at risk, and you may be able to take legal action against the tenant.

They can also be prosecuted by the local authority with a maximum fine of £5000.

So tenants are liable to being prosecuted and fined in the same way as landlords if they fail to comply with the regulations.

Licensing of HMOs

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

Purpose of licensing HMOs

Licensing is intended to make sure that:

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

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

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

HMOs subject to mandatory licensing

Mandatory licensing applies to HMOs for which:

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

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

For clarification of whether or not your property is licensable contact your local authority. If you refuse to apply for a licence or cannot meet the criteria, yourself yet do not use an agent to manage the property, the local authority must intervene and manage the property.

Other HMOs may also require a licence through an additional local authority licensing scheme.

Additional licensing of HMOs

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

Before they can set up such a scheme, the authority must follow the legal process which includes:

- identifying the problems arising from that type of HMO
- considering whether any other course of action to deal with the problems is available
- ensuring the scheme is consistent with their local housing strategy consulting with those likely to be affected including tenants, landlords, landlord organisations etc.

A scheme does not come into effect until three months after it is made and may last for up to five years.

Selective licensing

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

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

Applying for a mandatory licence

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

- HMO is reasonably suitable for occupation by the number of people allowed under the licence
- the proposed licence holder is a fit and proper person or that the proposed manager, if there is one, is fit and proper
- the proposed licence holder is the most appropriate person to hold the licence
- the proposed management arrangements are satisfactory, the person involved in the management of the HMO is competent and the financial structures for the management are suitable.

Suitability for Occupation

This relates to the number of amenities provided and the suitability of rooms for example the size of kitchens and bedrooms/bedsitting rooms

Fit and proper person test

In determining whether the licence applicant is a 'Fit and Proper Person' the local authority will take into account a number of factors.

They have to consider:

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

The authority must also consider these offences if they have been committed by any person associated with the applicant either in a personal or working capacity.

Management Arrangements

The licence holder/manager will need to formalise the arrangements for managing the tenancy and property. They must use a suitable tenancy agreement or licence that does not contain unfair conditions. They must have a system for checking the property and its contents, for dealing efficiently with tenants complaints and anti-social behaviour and providing instructions to tenants on fire safety.

Licence conditions

A mandatory licence, which will normally last for the maximum five year period, may carry a fee to be charged by the local authority to cover their costs in administering the scheme. The licence will specify the maximum number of people who may live in the HMO. The following conditions must apply to every licence:

- a valid current gas safety record, which is renewed annually, must be provided (for properties that have gas)
- proof that all electrical appliances and furniture are kept in a safe condition
- proof that all smoke alarms and emergency lights are correctly positioned and installed
- each occupier must have a written statement of the terms on which they occupy the property. This may be, but does not have to be, a tenancy agreement.

The local authority may also apply other conditions of their own which may include any of the following:

- restrictions or prohibitions on the use of parts of the HMO by occupants
- action necessary to deal with the behaviour of occupants or visitors
- ensuring the condition of the property, its contents, such as furniture and all facilities and amenities (e.g. bathroom and toilets) are in good working order and to carry out specified works or repairs within certain time limits
- a requirement that the responsible person attends an approved training course.

The standards applicable to licensable HMOs in Newcastle upon Tyne are appended to the Handbook. Should you require guidance to ensure compliance with the Housing Health and Safety Rating System in non-licensable HMOs and in particular with regard to fire safety and room sizes (crowding) you should contact the HMO & Shared Housing team in the civic centre.

Properties which cannot be granted a licence

If the property is not suitable for the number of occupants is not properly managed or the landlord or manager is not a fit and proper person, a licence will not be granted. If an HMO is supposed to be licenced but cannot be granted one, the council must make an Interim Management Order (IMO), which allows it to manage the property.

The IMO can last for a year until suitable permanent management arrangements can be made. If the IMO expires and there has been no improvement, then the council can issue a Final Management Order (FMO). This can last up to five years and can be renewed.

Temporary exemption from licensing

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

This lasts for a maximum of three months and ensures that a property in the process of being converted from an HMO does not need to be licensed. If the situation is not resolved, then the landlord can apply for a second Temporary Exemption Notice for a further three months. When this runs out the property must be licensed, become subject to an Interim Management Order, or cease to be a HMO.

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

Right of appeal against a local authority's decision

A landlord can appeal to the Residential Property Tribunal, normally within 28 days if the local authority refuses a licence, grants a licence with conditions, revokes or varies a licence.

More information about the work of the Residential Property Tribunal Service and the jurisdiction of Residential Property Tribunals under the Housing Act 2004 can be obtained from <http://www.rpts.gov.uk>

Offences

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

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

Rent repayment orders

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

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

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

Accreditation Schemes

Accreditation is where a landlord or their properties are accepted as being of a certain standard. Newcastle City Council* has schemes for private landlords to join. Membership of accreditation schemes is sometimes required to advertise through some citywide accommodation schemes. Many of them offer incentives such as discounts or priority grant applications.

Advertising and Finding a Tenant

You may wish to use a letting agent who is affiliated to an organisation, either just to find a tenant or provide a full management service. You should check their charges and read any documentation before signing up for their services.

If you choose to find your own tenants there are several methods: -

- Adverts in the local press or shop windows
- Personal contacts
- Internet sites
- At places of work or study

Local libraries or advice centres sometimes have accommodation registers or you could try local projects like the Newcastle Private Rented Service.

Viewings

- Once you have found a prospective tenant you will need to show them around the property.
- Make arrangements for tenants to view the property, ideally when you can be present and show them around the property stating what is included.
- Give advance notice to any existing tenants that viewings are going to take place.
- Ideally only let one set of prospective tenants view the property at one time.
- Arrange viewings in daylight hours. You can show the property to its best advantage.

Tenancy Agreements

Once you have satisfactory references you can proceed to grant a tenancy. This will involve a legal agreement between you and the tenant in the form of a Tenancy Agreement.

New private rented tenancies will normally be an Assured Shorthold Tenancy. Shorthold tenancies allow landlords to let their properties for a short period only and to get it back (if they wish) after 6 months. There are some exceptions e.g. where the landlord also lives in the property. Most fixed term agreements are for 6 or 12 months.

When creating a tenancy shorter than 6 months you must be aware that the courts cannot order possession to take effect within 6 months of the start of tenancy.

Other types of agreements you may come across would include assured tenancies regulated or protected tenancies or unprotected tenancy. Special rules apply for those situations where the landlord and tenant live in the same property. In some situations where accommodation is shared a licence may be created. Individual advice may need to be obtained about those situations.

Where a tenant has an assured (non-shorthold) tenancy the most significant difference is that a landlord cannot use a section 21 notice to end the tenancy. This type of tenancy can only be brought to an end if the landlord can provide evidence that the tenant is in breach of their original agreement.

It is worth noting that if a tenant has an assured tenancy, even if they agree to sign a new tenancy agreement called an assured shorthold tenancy agreement this does not revoke their rights under their original assured agreement.

The Tenancy Agreement document:

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

Tenant's right to a written statement

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

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

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

Implications of oral agreements

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

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

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 excellent standard tenancy agreements which are available from landlord associations, law stationers, the larger general stationery stores, the many online services available for landlords.

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

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

Stamp Duty on Agreements

Following changes to stamp duty in 2004, tenancy agreements are no longer required to be stamped in order to have validity unless they are of very high rent value. However, more details can be found in the Inland Revenue leaflet 'Stamp Duty on Agreements Securing Short Tenancies' available from any Stamp Office. The Stamp Office Helpline can provide more advice on stamp duty on [0845 603 0135](tel:08456030135).

Extra Clauses

If you wish to put in extra clauses then these can be added as long as they do not go against housing law. (See leaflets on Unfair Tenancy Terms available from the Trading Standards team)

It is worth noting that at the end of the fixed term, if you have not made efforts to end the tenancy in the proper manner the tenant has a right to remain in the property. The tenancy would then become periodic and runs from one rental period to another.

Breaches in the Tenancy Agreement

A breach of the Tenancy Agreement is when a landlord or tenant fails to fulfil an obligation contained within the agreement. Action can be taken against a person when a breach occurs.

A breach includes rent arrears, anti social behaviour, damage to the property or to furniture provided.

As a general principle when an agreement is signed, even if you have not read it, you are bound by the terms of the agreement. However the Unfair Terms in Consumer Contracts Regulations apply to tenancy contracts and this may mean that some clause of the contract may be unenforceable. A tenant or a landlord cannot unilaterally cancel the agreement once it is signed in most circumstances. A landlord should seek advice if this occurs

See section "Management Issues" for further information. Always seek further advice from a Solicitor, the Tenancy Relations Officer* or the Newcastle Private Rented Service*

Deposits

Most landlords nowadays will take a 'damage deposit' from tenants to hold for the duration of the tenancy. When the tenant moves out this is returned to the tenant less any deductions for 'damage'.

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

Deposits can cover:

- damaged items
- stolen items
- outstanding debts attached to the property
- failure of the tenant to carry out obligations set out in the tenancy agreement such as cleaning
- non-payment of rent.

Allowance for fair wear & tear must be made, which is not recoverable from a deposit. Wear and tear is the sort of damage which is the result of normal living in a property.

You cannot expect to receive a property back in the same pristine condition as it was at the start. You can expect it to be clean and tidy, but if a tenant has been living in the property for two years, you must take this into account. For example paintwork will be less fresh and carpets may be worn.

You should normally ask for a deposit from the tenant when the tenancy begins. Remember to issue a receipt for any money that has changed hands and keep a copy for yourself too.

Both you and the tenant should make sure that the tenancy agreement states:

- How much the deposit is?
- Who holds it?
- When money can be deducted from it? (E.g. damage to the property or for unpaid rent)?
- When the tenant will get the money back?

Rent Deposit Schemes

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

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

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

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

For landlords the schemes can:

- provide a guarantee against damage or rent arrears
- provide assistance in getting Housing Benefit processed quickly
- in certain circumstances the bond banks can help find tenants
- offer general advice on landlord and tenant matters.

The types of services offered may vary across the country and the local authority should have details of schemes operating in your area.

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

For information on the Newcastle bond guarantee scheme, contact the Newcastle Rent Deposit Scheme on 0191 273 6103.

Tenancy Deposit Protection

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

The schemes will be of two types:

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

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

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

If deposits are taken but are not protected by one of the statutory schemes, the tenant will be able to go to court to get an order requiring you to either provide information about the scheme under which the deposit is held or to return it to him, and the court will at the same time order that you pay the tenant a fine of three times the amount of the deposit.

Also you will not be able to use the no fault section 21 procedure for obtaining possession of the property.

The following are the three companies awarded by the Government to operate the Schemes:

Custodial:

The Deposit Protection Service (DPS) - The only custodial deposit protection scheme- this is free to use and open for all landlords and letting agents.

Insurance:

The Tenancy Deposit Solutions Ltd (TDSL). This is a partnership between the National Landlords Association (NLA) and Hamilton Fraser Insurance. This insurance-based scheme allows landlords to either directly or via letting agents to hold their deposits. For more information, visit www.mydeposits.co.uk or 08717030552

The Tenancy Deposit Scheme (TDS). This scheme is run by the Dispute Service. This is an insurance-backed deposit protection and dispute resolution scheme; it provides dispute resolution and complaints handling for the lettings business. The scheme enables letting agents and landlords to hold deposits. For more information visit www.tds.gb.com or call 0845 2267837.

Further information about the details of the Tenancy Deposit Scheme is available on the website www.direct.gov.uk/tenancydeposit or call 02079444400.

If you want the tenant to pay a very large deposit, the tenant could challenge this in court under the Unfair Terms in Consumer Contracts Regulations.

For more information see the Shelter* guide 'Paying a Deposit'

Setting the Rent

One of the first decisions you have to make when letting a property is the level of rent to charge. If you use a letting agent they will advise you, otherwise you could check local newspapers and letting agents for prices on other similar properties.

- When setting the rent consider:
- What you will be providing? (E.g. additional services, furniture, etc)
- What is the likely wear and tear on the property?
- What are your likely overheads?
- Will the rental income cover any mortgage payments?
- Will the type of people who want to live in the property be able to afford it?
- Is it good value?

Remember that you need to be realistic with the rent. If you set a rent too high, you may price yourself out of the market.

You should agree the rent before the tenancy begins and the details must be included in the Tenancy Agreement.

You should also include the procedure for increasing the rent and how often the rent will be reviewed.

Raising the Rent

Shorthold Tenancies

Your tenant can apply for the rent to be reset by the Rent Assessment Committee (RAC)* provided they apply within the first 6 months of the first period of the initial tenancy. This does not apply to replacement tenancies of the same property. The RAC may raise or lower or keep the rent as it is.

The rent shown on the Tenancy Agreement will remain valid for the length of the contract unless adjusted by the RAC or a clause in the Tenancy Agreement states that it can be changed.

If a Tenancy Agreement is for an open ended periodic tenancy (i.e. not for a fixed term) you may increase the rent by agreement or in the absence of an agreement use the statutory procedure under section 13 of the Housing Act.

You should issue a Proposed Notice of Increase which can be obtained from a legal stationers such as the SPCK Bookshop The Rent Assessment Committee can also advise on how to do this by telephone on 0845 100 2614.

The landlord and tenant may come to a mutual agreement for an increase at any time before the RAC has made a decision on the proposal.

The withdrawal of the application will need to be made in writing and signed by both parties.

If a fixed term has expired and a new contract has not been signed then you can raise the rent by serving a Proposed Notice of Increase. This would potentially allow a rent increase at the end of a fixed six month tenancy. If the statutory procedure is used, further increases can be proposed at yearly intervals thereafter.

Alternatively you and your tenant can come to a mutual agreement about the level of rent.

Early and Appropriate Intervention – Rent Arrears

Good housekeeping and tenancy management.

- Ensure your records are accurate and up to date
- Always issue receipts and keep a copy for your own records
- Verify housing benefit payments received direct from the Council with the tenants rent book if any
- The dates shown on housing benefit payment cheques do not necessarily have a relevance to your contract with your tenant
- The tenant's obligations with respect to rent are not varied or changed by virtue of any claim for benefit
- If you agree to vary the written terms of the tenancy issue a written confirmation to the tenant and keep a copy of the property file

Rent being paid by the tenant

It is a fact of life that a person may sometimes be late in paying their bills. A judgement has to be made as to how long a landlord may wait before making a formal request for rent due

It is suggested that two weeks would be a reasonable time for the landlord to write a simple but formal letter seeking information about the rent due. Information could include some evidence of the reason for delay. A tenant could be reminded that rent is considered to be a priority debt by the Courts in relation to other debts or liabilities that a person may have.

The landlord may wish to advise the tenant to seek independent advice about their finances from one of the agencies on the leaflet of sources of advice in Newcastle. Debt advice may be obtained from the CAB or Money Matters. If a person's circumstances have changed an Advice and Support Worker may be able to assist the tenant.

Although these comments may appear to be directed at the tenant the knock-on effect should ideally benefit the landlord and therefore obviate the need for more formal action

On-going rent arrears

If a situation has occurred whereby arrears have been allowed to accrue such that they are significant a landlord has a choice to make of the most appropriate method of seeking to claim their legal entitlement

Questions to ask

Does the tenant agree that the rent arrears exist?

If no, then some investigation needs to be done to establish the facts.

If yes, then consider the next question

Can the tenant pay their continuing existing weekly/monthly obligation?

If no, then an application for possession may be the only option

If yes, then the landlord may be prepared to continue the tenancy – providing that the arrears do not deteriorate

Is the landlord prepared to accept small instalments to clear the arrears?

If yes, then a mutual written agreement could be used to settle the matter, saving the need for legal action. The landlord may reasonably ask for some evidence of means to pay by way of an income or expenditure sheet. This would be similar to the evidence that would be required by a Court.

If no, then the landlord will have to consider if they wish to take an action for debt as a Small Claim or for possession.

If for possession, does the landlord wish to end the tenancy as a guaranteed right but without seeking the debt.

Yes. A quick method may be issuing a non-fault notice under section 21 of the 1988 Housing Act if the tenancy is an assured shorthold - this should only be used if the fixed term tenancy has or is due to expire or if it is a periodic tenancy at least six months has expired since commencement

No. Then the landlord will have to consider if the tenant's debt comes into the mandatory grounds of at least 8 weeks or two months rent is due – depending on the terms of the tenancy.

Note this does not mean where if housing benefit is payable, the tenant's top up is 8 weeks or two months in arrears

If the rent is reduced below the figure at the day of the hearing, then the mandatory ground can be defeated.

The alternative rent arrears grounds may be used and they can still result in an outright possession order if the Court is satisfied that it is just and equitable to do so.

The alternative grounds are concerned with either persistent delay in paying rent or that some rent is due and there were arrears when the Notice Seeking Possession was served.

These are two distinct grounds although some people do think that they are the same.

The Ground of persistent delay might mean that there are no arrears when the matter is considered at Court, but the tenant as a matter of course regularly delays paying the rent. A Court would be unlikely to grant possession based upon payment by housing benefit being paid in arrears as that would be outside of the control of the tenant.

Housing Benefit

This is a payment made because a person's income is assessed as low. It is available to tenants who cannot pay their rent out of their own income. It is administered by the Local Authority, which is reimbursed by Central Government.

At present payment could go to the tenant unless they request it goes directly to the landlord (This is likely to change on the introduction of Local Housing Allowance, see section on LHA).

Entitlement depends on the claimants' income and family circumstances.

A tenant should complete a new Housing Benefit form as soon as possible after the Tenancy Agreement has been signed and send it to the local Housing Benefit office with proof of their income and a copy of the Tenancy Agreement.

Housing Benefit is only payable for the period the tenant is actually living in the accommodation.

A tenant does not have to inform you that they are getting Housing Benefit.

Some tenants have to rely on housing benefit that is paid at different times and intervals than specified in the tenancy contract. Many tenants will not be able to do anything about this. However, as a landlord you will need to prepare for any problems that may occur later.

Pre-tenancy determination (see elsewhere)

At the start of the tenancy ask the tenant to pay a minimum contribution of the difference between the contractual rent and the PTD.

If a contract is signed but a PTD was not obtained and the tenant has evidence of an existing entitlement to housing benefit the landlord should ask for at least £5.00 or £10.00 per week until the claim is processed.

Although a tenant is not required to inform a landlord that they are applying for benefit, it might be reasonable for them to provide some evidence that a claim has been made if the landlord is being asked to wait for rent to be paid. Ask the tenant to supply a copy of the receipt for their claim and/or ask them to allow the Council to disclose to the landlord information on the progress of the claim. The Council will not be able to disclose personal information on which the claim is based.

Interim payment

If the claim is taking too long to process a landlord can ask the tenant to seek an interim payment. This should allow a token amount of benefit to be paid pending final assessment.

Bare promise

Although a landlord should accept a reasonable explanation given by a tenant it is suggested that they should seek some evidence in support of a reason given for rent delay - In particular a landlord is advised to seek verification and not to delay in doing so if a tenant gives a repeated reason without any form of justification

Rent Direct

Landlords can ask tenants to direct the payment of benefit to them. A landlord may however then be responsible for the return of benefit that has been overpaid.

A landlord can also ask for benefit to be paid direct to them without the consent of the tenant if they are able to show that the rent is at least 8 weeks in arrears. In addition, the local authority may make a decision to pay the rent direct to the landlord if it is considered to be in the best interests of the tenant.

Local Housing Allowance (LHA)

Is a new form of Housing Benefit that is being introduced across the UK. LHA is based in the number of rooms people are allowed, not how much the rent is. The number of rooms allowed depends on who lives with the tenant. LHA in most cases would be paid direct to the tenant, the tenant would then be responsible to pay the landlord.

However the Local Authority can in certain circumstances make the payment direct to the landlord if they consider the tenant as being 'vulnerable' e.g. those tenants with a learning disorder or drug/alcohol problems or of the tenant falls behind with rent more than 8 weeks.

For further information please contact the Local Housing Benefit department or visit the Department for Work and Pensions website on www.dwp.gov.uk
Pre Tenancy Determinations

Until the LHA is introduced in an area it is possible to find out how much Housing Benefit will be payable before a tenancy starts by both tenant and landlord completing a Pre Tenancy Determination form.

However, these assessments are only made on the assumption that a tenant is entitled to full Housing Benefit e.g. it does not take into consideration that a tenant may have a non dependent charge (a reduction for another adult in the family who is working or gets welfare benefits independently).

References

It is advisable for you to gather certain pieces of information from a prospective tenant. The information will assist in checking references prior to creating a new tenancy.

References from former landlords are particularly useful as they can tell you how they conducted a tenancy (e.g. if their rent was paid regularly, did they look after the property?).

The information you will need from a prospective tenant will include:

- Current and previous addresses
- Contact details
- Who will be living in the property?
- Employment status
- Will they be paying full rent or receiving Housing Benefit?

By reference checking tenants you can make an informed decision as to whether you want to offer a person a tenancy or not, based upon their previous tenancy history.

- References can be personal or from an employer and some landlords ask for bank references; however there may be a charge for these.
- It is best for you to write to referees rather than accept a letter from the prospective tenant as forgeries can occur.
- You may wish to visit the tenant in their existing home to see how they keep it.
- You may also want a tenant to provide a guarantor against whom you can make a claim if the tenant defaults on payments. It is always wise to check out a guarantor too.

The Newcastle Private Rented Service can assist with reference checking for all landlords in the Newcastle upon Tyne area.

Try to be helpful to other landlords by being cooperative when asked for a reference for a previous or current tenant.

Record Keeping

Keep comprehensive records for each property and each set of tenants.

- Keep all relevant papers relating to each property and each set of tenants
- Issue receipts for rent and deposits
- Keep guarantees and receipts for items bought, safety certificates, copies of letters, notes from meetings and inspections, copies of reference checks and any information about how the tenancy was conducted. You may need it at a later date, especially financial information for tax returns.

Inventory

It is a matter of good practice to always complete an inventory at the start of every tenancy.

If you take a deposit and fail to take an inventory you will find it very difficult to claim for damages through Alternative Dispute Resolution Service as you will have no evidence of the condition of the property at the start of the tenancy to support your claim.

An example of a good inventory is included in this pack, however if you prefer to use your own always make sure it is as detailed as possible and signed by yourself and the tenant soon after the beginning of the tenancy.

If possible your inventory can be supported by photographic or video evidence.

Rent books

You are legally obliged to provide a rent book if the rent is stated to be paid weekly. It is recommended that a rent book be provided for every tenancy and that it is kept up to date. It can be used as a record of payments and to resolve any dispute.

Utility Bills

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

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

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

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

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

You can agree the meter readings with the incoming tenant, and let them know which companies are currently supplying the fuel.

The tenant can choose their own electric/gas utility supplier after one month's period of a tenancy.

Council Tax and Council Tax Benefit

Council Tax is payable by occupiers of residential property. The amount of tax payable varies according to the band in which the house has been placed; higher value properties are liable for more tax than lower valued ones. The tax is charged daily and liability starts from the day of occupation.

In some cases the Owner/ Landlord may be liable to pay Council Tax, you should check with your local authority if you are liable to pay. If a property is let out under separate contracts for each room, like a bedsit, the landlord will be liable for the payment of Council Tax

Council Tax Benefit cannot be paid where the landlord is liable for the Council Tax; however the Council Tax element of the rent is eligible for Housing Benefit.

Certain households may be eligible for a discount or exempt from paying Council Tax, such as single persons or students.

Practical checklist for landlords:

- permission from mortgage lender and/or freeholder
- planning or Building Control approval for major improvement work done to property
- make sure the property is both a safe and healthy for any potential
- occupiers or visitors, including
- adequate heating and insulation
- free from tripping and falling hazards
- free from significant disrepair and asbestos
- good lighting and ventilation
- good security
- good sanitation, food preparation and is hygienic
- gas safety check by CORGI registered installer
- comply with electrical & furniture standards
- fire alarm and/or smoke/heat detectors
- emergency lighting
- check whether HMO or other licence is needed from the council
- if letting as an HMO, comply with HMO regulations
- decide about the kind of tenant you are seeking, will you accept a tenant needing HB, and whether to let furnished or unfurnished
- decide whether gas/electricity/water rates is included in the rent
- decide whether or not to use an agent, and agree costs and level of service
- obtain insurance (NB check policy is suitable for rented property)
- consider any local council schemes such as deposit guarantees etc
- decide on the likely market rent
- calculate realistically whether the rental income (with void periods) will cover mortgage payments, repairs and all the other rental costs. If not, budget to set aside money from earnings each month (in the early years) to cover the shortfall.
- obtain a tenancy agreement suitable for your letting.
- decide on length of letting
- advertise through agent, newspaper, internet or other means.
- consider joining a Landlord Association and undertaking professional development.

Moving in... Hints and tips

Once you have agreed the rent and the terms of the Tenancy Agreement and you have completed all the necessary repairs, you should arrange a date when the tenant can move in. We have listed some other practicalities you should consider when moving a new tenant into your property.

- 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
- Give receipt for deposit (if taken). Forward to Bond Bank and notify tenant.
- Sign the tenancy agreement - two copies, landlords retain one signed by tenant and tenant should have one signed by landlord (although they can both sign them both).
- Notify gas/electricity suppliers, council tax etc, the details of the new tenant. Check the meter readings together and advise the tenant of the current utility suppliers.
- Complete and agree an Inventory and Schedule of Condition Remember to sign and date it.
- Show the tenant how the heating and other appliances work; if possible have copies of the handbooks for the tenants' reference (and keep a copy for your use in case it gets lost).
- Be around to hand the keys over to let the tenant into the property. Show the tenant which keys are for which locks including window locks and bars.
- Advise the procedure for rubbish removal - is it collected from the front or rear of the property? What is the usual collection day and method of collection (wheelie bin)? Is recyclable material collected separately?
- Give your tenants instructions on any fire escapes routes, or where fire blankets or fire extinguishers are where applicable
- Give the tenant your (or agent's) contact details for repairs and other problems. Name, address and telephone.
- keep tax records of income and expenditure
- provide receipts to tenant for cash rent payments
- keep detailed records of repair requests, inspections, safety checks, repairs done, other management issues and a rent statement
- if rental income exceeds (allowable) expenditure, set an amount aside to cover future tax demands
- complete tax return ideally soon after the end of your tax year

During a Tenancy

Routine visits

You will need to keep an eye on your properties and ensure that things are running smoothly.

To do this most landlords carry out regular inspection visits, just to check that everything is all right and to see if there is any essential repair or other work that needs to be carried out.

You may be calling regularly to collect rent, but if not make provision to visit regularly to check everything is running smoothly in the tenancy.

You should consider that people have different housekeeping standards. You cannot insist that a property is kept spotless and you cannot impose a charge if you are unhappy with the standard of housekeeping.

You should however note the following:

- any terms in the tenancy agreement regarding inspection visits must comply with the law, for example should not provide for unreasonable access (or they will be void under the regulations)
- you have a duty to carry out repairs within reasonable time limits, emergency repairs should be responded to within a reasonable time
- you should give tenants as much advice as possible of inspection visits - at least 24 hours notice in writing, and never mislead them
- you (or your agent if your property is managed by an agent) should be available to be contacted by telephone during normal working hours and have an emergency procedure in place for other times
- you should inspect the property at reasonable intervals - quarterly visits are normal.

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

Rights and refusal of entry

During the period of the tenancy the property belongs to the landlord but it is the tenants HOME. The landlord must seek the tenant's CONSENT and obtain their PERMISSION for an agreed date and time before entering a property.

These basic rules apply even though a tenancy agreement may specify that the landlord should give a certain period of written notice to obtain entry.

Section 11 of the Landlord & Tenant Act 1985- it is an implied term that the landlord has the right to enter to inspect a property having given 24 hours notice in writing.

And likewise under Section 16 of the 1988 Housing Act there is an implied term into a contract to which the section applies that the tenant will provide reasonable access for the purposes of undertaking repairs. This does not apply to improvements that the landlord wishes to carry out.

However these implied terms can not be enforced without a formal application for a Court Order.

Reasonable refusal

A tenant has the right to refuse entry even if 24 hours notice has been given, if the time or date is not convenient and reasonable for their purposes.

The tenant may have made a prior arrangement to have guests or may not be able to attend due to work or other commitments. The tenant may simply be away for a break or a holiday and not wish to allow strangers into their home without their presence. Any clause in a contract that states a landlord has the right of entry with or without the tenant's presence or consent is likely to be invalid and or in breach of the Unfair Terms Regulations

Unreasonable refusal

A tenant however should not refuse every request made for an inspection or for repairs made by the landlord. To refuse every time would be in breach of the tenants obligations under statute.

Court application

In the unlikely event that a landlord has been unable to secure any agreed access, the landlord will need to apply to the Court for an order to direct that the tenant allow the landlord and or agent access for a stated given purpose.

The Court will consider the reason for the access request and grant the order to facilitate the reason. If it is just to inspect, an order would be made to allow access at a given time. If it is to carry out a repair the order would specify that access should be given on a number of dates sufficient to carry out the work.

A tenant would be liable for the costs of a successful application. Before legal action is taken the tenant should be given a written warning that formal action was to be taken

Emergency procedures

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

- gas – contact the National Grid emergency number 0800 111 999
- Water – severe and/or flooding – contact the utility company responsible for water in your region, if closing the stopcock is ineffective
- Suspicious circumstances relating to criminal activity – liaise with the police.

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

If it was necessary to break in order to gain access you will have to supply a new key or keys to the tenant.

Changing the terms of an assured or an assured shorthold tenancy

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.

A landlord can not require a tenant to sign a new tenancy agreement in order to secure a change in the terms of the contract or to increase the rent in breach of an existing agreement. If a landlord wishes to propose a change in the terms of the contract and the tenant does not agree the landlord should use the statutory procedure under Section 6 of the Housing Act 1988. The Residential Property Tribunal Service will make a determination of the new terms to apply to the tenancy

Dealing with Anti Social Behaviour

Anti social behaviour is behaviour that causes or is likely to cause alarm, distress and harassment to one or more people not of the same household and is of a serious and persistent nature.

Landlords may experience problems relating to ASB either where their tenant is causing the problem or if their tenant is the victim.

If your tenant or their visitors are being anti social you should remind them that they are in breach of their tenancy agreement. If behaviour persists or is severe you should consider taking possession proceedings.

Prevention is better than cure, always vet tenants, many LA have a private rented service which will offer vetting. (In Newcastle contact the Newcastle Private Rented Service.)

- Make sure your tenants are aware that ASB will not be tolerated; include a clause in your tenancy agreement to support this.
- If your tenant or their visitors are being anti social you should remind them that they are in breach of their Tenancy Agreement.
- At the start of the tenancy make sure your property looks the part inside and out. Make sure that you clear out the garden of refuse or old furniture before the start of the new tenancy.
- Visit the property regularly or take on a local agent who can do this for you.
- Where possible ensure that neighbours know how to contact you (or an agent) if there have any complaints.

If you do receive a complaint make sure you act on it. Send a letter, or if you feel comfortable, maybe visit your tenants and talk to them about the complaints you have received. Let them have their say and it will then be necessary for you to come to a conclusion whether the complaint has been founded.

If you feel it would be unsafe for you to do this, or have tried and the complaints continue, contact your Local Authority who may have special officers who may be able to support you. In Newcastle contact the Newcastle Private Rented Service for general complaints or the Noise Team in Environmental Health for problems with amplified music. If the conduct is criminal it should be reported to the police

If the behaviour persists or is severe you should consider taking possession proceedings. A landlord should seek advice from their solicitor if they are thinking of commencing legal action as the tenant may have a defence to the claim and the landlord may have to pay the costs if the claim is lost.

If your tenant is the party suffering from anti-social behaviour

- Make sure your tenant knows how they can make a complaint; this will depend on whether the neighbouring property is another private let, social landlord or owner occupied.
- You should encourage them to keep a detailed and accurate record of events.
- In serious or persistent cases where you are not able to resolve the problem, for example where there are threats or violence, or where parties do not agree to mediate you should contact the local authorities ASB team or ask the Police for assistance.

As a landlord of a private tenancy, which is not a House of Multiple Occupation, you do not have any legal duty to tackle anti social behaviour concerning a neighbouring property, unless you are also the landlord of the source of the anti social behaviour.

If the problem is regular noise, contact the Environment Team who may be able to issue a noise meter or other method of recording the regular noise disturbance.

Alternatively if the noise disturbance is a question of varying lifestyles between the parties, Mediation may be able to assist.

The tenant does not have the right to repudiate or refuse to honour their contract merely because there is some conduct in the vicinity that they do not like. However, if the tenant has sought information from the landlord about the neighbourhood and the landlord has knowingly misled the tenant to take on the contract, then the landlord may be liable for misrepresentation

Ending a Tenancy

You can end a tenancy at any time if your tenant agrees to this. If you wish to end a tenancy without their agreement you must first 'serve notice'.

This means giving the tenant a document which states the current date, the reason for wanting the tenancy to end and the date of the end of the notice. If the tenant remains in the property after this date you will need to take court proceedings to get your property back.

If a tenant wants to leave, either at the end of the tenancy or once the tenancy has become periodic it is reasonable that you request they give you one months notice. In the absence of a term in a fixed term contract a tenant is not required to give specific notice as it is implied at the start of the agreement. However if the landlord needs to obtain possession at the end of a fixed term or periodic tenancy it will be necessary to have served to appropriate notice.

A tenant may ask to leave during the fixed term, you do not have to agree to this, however it would be considered good business practise to listen to their reasons why they want to leave, if they can no longer afford the rent or have been offered a job elsewhere they are likely to just leave the property even if you refuse permission.

This would leave you having to deal with an abandonment which may cost you more in lost rent and court costs.

Surrender and Abandonment

The tenant may ask to be allowed to finish the agreement early. You can agree to this, however, you may not and you may decide to make a County Court claim for the rest of the rent.

You should consider the court costs and the likelihood of being able to recover the rent.

There are also situations when a tenant may leave without your knowledge. The problem of abandonment can be reduced by regular management visits to the property planned in and agreed at the start of the tenancy. However, take care that too frequent visits may be construed as interference with the tenants' quiet enjoyment of the tenancy

Notices

The two main notices for assured shorthold tenancies are

A Section 21 notice - served to formally end a tenancy either at the end of the fixed period on the Tenancy Agreement or at any time after that. The notice cannot expire before the first six months of the tenancy, so even if a tenancy was only for a fixed term of 4 months, the notice cannot expire before 6 months.

The notice needs to be properly drafted. You may prefer to have it drafted by a solicitor to be sure it is valid. Housing Act notices are particularly complicated documents and should not be attempted by someone without expert knowledge.

The notice:

- must be in writing
- must state that possession is required under section 21 of the Housing Act 1988
- must have a notice period of at least two months
- if the tenancy is a periodic tenancy, the notice period must be at least two months and the date specified in the notice must be the last day of a period of the tenancy.

This type of action allows the landlord to secure an order for the possession of the property and the cost of the application. It does not enable them to obtain any rent that may be owed.

If there are any rent arrears then you may need to issue a separate summons for debt

A Section 8 notice – This is used where the landlord is alleging a breach of the tenancy agreement such as rent arrears or damage to the property. In serious rent arrears cases or alleged anti social behaviour cases it is suggested that a landlord obtains advice from a solicitor even if having obtained the independent advice they are satisfied that they may be able to conduct the hearing themselves.

There are some situations when a notice should be served before a tenancy starts i.e. if the property was your home and you wish to live in it again. You can purchase notices at HMSO stockists and stationers*.

This Handbook is intended as a general guide only. Remember! Always seek further advice from a solicitor, a Tenancy Relations Officer, or the Newcastle Private Rented Service before taking action.

Court Possession Proceedings

If the tenant is still in the property after the notice has ended you will need to apply for a court order to regain possession. You can do this at the local County Court*.

You will need copies of the Tenancy Agreement and the notice and you will have to complete a court form (available from the courts or on line at www.courtservice.co.uk). If the matter is a contentious issue that might be defended you will also need additional evidence such as letters, rent schedules etc. It may also be necessary to consult a solicitor to draw up witness statements particularly where the landlord as the claimant has not been actively managing the property.

A further explanation is given in the government publication, 'Assured and Assured Shorthold Tenancies – A guide for Landlords'.

Legal advice may be required in some cases when the landlord needs to prove grounds for possession or where the tenant may make a counter claim against the landlord.

Accelerated Possession

This is a simple and inexpensive procedure for getting possession of your property back without a court hearing. You can only use this procedure if you have a written Tenancy Agreement and you have given the tenant the required notice in writing that you are seeking possession. This can only be used for Assured Shorthold Tenancies which have been ended using the no-fault procedure at the end of a fixed period or six months whichever is the latter. Providing that all the paper work is in order the judge may grant possession by considering the application and the tenant's response without a formal hearing.

If the tenant has raised any issues of validity and the Judge considers that the matter is arguable, an oral hearing will be arranged at short notice

Eviction by County Court Bailiffs

The tenant should leave the property on the date specified in the court order. However, if the tenant refuses to leave, you still cannot evict the tenant yourself.

You must apply for a warrant for eviction from the court, which will involve an additional fee.

The court will then arrange for bailiffs to evict the tenant. You will need to attend this appointment to receive possession from the bailiffs.

For more information contact the County Court or go on line at www.courtservice.co.uk. If using the on-line service the landlord is required to formally serve at Court and on the tenant any additional documents within 14 days

Harassment & Unlawful Eviction

You should not resort to harassment or illegal eviction to settle a dispute. Criminal proceedings may be brought against you by the City Council, in addition to any civil claim that the tenant may

If you have tenancy disputes then seek legal advice – Newcastle City Council has a Tenancy Relations Service which is responsible for investigating alleged offences under the Protection from Eviction Act and other housing legislation. If the Tenancy Relations Service has received a complaint they will contact a landlord and ask them to desist from the action that has caused the complaint. The officers will also attempt to resolve the issues of dispute without formal action. However, if a landlord does not wish to follow any guidance given to them, they will be referred to a solicitor for independent advice. The tenant will also be referred to a solicitor to commence their own civil action if appropriate. Early advice and information from a solicitor or advice agency may prevent Court action.

Whilst the City Council can provide advice to either the landlord or the tenant, it does not have the power to instruct either party to do anything or to desist from doing anything. However, both parties will have to deal with the consequences of their own actions if they wish to ignore advice that is given to them.

Harassment can include unnecessary and unwanted visits or phone calls; withdrawal of contractual services; verbal or written threats; seeking payments of money that are not due or anything that interrupts a tenant's peaceful enjoyment of the property. An illegal eviction is created by acts such as changing locks so preventing the tenant entering their home or by throwing the tenants belongings out of the property or indeed by telling them that they must leave the property on a penalty of being thrown out if they refuse to go. (See above concerning too frequent visits to a tenant's home). A landlord and their agent or other person can be guilty of these offences.

When the parties to a contract get into a dispute a tenant may feel that they are harassed by an act of the landlord. And likewise the landlord may feel that the tenant is in breach of contract by the tenant's action or inaction. However it is up to the Tenancy Relations Service to make a judgement based upon the facts of whether the action complained of constitutes an offence at the time of the complaint. In some cases a first complaint may mean that a landlord is provided with advice and information. If the landlord does not wish to follow the advice, the complaint could become formal.

In addition the Police under the Protection from Harassment Act 1997 could prosecute a landlord or any other person if they engage in activities that cause alarm, distress or similar unacceptable behaviour on more than one occasion. A complainant may also seek civil damages by making a complaint to the County Court

Moving Out

It is good practice for the landlord or their agent to be available when the tenant moves out.

Practical issues around moving out include

Being available to check all sets of keys are returned

Outstanding bills

If the accounts for gas, electricity, water, telephone etc. are in the name of the tenant, then payment is a matter between the tenant and the supplier, and the supplier cannot require you to pay. When the tenant moves in, you should notify all the suppliers of the name of the new tenant and the date when the tenancy started. You need to pay the bills for any services used during a void period. As there are so many different suppliers, it is helpful to notify the new tenant of the name of the existing suppliers if known.

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

If the gas or electricity company is trying to charge you, when you have notified them of the name of the new consumer (tenant), you can complain to EnergyWatch on their dedicated helpline: 0845 906 0708, via Typetalk on 18001 08459 06 07 08, or via email at: enquiries@energywatch.org.uk. Their website is: www.energywatch.org.uk.

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

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

Meter readings

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

Damage and return of deposit

At the end of the tenancy you should go through the inventory and schedule of condition (preferably in the presence of the tenant) to identify missing items, breakages and any damages that the tenants will need to pay for out of their deposit.

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

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

Deposits should be returned to tenants as soon as possible.

Empty Property Management

If your property is empty for any period of time you ensure that it is safe. Treat it as you would your own home if you were on holiday.

It is good practise to do some of the following:

- Visit regularly, checking front and rear of the property are secure
- Leave the alarm on
- Make it look lived in – leave curtains up, collect post, have lights on timers, etc
- Leave a key and your contact details with a trusted neighbour
- Inform the Police
- In winter, drain down the central heating system

Sources of advice

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

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

Publications are available free of charge from

DCLG Publications,
PO Box 236,
Wetherby. LS23 7NB.
Tel: 0870 1226 236,
Fax: 0870 1226 237,
Textphone: 0870 1207 405,
Email: communities@twoten.com.

For example quote reference 97 HC 228B for 'Assured and assured short-hold tenancies: A guide for landlords'.

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

Landlords' associations usually offer members free basic legal advice.

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

Useful contacts for landlords

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

Central and local government:

Department for Communities & Local Government (DCLG)

Responsible for policy on housing, planning, regional and local government and the fire service a range of useful information and leaflets.

www.communities.gov.uk

Department of Work and Pensions

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

Direct.gov.uk

Links to government departments and local council websites.

www.direct.gov.uk

Landlords associations:

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

National Landlords Association www.landlords.org.uk

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

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

The Residential Landlords Association supporting landlords that own their own properties, it is owned and trusted by its members.

For more information or membership enquiries call 0845 666 5000 or visit online.

National Federation of Residential Landlords (NFRL) www.nfrl.org.uk

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

Websites:

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

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

Landlord Zone - Information for landlords, tenants & agents.
www.landlordzone.co.uk

LLAS and London Landlord Day website www.londonlandlord.org.uk

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

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

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

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

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

Agents' professional bodies' websites:

The Association of Residential Letting Agents
<http://www.arla.co.uk>

The Royal Institute of Chartered Surveyors
<http://www.rics.org>

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

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

Other Contacts:

The Association of Independent Inventory Clerks

<http://www.aiic.uk.com>

Mediation UK

Information about mediation service

<http://www.mediationuk.org.uk/>

Law Pack Publishing

Low cost forms for landlords

<http://www.lawpack.co.uk>

The Leasehold Advisory Service

For landlords of flats on long leases who may have problems with their freeholder

<http://www.lease-advice.org>

Newcastle City Council Departments

Tenancy Relations Service

The Tenancy Relations Service offers advice and deals with issues around private tenancies contact at the Housing Advice Centre on 0191 232 5400 or call into the office at 112- 114 Pilgrim Street, Newcastle City Centre.

The Public Health and Environmental Protection Team (PHEP)

The Public Health and Environmental Protection Team makes sure that the private sector housing is of an acceptable standard. Powers are available to deal with a range of housing disrepair issues and also ensure that houses in multiple occupation are of a satisfactory standard and properly managed. Contact the PHEP team on 0191 211 6113.

Newcastle Private Rented Service

The Newcastle Private Rented Service was established in 1997 to help raise standards in private rented housing through a mixture of advice, training and support for both private landlords and tenants.

For more information about us and useful information about private renting please visit our website www.privaterentedservice.co.uk or contact us on 0191 2736103 or visit us at 91 Tamworth Road, Arthur's Hill, Newcastle upon Tyne, NE4 5AS. Email: privaterentedservice@newcastle.gov.uk

