Communities and Local Government

Assured and Assured Shorthold Tenancies

A guide for tenants

housing

Assured and Assured Shorthold tenancies

Who should read this booklet?

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

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

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

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

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Appendices

1. Introduction to assured and shorthold tenancies

1.1 What are assured and shorthold tenancies?

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

In the legislation, the term "assured tenancy" covers both assured tenancies (sometimes called "full" or "ordinary" assured tenancies) and assured shorthold tenancies. For clarity, this leaflet will refer to assured tenancies and *shorthold* tenancies to highlight the important differences between the two.

An **assured** or **shorthold tenancy** is the usual form of letting if:
- you are a private tenant and your landlord is a private landlord
- the tenancy began on or after 15 January 1989
- the house or flat is let as separate accommodation and is your main home.

A tenancy will **not** be an assured or shorthold tenancy if:
- the tenancy began before 15 January 1989
- it is a business or holiday let
- no rent or a very low or very high rent is charged
- the landlord is a "resident landlord" (see section 1.2).

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

Assured and shorthold tenancies allow landlords to charge a full market rent, unlike previous forms of tenancy. Shorthold tenancies also allow landlords to let their property for a short period only and to get it back if they wish after six months.

Changes in the 1996 Act mean that:
- a new tenancy will automatically be a shorthold tenancy unless the landlord gives written notice that it will not be a shorthold tenancy
- the landlord has a right to possession if you owe at least two months' or eight weeks' rent (rather than three months' or 13 weeks' rent)
- it will be easier for the landlord to evict you if you cause a nuisance or annoyance to other local people
- if the landlord agrees a new or replacement shorthold tenancy with you, you have a right to a statement of the main details of the tenancy agreement if he or she does not provide a written agreement.

Under changes in the 1996 Act, if you are a new shorthold tenant, you will:

- only be able to refer your rent to a rent assessment committee during the first six months of the tenancy
- continue to have the right not to be evicted without a court order and to have the same rights as existing tenants to stay in the property.

These are the most important changes. A summary of all the changes is at Appendix B.

1.2 If I do not have exclusive use of the accommodation or I live in part of the landlord's home, am I covered by the law on assured and shorthold tenancies?

Different rules apply if you do not have exclusive use of the accommodation or the landlord lets part of the house or flat he or she lives in to you.

If the landlord agrees to rent you accommodation for a period and you will have exclusive use of the accommodation, the agreement will almost certainly be an assured or shorthold tenancy. If you do not have exclusive use of any part of the accommodation, you are likely to have a licence to occupy, not an assured or shorthold tenancy. The agreement will probably be a licence if the landlord has specified that he or she requires unrestricted access to your room to provide services such as cleaning.

If the landlord is a "resident landlord", then you will not have an assured or shorthold tenancy. This rule generally applies to converted houses. So if the landlord has his or her only or main home in a flat in a building which has been converted into flats and then lets you another flat in that same building, the arrangement will not be an assured or shorthold tenancy. The landlord does not need to share any accommodation with you to be held to be a resident landlord. It is enough that he or she lives in the same building.

However, if the landlord lives in a flat in a purpose built block of flats and rents you one of the other flats in the same block, he or she will not be a resident landlord and you will be an assured or shorthold tenant. If you share part of the landlord's own flat in a purpose built block, you will have a licence or a tenancy, but it will not be assured or shorthold.

If you have exclusive use of part of the accommodation but can also use another part of the accommodation, such as a communal living room or kitchen, with someone who is not the landlord, you are likely to have an assured or shorthold tenancy.

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

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

1.3 Where can I get more information?

The Department produces a range of booklets, a list of these titles is held at the end of this booklet.

2. The differences between an assured and a shorthold tenancy

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

If you have a **shorthold tenancy**, the landlord **can regain possession of the property six months after the beginning of the tenancy**, provided that he or she gives you two months' notice requiring possession. Sections 6.1 to 6.12 explain the procedures for regaining possession in a shorthold tenancy.

If you have an **assured tenancy, you have the right to remain in the property** unless the landlord can prove to the court that he or she has grounds for possession. The landlord does not have an automatic right to repossess the property when the tenancy comes to an end. Sections 6.7 to 6.12 explain the procedures for possessing an assured tenancy.

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

2.2 Should I choose an assured or a shorthold tenancy?

Most landlords let on shorthold tenancies and many are happy to grant a tenant a further tenancy when the first tenancy comes to an end. However, if you would like the security of knowing that the landlord cannot automatically regain possession after six months, you can try to negotiate an assured tenancy, or a shorthold tenancy for a fixed term (section 3.4 explains what a fixed term is). If you are unsure which type of tenancy you are being offered, you should seek legal advice.

2.3 Are there any tenancies which cannot be shorthold tenancies?

If you are an existing assured tenant, the landlord cannot replace your tenancy with a shorthold tenancy unless you agree that he or she can (see section 5.5). Appendix A gives a list of tenancies which cannot be shorthold tenancies. You should seek legal advice if you are in any doubt whether your tenancy can be a shorthold tenancy.

3. How a tenancy is agreed

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

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

3.2 How will I know whether the tenancy is a shorthold tenancy?

For tenancies starting on or after 28 February 1997

There is *no special procedure* for creating a shorthold tenancy. A tenancy will automatically be a shorthold tenancy unless the landlord follows the procedure described in section 3.3.

For tenancies which started or were agreed before 28 February 1997

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

If the landlord is replacing your existing shorthold tenancy, see sections 5.1 and 5.2.

3.3 How will I know if the tenancy is an assured tenancy?

For tenancies starting on or after 28 February 1997

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

For tenancies which started or were agreed before 28 February 1997

If the tenancy began, or was agreed in a contract before this date and your landlord did not serve a Section 20 notice before the tenancy started, then the tenancy is **automatically** an assured tenancy in law.

If your landlord is replacing your existing assured tenancy, see sections 5.3 to 5.5.

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

An assured or shorthold tenancy may either:

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

If you agree a fixed term tenancy, the landlord will only be able to seek possession during the fixed term if one of grounds for possession – 2, 8, 10 to 15 or 17 in Appendix C – apply and if the terms of the tenancy make provision for it to be ended on any of these grounds. If you agree a periodic tenancy, the landlord can seek possession at any time on any of the grounds in Appendix C.

Furthermore, if you agree a shorthold tenancy on a periodic basis, the landlord has an automatic right to possession at any time after the first six months, provided he or she has given you two months' notice requiring possession. If you are an assured tenant, the landlord cannot seek possession without grounds when the fixed term ends. Section 6 explains in detail the procedures for seeking possession of a tenancy.

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

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

Important changes were made in the Housing Act 1996.

For tenancies starting on or after 28 February 1997

The landlord does not have to agree an initial fixed term but may do so if you both agree. The fixed term may be for less than six months if you agree. Or the tenancy can be set up as a periodic tenancy from the outset.

However, **the landlord does not have a guaranteed right to possession during the first six months of the tenancy**, even if you agreed a fixed term of less than six months or a periodic tenancy from the outset. The landlord can, however, seek possession during this period on one of the grounds for possession set out in Appendix C.

For tenancies which started or were agreed before 28 February 1997

These had to have an initial fixed term of at least six months. The landlord can only seek possession of the property during the fixed term of the tenancy if one of the following grounds for possession in Appendix C apply – 2, 8, 10 to 15 or 17 – and the terms of the tenancy make provision for it to be ended on any of these grounds.

3.6 Does the tenancy agreement have to be in writing?

The landlord is not required by law to provide a written tenancy agreement (except for fixed-term tenancies of greater than three years) but you should ask for one. Tenancies for a fixed term which is greater than seven years should be registered with the local Land Registry. This would be your responsibility.

The Unfair Terms in Consumer Contracts Regulations apply to tenancy agreements, and if a term is found to be unfair it is not enforceable. The Office of Fair Trading publishes guidance as to what is and is not considered "unfair"; this includes issues such as use of plain English in an agreement; and in standard agreements, one party being given more right than the other to cancel a contract, or unreasonable restrictions.

If you have concerns about possible unfair terms in the agreement you have been given, you should contact your local council's Trading Standards Department.

If you have a shorthold tenancy starting on or after 28 February 1997 and you do not have a written agreement, you have a legal right to ask for a written statement of any of the following main terms of the tenancy – the date the tenancy began, the amount of rent payable and the dates on which it should be paid, any rent review arrangements, and the length of any fixed term which has been agreed. You must apply in writing for this statement. The landlord is required to provide it within 28 days of receiving your request. Failure to do so, without reasonable excuse, will make him or her liable to a fine.

If you have only an oral agreement with the landlord, you are both bound automatically by the legislation applying to shorthold tenancies if the tenancy started on or after 28 February 1997 and by the legislation applying to assured tenancies if the tenancy started or was agreed before 28 February 1997.

You should be sure that you understand the terms of the agreement before you sign it. The landlord should give you every opportunity to read and understand the terms of the tenancy, and any other agreement, before you become bound by them. You should also take the opportunity to visit the property before agreeing to a contract and if you are registered with a letting agency, you should make yourself aware of any fees they are likely to charge, before you sign a tenancy agreement. Once you have signed a tenancy agreement, it is likely to be

considered reasonable for the landlord or letting agency to ensure that you honour the agreement or compensate them for any breach – i.e. terminating the agreement early.

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

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

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

3.7 Can the landlord charge a deposit?

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

If you cannot afford the deposit, you can check with your local authority's Housing Department or Housing Advice Centre whether there is a rent or deposit guarantee scheme in the area which would guarantee rent or the costs of damage for a specified period.

Under the tenancy deposit protection legislation introduced by the Housing Act 2004, landlords are required to protect the deposits for all assured shorthold tenancies that have been created since 6 April 2007 in a government-approved scheme. It is the responsibility of whoever holds the deposit – whether it is the landlord or agent – to ensure that the money is properly protected in an authorised scheme.

3.8 What are Tenancy Deposit Schemes?

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

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

Failure to protect a deposit has serious consequences for the landlord. Firstly he or she will be unable to gain possession using Section 21 (Notice Only) of the 1988 Housing Act and, secondly; the landlord can be fined up to three times the amount of the deposit if he or she fails to protect the deposit within 14 days of having received it.

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

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

Under the insurance schemes at the end of the tenancy:

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

Under the custodial scheme at the end of the tenancy:

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

3.9 Resolving tenancy deposit disputes

You should ask the landlord to state clearly in the tenancy agreement the circumstances under which part or all of the deposit may be withheld at the end of the tenancy and to agree a list of furniture, kitchen equipment and other items in the property with you at the outset of the tenancy. In any case, taking photographs of the interior of the accommodation when the tenancy starts can also be a useful way of recording its condition, in case of any later dispute about what damage has been caused.

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

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

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

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

3.10 Should the landlord provide a rent book?

The landlord is only legally obliged to provide a rent book if the rent is payable on a weekly basis. If the landlord is not required to provide a rent book, you should ask for a record of rent payments or receipts for rent paid to avoid any disagreements later.

3.11 Can an accommodation agency charge a fee for finding the tenancy?

An accommodation agency may charge a fee for finding you accommodation which you subsequently agree to rent. It cannot charge a fee for providing you with details of properties for rent. There are other fees a letting agency may charge, such as for renewing your tenancy. These fees should be commensurate with the service being provided. However, it is in your best interests to clarify all the fees that the letting agency may charge, including the amounts and the circumstances under which the fees might be levied.

Where you are thinking of renting a property through a letting agent, we recommend that you use agents who are members of the Royal Institution of Chartered Surveyors, the Association of Residential Letting Agents, the Incorporated Society of Valuers and Auctioneers, or the National Association of Estate Agents as these agents are required to operate to standards recognised by their organisations. In addition, letting agents who are accredited with the National Approved Letting Scheme have also agreed to abide by NALS' standards.

4. Landlord and tenant responsibilities and rights

4.1 What is the landlord responsible for?

Repairs

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

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

Responsibility for other repairs depends on what the landlord agrees with you. He or she is not responsible for repairing damage caused by you.

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

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

Safety of gas and electrical appliances

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

The landlord must keep a record of the safety checks and issue it to you within 28 days of each annual check. He or she is not responsible for maintaining gas appliances which you are entitled to take with you at the end of the letting.

Further guidance is contained in the leaflets *Gas appliances – get them checked, keep them safe* and *Landlords – A guide to landlords' duties: Gas Safety (Installation and Use) Regulations 1998*, available, free of charge, from the Health and Safety Executive (HSE): telephone 0845 345 0055 or visit their website at www.hse.gov.uk.

The landlord should ensure that the electrical system and any electrical appliances that he or she supplies such as cookers, kettles, toasters, washing machines and immersion heaters are safe to use.

New rules for electrical safety in the home came into effect on 1 January 2005 in England and Wales. From this date people carrying out electrical work in kitchens, bathrooms or outdoors or adding new circuits to any part of their house will have to follow the new rules in the Building Regulations. The alternative is to get the work carried out by a suitably qualified electrician. There is further guidance in the leaflet *New rules for electrical safety in the home* or visit: www.planningportal.gov.uk/uploads/br/BR_PDF_PTP_NEWRULESenglish.pdf.

Fire safety of furniture and furnishings

The landlord must ensure that any furniture and furnishings he or she supplies meet the fire resistance requirements in the Furniture and Furnishings (Fire) (Safety) Regulations 1988, unless he or she is letting on a temporary basis whilst, for example, working away from home.

The regulations set levels of fire resistance for domestic upholstered furniture. All new and second-hand furniture provided in accommodation that is let for the first time, or replacement furniture in existing let accommodation, must meet the fire resistance requirements unless it was made before 1950. Most furniture will have a manufacturer's label on it saying if it meets the requirements. Further guidance is contained in the booklet *A Guide to the Furniture and Furnishings (Fire) (Safety) Regulations*. This is can be downloaded from: www.bis.gov.uk/files/file24685.pdf.

HMO licensing

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

Digital Television

Digital TV is being introduced across the UK between 2008 and 2012. If you share your aerial with others you may have a communal TV system which may need to be adapted to receive digital television. Your landlord or managing agent should be aware of this and be making plans. More information is available from the Digital UK website: www.digitaluk.co.uk

Energy Performance Certificates (EPCs)

From 1 October 2008, an Energy Performance Certificate (EPC) will be required whenever a dwelling in the social or private rented sectors is let to a new tenant. The purpose of the EPC is to show prospective tenants the energy performance of the building they are planning to occupy. The EPC shows the energy efficiency rating (relating to running costs) and the Environmental Impact rating (relating to CO_2 emissions rating) of the property. They are shown on an A-G rating scale similar to those used for fridges and other electrical appliances. The certificate will

be accompanied by a recommendation report that contains recommendations on how to improve the building's energy efficiency. However, there is no statutory requirement to carry out any of the recommended measures. The Energy Saving Trust estimates that the average household could save up to £300 a year by making energy saving improvements.

Other

A tenancy is a contractual agreement and even if there is no written agreement the landlord must supply whatever he or she agreed to supply.

4.2 What is the tenant responsible for?

Council Tax

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

Water and sewerage charges

You will normally be responsible for paying water and sewerage charges if the accommodation is self-contained. The tenancy agreement should set out who is responsible for payment. If the landlord pays the charges, he or she can include the cost in the rent. However, as an occupier of the premises you could ultimately be liable for any non-payment of water and sewarage charges regardless of what is stated in the tenancy agreement. The landlord can be considered liable, however, if he or she has a specific agreement in place with the water company. If you are in any doubt as to who will be liable for these charges, contact the water utility company for the area or ask your landlord for a copy of the agreement he or she has in place with the company.

Other bills

You should agree with the landlord who is responsible for the payment of other bills (gas, electricity, telephone etc). You may be responsible directly to the utility company for payments, or the landlord may recharge you separately, for example through a coin meter. The resale of electricity and gas is subject to maximum resale prices, which depend on the gas or electricity supplier that the landlord uses. However, the maximum resale charges do not apply if a flat rate is charged to cover your usage, or if rent is charged on an all-inclusive basis. Again, as an occupier of the premises, any non-payment of utility bills is likely to be your responsibility unless the landlord or relevant utility company confirms otherwise.

Other

You have a duty to take proper care of the property and use it in a responsible way, pay the rent as agreed and keep to the terms of the tenancy agreement, unless the terms are in contravention of your rights in law.

4.3 What rights does the landlord have?

Access

The landlord, or landlord's agent, has the legal right to enter the property at reasonable times of day to carry out the repairs for which he or she is responsible and to inspect the condition and state of repair of the property. Twenty-four hours' written notice of an inspection must be given. You should ask the landlord to set out in the tenancy agreement the arrangements for access and procedures for getting repairs done.

4.4 What rights does the tenant have?

Quiet enjoyment

You have the legal right to live in the property as your home. The landlord should ask your permission before he or she enters the premises.

The landlord cannot evict you without a possession order from the court.

If the landlord sells the freehold of the property, you will retain any rights you have to remain in the property, as the tenancy will be binding on any purchaser.

Matters such as whether you can keep pets, install Sky or cable television or Internet Broadband and so on, should be negotiated at the outset of your tenancy and included in the terms of the tenancy agreement.

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

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

5. What happens when a tenancy ends?

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

When a shorthold tenancy comes to the end of the fixed term, the landlord can end the tenancy but must have given two months' notice that he or she requires possession (see sections 6.1 to 6.5).

If the landlord agrees a replacement tenancy, it will automatically be on shorthold terms unless he or she agrees to set up a replacement tenancy on an assured basis (see section 3.3).

If the landlord agrees a replacement tenancy, it can either be for a fixed term or run on a periodic basis – called a contractual periodic tenancy. If the landlord grants you a replacement shorthold tenancy on a fixed term basis, he or she will only be able to regain possession during the fixed term on one of grounds for possession 2, 8, 10 to 15 or 17 in Appendix C. Once the fixed term has ended, the landlord will be able to regain possession provided he or she has given you two months' notice. If the landlord grants you a replacement shorthold tenancy on a contractual periodic basis, he or she will be able to regain possession at any time provided that two months' notice that possession is required has been given.

If the landlord does nothing, the tenancy will automatically run on from one rent period to the next on the same terms as the preceding fixed term shorthold tenancy – called a **statutory periodic tenancy**. The tenancy will continue to run on this basis until you leave, the landlord replaces the tenancy, or the landlord requires possession of the property.

Sections 6.1 to 6.12 explain in detail the possession procedures for a shorthold tenancy.

5.2 How do the changes in the Housing Act 1996 affect existing shorthold tenants?

If your shorthold tenancy started or was agreed before 28 February 1997, any replacement tenancy which the landlord agrees with you will automatically be on shorthold terms. He or she will not have to serve a new Section 20 notice before the start of the replacement tenancy.

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

Any replacement tenancy which the landlord agrees with you will automatically be on assured terms whatever the tenancy says unless you agree that he or she can replace it with a shorthold tenancy (see section 5.5). If the landlord agrees a replacement tenancy, it can either be for a fixed term or run on a periodic basis – called a contractual periodic tenancy.

If the landlord grants you a replacement assured tenancy on a fixed term basis, he or she will only be able to regain possession during the fixed term on one of grounds for possession 2, 8, 10 to 15 or 17 in Appendix C although after the fixed term has ended, possession may be applied for on any of the grounds in Appendix C. The landlord does not have an automatic right to regain possession of an assured tenancy at the end of a fixed term.

If the landlord does nothing, the tenancy will automatically run on from one rent period to the next on the same terms as the preceding fixed term assured tenancy. The tenancy is called a **statutory periodic tenancy**. It will continue to run on this basis until you leave, the landlord replaces the tenancy or gives notice seeking possession of the property on one of the grounds in Appendix C.

Sections 6.7 to 6.12 explain in detail the procedures for possessing an assured tenancy.

5.4 How do the changes in the Housing Act 1996 affect existing assured tenants?

If your assured tenancy started on or after 28 February 1997, any replacement tenancy will automatically be on assured terms whatever the tenancy agreement says, unless you give the landlord notice on a special form that you want a replacement tenancy on shorthold terms (see section 5.5).

5.5 What do I do if my landlord wants to replace my assured tenancy with a shorthold tenancy?

If you are happy to accept a replacement tenancy on a shorthold basis, you should give the landlord notice on a special form that you want a replacement shorthold tenancy. The form is called *Tenant's notice proposing that an Assured Tenancy be replaced by an Assured Shorthold Tenancy* which can be obtained from a law stationers or a rent assessment panel. There are six rent assessment panels in England and Wales, for information on the panel representing your area please go to: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/residential-property/index.htm. The landlord cannot give you a replacement shorthold tenancy unless you complete and sign the form and give it to him or her.

You do not have to complete this form even if your landlord has asked you to do so, unless you are quite sure that you want a replacement tenancy on a shorthold basis. If you give your landlord this notice, your assured tenancy will be replaced by a shorthold tenancy and you will be giving up your existing right to remain in the property. Your landlord will be able to regain possession of the property as soon as the initial six months of the shorthold tenancy have passed, or if the tenancy has a fixed term, at the end of the fixed term. The landlord will not have to give any grounds as to why he or she wants to repossess the property.

If the landlord is trying to make you accept a replacement shorthold tenancy and you are in any doubt about whether to accept it, seek advice from a Law Centre, Citizens Advice Bureau, Housing Advice Centre or solicitor.

5.6 Can I leave during the tenancy?

If you have a fixed term tenancy but want to move out before the end of the term, you can only do so if the landlord agrees you can leave early or if this is allowed for by a "break clause" in the tenancy agreement and you have followed any requirements for giving notice specified in the tenancy agreement. If the agreement does not allow you to leave early and the landlord does not agree that you can break the agreement, you will be contractually obliged to pay the rent for the entire length of the fixed term. However, this does not mean that the landlord should necessarily be able to claim for the whole term's rent if you leave early: there is also a responsibility on the landlord in this situation to try to cover his or her losses in other ways, notably by trying to re-let the accommodation.

Your landlord should also not reasonably refuse an alternative tenant you have suggested as a replacement. However, this is something that should be negotiated at the outset and included in the tenancy agreement.

If the tenancy has no fixed term, you must give the landlord reasonable notice in writing of your intention to leave. You must give at least four weeks' notice if you pay rent on a weekly basis and at least a month's notice if you pay rent on a monthly basis. See the Department's booklet *Notice That You Must Leave*.

6. When can I be asked to leave the property?

6.1 Can the landlord ask me to leave when the fixed term of a shorthold tenancy has ended?

If the tenancy started on or after 28 February 1997

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

If the tenancy started or was agreed before 28 February 1997

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

6.2 What does the landlord have to do if he or she wants me to leave when the fixed term of a shorthold tenancy has ended?

The landlord must give you at least two months' notice that he or she requires possession. The landlord can give you notice at any time during the fixed term, but the date he or she states possession is required cannot be before the end of the fixed term. If the tenancy is on a contractual period or statutory periodic basis, the date on which the notice expires must be the last day of a tenancy period, and the notice must state that possession is required under Section 21 of the Housing Act 1988.

If the landlord gives you notice on or after 28 February 1997 that he or she requires possession, the notice must be in writing.

6.3 Do I have to move out when the notice requiring possession expires?

You should leave the property if the landlord has given you at least two month's notice that he or she requires possession. However, the landlord cannot evict you without a possession order from the court. He or she can apply to the court to start possession proceedings as soon as the notice requiring possession expires. The landlord will not have to give any grounds for possession and he or she may use the accelerated possession procedure. When you receive a notice that possession is required under Section 21 of the Housing Act 1988, you may wish to seek advice from your local authority if you are concerned that you will not be able to find alternative accommodation by the date specified in the notice.

6.4 What is the accelerated possession procedure?

This is a procedure for getting possession of a property without a court hearing. The court will make its decision by looking at the documents which you and the landlord provide, unless it considers that a hearing is required. The landlord can only use this procedure if you have a written tenancy agreement (or, if the tenancy has lapsed into a statutory periodic tenancy, there was a written agreement for the original tenancy) and he or she has given you the required notice in writing seeking possession.

6.5 Do I have to leave when the landlord has a possession order from the court?

You should leave the property on the date specified in the court order. If you do not leave, the landlord must apply for a warrant for eviction from the court. The court will arrange for bailiffs to evict you.

6.6 Can the landlord ask me to leave during the fixed term of a shorthold tenancy?

The landlord can only seek possession during a fixed term of the tenancy if one of the following grounds for possession in Appendix C apply – grounds 2, 8, 10 to 15 or 17 – and the terms of the tenancy make provision for it to be ended on any of these grounds. It is for the court to decide whether one or more of the grounds for possession apply.

6.7 Can the landlord ask me to leave if I am an assured tenant?

The landlord can only seek possession during a fixed term of the tenancy if one of the following grounds for possession in Appendix C apply – grounds 2, 8, 10 to 15 or 17 – and the terms of the tenancy make provision for it to be ended on any of these grounds. Once the fixed term of the tenancy has ended, he or she can seek possession if one or more of the 17 grounds for possession in Appendix C apply. It is for the court to decide whether one or more of the grounds for possession apply.

6.8 What are the grounds for possession?

The reasons or "grounds" for possession cover, for example, cases where you have not paid the rent, or have broken another term of the tenancy agreement. Some are **mandatory** which means that if the landlord can prove that the ground applies, the court must grant him or her a possession order. The others are **discretionary** which means the court will only grant the landlord a possession order if it thinks it reasonable to do so, based on all the facts of the case.

Grounds 1 to 5 are **prior notice** grounds which means they can usually only be used if the landlord notified you in writing **before the tenancy started** that he or she intended one day to ask for the property back on one of these grounds. However, the court may grant possession on grounds 1 and 2 without the prior notice if it considers that there were good reasons for not serving the notice.

6.9 If the landlord is seeking possession on one of the grounds for possession, what should he or she do?

The landlord must first give you written notice that he or she intends to go to court to seek possession. The period of notice is usually two weeks or two months, depending on which ground for possession is being used. The notice periods for each ground are given in Appendix C. He or she must give you notice on a special form called *Notice seeking possession of a property let on an Assured Tenancy or an Assured Agricultural Occupancy*. (The landlord will also use this form if the tenancy is a shorthold tenancy). The form states which of the grounds for possession he or she is using.

The landlord can apply to the court to start court proceedings as soon as the notice expires.

You do not have to leave the property until there is a court order requiring you to leave.

6.10 What should I do if I do not think the landlord has the right to possession?

If the landlord is relying on one of the grounds for possession in Appendix C, the notice that he or she will give you to notify you that possession of the property is being sought will state which grounds for possession he or she is using.

If you do not think the landlord has the right to possession or you disagree with anything he or she says in the notice, you should seek advice on what to do. When you get a copy of the landlord's application to the court for possession proceedings, you should act immediately if you disagree with anything in the landlord's sworn statement ("affidavit").

6.11 Do I have to leave as soon as the landlord has a court possession order?

If the court orders possession on one of the mandatory grounds, you will have to leave on the date specified in the court order – this is called an **absolute possession order**. If the court orders possession on one of the discretionary grounds, it can either grant an absolute possession order or it may allow you to stay on in the property provided you meet certain conditions – for example, paying back an amount of rent arrears each week. This is called a **suspended possession order** and you cannot be evicted provided that you meet the conditions.

If you do not leave after the date specified in the order, the landlord must seek a warrant for eviction from the court. The court will arrange for bailiffs to evict you.

6.12 What happens if I breach the conditions of a suspended possession order?

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

7. Rent increases and varying the terms of a tenancy

7.1 How frequently can the landlord put up the rent?

You should agree with the landlord the rent and arrangements for paying it before the tenancy begins. The details should be included in the tenancy agreement.

If the tenancy is for a fixed term, the agreement should say either that the rent will be fixed for the length of the term or that it will be reviewed at regular intervals and how it will be reviewed.

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

7.2 Can the landlord put the rent up by more than he or she agreed in the tenancy agreement?

Only if you agree.

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

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

If the tenancy is a **contractual periodic tenancy**, the landlord can put the rent up if you agree. Alternatively the landlord can use a formal procedure in the Housing Act 1988 to propose a rent increase to be payable a year after the tenancy began. He or she can then propose further increases at yearly intervals after the first increase.

When a fixed term tenancy ends and the tenancy lapses into a **statutory periodic tenancy**, the landlord can put the rent up if you agree. Alternatively he or she can use the formal procedure in the Housing Act 1988 to propose a rent increase to be payable as soon as the statutory tenancy starts. The landlord can then propose further increases at yearly intervals after the first increase.

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

The landlord must propose the rent increase on one of two special forms called *Landlord's notice proposing a new rent under an Assured Periodic Tenancy of premises situated in England* **or** *Landlord's notice proposing a new rent under an Assured Periodic Tenancy of premises situated in Wales*. The forms can be used for assured or assured shorthold tenancies.

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

7.5 What should I do if I get formal notice of a rent increase?

If you accept the rent increase, you should simply pay it from the date given in the notice.

If you do not agree with the increase, you must apply to a rent assessment committee to decide what the rent should be. You must apply on a special form called *Application referring a Notice proposing a new rent under an Assured Periodic Tenancy or Agricultural Occupancy to a Rent Assessment Committee*, available from law stationers or rent assessment panels. There are six rent assessment panels in England and Wales, for information on the panel representing your area please go to: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/residential-property/index.htm. (This form must also be used if the tenancy is a shorthold tenancy). The committee must receive the application before the date on which the new rent would be due.

7.6 What is a rent assessment committee?

Rent assessment committees are made up of two or three people – usually a lawyer, a property valuer and a lay person. They are drawn from rent assessment panels – bodies of people with appropriate expertise appointed by government ministers. The committees are independent of both central and local government. There is no appeal against a committee's decision except on a point of law.

The committee may make a decision by considering the relevant papers although you or the landlord can ask for an informal hearing, which you may both attend. There is no charge for a committee decision.

7.7 When can I apply to a rent assessment committee for a decision on the rent?

If you are an assured or a shorthold tenant, you can ask a committee to set a rent under a contractual periodic or statutory periodic tenancy if you have been given notice by the landlord of a rent increase (see section 7.4).

If you are a shorthold tenant, you can ask a committee to set a rent at the beginning of a shorthold tenancy if you consider the rent to be significantly higher than rents for comparable tenancies (see section 7.10).

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

When settling disputes on rent, the committee decides what rent the landlord could reasonably expect for the property if he or she was letting it on the open market under a new tenancy on the same terms. It does not take into account any increase in the value of the property due to voluntary improvements by you. The committee may agree the proposed rent or set a higher or lower rent.

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

7.9 Can the landlord propose a further rent increase after the committee has made a decision?

The landlord can propose that the rent is increased a year after the date on which the rent decided by the committee was payable (but see Appendix D), unless you agree that he or she can put it up earlier. You must apply to a rent assessment committee to decide what the rent should be if you do not agree with the proposed increase.

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

If you are a shorthold tenant, you can also apply to a rent assessment committee at the beginning of the tenancy for a decision on the rent if you consider the rent to be significantly higher than the rent for comparable tenancies. The Housing Act 1996 made important changes to the deadline for applications.

For tenancies starting on or after 28 February 1997

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

For tenancies which started or were agreed before 28 February 1997

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

7.11 What is the procedure for referring the rent for a shorthold tenancy to a rent assessment committee?

You must apply to the committee for a decision on the rent on a special form called *Application to a Rent Assessment Committee for a determination of a rent under an Assured Shorthold Tenancy*, obtainable from law stationers or rent assessment panels. There are six rent assessment panels in England and Wales, for information on the panel representing your area please go to: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/residential-property/index.htm.

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

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

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

7.13 Can I refer the rent of a shorthold tenancy a second time to the committee?

Not under the procedure described in sections 7.10 to 7.12.

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

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

However, if the fixed term of an assured or a shorthold tenancy has ended and the tenancy has automatically run on as a statutory periodic tenancy, it will continue on the same terms unless you, or the landlord, propose new terms. You or the landlord may propose new terms, and any consequent change to the rent, within a year of the statutory periodic tenancy starting, using a special procedure under the Housing Act 1988. You both have the right to apply for an independent decision by a rent assessment committee if you cannot agree new terms.

7.15 How does this procedure work?

You, or the landlord, must propose the new terms, and any consequent change to the rent, on a special form called *Notice proposing different terms for a Statutory Periodic Tenancy*, available from law stationers or rent assessment panels. There are six rent assessment panels in England and Wales, for information on the panel representing your area please go to: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/residential-property/index.htm. If you both agree the new terms, they can be included in the agreement.

If the terms are not agreed, you or the landlord must apply to a rent assessment committee to settle the terms and any consequent change to the rent. You, or the landlord, must apply to the committee within three months of receiving the notice proposing changes, using a special form. The form is called *Application referring a notice proposing different terms for a Statutory Periodic Tenancy to a Rent Assessment Committee* see above.

7.16 How does the committee fix the terms?

The committee decides whether the proposed new terms are reasonable for the tenancy or whether other terms are more appropriate. The committee may adjust the rent up or down to reflect the new terms, whether or not you or the landlord proposed a new rent to match the new terms. The new terms and the new rent, if the committee decides that the rent should be changed, will apply from the date stated by the committee, but the committee cannot apply the new rent before the date proposed in the notice.

7.17 If the committee sets new terms, can the landlord propose further changes?

The landlord can only make further changes to the terms of the statutory periodic tenancy if you agree. He or she can, of course, propose a new fixed term tenancy or a contractual periodic tenancy on new terms at any time.

8. Succession rights, joint tenancies, subletting

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

The landlord can agree a joint tenancy with you and your partner or friend or any combination of people from the outset of the tenancy. Each of you is then responsible jointly and individually for meeting the terms of the tenancy in full, including paying the rent. So if one joint tenant leaves the property before the end of the tenancy without the landlord's agreement and the landlord cannot recover the rent due from him or her, the remaining joint tenant or tenants will be responsible for paying the full rent. Under a joint tenancy, all tenants have equal rights under the tenancy and are equally entitled to share possession of the whole of the house or flat.

You and your partner might want to ask for a joint tenancy so you both have equal rights under the tenancy and to avoid any possible arguments about succession rights later if one partner dies (see section 8.2).

If you and your husband or wife are joint tenants and you subsequently divorce, the court can decide as part of the divorce settlement who should take on the tenancy.

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

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

If the tenant was a sole tenant, the right to succession will depend on whether the tenant had a fixed term tenancy or a periodic tenancy. If he or she had a fixed term tenancy and the fixed term has not expired, his or her executors will arrange for it to be passed onto whoever the tenant has left the tenancy to in his or her will. If it was a contractual periodic tenancy or a statutory periodic tenancy, the tenant's husband or wife (or a person living with the tenant as husband or wife), has an automatic right to succeed to a periodic tenancy if he or she was living with the tenant at the time of the tenant's death, unless the tenant who died was already a successor themselves. Only one succession is allowed. No one else in the family has an automatic right to succession although other family members can negotiate a new tenancy with the landlord. If more than one person claims to have the right to succeed to the tenancy, the court can decide who should succeed.

If you have inherited a contractual periodic tenancy or a tenancy which was or has become a statutory periodic tenancy under the will or intestacy of a former tenant and you do not have a right to succeed to the tenancy, the landlord has a right to possession under ground 7 in Appendix C, provided that he or she starts possession proceedings within a year of the death of the original tenant.

If the tenancy is a shorthold tenancy, the landlord has an automatic right to repossess the property at the end of any fixed term, even if you had a right to succession, provided that he or she gives two months' notice that possession is required.

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

If the tenancy is a fixed term tenancy, you will not be able to sublet or give the tenancy to someone else if the tenancy agreement says that you cannot.

If the tenancy is a contractual periodic tenancy, or a statutory periodic tenancy which has arisen at the end of a fixed term, you cannot by law give the tenancy or sublet to someone else unless the landlord agrees that you can. However if you have paid a premium for the property (a sum which is additional to rent or a sum paid as a deposit which is greater than two months' rent), you will be able to do so unless a term in the tenancy agreement prevents you from doing so.

9. Housing benefit

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

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

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

More information on the Local Housing Allowance is available from: http://www.direct.gov.uk/en/Diol1/DoItOnline/DG_196239.

9.2 Can housing benefit be paid direct to the landlord?

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

Other circumstances in which housing benefit can be paid to the landlord include where a tenant is in rent arrears of eight weeks or more or where the tenant is unlikely to pay the rent based on evidence of past, or likely, failure to pay rent.

If the landlord is receiving housing benefit payments directly on your behalf, these will continue to be paid to them until such time as your circumstances change.

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

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

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

In some instances, you may be entitled to receive, by up to a maximum value of £15 per week, more housing benefit than is needed to cover the cost of the rent. Where housing benefit payments are being made directly to the landlord, you will still receive any benefits you are entitled to, over and above the cost of the rent.

9.4 What do I do if housing benefit payments are delayed and the landlord is seeking possession on the grounds of rent arrears?

You should contact the person handling your housing benefit application in your local authority's Housing Benefit Department immediately and explain that the landlord is taking steps to evict you because you are in arrears with the rent. The local authority has powers to make certain payments to you if it has not processed your claim but you have provided all the information that was needed with the claim. You can also seek advice from a Law Centre, Citizens Advice Bureau or Housing Advice Centre.

If the landlord is seeking possession for rent arrears using ground 10 or 11 in Appendix C, then the court may take into account the fact that it is not your fault that the rent is overdue. This is because the grounds are discretionary (see section 6.8). However, the court cannot take this into account if the landlord is seeking possession on ground 8 in Appendix C because the ground is mandatory (see section 6.8).

10. Harassment and illegal eviction

10.1 What do I do if I think my landlord is harassing me or trying to evict me illegally?

If you are an assured or a shorthold tenant, your landlord cannot evict you without a court order. To do so is a criminal offence. It is also a criminal offence for the landlord, or someone acting on the landlord's behalf, to try to drive you out of your home or stop you using part of it if you have a legal right to live there, by bullying, violence, withholding services such as gas or electricity, or any other sort of interference.

Local authorities have powers to start legal proceedings for offences of harassment and eviction, and to prosecute if they believe an offence has been committed. Any complaints should be made to the local authority's Tenancy Relations Officer or if the local authority does not have one, its Housing Department or Environmental Health Department.

For further advice, read the Department's booklet *My Landlord Wants Me Out – Protection Against Harassment and Illegal Eviction* listed at the end of this booklet.

11. Getting advice

11.1 Where can I go if I need further advice?

You can get advice from a Law Centre, Citizens Advice Bureau, Housing Advice Centre or a solicitor. The addresses and phone numbers of advice organisations are listed in the telephone directory or can be obtained from your local library or local authority.

Appendix A

Tenancies which cannot be assured or shorthold tenancies

The following tenancies cannot be assured or shorthold tenancies:

- a tenancy which began, or which was agreed, before 15 January 1989
- a tenancy for which the rent is more than £25,000 a year
- a tenancy which is rent free or for which the rent is £250 or less a year (£1,000 or less in Greater London)
- a business tenancy or tenancy of licensed premises (where alcohol is sold or consumed)
- a tenancy of a property let with more than two acres of agricultural land or a tenancy of an agricultural holding
- a tenancy granted to a student by an educational body such as a university or college
- a holiday let
- a letting by a resident landlord – see section 1.2
- a tenancy where the property is owned by the Crown or a government Department: however, lettings by the Crown Estates Commissioners, the Duchy of Cornwall or the Duchy of Lancaster may be assured tenancies
- a tenancy where the landlord is a local authority, a new town, a development corporation, a housing action trust, or a fully mutual housing association.

Tenancies which can be assured but not shorthold tenancies

The following tenancies cannot be shorthold tenancies:

- a tenancy replacing an earlier assured tenancy with the same tenant which has come to an end unless the tenant asks for a shorthold tenancy (see section 5.5) or a statutory periodic tenancy arising automatically when the fixed term of an assured tenancy ends
- an assured tenancy which the tenant has succeeded to on the death of the previous regulated (pre-1989) tenant
- an assured tenancy following a secure tenancy as a result of the transfer of the tenancy from a public sector landlord to a private landlord
- an assured tenancy arising automatically when a long leasehold tenancy expires.

Appendix B

Summary of changes introduced by the Housing Act 1996

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

- To set up a shorthold tenancy with a new tenant on or after 28 February 1997, the landlord no longer needs to serve a Section 20 notice on the tenant before the tenancy starts saying that it will be on shorthold terms. All tenancies are automatically shorthold tenancies unless the landlord follows the procedure for setting up an assured tenancy (see section 3.2)

- To set up an assured tenancy with a new tenant on or after 28 February 1997, the landlord must either serve a notice on the tenant saying that the tenancy is not a shorthold tenancy or include a statement to that effect in the tenancy agreement. The notice does not have to be given on a special form (see section 3.3)

- A shorthold tenancy set up on or after 28 February 1997 no longer has to have an initial fixed term. The tenancy can be on a contractual periodic basis from the outset. However, shorthold tenants retain the right to stay in the property for an initial six months (see section 3.5)

- Tenants with shorthold tenancies starting on or after 28 February 1997 have a right to ask for a written statement of the main details of the tenancy agreement if they have no existing written agreement or statement (see section 3.6)

- If the landlord serves notice on or after 28 February 1997 requiring possession of a shorthold tenancy at the end of the fixed term, the notice must be in writing. It does not need to be on a special form (see section 6.2)

- Tenants with shorthold tenancies starting on or after 28 February 1997 can only refer their rent to a rent assessment committee within six months of the beginning of the original tenancy. Tenants with shorthold tenancies which started or were agreed before 28 February 1997 can still refer to a committee at any time during the initial fixed term of the tenancy which may be for longer than six months (see section 7.10).

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

- the landlord can now seek possession under ground 8 if the tenant has at least two months' rent arrears (rather than three months) if the rent is paid monthly or eight weeks' rent arrears (rather than 13 weeks) if the rent is paid weekly

- Ground 14 has been strengthened so possession can be sought where the tenant, or someone living in or visiting the property:
  – has caused, or is likely to cause, a nuisance or annoyance to someone living in or visiting the locality;
  – has been convicted of using the property, or allowing it to be used, for immoral or illegal purposes, or an arrestable offence committed in the property or the locality.

- the landlord can start court proceedings as soon as he or she has served notice that he or she intends to seek possession under ground 14

- a new ground, ground 17, allows the landlord to seek possession if he or she was persuaded to grant the tenancy on the basis of a false statement by the tenant or someone acting at the tenant's instigation.

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

Appendix C

Grounds for possession

This appendix provides a summary of the grounds for possessing an assured or shorthold tenancy. During the fixed term of an assured or shorthold tenancy, the landlord can only seek possession if one of grounds 2, 8, 10 to 15 or 17 apply and the terms of the tenancy make provision for it to be ended on any of these grounds. When the fixed term of an assured tenancy ends, possession can be sought on any of the grounds. When the fixed term of a shorthold tenancy ends, the landlord does not have to give any grounds for possession (see Section 6.1).

Mandatory grounds on which the court must order possession

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

Prior Notice Grounds:

Ground 1:
Not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground or the court is of the opinion that it is just and equitable to dispense with the requirement of notice and (in either case)–

(a) at some time before the beginning of the tenancy, the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them occupied the dwelling-house as his only or principal home; or

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

Ground 2:
The dwelling-house is subject to a mortgage granted before the beginning of the tenancy and–

(a) the mortgagee is entitled to exercise a power of sale conferred on him by the mortgage or by section 101 of the [1925 c. 20.] Law of Property Act 1925; and

(b) the mortgagee requires possession of the dwelling-house for the purpose of disposing of it with vacant possession in exercise of that power; and

(c) either notice was given as mentioned in Ground 1 above or the court is satisfied that it is just and equitable to dispense with the requirement of notice;

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

Ground 3:
The tenancy is a fixed term tenancy for a term not exceeding eight months and–

(a) not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground; and

(b) at some time within the period of 12 months ending with the beginning of the tenancy, the dwelling-house was occupied under a right to occupy it for a holiday.

Ground 4:
The tenancy is a fixed term tenancy for a term not exceeding twelve months and–

(a) not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground; and

(b) at some time within the period of 12 months ending with the beginning of the tenancy, the dwelling-house was let on a tenancy falling within paragraph 8 of Schedule 1 to this Act.

Ground 5:
The dwelling-house is held for the purpose of being available for occupation by a minister of religion as a residence from which to perform the duties of his office and–

(a) not later than the beginning of the tenancy the landlord gave notice in writing to the tenant that possession might be recovered on this ground; and

(b) the court is satisfied that the dwelling-house is required for occupation by a minister of religion as such a residence.

Other, Mandatory grounds on which the court must order possession

Ground 6:
The landlord who is seeking possession or, if that landlord is a registered housing association or charitable housing trust, a superior landlord intends to demolish or reconstruct the whole or a substantial part of the dwelling-house or to carry out substantial works on the dwelling-house or any part thereof or any building of which it forms part and the following conditions are fulfilled:

(a) the intended work cannot reasonably be carried out without the tenant giving up possession of the dwelling-house because:

(1) the tenant is not willing to agree to such a variation of the terms of the tenancy as would give such access and other facilities as would permit the intended work to be carried out, or

(2) the nature of the intended work is such that no such variation is practicable, or

(3) the tenant is not willing to accept an assured tenancy of such part only of the dwelling-house (in this sub-paragraph referred to as "the reduced part") as would leave in the possession of his landlord so much of the dwelling-house as would be reasonable to enable the intended work to be carried out and, where appropriate, as would give such access and other facilities over the reduced part as would permit the intended work to be carried out, or

(4) the nature of the intended work is such that such a tenancy is not practicable; and

(b) either the landlord seeking possession acquired his interest in the dwelling-house before the grant of the tenancy or that interest was in existence at the time of that grant and neither that landlord (or, in the case of joint landlords, any of them) nor any other person who, alone or jointly with others, has acquired that interest since that time acquired it for money or money's worth; and

(c) the assured tenancy on which the dwelling-house is let did not come into being by virtue of any provision of Schedule 1 to the [1977 c. 42.] Rent Act 1977, as amended by Part I of Schedule 4 to this Act or, as the case may be, section 4 of the [1976 c. 80.] Rent (Agriculture) Act 1976, as amended by Part II of that Schedule.

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

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

Ground 7:
The tenancy is a periodic tenancy (including a statutory periodic tenancy) which has devolved under the will or intestacy of the former tenant and the proceedings for the recovery of possession are begun not later than 12 months after the death of the former tenant or, if the court so directs, after the date on which, in the opinion of the court, the landlord, or in the case of joint landlords, any one of them became aware of the former tenant's death.

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

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

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

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

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

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

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

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

Discretionary grounds on which the court may order possession

Ground 9:
Suitable alternative accommodation is available for the tenant or will be available for him when the order for possession takes effect.

Ground 10:
Some rent lawfully due from the tenant:

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

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

Ground 11:
Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

Ground 12:
Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

Ground 13:
The condition of the dwelling-house or any of the common parts has deteriorated owing to acts of waste by, or neglect or default of, the tenant or any other person residing in the dwelling-house and, in the case of an act of waste by, or neglect or default of, a person lodging with the tenant or a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

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

Ground 14:
The tenant or a person residing in or visiting the dwelling-house:

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

(b) has been convicted of:

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

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

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

Ground 15:
The condition of any furniture provided for use under the tenancy has, in the opinion of the court, deteriorated owing to ill-treatment by the tenant or any other person residing in the dwelling-house and, in the case of ill-treatment by a person lodging with the tenant or by a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

Ground 16:
The dwelling-house was let to the tenant in consequences of his employment by the landlord seeking possession or a previous landlord under the tenancy and the tenant has ceased to be in that employment.

Ground 17:
The tenant is the person, or one of the persons, to whom the tenancy was granted and the landlord was induced to grant the tenancy by false statement made knowingly or recklessly by:

(a) the tenant, or

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

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

Notice periods

Where your landlord has served you with a notice to leave the property, you are expected to leave the property upon the expiry of that notice unless you dispute his or her justification for serving that notice or you believe the notice has not been served correctly.

A correct notice will be served using a special form, entitled "Notice seeking possession of a property let on an Assured Tenancy or an Assured Agricultural Occupancy" and the notice period will be in accordance with the Housing Act 1988. The notice periods of each of the grounds in Schedule 2 of the Housing Act 1988 are as follows:

- for grounds 3, 4, 8, 10, 11, 12, 13, 15 or 17 – **at least two weeks**
- for grounds 1, 2, 5, 6, 7, 9 and 16 – **at least two months**. If the tenancy is on a contractual periodic or statutory periodic basis, the notice period must end on the last day of a tenancy period. The notice period must also be at least as long as the period of the tenancy, so that three months' notice must be given if it is a quarterly tenancy.
- for ground 14 from 28 February 1997 – the landlord can start court proceedings as soon as he or she has served notice.

Appendix D

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

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

1. The first rule, which applies in all cases, is that a minimum period of notice must be given before the proposed new rent can take effect. That period is:
   - one month for a tenancy which is monthly or for a lesser period, for instance weekly or fortnightly
   - six months for a yearly tenancy
   - in all other cases, a period equal to the length of the period of the tenancy – for example, three months in the case of a quarterly tenancy.

2. The second rule applies in most cases:
   - the starting date for the proposed new rent must not be earlier than 52 weeks after the date on which the rent was last increased using this statutory notice procedure or, if the tenancy is new, the date on which it started, unless
   - that would result in an increase date falling one week or more before the anniversary of the date in the notice, in which case the starting date must not be earlier than 53 weeks from the date on which the rent was last increased.

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

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

   The two exceptions to the second requirement, which apply where a statutory tenancy has followed on from an earlier tenancy, are:
   - where the tenancy was originally for a fixed term (for instance, six months) but continues on a periodic basis (for instance, monthly) after the term ends; and
   - where the tenancy came into existence on the death of the previous tenant who had a regulated tenancy under the Rent Act 1977 (see booklet *Regulated Tenancies*).

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

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

Other booklets on landlord and tenant legislation

The following booklets are available, free of charge:

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

Regulated Tenancies

Repairs – a guide for landlords and tenants

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

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

These leaflets, and further copies of this leaflet, can be obtained from the Communities and Local Government website: www.communities.gov.uk

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

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