

Foreword

Cardiff Council recognises the important role played by private landlords in the provision of all types of accommodation to meet the needs of the Capital's growing population. This Guide is one of the ways in which Cardiff Council hopes to support and encourage landlords to provide good, safe, secure and well-managed accommodation. This Guide is intended to give basic information for existing landlords, and for those who are thinking of renting out a property. It gives information on what you need to consider as a landlord, the requirements that you need to be aware of, and a list of contacts where appropriate.

Cardiff Council wishes to work productively with landlords to achieve decent accommodation and good management practices. We hope that you find this Guide useful.

The 'Good Landlord Guide' is produced by The Housing Advice Unit, and was substantially revised for 2008. It has been updated in 2009 and 2010, with contributions from:

Private Sector Housing Enforcement, Cardiff Council (Part 3)
Cardiff Bond Board (Part 5)
Andrew Thomas, TDS Council Member (Part 5)
Housing Benefit Section, Cardiff Council (Part 6)
The Association of Letting and Management Agents (Part 12)
Cardiff Landlords' Forum (Part 12)
Trading Standards, Cardiff Council (Part 13)
Building Control, Cardiff Council (Part 13)

The remaining sections have been produced (and updated in 2009) by Denise Wheten at the Housing Advice Unit who has been responsible for the overall editing of this Guide.

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This guide is designed to provide an outline of the legal aspects of the subject matter covered. It does not purport to be fully comprehensive, nor is it a substitute for proper legal advice
All landlords are recommended to seek their own legal advice.

The City and County of Cardiff Welcomes Caring Landlords

Last Updated October 2010

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Part One - A Statement of Principle

Tenants' Rights

Every tenant has the right:

- * to know the terms of the tenancy;
- * to know the name and address of the landlord;
- * to a decent standard of repair in the property, and safe accommodation;
- * to 'quiet enjoyment' while living in the property;
- * to a rent book if the rent is payable on a weekly basis;
- * to proper notice if the landlord wishes to inspect the property;
- * to proper notice if the landlord wants the tenant to leave; and
- * to a Court Order if he or she doesn't leave during the notice period (as long as the tenant does not share facilities with a resident landlord).

Landlords' Rights

Every landlord has the right...

- * to charge a market rent (on lettings which began on or after 15th January 1989);
- * to fix terms of the agreement before the tenancy begins;
- * to receive rent as and when it falls due;
- * to be advised of any necessary repairs;
- * to be given proper notice by a tenant if he or she wishes to leave;
- * to reasonable access to inspect the property (by appointment);
- * to ask for a deposit which can then be used to offset any damage to the property by the tenant;
- * to ask for rent in advance; and
- * to choose who the property will be let to as long as the choice is in compliance with legislation prohibiting discrimination under the relevant legislation including Disability Discrimination Act 1995, The Race Relations Act 1976, The Sex Discrimination Act 1975 amongst others.

Part Two – Introduction

Letting a property to another person creates a legal relationship between the landlord and the tenant. However informal you intend the arrangement to be, it is bound by specific housing legislation which the Local Authority enforces. This legislation defines both your rights and responsibilities, and those of your tenant.

There are several Council Departments that can advise you on becoming a landlord, particularly in relation to your responsibilities regarding the occupants and the standard of accommodation you are providing. A list of all the Council Departments which either provide a service to landlords, or have some regulatory powers, can be found in Part Eleven. Advice is free and landlords are encouraged to approach the Council when in doubt.

Cardiff Council also supports a scheme that can provide training and guidance to responsible landlords and agents. The Landlords Accreditation Scheme is a partnership administered in Cardiff on behalf of the 22 Local Authorities in Wales. Further information can be found in Part Twelve or by visiting www.welshlandlords.org.uk .

For independent advice on letting your property you should contact your solicitor or a good professional letting agent. Cardiff Council recommends letting agents who are members of ALMA (the Association of Letting and Management Agents), a self-regulating organisation, which encourages best practice in the lettings industry throughout South Wales. If you want to know more about ALMA, look at Part Twelve of this guide or visit www.almacardiff.co.uk .

Before letting a property you may be required to consult other people, such as:

- * your mortgage lender (if any);
- * your freeholder (if you want to let a leasehold flat);
- * your house insurance company (buildings and contents)
- * your landlord, if you are a tenant yourself;
- * the local Planning Department (if you are going to change the use of any property or part of it, or intend to alter the structure);
- * the Council's Private Sector Housing Department to see whether there is a need to 'register' with the Council e.g. licensing or HMO regulations

Before you begin, you will also need to decide what exactly you have to let, and how you want to let it. For example:

- * you might own an empty house or a flat independent to your own home;
- * you may be working away from home and want let your house or flat in your absence;
- * the property may be an investment bought specifically with the intention of letting it;
- * you may want to let your property to a single tenant or to a group of people;
- * you may intend to let part of the home you live in yourself, either sharing with your tenant, or on a self contained basis

Part Three – Standards in Rented Accommodation

This section covers the main legislation and safety standard requirements for rented accommodation. This includes information on the following:

- The Housing Act 2004;
- The Housing Health and Safety Rating System;
- Extra requirements for Houses in Multiple Occupation, including Licensing;
- Fire Safety Orders;
- Gas Safety;
- Electrical Installation Work;
- Furniture and Furnishings;
- Energy Performance Certificates.

The Housing Act 2004

The Housing Act 2004 came into force in Wales on 30th June 2006 and affects landlords in number of ways:

- The definition of Houses in Multiple Occupation (HMO) changed. Most student-shared houses are now classed as HMOs
- Landlords of HMOs with three storeys or more, and five or more occupants must have a licence from the Council to operate.
- From the 1 July 2010, the Council introduced an additional licensing scheme in the Cathays Community Ward of Cardiff. All HMOs in that area need to have a licence from the Council.
- The Housing Health and Safety Rating System (HHSRS) introduced 29 hazards for officers to consider when inspecting all properties.

The Housing Health and Safety Rating System (HHSRS)

All landlords are affected by the Housing and Health and Safety Rating system (HHSRS), which replaced the Fitness Standard.

The HHSRS is the Government's new approach to the evaluation of the potential risks to health and safety from any deficiencies identified in dwellings. It is a method by which housing professionals may identify hazards and assess the likelihood of harm.

There are 29 hazards in total. The HHSRS is evidence based and is supported by research on the impact of housing conditions on health. It was developed to allow assessment of all the main potential housing related hazards. Focusing on potential hazards, it places the emphasis directly on the risk to health, safety and welfare.

What hazards are covered by the HHSRS?

The hazards are divided up into four sections with subsections under each one.

A. Physiological Hazards

Hydrothermal Conditions	Pollutants (non-microbial)
<ul style="list-style-type: none"> damp and mould growth excess cold excess heat 	<ul style="list-style-type: none"> asbestos biocides carbon monoxide lead radiation uncombusted fuel gas volatile organic compounds

B. Psychological Hazards

Space, Security, Lighting and Noise
<ul style="list-style-type: none"> crowding and space entry by intruders lighting noise

C. Protection Against Infection

Hygiene, Sanitation and Water Supply
<ul style="list-style-type: none"> domestic hygiene, pests and refuse food safety personal hygiene water supply for domestic purposes

D. Protection Against Accidents

Falls	Electric Shocks, Fires, Burns and Scalds	Collision, Cuts and Strains
<ul style="list-style-type: none"> falls associated with baths etc falls on the level falls associated with stairs and steps falls between levels 	<ul style="list-style-type: none"> electric hazards fire hot surfaces and materials 	<ul style="list-style-type: none"> collision and entrapment explosions ergonomics structural collapse and failing elements

What part of a dwelling does HHSRS apply to?

When carrying out an assessment consideration must be given to the whole 'dwelling'. A dwelling is any form of accommodation, which is used for human habitation, or intended or available for such use. It includes:

- what is commonly known as a "house", whether it is detached, semi detached or terraced
- what is commonly known as a "flat", "maisonette" or "apartment"; that is a self-contained dwelling on one or more floors in a building containing other dwellings or other types of accommodation (e.g. shops or offices); and
- what may be known as a "bedsit", or "flat", and which is not self-contained, and where there is the shared use with other dwellings of some facilities such as a bath or shower room, sanitary accommodation, or kitchen.

Included as part of the dwelling are:

- any paths, yards, gardens, and outbuildings etc that are associated or for use with, or give access to that dwelling, whether or not they are for the exclusive use of that dwelling, or are shared with other dwellings; and
- any rights of way, easements, and common or shared parts and services necessary for the occupation and use of the dwelling, for example non-adopted footpaths, drives, and drains or private sewers.
- any rights of way, easements, and common or shared parts and services necessary for the occupation and use of the dwelling, for example non-adopted footpaths, drives, and drains or private sewers.

What are the Local Authority's powers and duties under HHSRS?

The Housing Act 2004 gives Local Authorities powers to intervene where they consider housing conditions to be unacceptable, on the basis of the impact of hazards on the health and safety of the most vulnerable potential occupant.

Following an assessment and calculation the Act puts Local Authorities under a general duty to take appropriate action in relation to category 1 hazards which score 1000 or more and category 2 hazards, which score less than 1000. The Act provides Authorities with a range of enforcement options to address hazards:

- Improvement notices
- Prohibition notices
- Hazard awareness notices
- Emergency remedial action or emergency prohibition orders (not available for category 2 hazards)
- Demolition orders (not available for category 2 hazards)
- Clearance areas (not available for category 2 hazards)

Cardiff Council's Private Sector Housing Section has an Enforcement Policy that is published on their website (www.cardiff.gov.uk) which outlines Cardiff Council's priorities and approach to enforcement to secure fair, practical and consistent enforcement operated in a transparent manner. Legislation can appear complicated,

but the policy aims to make the Council's practices clear, straightforward and accessible.

The Council has a duty to rectify housing conditions where a category 1 hazard exists, but will also prioritise action in any property where one of the following is identified as a Category 2 hazard, if the Officer considers it appropriate:

- **Means of escape from fire**
- **Security**
- **Structural collapse**
- **Energy efficiency**
- **Amenities (kitchen and bathroom facilities)**

The Council reserves the right to take action in other circumstances where appropriate.

The Council have produced a range of information sheets to give further information on the priority hazards. The sheets in the series are:

- **Fire Safety**
- **Gas Safety**
- **Electrical Safety**
- **Security**
- **Energy Efficient, Warm & Healthy Homes**
- **Slips, Trips and Falls**

All information sheets can be found at www.cardiff.gov.uk/privaterent (click on the Assessment of Housing (HHSRS) heading on the left.)

Houses in Multiple Occupation (HMOs)

In addition to the HHSRS, there are a range of additional provisions that apply to HMOs.

Under the Housing Act 2004, a House in Multiple Occupation is defined as follows:

- an entire house or flat which is let to **three or more** tenants who form **two or more** households* and who share a kitchen, bathroom or toilet
- a house which has been converted entirely into bedsits or other non self-contained accommodation and which is let to **three or more** tenants who form **two or more** households and who share kitchen, bathroom or toilet facilities
- a converted house which contains one or more flats which are not wholly self contained (i.e. the flat does not contain within it a kitchen, bathroom and toilet) and which is occupied by **three or more** tenants who form **two or more** households
- a building which is converted entirely into self-contained flats if the conversion did not meet the standards of the 1991 Building Regulations and more than one-third of the flats are let on short-term tenancies

This is a simplified version of the new definition. The full definition can be found in sections 254 and 259 of the Housing Act 2004.

This means that most houses occupied by students are now HMOs.

* **Single Household** : Persons who are all members of the same family (i.e. they are married or co- habiting, regardless of their sex, or one of them is the parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece of the other)

Specific Legislation covering ALL HMOs:

From 1st October 2007 there are two sets of management regulations which apply to **all** HMOs, whether or not they need to be licensed. The Management of Houses in Multiple Occupation (Wales) Regulations 2006 (No. 1713 (W.175)) provides a standard for most HMOs (except s.257 HMOs) and The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (Wales) Regulations 2007 (No. 3229 (W.281)) provides management regulations specifically for section 257 converted blocks of flats.

There is no provision for legal notices to be served under these management regulations. Non-compliance with the regulations is a strict offence. Where there are deficiencies, the Council can give landlords informal advice or, in more serious cases, prosecute the landlord in the Magistrates Court.

The regulations impose duties in the main on managers but with some requirements also on residents to ensure that good conditions are maintained.

These duties include the following.

1. Maintenance of common parts, fixtures, fittings and appliances

Managers are required to maintain the following in repair, good order and a clean condition:

- Water, gas and electricity supplies and drainage facilities;
- Appliances such as cookers, heaters, washing machines;
- Shared lighting and heating facilities, including hot water supplies;
- Shared toilets, baths, sinks and basins;
- Shared cooking, food storage and other installations;
- Staircase, handrails, halls and landings, including floor coverings;
- Windows and other means of ventilation;
- Outbuildings, paths, yards and gardens areas;

2. Maintenance of living accommodation

Managers must ensure that:

- Each unit of living accommodation and any furniture supplied are in clean condition at the beginning of a person's occupation of it;
- The internal structure of living accommodation and any fixtures, fittings or appliances supplied within it are maintained in good repair and clean working order, subject to the tenant behaving in a tenant – like manner.

3. Safety Measures

Managers must take reasonable safety measures to ensure that:

- Tenants are protected from injury;
- Means of escape from fire are free from obstruction and in good order;
- The fire alarm system and any fire fighting equipment provided are maintained in good order

4. Supply and maintenance of gas and electricity

Managers must:

- Not unreasonably interrupt supplies of gas or electricity;
- Supply to Cardiff Council within 7 days of request, the latest gas appliance test certificate for the HMO;
- Ensure that every fixed electrical installation is inspected and tested at intervals not exceeding five years by a person qualified to undertake such inspection and testing AND obtain a certificate from that person specifying the results of the test AND supply that certificate to Cardiff Council, within 7 days of receiving a request.

5. Provision of information for tenants

Managers must:

- Display a notice in the HMO giving the name, address and telephone number of the manager so that residents have someone to contact whenever necessary.

6. Waste disposal facilities

Managers must:

- Provide enough bins for refuse disposal, make sure rubbish does not accumulate and make arrangements for the disposal of refuse and litter having regard to any service provided by the Council.

7. Duties of occupiers

Tenants must:

- Take reasonable care to avoid damage and disrepair;
- Co-operate in a reasonable way with the manager, and provide information to allow him/her to carry out their duties;
- Comply with any reasonable arrangements made by the manager regarding means of escape from fire and refuse storage and disposal;
- Allow the manager access to their rooms to carry out his/her duties.

HMO Licensing

Due to the additional risk that multiply occupied properties pose, property condition and management can sometimes be an issue and licensing seeks to ensure that:

- Landlords as managers are 'fit and proper persons'
- HMOs meet standards for kitchen and bathroom amenities and fire precautions
- The standards of tenancy relations management and property management are adequate

- Where landlords are unwilling or unable to meet the required standards, Councils can step in to manage properties
- Vulnerable tenants can be protected
- High risk HMOs and their landlords can be more easily identified, so that enforcement action can be targeted on the worst cases using the Housing Health and Safety Rating System

Which HMOs are licensable?

Not all HMOs are subject to licensing. In Cardiff we have two licensing schemes in place:

- **Mandatory Licensing:** This scheme applies to all HMOs of 3 or more storeys, which are occupied by 5 or more persons, other than those consisting entirely of self contained flats*. All local authorities must introduce this type of licensing scheme.
- **Additional Licensing:** Due to particular issues with high concentrations of HMOs in Cathays, Cardiff Council has introduced an additional licensing scheme. Since the 1 July 2010 all HMOs in the Cathays Community Ward of Cardiff now need to become licensed.

It is a legal requirement for landlords who own certain types of HMO to apply for a licence.

* Individual flats might require a **mandatory licence** if in a building consisting of 3 storeys, and where the flat itself has 5 or more occupants sharing amenities.

How do I get a licence for a HMO?

The first step to take is to contact the Council to verify if your property is licensable. If so, the Council will send you the appropriate application form. Alternatively you can download the form at www.cardiff.gov.uk/privaterent. In order to grant a licence the Council must be satisfied that:

- the dwelling is reasonably suitable for occupation by no more than the permitted minimum number of households or persons
- the license holder is a fit and proper person
- there are adequate management arrangements for the dwelling.

What is a fit and proper person?

In deciding if a person is fit and proper, the Council will make enquiries relating to:

- any offences involving fraud, dishonesty, violence, drugs or offences listed in Schedule 3 of the Sexual Offences Act 2003
- any discrimination practiced in relation to sex, colour, race, ethnicity or disability
- any contraventions of Housing or Landlord and Tenant Legislation
- Failure to comply with Management Regulations in respect of HMOs.

To fulfill this requirement the Council will ask all applicants to supply a Criminal Conviction Certificate from Disclosure Scotland giving the basic level of disclosure. Applications can be made on line at www.disclosurescotland.co.uk or by telephoning 0870 609 6006 for more information.

The fact that you may have committed an offence does not automatically mean that you are not a fit and proper person. The Council must consider all the facts and make a considered judgment about whether you should be excluded from managing the property.

What standards apply for amenities and fire precautions?

A licensable HMO must meet certain standards for kitchen facilities, bathroom facilities and fire precautions. Please note that the standard does not have to be met before the licence is awarded – the licence will set a timescale within which the additional amenities or fire precautions must be provided.

What is the licensing fee? How long does a licence last?

Currently the licensing fee is set at:

£700 for a licence under the mandatory scheme

£500 for a licence under the additional scheme

The following discounts are available for **additional licensing** scheme applications:

- £100 reduction if the licence holder is an Accredited Landlord (see Part Twelve)
- A further £100 refund will be made, if the Licensing Officer determines on inspection that the property fully complies with the Council's standards. In particular fire safety, kitchen and bathroom amenities, security and excess cold. The standards can be found at: www.cardiff.gov.uk/privaterent

In most cases licences will be granted for five years.

What if I do not get a licence for a HMO?

There are several offences in relation to licensing of HMOs, which carry fines on conviction.

If an HMO that requires a licence is operated without one, the person having control of, or the person managing the dwelling is liable on conviction to a maximum fine of £20,000.

Breaching licence conditions is an offence and on conviction may lead to a maximum fine of £5,000 per breach, unless the breach is of overcrowding condition, which is subject to a maximum fine of up to £20,000. For example, if the licence stipulates the dwelling is to be occupied by no more than 7 people, but the property is found to be housing 8 people, this would be a breach of the conditions. Failure to carry out works specified by the Council in the licence would also constitute breach of conditions.

What is a Temporary Exemption Notice?

Temporary Exemption Notices (TEN) are notices which temporarily exempt the dwelling from requiring a licence. These can be issued by the Council if they are satisfied that the person required to be the licence holder proposes to take steps necessary to ensure the property no longer requires a licence (e.g. falls out of the licensing criteria, tenants leaving, pending sale etc.)

If considered appropriate, a TEN will be issued for a period of 3 months and in this time, it will be the duty of the proposed licence holder to ensure that the property no longer requires a licence. In exceptional circumstances, a second TEN may be served providing a further 3 months' exemption. A maximum of two TENs may be served in total and, following the expiry of these notices, should the HMO fall within the licensable criteria, it will need a licence.

However, it should be **noted** that the landlord may not issue a notice under section 21 of the Housing Act 1988 in order to seek possession under an assured shorthold tenancy in order to reduce the number of occupiers and avoid the requirement to obtain a license.

What are Interim and Final Management Orders?

Where the Council is unable to issue a licence for a HMO, for example because the owner is not deemed a fit and proper person, it must serve a Management Order. This will allow the Council to manage the property on a day-to-day basis. Rent collected for the property will be used to cover costs of managing the property and to carry out any necessary works. The expectation is that this power will only be used sparingly. Owners who are not fit and proper may appoint a competent managing agent to hold a licence on their behalf.

For more information about standards in rented accommodation or to obtain a Licensing Application Form visit our website page www.cardiff.gov.uk/privatrent and follow the links on the left hand side of the page, or contact:

Private Sector Housing Section

Cardiff Council
City Hall
Cardiff
CF10 3ND

Tel: 029 2087 1762

email: privatesectorhousing@cardiff.gov.uk

Fire Safety Order

The Regulatory Reform (Fire Safety) Order 2005 (RRFSO) which replaces over 70 different pieces of fire safety legislation with one legislative document now places a clear legal obligation on landlords to take responsibility for fire safety.

The Fire Safety Order applies in England and Wales. (Northern Ireland and Scotland have their own laws.) It covers 'general fire precautions' and other fire safety duties which are needed to protect 'relevant persons' in case of fire in and around most 'premises'. The Order requires fire precautions to be put in place 'where necessary' and to the extent that it is reasonable and practicable in the circumstances of the case.

Under the RRFSO, the Fire & Rescue Services are the enforcing authority, both working to raise awareness of the Order but also responsible for acting where non-compliance is identified. Since the Order came into force on 1st October 2006, the lettings sector has been slow to act, and consequently a number of residential landlords have been fined, and even imprisoned for non compliance. In addition, it is highly doubtful that insurers will pay out in the event of a fire.

Whilst the RRFSO does not deal with all domestic properties, it does stipulate that Houses of Multiple Occupation (HMOs) and flats must have a fire risk assessment by law, covering all common parts of the building, stairwells, emergency exits, lifts and dry risers.

As opposed to the previously prescriptive legislation, where the local Fire Service informed landlords of what fire precautions were required, the RRFSO endorses a risk based approach. This puts the responsibility for fire safety firmly with the “responsible person” (in most cases the landlord himself) and requires each premises to have a dedicated written fire risk assessment. The fire risk assessment needs to be carried out at least annually - or sooner if there is either a material change to the building (such as an extension or conversion) or if a fire related incident should occur.

Further information can be obtained from South Wales Fire and Rescue, by speaking to their Fire Safety Team (Tel: 01443 232000) or visit www.southwales-fire.gov.uk. Alternatively you can download guidance documents, including 5 steps to risk assessment by visiting the Communities and Local Government website: <http://www.communities.gov.uk/fire/firesafety/firesafetylaw/>

Gas Safety

Further more detailed information on Gas and Electrical Safety can be found on the website: www.cardiff.gov.uk/privaterent under the HHSRS heading – look for the guidance documents to download.

Don't Take Risks with your Tenants' Lives

GAS CAN KILL!

You need a current gas safety certificate on every gas appliance before you let a property

Gas Safety Regulations for Landlords and Agents

From October 31st 1994 it became law for gas equipment in rented properties to be checked annually by a registered installer and for landlords to keep accurate records of work carried out on all appliances in their control.

Regulation 35 states:

1. It shall be the duty of every employer or self employed person to ensure that any gas appliance or installation pipework installed at any place of work under his/her control is maintained in a safe condition so as to prevent risk of injury to any person.
2. It shall be the duty of any person who owns a gas appliance or any installation pipework installed in premises or any part of premises let by him/her to ensure that such an appliance or installation pipework is maintained to a safe condition so as to prevent risk of injury to any person.
3. Without prejudice to the generality of paragraph (2) above, a person subject to a duty imposed by that paragraph shall:

- a) ensure that such an appliance to which that duty extends is checked for safety at intervals of no more than 12 months by, or by an employee of, a member of a class of persons approved for the time being by the Health and Safety Executive for the purposes of regulation 3 (3) of these Regulations; and
 - b) keep a record in respect of the appliances to which that duty extends of the dates of inspection, the defects identified and any remedial action taken.
4. The record referred to in paragraph 3b above shall be made available on request and upon reasonable notice for the inspection of any tenant who may be affected by the use or operation of any appliance to which the record relates.

The regulation applies to landlords of domestic property who are legally obliged to maintain a record of when each gas appliance was checked, the defects found (if any) and the remedial action taken. The landlord must show the record to his/her tenants and must ensure that all work carried out on gas appliances are by a GAS SAFE* registered installer. Landlords who ask agents to manage their properties should ensure that the management contract specifies who is responsible for the maintenance of gas appliances and for keeping records to indicate when such maintenance has been carried out.

Prosecution for breach of the gas safety laws could result in an unlimited fine and/or imprisonment. A defective gas appliance could result in the landlord being prosecuted for manslaughter.

* To find a Gas Safe contractor (the scheme which has now replaced CORGI), visit the website www.gassaferegister.co.uk. It is important to make sure that the contractor is qualified to undertake the work you are asking them to do before you employ them.

Electrical Installation Work

A change to the Building Regulations, with the addition of Part P to the schedule 1 requirements, has introduced regulations affecting domestic electrical installations. This means that a fixed electrical installation in a dwelling will become a 'controlled service or fitting' and thus subject to the statutory provisions of the building regulations.

The new regulations result from the Government's determination to address the fact that in the UK some 10 deaths and over 750 serious injuries are caused annually by faulty fixed electrical installations in the home. Furthermore, government figures highlight that every year some 12,200 domestic fires are believed to be caused by faulty electrics.

Requirements

The new regulations require:

- Reasonable provision to be made in the design, installation, inspection and testing of electrical installations to protect persons against fire and injury.
- Where an electrical installation is provided, extended or altered, sufficient information to be provided so that persons wishing to operate, maintain or alter the installation in the future can do so reasonably safely.

Scope

Part P applies in England & Wales to fixed electrical installations after the electricity supply meter in all dwellings and:-

- Dwellings and business premises that have a common supply;
- Common access areas in blocks of flats;
- Shared amenities of blocks of flats such as laundries and gymnasiums;
- Outbuildings; including sheds, garages and greenhouses, and in garden areas; e.g. to ponds and lighting, supplied from a consumer unit located in any of the above.

A way of meeting the requirements is to follow the technical rules in BS 7671: 2001 and the guidance given in installation manuals that are consistent with this standard, e.g. the IEE On-Site Guide and NICEIC Guidance Notes No's 1 to 7.

Notification of Work

With certain exceptions outlined below, notification of proposals to carry out electrical installation work must be given to a building control body **before** work begins.

This prior notification is **not** necessary if:-

- The proposed work is to be undertaken by a competent and qualified electrician registered (either as an individual or a member of a company) under a government approved Competent Person Scheme approved by the Secretary of State; **or**
- The proposed work is 'minor work'.

Minor Work

The following 'minor work' does not need to be notified to Building Control:-

Work that is not in a kitchen, or special location, comprising:-

- Adding lighting points to an existing circuit;
- Adding socket-outlets and fused spurs to an existing circuit;
- Installation/upgrading of main and supplementary equipotential bonding;

Work in all locations comprising:-

- Replacing accessories such as socket-outlets, control switches and ceiling roses;
- Replacement of the cable for a single circuit only;
- Re-fixing or replacing the enclosures of existing components;
- Providing mechanical protection to existing fixed installations.

N.B. refer to Schedule 2B to the regulations (as amended by SI 2004 No. 1808) for definitive full details of work where **no** Building Notice or deposit of Full Plans is required.

Competent Person Schemes (CPS)

The following organisations run Competent Person Schemes approved by the Secretary of State for work in dwellings: (see also Schedule 2A to the regulations, as amended by SI 2004 No.1808, for further details of approved schemes)

NICEIC Certification

Services Ltd

Phone: 0800 013 0900

Website: www.niceic.org.uk

British Standards Institution

Phone: 01442 230442

Website: www.bsi-global.com/kitemark

ELECSA Limited

Phone: 0870 749 0080

Website: www.elecsa.org.uk

NAPIT Certification Limited

Phone: 0870 444 1392

Website: www.napit.org.uk

N.B. The list of approved schemes will change from time to time therefore you are advised to visit Communities and Local Government website for a definitive list (<http://www.communities.gov.uk/planningandbuilding/buildingregulations/>).

Local Authority Building Control

If you do not use a contractor registered under one of the CPS detailed above then you must notify the Council's building control service **before** commencing any work. This can be done in one of two ways:

1. Building Notice - This method could be used where electrical work only is being carried out (to a newly erected or an existing dwelling) or, where electrical work in conjunction with other material alterations and/or extensions to an existing dwelling is intended. A building notice has to be given and accepted 48 hours before the commencement of any work.
2. Full Plans Application – This method is only suitable where electrical work is to be carried out in conjunction with the construction of a new dwelling; or, carried out in conjunction with the material alteration and/or extensions of an existing dwelling. The charges for both the building notice and full plans options are the same and can be obtained from building control by any of the contact methods given below. Charges are required, by legislation, to be levied on a full cost recovery basis and will cover administration, inspection and third party testing of all the fixed electrical installation work.

The Consequences of Failure to Comply

Failure to comply with the statutory requirements of the Building Regulations will result in:

- a) A Completion Certificate for the works (including the main development if the electrical installation forms part of the erection of a new dwelling or the extension/alteration of an existing one) not being issued. This will result in any future sale of the property being compromised.
- b) Enforcement action by the local authority, in the Magistrates' Court, for an order requiring the work to comply with the Building Regulations which will inevitably incur greater costs and the opening up of completed work for inspection.

As the owner of a dwelling you need to ensure all notifiable electrical work is carried out by a qualified electrician registered under one of the government's Competent Person Schemes.

Notwithstanding the above, the most serious consequence of failure to comply with these new electrical safety rules is **Death or Serious Injury**.

Don't become a victim or a statistic: follow the rules.

Further Guidance

Further guidance on the requirements of Part P and the methods of achieving compliance can be obtained from:

The Council's Building Control Section :

www.cardiff.gov.uk/buildingcontrol

E-mail: buildingcontrol@cardiff.gov.uk

Telephone: 029 2087 1303

An Electrical Installers' Guide to the Building Regulations - a joint publication between NICEIC and ECA.

Approved Document P available at:

www.communities.gov.uk/electricalsafety

The IEE On-site Guide BS 7671: 2001 (2004)

British Standard BS 7671 Requirements for Electrical Installations

The Electrical Safety Council website:

www.esc.org.uk

Is your Furniture safe?

Most of the laws covering product safety are derived from the Consumer Protection Act 1987. This states that where goods are 'supplied' in the course of a business to consumers, certain safety standards must be met. The following are typical items that you may provide to your tenants :

- Upholstered furniture e.g. sofas, armchairs, mattresses
- Electrical appliances and installations e.g. fridges and televisions
- Gas appliances e.g. cookers
- Other consumer products e.g. lawn mowers, ironing boards

Have you considered how safe the items you are supplying are?

Upholstered Furniture

The Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended) control the safety of upholstered furniture supplied to consumers as part of a furnished letting arrangement. These Regulations were introduced to reduce the number of deaths and injuries caused by the toxic fumes that are given off when some upholstery materials burn.

Examples of furniture that are covered by the regulations include:

- Three piece suites and arm-chairs
- Beds, head-boards of beds, mattresses
- Sofa-beds, futons and other convertibles
- Loose and stretch covers for furniture
- Scatter cushions and seat pads
- Garden furniture which is suitable for use in a dwelling

How to tell if furniture complies – Labelling

Whether new or second-hand, upholstered furniture should by law have a label permanently attached to show compliance with these regulations.

You should check to see that a permanent label is present. The label should state at least the following:

Permanent labels can either be sewn or stapled to the furniture, usually under the main cushion or on the base of the furniture.

CARELESSNESS CAUSES FIRE

Batch/ID No DF 1234

To comply with The Furniture and Furnishings (Fire) (Safety)

Regulations:

This article does (or does not) include a Schedule 3 interliner

All foams, fillings and composites have been tested to ensure compliance with the relevant ignitability test.

All covers and fillings have been tested to ensure that they are cigarette resistant.

All covers have been tested to ensure that they are match resistant.

Further details are available from your retailer

What about mattresses?

Mattresses, bed bases and divans are not required to bear the type of label shown above. Compliance with the law may be shown by the presence of a permanently affixed label demonstrating compliance with BS7177.

An example of the label is:



Permanent labels are usually sewn into the piping of the mattress or bed base.

usually sewn into the piping of the

As a landlord, any upholstered furniture you supply as part of a let, whether new or second-hand, must comply with the regulations. If no labelling is present then the furniture is unlikely to comply with the regulations. Do not supply the item, unless you can obtain written confirmation from the manufacturer that the item complies with current safety standards.

Electrical Appliances and installations

The Electrical Equipment (Safety) Regulations 1994 apply to all electrical equipment whether new or secondhand and ensures that any electrical equipment provided with rented accommodation is safe. Generally;

- All electrical equipment should be complete and carry warnings, where necessary, for safe use.
- Access to live, hot or moving parts must not be possible without the use of a tool;
- Cable should be of the double insulated type with no basic insulation exposed;
- Wiring should not be damaged in any way;
- Cord grips on appliances must be effective;
- All guards should be in place and effective

What about Plugs on Electrical Appliances?

The Plug and Sockets Etc. (Safety) Regulations 1994 require electrical appliances to be correctly fitted with an approved plug. All plugs must;

- Be marked with BS1363
- Be marked with an approved body, normally BSI, ASTA or BEAB.
- Be fitted with the correct fuse (Marked BS1362).
- Have the two bottom pins (neutral and live) sleeved to reduce the risk of electrocution.

Must I have my Electrical Appliances tested?

There is no specific legal requirement to test electrical appliances under these regulations; however, there are many visual checks that you can conduct on electrical appliances that you supply.

In addition to the visual checks that you can conduct you are also advised to take the following precautions to achieve and demonstrate compliance with the safety requirements.

- Each piece of equipment should be regularly inspected and tested by a qualified electrician who has the necessary equipment and is competent to carry out testing.
- The frequency of checks should be decided by taking into account all relevant factors including the type and age of the equipment, the frequency of use, and advice from the tester.
- Each item should be marked or labelled to show it has been tested and when the next test is due and records kept.

You are also advised that all permanent electrical installations (e.g. mains power wiring and sockets; lighting wiring; fittings and switches) should be checked on a regular

basis by a competent person and records kept that demonstrates compliance with safety standards.

What about Gas Cookers?

The Gas Cooking Appliances (Safety) Regulations 1989 state that all gas cooking appliances must;

- Have legible and durable markings on the controls
- Have adequate pan supports
- Have tap handles that are easy to operate, but not liable to be turned on accidentally
- Ignite promptly
- Have oven doors that seal in hot gases
- Have instructions for safe use
- Have a hob cover that will shut off the gas supply, or the cover must bear a warning label stating that it does not.

Penalties

It is an offence to supply goods which do not comply with safety regulations. The maximum penalty is a fine of £5,000 and/or six months imprisonment.

If you would like further information or details on how to conduct visual inspections on upholstered furniture, electrical and gas appliances please contact Cardiff Trading Standards 029 20 872059 and ask for a copy of the 'Are They Sleeping Safely?' Guide.

Energy Performance Certificates

For all new tenancies in rented accommodation started since the 1st October 2008, it is a legal requirement that an Energy Performance Certificate (EPC) is available for all prospective tenants to see.

EPCs look similar to the energy labels found on domestic appliances such as fridges and washing machines.

If you do not have one available for prospective tenants to see for free when they are viewing your rental, you could be fined £200 for non compliance (enforced by Trading Standards).

To get an EPC, you must commission one from an accredited Domestic Energy Assessor (DEA). They will visit your property to assess the age, construction and location of the property as well as its current fittings such as heating systems, insulation, double glazing, etc.

DEA's can be found in the local directories or via <https://www.epcregister.com/search/searchAssessor.html>

Once you have an EPC it is valid for 10 years, and you can use the one you received when buying the house if still valid.

Things to look out for on the EPC:

- The current 'energy efficiency rating'. If this is a Band F or G this could indicate serious problems in the property and it is likely that energy efficiency works need to be done in order to ensure your tenants have a property that is warm, healthy and easy to heat.
- The 'lower cost measures'. These are measures you can easily and cost effectively put into the property which will improve its energy efficiency rating.

Financial Assistance for landlords wishing to improve the Energy Efficiency of their properties:

There are two schemes to be aware of:

- a. **The Home Energy Efficiency Scheme (HEES)** If your tenants are a certain age or on certain benefits, they may be eligible to have grant works done in your property for free. The tenants themselves have to apply for the grant – more information can be found on www.heeswales.co.uk
- b. **Landlord Energy Saving Allowance (LESA)**. This is a tax allowance that allows you to claim up to £1,500 against your tax every year for the cost of buying and installing certain energy saving products.

In Wales the Energy Saving Trust, a non-profit government funded organisation offering free impartial advice, has a dedicated Landlord Advice Officer. Call them on 0800 512 012 to get tailored advice and to find out about the full range of assistance available to you to improve the Energy Efficiency of your properties.

Part Four - What Kind of Tenancy?

Assured and Assured Shorthold Tenancies

These are the most common arrangements for letting houses and flats by private landlords. In their current form, they were introduced by the Housing Act 1988 but important changes were made by the Housing Act 1996 with effect from 28th February 1997.

In the legislation, the term “assured tenancy” covers both assured tenancies (sometimes called “full” or “ordinary” assured tenancies) and assured shorthold tenancies.

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

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

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

- the tenancy began before 15th January 1989 (see Regulated Tenancies below)
- it is a business or holiday let
- no rent or a very low or very high rent is charged
- you are a ‘resident landlord’ (see below)

The changes in the 1996 Act make it easier to set up an assured shorthold tenancy and simpler and quicker to evict tenants who fail to pay their rent or cause a nuisance and annoyance to other local people. Changes in the 1996 Act mean that:

- a new tenancy will automatically be an assured shorthold tenancy unless the landlord gives written notice that it will not be an assured shorthold tenancy;
- as the landlord you have a right to possession if your tenant/s owe at least 2 months’ or 8 weeks’ rent (rather than 3 months’ or 13 weeks’ rent);
- it has been made easier for landlords to evict if the tenant causes a nuisance or annoyance to other local people;
- If the landlord agrees a new or replacement shorthold tenancy with the tenant, the landlord should provide a written statement;
- a tenant can only refer the rent to a Rent Assessment Committee during the first 6 months of the tenancy.
- tenants continue to have the right not to be evicted without a court order.

Whether it is assured or assured shorthold, the tenancy is an agreement between landlord and tenant whereby in return for rent payable, the tenant can live in the property as his or her home.

The agreement does not need to be in writing unless it is for a fixed term of three years or more. It can either be for a fixed period (e.g. six months or a year) or it can be 'periodic' (continuing from week to week or month to month until the tenant leaves). However it is always sensible to put agreements in writing so that misunderstandings do not arise.

The rent is the payment negotiated between the parties, and a full market rent can be charged for an assured or an assured shorthold tenancy. By law, the rent can be re-negotiated annually if the agreement allows. However, for assured tenancies, the Housing Act 1988 (as amended by the Housing Act 1996) sets out the procedure the landlord must follow for rent increases. You should get advice on this, should the situation arise.

If the rent is paid weekly you will need to provide a rent book for your tenant. This must by law contain certain information - you can obtain standard rent books for assured and assured shorthold tenancies from law stationers and larger general stationers. However, for all tenancies it is sensible to keep a record of rent payments and provide receipts for rent paid to avoid any disagreements later.

As you are giving the tenant the right to use your property as his or her home you are not entitled to a key or to enter the tenant's living area without his or her permission, and then only by appointment.

Section 97 Housing Act 1996 - Duty of Landlord to provide a Statement of Terms of an Assured Shorthold Tenancy

Under Section 97 a tenant can apply in writing for a statement of terms that are not already evidenced in writing. The landlord must then supply the following information in writing:

- the date the tenancy began;
- the length of any fixed term;
- the rent and when it is due, and
- any rent review procedures.

Where a landlord has already provided a statement of the terms and the terms have not altered since it was provided, they do not have to provide another statement.

Failure to provide a statement without reasonable cause within 28 days of the request may result in the landlords being fined £4,000.

The statement of terms will not be taken as conclusive evidence that the parties have agreed them.

Regaining Possession

Although most tenancies end by agreement between the landlord and the tenant, the general rule is that a landlord cannot evict a tenant without first obtaining a Possession Order from the County Court. Any landlord who attempts to evict a tenant without following the correct procedure is guilty of a criminal offence.

If you let your property on a shorthold tenancy you can regain possession of your property 6 months after the beginning of the tenancy, provided that you give 2 months' notice that you require possession. If you let on an assured tenancy the tenant has the right to remain in the property unless you can prove to the Court that you have grounds for possession. You do not have an automatic right to repossess the property when the tenancy comes to an end; see "When I Want my Tenant To Go" (Part Ten) particularly the summary of the Grounds for Possession listed in Schedule 2 of the Housing Act 1988 as amended by the Housing Act 1996.

THE HOUSING ACT 1996 CAME INTO EFFECT ON 28 FEBRUARY 1997. THIS ACT HAS AMENDED CERTAIN GROUNDS FOR POSSESSION AND ADDED AN EXTRA GROUND. THESE CHANGES APPLY TO ALL ASSURED AND ASSURED SHORTHOLD TENANCIES

If there are no grounds to evict a tenant under Schedule 2 and the shorthold provisions have not been followed then you will not be able to evict the tenant. You therefore need to carefully consider your future requirements before you let your property. If you think that you may need to regain possession of your property at some time, you should consider a shorthold tenancy. If you have a mortgage your lender may require the tenancy to be a shorthold tenancy. If you are unsure which type of tenancy to offer you should seek legal advice.

If the tenant does not have exclusive use of the accommodation or you let part of your home

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

If you agree to let accommodation for a period at a rent, and the occupier will have exclusive use of the accommodation, the agreement will almost certainly be an assured or assured shorthold tenancy.

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

Resident Landlords

If you grant a tenancy but live in the same building as your tenant then you will be classed as a '**resident landlord**' and the tenancy can not be an assured or assured shorthold tenancy. This rule also generally applies to converted houses, so if your only or main home is a flat in a building which has been converted into flats and you then let another flat in that same building, the arrangement will not be an assured or assured shorthold tenancy (unless it is a purpose built block of flats). You do not need to share any accommodation with the occupier to be held to be a resident landlord – it is enough that you live in the same building.

This is the simplest letting arrangement to understand as the law attaches considerable importance to the fact that it is also your home. There are two basic types of letting involving resident landlords, either sharing facilities with the tenant (excluded occupier) or living in the same building as your tenant and not sharing any facilities (occupiers with basic protection). You should get independent advice on this before entering into an agreement as there are different rules for ending the tenancy.

Sharing Part of Your Home

If you are going to allow someone to live in your home as a tenant you should choose carefully and make sure that you have a common understanding of the rules and courtesies you both expect. In these circumstances you are free to negotiate the rent.

If the landlord/tenant relationship breaks down, if you need to sell the property with vacant possession, or if your circumstances change in any way, you can give the tenant notice to leave without any special procedures, which in most cases will be four weeks or a months notice. Obviously if the relationship is good, you will want to give your tenant as much time as possible to find other accommodation.

Separate Accommodation

If your tenant occupies part of the property in which you live without sharing any facilities with you other than in a purpose built block of flats (except perhaps the front hall and stairs) the law grants greater protection to the tenant. It is important to be clear about each party's rights and responsibilities, especially regarding bills for services, etc.

If, for any reason, you change your mind about letting, you have the right to vacant possession, and most tenants will leave amicably if given enough time. However, because of the tenant's greater rights, the law requires you to follow a formal procedure and obtain a Court Order if you want the tenant to leave and he or she refuses. For more information see "When I Want My Tenant To Go" (Part Ten).

If your circumstances change and you have to move yourself, get advice. You will need to negotiate a new agreement with your tenant before you go.

It is important to establish whether an agreement is an assured/assured shorthold tenancy or a licence as this will affect your rights and responsibilities and those of the tenant or licensee. For further information see the Shelter publication 'Private Tenant's Rights' which is available on their website www.sheltercymru.org.uk and 'Assured and Assured Shorthold Tenancies – a Guide for Landlords' – produced by the Department for Communities and Local Government – www.communities.gov.uk

Remember, however, that it is a criminal offence to evict someone without giving notice. If the tenant does not leave, you must not use force to evict him or her. If the notice has expired and the tenant is refusing to leave we suggest you contact your own solicitor or the Housing Advice Unit for further advice.

There are also tax incentives to landlords letting out part of their home. These are explained in detail by the Inland Revenue on their website www.hmrc.gov.uk – see

their leaflet entitled “Rent-a-Room Scheme” (Orderline: 08459 000 404 - for outside of the UK the orderline number is +44 151 210 2222, Helpline: 08459 000 444)

Non-Shorthold Tenancies

As indicated above, most tenancies are now the assured shorthold tenancies. However, Schedule 7 of the Housing Act 1996 lists tenancies that cannot be shorthold. These include:

- Tenancies excluded by Notice – this is where notice was served by the landlord either before the start of the tenancy or during the tenancy. Notice does not need to be in a prescribed form.
- Tenancies containing Exclusionary Provisions - it is unclear whether the exclusion needs to be implicit or implied e.g. the tenancy stating that it is a tenancy for life. The DoE indicates that it will be up to the courts to decide whether implied exclusions mean that the tenancy is an assured tenancy. Further complications may arise if the tenancy was verbally created, as it is likely there will be no evidence of any exclusionary provision.
- Tenancies under Section 39, HOUSING ACT 1988 - Assured Tenancies created by succession to Rent Act 1977 Protected Tenancies.
- Tenancies replacing Non-Shorthold tenancies - an existing fully assured tenancy cannot be replaced or become a Shorthold Tenancy, unless the tenant serves a notice on the landlord that it is to become a Shorthold. The Act allows, for the first time in the history of residential tenancy law, that tenants may sign their rights away. NB: This applies to existing assured tenancies as well as tenancies created after the implementation of the Act. Schedule 8 paragraph 2(4) deletes paragraph 3 of Section 20 to the Housing Act 1988. This protected tenants from signing their rights away and accepting a less secure tenancy.
- Tenancies commenced prior to 15th January 1989. Most residential lettings by non-resident private landlords which began before 15th January 1989 will be Regulated or Protected tenancies under the Rent Act 1977. There are strict rules governing security of tenure, the amount of rent charged, and succession, and further advice should be sought. See Department for Communities and Local Government publication ‘Regulated Tenancies’ or the website www.communities.gov.uk for further information.

If you initially create an assured shorthold tenancy it will remain an assured shorthold tenancy unless you serve a specific notice to the tenant stating that the shorthold provisions no longer apply. It therefore follows that a landlord cannot accidentally lose the right to use the shorthold provisions. This is a good safeguard for any landlord who wants to let a property in the medium term but may require vacant possession in the future. The usual rules for possession for other reasons continue to apply (for example, if you want to gain possession mid way through the tenancy for rent arrears) and these are listed in the Housing Act 1988 as amended by the Housing Act 1996 Schedule 2 and are summarised in Part Ten of this Guide.

Part Five – Rent and Deposits / Bonds

Rent

For tenancies created on or after 15th January 1989 there are few restrictions on the rent a landlord can charge, but you should consider the market and what the rent covers before proposing any rent figure. When deciding on this figure, consider the quality of the accommodation, its size, the services or furniture included and the property's location. Check adverts in the press for rent levels of similar accommodation in your area.

During the first term of an assured shorthold tenancy, the tenant has the right to refer the rent level to the Rent Assessment Committee for an assessment of a market rent. This figure is then the legal maximum payable.

Rent Books and Rent Receipts

Landlords are only legally obliged to provide a rent book or similar document if the rent is stated to be payable weekly. The rent book should be provided by the landlord, but retained by the tenant. It is in everyone's interest to ensure that this document is accurately kept, as it is both a receipt book and a rent book. However, even if the rent is monthly, landlords should consider providing a rent book or similar document, because of its convenience as a record of payments. If not, providing receipts for rent paid can help avoid and/or settle any disputes at a later date.

Tenancy Deposits

It is common practice for landlords to ask tenants for a deposit (also known as a bond) to be held as surety against any damage, rent arrears or unpaid bills. In deciding how much the deposit should be, consider what you might need to recover from it should this become necessary. If the tenant is going to put bills for services like gas and electricity in his or her own name (which is the recommended arrangement) or if a key meter is provided, you do not need to allow in the deposit for any failure by the tenant to pay these bills. Similarly, if a property is unfurnished, you do not need to allow for damage to furniture (although you may allow for damage to decoration and floor covering so long as it is beyond what might be considered 'normal fair wear and tear').

Most landlords request a bond equal to one month's rent – it is illegal to charge more than the equivalent of two month's rent as a deposit.

Tenants should be clear about the purpose of the bond and you should give a receipt clearly stating the amount of money received and what the deposit covers (breakages, damage, carpet cleaning, etc). Prior to the tenants occupation, landlords should make an inventory and schedule of the property and its contents, noting and describing the property, its fixtures, furnishings and other items provided – including their condition. You should give the tenant the opportunity to check your inventory and suggest changes. You should then ask them to sign each page and return this form to you. The inventory will be a useful reference when checking the property at the end of the

tenancy and very important evidence should you need to make a claim against the deposit (under new laws – see below). You may also find it useful to photograph certain items, particularly at the end of the tenancy if any damage has occurred.

Tenancy Deposit Protection

The Government has recognised the need to safeguard tenants' deposits and to facilitate the resolution of any dispute that may arise at the end of the tenancy. Changes introduced by the Housing Act 2004 came into force on the 6th April 2007 and for any tenancy starting after that date (including fixed term renewals) landlords who take a deposit must safeguard it in an approved deposit protection scheme. The deposit itself must either be paid over to the new Custodial Scheme or held within one of two insurance-based schemes approved by Government. Further information is available from <http://www.arla.co.uk/infosheets>. If you do not wish to use the Custodial Scheme but you still want to take a deposit you must purchase insurance through a scheme known as MyDeposits, run in association with the National Landlord's Association: www.mydeposits.co.uk. If your agent is regulated by a professional body they must be a member of TDS, which is the largest of the three schemes and backed by ARLA, NAEA and RICS. The TDS website is at www.thedisputeservice.co.uk.

Whichever option you choose, the main rules are:

- Any deposit paid to a landlord or his/her agent in relation to a shorthold tenancy must, from the time of its receipt be dealt with in accordance with one of the approved schemes
- The person who has received the deposit must, within 14 days of receipt, advise the tenant of the scheme being followed, its requirements and how it operates.
- Failure to comply may result in an application to the County Court for breach of the requirement to protect the deposit
- The Courts can impose penalties, including ordering the deposit to be repaid to the tenant, and can impose on the landlord a fine equal to three times the original deposit
- If the provisions of the scheme are not followed then the landlord or his/her agent will not be able to serve a Section 21 Notice to end the tenancy
- The Schemes make provision for the release of the deposit within 10 days of the tenancy ending
- All three schemes provide third-party dispute resolution so that any disputes can be resolved at no cost and without recourse to litigation.

Landlords who wish to use agents must always check that their agent is actually protecting the deposit – landlords must remember that they are themselves in a contractual relationship with the tenant and therefore the liable person if there is a breach of the regulations. There **have** been reported cases in Cardiff where tenants have issued proceedings against the landlord for failure to protect the deposit.

What if the tenant hasn't got the money for a bond?

Neither the Department of Work & Pensions (DWP) or Housing Benefit Section can help with supplying a bond and many tenants find it difficult to find a lump sum to use as a deposit.

Cardiff Bond Board

Cardiff Bond Board currently operate from offices in Charles Street Cardiff. They are a registered charity that assists single people on benefits or low income to access accommodation.

The bond is given to the landlord in the form of a Security Bond Certificate. If there are rent arrears or damage at the end of the tenancy, Cardiff Bond Board will reimburse the landlord up to the value of the agreed bond.

If Cardiff Bond Board incurs any loss because of the tenant's behaviour, it will use every means available, including court action, to recover the full amount from the tenant.

If you have property to let, and feel that some of your prospective tenants may need to use the services of Cardiff Bond Board, please refer them to or contact the Bond Board directly.

Bond Officer
55 Charles Street
Cardiff
029 20371377.

The Bond Board's guarantee is exempt from the new Tenancy Deposit Protection legislation and as such the landlord will not have to comply with these rules where they accept the guarantee only.

Cardiff Council's Family Bond Scheme

Cardiff Council's Family Bond Scheme is administered by the Housing Advice Unit. Officers will assess an individual's housing needs and if they meet the criteria for assistance, they may be able to offer landlords a bond guarantee certificate. The fund is very limited and help is restricted to those who are eligible depending on availability of funds. For more information contact the Council's Housing Advice Unit on Tel: 029 20871050

Cardiff Council
Housing Advice Unit
Central Square
Cardiff CF10 1EP

Part Six - Housing Benefit

What is Housing Benefit?

Housing Benefit helps people who are on a low income to pay their rent. The local Council pay Housing Benefit, but the rules are set by the Government.

There are two types of Housing Benefit for private tenants:

Local Housing Allowance – If your tenant made their claim for benefit after 7th April 2008, or if they changed address or had a break in their claim after 7th April 2008, Local Housing Allowance rules will apply. Most of this guide will refer to the Local Housing Allowance rules.

Rent Allowance – If your tenant claimed benefit before 7th April 2008 and has not since had a break in their claim or change of address different rules will apply. Please see the information about Rent Allowance at the end of this section.

To apply for Housing Benefit tenants should fill in a Housing Benefit application form and send it to the Council's Benefit Service, with supporting documents to verify the information given. Please note that only original documents will be accepted- not photocopies.

If any information is missing the Housing Benefit Service will write to the tenant and request it – it is therefore in the tenant and landlord's interests to make sure that information is provided as soon as possible (and no later than one calendar month after the date of the letter) as the claim cannot be processed, and payment of any benefit made, until full information is received.

What evidence must the landlord supply?

A 'proof of rent' form is attached to the Housing Benefit application form. This can be completed by the landlord and is generally accepted as proof of the rent that the tenant is required to pay.

Alternatively, the tenant can send the Housing Benefit Section their tenancy agreement and proof of recent rent payments, such as a rent book or receipts.

When will benefit start?

Benefit will usually start from the Monday after the application form has been received. It is therefore important that the form is returned as soon as possible.

The Council can pay benefit from an earlier date if there is a good reason for the delay in claiming (this is known as backdating), but the tenant will need to make a special request for this.

How much benefit will be paid?

The amount of benefit that your tenant will be entitled to will depend on:

- The Local Housing Allowance rate that applies to them.
- Their income, savings and housing needs

The Local Housing Allowance Rates

A Local Housing Allowance rate is set by the Rent Officer on a monthly basis for each size of property (see below). These rates determine the **maximum** amount of housing benefit that a household needing a particular size of property can be awarded. However, the **actual** amount of housing benefit they will receive is assessed taking into account their income and savings and may therefore be lower than the maximum.

Local Housing Allowance rates as at October 2010 (Please note that rates change on a monthly basis)

Number of Rooms	Example Weekly Local Housing Allowance rate	Monthly Equivalent
Shared Accommodation	£57.69	£249.99
1 Bedroom self contained	£109.62	£475.02
2 Bedrooms	£136.15	£585.000
3 Bedrooms	£160.38	£694.98
4 Bedrooms	£207.69	£899.99
5 Bedrooms	£276.92	£1199.99

Note

The government has announced major changes to the LHA arrangements from 1 April 2011, including how the LHA rates are worked out. The main changes are:

- I. Setting rates at the 30th percentile in each area, a reduction from the 50th percentile currently used. Local Housing Allowance rates for rooms are based upon the average market rent in an area. This is being reduced from the mid point to properties in the bottom third. So, in each market area, if there were 100 rental properties, the Local Housing Allowance would be based on the 30th lowest of those 100 properties. This means generally, that Local Housing Allowance will only fully cover rents of the lower priced properties. Anyone wanting to rent a higher priced property will have to pay the difference.
- II. Making the four bedroom property rate the maximum payable.
- III. Disabled customers who need overnight care may be able to claim for an extra room for a
- IV. Non-resident carer.

For further information see www.wales.gov.uk.

How can I find out how much the current Local Housing Allowance rates are?

The Local Housing Allowance rates are reviewed each month and are publicised by the Council in local offices and on the Cardiff Council website (www.cardiff.gov.uk/benefits) Current rates can also be obtained by telephoning the Council's Benefit Service - see contact details in Part 11 of this Guide.

Which Local Housing Allowance rate will apply to your tenant?

The Local Housing Allowance rate that your tenant will qualify for depends on the number of people in their household and their ages.

A requirement of one bedroom for each of the following is assumed for the purposes of the calculation:

- A single adult or a couple
- Any other adult (aged 16 or over)
- Any 2 children under the age of 10
- Any 2 children of the same sex aged 10-16
- Any other child

However it is important to note that:

- not everyone in the household is counted when working out how many rooms are required e.g. foster children
- single tenants under the age of 25 will only be entitled to the shared accommodation rate.

Will my tenant get the full Local Housing Allowance rate for the size of property they need?

Your tenant may not get the full amount of Local Housing Allowance that applies for the size of property they need. The actual amount they receive will be calculated taking into account their household income and savings.

When will the Local Housing Allowance rate change?

The rate of Local Housing Allowance that applies in the month that your tenant made their claim will be used to calculate their benefit. This will be updated on the anniversary of their claim. However if there is a change in their household this could affect the number of bedrooms that they require and the Council should be notified of this change immediately.

What if the rent is higher than the Local Housing Allowance rate?

The maximum amount of benefit a tenant can receive is the Local Housing Allowance rate applicable for their household size. If their rent is more than this figure it is up to the tenant to make up any shortfall.

What are the payment arrangements?

Payments are usually made 4 weekly in arrears, although fortnightly payments can be arranged on request. The preferred method of payment is directly to a bank or building society account as this is quicker and more secure. If your tenant does not have an account then Housing Benefit staff may be able to assist them with opening one.

Who will the Local Housing Allowance payment be made to?

Local Housing Allowance is normally paid to the tenant - he/she does not have the option of requesting payment direct to the landlord. However there are some

circumstances where, in order to protect tenancies, payment can be made direct to the landlord. The Council's "Safeguard Scheme" sets out these arrangements. Further information is available from the Council's Benefits Service but in general the situation in which direct payments can be made direct to the landlord are where:

- The tenant has rent arrears of 8 weeks or more
- Deductions are being made from their Income Support or Jobseekers Allowance to pay rent arrears
- There is evidence that the tenant is unlikely to pay their rent
- The tenant is likely to have difficulty in managing their financial affairs

In these circumstances landlords can request a Direct Payments form from the Council's Benefit Service and return it with evidence to support the request, such as a letter from a doctor or social worker where the tenant is struggling to manage their financial affairs or the rent book / rent statement where the tenant has failed to pay their rent. If the tenant's benefit is higher than the rent amount, the excess will also be paid to the landlord to help reduce the arrears.

All decisions to make payment direct to the landlord are reviewed periodically (usually on an annual basis).

How long will benefit be paid for?

The claim will usually remain in payment until there is a change in the tenant's circumstances.

What if the tenant cannot afford the rent and is already living in the property?

Where the tenant has exceptional circumstances and can show that the shortfall in benefit is causing hardship, they can apply for Discretionary Housing Payments. A leaflet and application form is available from the Council's Benefit Service.

Duty to inform the Council of changes in circumstances

Landlords have a duty to inform the Housing Benefit Service within 1 calendar month of any change in their tenants' circumstances that may affect their benefit. The Housing Benefit Service cannot normally backdate changes that increase the tenants benefit. Changes that a landlord needs to tell the Housing Benefit Service include:

- A change in the number of occupiers
- If a tenant or partner moves out (even temporarily)
- If the rent changes
- If the tenant's income or savings change, or the income of anyone living with them

This list is not exhaustive.

A landlord may be prosecuted if he/she deliberately fails to tell the Council about a change in circumstances. If a change results in the tenants benefit decreasing the

landlord may have been overpaid benefit and this overpayment may be recovered

Rent Allowance - Different rules for tenants who claimed before 7th April 2008

If your tenant made their claim before 7th April 2008, and has not since changed address or had a break in their claim, Rent Allowance rules apply to them.

The differences are as follows:

- The benefit will not be based on the set Local Housing Allowance rates. Instead the rent will be decided by the Rent Officer Service on an individual basis and reviewed each year.
- Unlike the Local Housing Allowance rate, the Rent Officer figure will never be higher than the rent paid.
- The tenant can choose to have their benefit paid directly to their landlord.

How can I contact the Council's Benefit Service

Cardiff Council's Benefit Service has a dedicated Landlord Liaison Team to provide help and advice to landlords on Housing Benefit related issues. The Team can be contacted on a dedicated landlord telephone number, fax number and e-mail address. Contact details are provided in Part 11 of this Guide. You can also request an appointment to discuss your enquiry in person.

A regular newsletter is also produced to keep you up to date with relevant changes.

For further information on Housing Benefit please ask for a copy of the Council's leaflet "Housing Benefit – A Guide for Private Landlords".

Part Seven – Contracts and Agreements

Whenever you let accommodation to someone you are entering into a legal contract or agreement, even if it is not in writing. You have, in effect, contracted to provide someone with a home in exchange for money and this carries legal obligations and responsibilities. There is no legal requirement to enter into any written agreement (unless the term is for 3 years or more – see Part Four of this Guide) but it would be sensible to record any agreement between you and your tenant and you are strongly advised to have a written agreement as it will make it easier to sort out any disagreements which may arise later, and if necessary, to evict the tenant. You can not use the accelerated possession procedure operated by the County Courts without a written tenancy agreement (see Part Ten of this Guide)

Remember: no such agreement can take away your legal rights and responsibilities in the landlord/tenant relationship and any terms you incorporate into your contracts must satisfy the Unfair Terms in Consumer Contracts Regulations 1999 – see below.

The Unfair Terms in Consumer Contracts Regulations 1999 - Office of Fair Trading's Guidance on unfair terms in tenancy agreements

The Office of Fair Trading have produced guidance, backed up by legislation, which says that landlords and agents should deal fairly and equitably with tenants, respecting their legitimate interests and deal with them in good faith - see 'Guidance on Unfair Terms in Tenancy Agreements' (OFT356). You can download this for free on their website visit www.offt.gov.uk.

The Guidance says that tenants are entitled to have tenancy agreements that strike a fair balance between themselves and landlords. Under the Regulations a tenant is not bound by a standard term in a contract with a landlord if the term is unfair, and tenants are protected from one-sided contracts favouring landlords. You should therefore ensure that your tenancy agreement is jargon free and does not reduce the tenant's legal rights or your legal obligations.

Written agreements are therefore useful as they spell out the obligations of the parties before the contract begins and both sides can take advice. The tenancy can be for a fixed period or for an indeterminate period, i.e. a periodic tenancy. At the end of the fixed term tenancy, a statutory periodic tenancy will be created automatically unless a new fixed term tenancy is granted. This will be on the same terms and conditions as the fixed term tenancy.

Agreements should include:

- * **the names and addresses of the landlord and tenant;**
- * **what is to be let**

- * **the rent and how it should be paid;**
- * **who is responsible for paying the bills;**
- * **any rules; for example, about guests, pets, cleaning, decorating, laundry or the tenant's other obligations.**

PLEASE NOTE THAT THE HOUSING ACT 1996 IMPOSES A DUTY ON THE LANDLORD TO PROVIDE A STATEMENT OF TERMS OF AN ASSURED SHORTHOLD TENANCY. SEE PART 4 OF THIS GUIDE FOR FURTHER DETAILS.

You may draw up your own agreement but you must make sure that the terms are fair and do not conflict with the duties on landlords imposed by legislation which will automatically override what you agree with your tenant. If you decide to draw up your own agreement you are strongly advised to seek legal advice. If you know that you will want the property back with vacant possession in the short or medium term, drawing up your own agreement is not a good idea. Assured shorthold or assured tenancies, where you want to serve prior notice, are more technical than merely filling in forms and are only valid if absolutely correct. Your solicitor or residential letting agent will be able to draw up an agreement for you. Make sure it complies with what you want and that you understand it! Even buying printed forms can be risky and definitely don't borrow an agreement from a friend. You may end up copying mistakes.

For resident landlords and people letting long-term there are not so many dangers. But do not make the language of any agreement 'legalistic' - just write simply and clearly, describing what you expect from your tenant and what you are offering in return. Read the agreement, and once you think it is right **get advice**. Make sure your tenant also understands the terms of the agreement before the tenancy begins.

If you are unsure about any point, consult with your solicitor or letting agency and, however you draw up your agreement, always make sure the tenant has a copy.

Stamp duty

A Tenancy Agreement is a legal document and it will need to be stamped in order for it to have validity if it is subsequently to be used in any Court proceedings. Stamp Duty Land Tax (SDLT) was introduced on 1st December 2003 to replace stamp duty. Details are available from www.hmrc.gov.uk or Tel: 0845 603 0135.

Forfeiture Clause

There is one clause found in most tenancy agreements that causes a great deal of confusion and misunderstanding - although it is strongly recommended you include it! Generally referred to as the 'forfeiture' clause, it usually says something like:

"PROVIDED that the rent shall be in arrears or if there shall be any breach of the obligations on the part of the tenant the landlord may immediately re-enter the premises..."

It is necessary to have such a clause in a fixed term contract so that landlords can take action during this term against tenants who are in breach of their agreements. **BUT it only allows landlords to start proceedings for possession and most definitely does not allow them to take possession of the property against a tenant's will.** Any landlord who did so would be committing a criminal offence under the Protection from Eviction Act 1977. For more information please see 'When I Want My Tenant To Go' (Part Ten) for details of the proper procedure.

Please note - even if a tenant does not pay the rent you can only regain possession through the Courts.

Part Eight - How Do I Find A Tenant?

There are a number of options available to landlords in Cardiff to help them to find tenants for their properties.

Letting & Managing Agents

You may wish to approach an Agent. Agents charge a percentage of the rent (which will vary from agent to agent) for finding a tenant and managing the property for you. Should you decide upon this method it is always advisable to “shop around” not only to ensure the best financial deal, but also to be aware of good or bad practice.

Private Advertisements

You could advertise in the local press (which can be quite costly) or put a card in a local shop window.

Cardiff Housing Website

Landlords can advertise their properties, free of charge, at www.cardiffhousing.co.uk. This website also provides information about required accommodation standards, accreditation options and other issues.

In order to advertise your property all you need to do is visit the landlord section of the site where you can either download the property to let form, or complete an on-line application.

Once you have advertised the property prospective tenants are able to view the available properties on the website or in person at the Housing Advice Unit

Any prospective tenants will be asked to contact you direct and arrangements can then be made for them to view the property. It must be remembered that you, as owner of the property, will have the ultimate choice as to whether to accept someone as your tenant. Don't be shy about asking for references from previous landlords, if applicable, and follow up on those references.

You can also obtain help and advice, free of charge from a Tenancy Relations Officer at the Housing Advice Unit on any aspect of renting and letting and we are happy to discuss any issues you have before letting.



A Fast and Friendly Service

Fast - from the moment you decide to use **CanDo Lettings** they will have your property uploaded and advertised on their website. The average letting time for 1 bed flats is 9 days.

Friendly - the team endeavours to put customers first providing a personal and friendly service.

They provide a **hassle free full management service** at competitive prices and are currently managing in excess of 170 properties for over 100 Landlords.

- **Rent in advance** for selected properties
- **High standard** of management
- **No worries about rent arrears** – we manage them
- **Routine repairs up to the value of £200 per annum** covered within the charges
- **Charges** consist of initial setup fee plus commission
- **Fees and Commission** deducted monthly from rents
- **Tenancy agreements** are between **CanDo Lettings** and the tenant

Properties have to meet the legal requirements for the private rented sector as advised by Private Sector Housing Section of the Council.

For further details you can:

Visit their website www.candolettings.co.uk

Email info@calon.com or

Telephone the CanDo Team on 02920 434434

Part Nine - How Am I Going To Manage The Property?

Whenever entering into commercial and contractual arrangements with tenants, the landlord has a number of duties relating to the management of the property.

You may choose to let your property through a Letting Agent especially if the property you intend to let is far from where you live, or if you are frequently away for long periods of time.

What Can Letting Agents Do?

- * Find tenants
- * Take up references
- * Prepare inventories and contracts
- * Collect rents
- * Deal with emergency repairs
- * Monitor and chase rent arrears
- * Inspect the property from time to time
- * Deal with departing tenants

As a landlord you should be clear about what services you require, and make sure that the agent you choose **can** and **will** provide these services. You will usually have to enter into a contract with the managing agent and, as with all contracts, you should ensure you read it carefully and are fully aware of the terms and conditions. Remember that the managing agent is only the **agent** for you, and the ultimate responsibility for the property is yours.

Please choose your agent carefully as the services they offer and the fees charged vary. We recommend that you :

- Ensure that the agent has membership of a professional organisation such as ARLA (Association of Residential Letting Agents), NALS (National Approved Letting Scheme) or ALMA (Association of Letting and Management Agents) - see Part Twelve. Some may also employ staff who are qualified members of the Royal Institute of Chartered Surveyors.
- Check whether the agent is long-established in the area or is part of a larger organisation.

- Ask about client money protection insurance as this ensures the security of any money belonging to a landlord or tenant which is held by the agent.
- Talk to the Council and other landlords or estate agents in the area. Reputable agents should be willing to put you in touch with existing customers.

If you are going to entrust your property to an agent, try to gain as much assurance as you need regarding their standards and services. For further information see: www.arla.co.uk and www.almacardiff.co.uk

If you are going to manage the property yourself, look again at the list of requirements for managing HMOs earlier in this booklet. Even if your property is not an HMO the property (and possibly any contents) will still need to meet legal requirements. Please ensure that you read this Guide thoroughly to ensure you are familiar with your responsibilities as you will be held legally responsible if there is a breach. You could consider the Landlord Accreditation Wales scheme, accessing one of their accreditation courses which give an overview on legal responsibilities and information on best practice.

You should also look again at the Contract or Tenancy Agreement you are proposing and **don't forget to include:**

- **arrangements for collection/ payment of rent;**
- **procedures for emergencies;**
- **general arrangements for repairs;**
- **a clear means for the tenant to contact you when necessary.** S1 of the Landlord & Tenant Act 1985 requires the person who asks for rent from a tenant (or the last person who received rent) to provide a written statement of the landlord's name and address, within 21 days. It is a criminal offence to refuse to do this. S48 of the Landlord & Tenant Act 1985 requires that a landlord must give a tenant written notice of an address in England Wales at which notices, including notices in Court proceedings, can be served. Until this is done, rent will not technically be due to the landlord.
- **Tenancy deposit protection arrangements.** If you do not take the necessary steps to protect deposit/bond monies paid to you by or on behalf of the tenant within 14 days of receiving it, you will not be able to gain possession of the premises and the tenant can issue County Court proceedings against you - see the booklet "Are You Protecting Your Tenant's Deposit" produced by the Department for Communities (www.communities.gov.uk).

Part Ten - When I Want My Tenant To Go

Most tenancies end amicably by agreement, but how can a landlord ensure that vacant possession can be obtained when it is required? Planning ahead is crucial. When granting the tenancy, the landlord may need to serve notices, which would entitle him or her to possession at a later date. The landlord must allow enough time for the proper procedures to be followed in case the tenant does not leave by agreement.

Resident Landlords

Resident landlords sharing more accommodation with their tenants than the entrance hall or staircase do not require a Court Order before evicting tenants. However, reasonable notice has to be given first, which is usually in line with the rental period, i.e. a month, but also dependant upon written/verbal agreement between the parties and the circumstances. At the end of the notice period, you can evict the tenant so long as you do not use any kind of force.

A landlord living so closely with a tenant is in an excellent position to explain the reasons for needing the tenant to leave and giving him or her the maximum time to leave the property.

Resident landlords who do not share accommodation with their tenants have to follow the correct procedure:

- A minimum of 4 weeks' formal written notice to quit is required and this must be in the legally prescribed form.
- If the tenant still refuses to leave, the landlord has to apply for a Court Order to evict the tenant. A Court Order cannot be applied for until the period of notice has expired and it will usually be about six weeks before the case is heard.
- The Court will usually grant the tenant a further four weeks to find somewhere else to live.
- If the tenant still doesn't leave the property, the Court Order can only be enforced by instructing the Court Bailiffs.

It is very important for a landlord not to make commitments relating to the property that do not allow time for this process. However, if the tenant seeks proper advice once he or she has been asked to leave, the tenant will be told that he or she has no defence to this, and could incur costs by remaining until a Court rules he or she must leave.

The landlord must not try to force the tenant to leave, without going through the Court process.

Assured and Assured Shorthold Tenancies - Section 21 Notice (Assured Shorthold Tenancies Only)

If your tenant is an assured shorthold tenant you are guaranteed possession if the correct procedure is followed. Firstly at least 2 months' written notice that possession is required should be served on the tenant, expiring no sooner than six months from the commencement of the tenancy or the end of the current fixed term whichever is the later. Where the tenancy is outside of a fixed term, the Court of Appeal ruled in *McDonald v Fernandez* (2003) EWCA Civ 1219 that a valid notice must end on the last day of a period – a period being usually defined as starting on the rent due day and ending on the day before rent is next due.

Please note in the case of new and renewal tenancies commencing after 06/04/07 any deposit or bond must be protected in a Government approved scheme (please see Part Five). Under Section 215 of the Housing Act 2004 a Section 21 may not be given in relation to a tenancy where the deposit has not been protected.

In *Adamson v Mather*, Harrow County Court, District Judge Wood held a Section 21 notice defective for failure to make it known to the tenant that possession was sought under Section 21 of the Housing Act 1988. It is advisable, therefore, that notice sought in this way contain the words 'Section 21' of the 'Housing Act 1988 (as amended)'. It is further advisable that the following prescribed information is contained within the notice:

'If the tenant or licensee does not leave the dwelling, the landlord or licensor must get an order for possession from the court before the tenant or licensor can lawfully be evicted. The landlord or licensor cannot apply for such an order before the notice to quit or notice to determine has run out.

'A tenant or licensee who does not know if he has any right to remain in possession after a notice to quit or a notice to determine runs out can obtain advice from a solicitor. Help with all or part of the cost of legal advice and assistance may be available under the Legal Aid Scheme. He should also be able to obtain information from a Citizens Advice Bureau, a Housing Aid Centre or a Rent Officer.'

If the tenant has not left on expiry of the notice, the landlord must apply to the court for a Possession Order. It generally takes a minimum of six weeks before a case is heard. The court will give the tenant between 2 and 7 weeks (usually 4) to make arrangements to leave, but if he or she still doesn't move the Court Order must be enforced by the Court Bailiffs. Forcing the tenant to leave without following the correct procedure could amount to harassment or unlawful eviction and might result in a criminal prosecution.

Remember that if the assured shorthold tenancy was properly created and the notice properly served, the tenant has no defence. If he or she obtains proper advice when you first serve notice the tenant may very well find other accommodation before the notice expires. If you have to go to Court, it is likely that the tenant will have to pay costs.

The following checklist will allow you to compare your notice to quit with the most common requirements.

- | | | | |
|----|---|------------------------------|---|
| 1. | Was the tenancy entered into on or after 28/02/97? | Yes <input type="checkbox"/> | No <input type="checkbox"/>
Seek Advice |
| 2. | Is the notice in writing? | Yes <input type="checkbox"/> | No <input type="checkbox"/>
Invalid |
| 3. | Is the notice addressed to the tenant? | Yes <input type="checkbox"/> | No <input type="checkbox"/>
Invalid |
| 4. | Does the notice give the landlords name and address and date of expiry? | Yes <input type="checkbox"/> | No <input type="checkbox"/>
Invalid |
| 5. | Is the notice correctly dated? Remember the start date of a notice cannot be backdated. | Yes <input type="checkbox"/> | No <input type="checkbox"/>
Invalid |
| 6. | Does the notice contain the wording 'Section 21' and 'Housing Act 1988'? | Yes <input type="checkbox"/> | No <input type="checkbox"/>
Invalid
Unless Served Under Section 8 |

Where the notice is served under 'Section 8' seek further advice.

Notice Served Under Section 21 of the Housing Act 1988

- | | | | |
|-----|--|------------------------------|--|
| 7. | On the date the notice expires, will a period of at least six months have elapsed since the date on which a tenancy was granted? | Yes <input type="checkbox"/> | No <input type="checkbox"/>
Invalid |
| 8. | Does the notice expire on or after the last day of any contracted period? See tenancy agreement. | Yes <input type="checkbox"/> | No <input type="checkbox"/>
Invalid |
| 9. | Has at least two months notice been given (or eight weeks in the case of tenants paying a weekly rent)? | Yes <input type="checkbox"/> | No <input type="checkbox"/>
Invalid |
| 10. | Where the notice was served outside of a contracted period, does it end on a day before rent is normally due? | Yes <input type="checkbox"/> | No <input type="checkbox"/>
Invalid |
| 11. | Where the notice has expired, was this date less than 52 weeks ago? | Yes <input type="checkbox"/> | No <input type="checkbox"/>
Invalid |
| 12. | Where the tenancy or last renewal was entered into on or after 06/04/07, was any cash bond held in an approved scheme? | Yes <input type="checkbox"/> | No <input type="checkbox"/>
Unenforceable |

Where a notice to quit fails the tests in points 7 – 10, a 'saving clause' may allow the last day of the notice to be corrected making the notice valid. Specific wording is required for this, though most standard Section 21 notices produced by companies such as Lawpack and Oyez contain it.

Notice (Assured and Assured Shorthold Tenancies)

If you want an assured tenant to leave, there are 17 'grounds' for possession that the Court can consider. This notice may also be served on assured shorthold tenants during the contracted period, inside of the first six months of the tenancy or to issue notice expiring immediately or after two weeks dependant upon the grounds used.

A lot will depend on what you as a landlord did before the tenancy began. Some grounds are only applicable if a prior notice was served before the tenancy began. Prior notice grounds must be notified to the tenant in writing before the landlord might seek possession on this ground. During the fixed term of an assured or assured 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.

Choose the ground or grounds which applies in your case then issue the tenant with a notice seeking possession containing the correct prescribed information as laid out in the Housing Act 1988 as amended by the Housing Act 1996. See summary of grounds below.

Mandatory Grounds on which the court must order possession.

Ground 1: a prior notice ground

The landlord used to live in the property as his only or main home. Or, so long as the landlord or someone before him did not buy the property after the tenancy started, the landlord or his partner requires it to live in as his main home.

Ground 2: a prior notice ground

The property is subject to a mortgage that was granted before the tenancy started and the lender, usually a Bank or Building Society, wants to sell it, normally to pay off mortgage arrears.

Ground 3: a prior notice ground

The tenancy is for a fixed term of not more than 8 months and at some time during the 12 months before the tenancy started the property was let for a holiday.

Ground 4: a prior notice ground

The Tenancy is for a fixed term of not more than 12 months and at some time during the 12 months before the tenancy started, the property was let to students by an educational establishment such as a University or College.

Ground 5: a prior notice ground

The property is held for use for a Minister of Religion and is now needed for that purpose.

Ground 6:

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

Ground 7:

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

Ground 8:

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

Discretionary Grounds on which the Court may order possession**Ground 9:**

Suitable alternative accommodation is available for the tenant, or will be when the Court Order takes effect. The tenants' removal expenses will have to be paid.

Ground 10:

The tenant was behind with his rent both when the landlord served notice seeking possession and when he began court proceedings.

Ground 11:

Even if the tenant was not behind with his rent when the landlord started possession proceedings, the tenant has been persistently late in paying his rent.

Ground 12:

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

Ground 13:

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

Ground 14:

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

- has caused, or is likely to cause, a nuisance or annoyance to someone living in or visiting the locality **or**
- has been convicted of using the property, or allowing it to be used, for immoral or illegal purposes, or an arrestable offence committed in the property or in the locality.

Ground 15:

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

Ground 16:

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

Ground 17:

The landlord was persuaded to grant the tenancy on the basis of a false statement knowingly or recklessly made by the tenant, or a person acting at the tenant's instigation.

Notice Periods

The landlord must serve notice seeking possession of the property on the tenant before starting Court proceedings and give the following amount of notice:

For grounds 3, 4, 8, 10, 11, 12, 13, 15 or 17 - **at least 2 weeks**

For grounds 1, 2, 5, 6, 7, 9 and 16 - **at least 2 months**

For ground 14 the landlord can start proceedings as soon as he has served notice.

The table below summarises the main differences between types of ground.

Ground	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Prior Notice Required	√	√	√	√	√												
Prior Notice Required For Use During Fixed Period		√						√		√	√	√	√	√	√		√
Mandatory Ground for Possession	√	√	√	√	√	√	√	√									
Discretionary Ground for Possession									√	√	√	√	√	√	√	√	√
2 Month Notice	√	√			√	√	√		√							√	
2 Week Notice			√	√				√		√	√	√	√		√		√
Immediate Notice														√			

This section is only a summary and you must take proper advice before attempting to gain possession on any of these grounds. Naturally as landlord you would have to follow the proper procedure and prove your case for any of the above complaints in Court.

Difficulties You May Encounter

If a tenant starts to get into arrears, try to discuss it with him or her. Have your tenant's circumstances changed? Should your tenant be claiming Housing Benefit? Have you given him/her the information and documentation (contracts, rent book or receipts) that the Council needs to assess the claim? Should you ask for the Housing Benefit to be paid directly to you under Local Housing Allowance direct payment arrangements? Don't wait for the situation to get any worse.

If you are sure your tenant can afford to pay the rent but is just refusing to do so, you can serve two weeks' formal notice (see Grounds 10 and 11 earlier in this section). Just serving the notice may be enough to persuade the tenant to start paying properly, but if it doesn't you can then apply to the Court for a Possession Order. You will have to prove that the tenant is in arrears and that it is reasonable to grant possession to you. If the Court agrees with you, your tenant will be given a little more time and be

asked to pay you what he or she owes. Again, the Order can only be enforced by Court Bailiffs.

If a tenants' rent is more than 8 weeks in arrears both at the time you serve the Notice Seeking Possession and at the Court hearing, then the Court has to order possession (see Ground 8 earlier in this section).

Sometimes a tenant may break a term of the contract or cause annoyance to others in the property. Often it will be sufficient to remind the tenant of the terms of the tenancy agreement or point out how his or her behaviour is affecting others.

Very occasionally a tenant may cause a serious nuisance to neighbours or may deliberately damage the property he or she lives in. In these circumstances you can start possession proceedings as soon as you have served notice (see Ground 14 earlier in this section).

Summary of Procedure for Possession

1. Discuss any problem with the tenant

if no solution can be found

2. Issue a correct notice asking the tenant to leave
(Never be afraid to issue a notice, they cost very little and can be withdrawn at any time.)

3. When the notice expires, has the tenant left?

If the tenant has not left

4. Apply to the County Court for a Possession Hearing.

Advice and assistance is available from specialist homelessness prevention staff at the Housing Advice Unit for all tenants struggling to maintain their tenancy. If you feel that your tenant would benefit from this, please direct them to:

The Housing Advice Unit
Marland House
Central Square
Cardiff CF10 1EP
Tel: 029 2087 1050
Email: hau@cardiff.gov.uk

Remember, if you do not follow the correct procedure for gaining possession of a property you could be committing a criminal offence.

The Protection from Eviction Act 1977 (as amended) makes it a criminal offence for a landlord or someone acting on his/her behalf to do acts:

- a) likely to cause the residential occupier of any premises to give up occupation, or,**
- b) likely to interfere with the peace and comfort of the residential occupier or a member of his/her household.**

These are offences for which the City and County of Cardiff has power to prosecute and may result in a fine of up to £5,000 and/or 6 months imprisonment – on indictment to the County Court the fine level is unlimited and imprisonment may be up to 2 years.

If you have any doubt whatsoever about the correct course of action to take, SEEK ADVICE

Part Eleven - Advice and Assistance

For independent advice you should go to your solicitor or residential letting agent. Information is also available from:

Address	Telephone
<p>Cardiff Council - Housing Advice Unit Marland House, Central Square, Cardiff CF10 1EP</p>	<p>(029) 2087 1050</p>
<p>Cardiff Council - Private Sector Housing Section City Hall, Cathays Park, Cardiff CF10 3ND www.cardiff.gov.uk/privaterent</p>	<p>(029) 2087 1762</p>
<p>Cardiff Council - Trading Standards 71 Bridge Street Cardiff CF10 2TS</p>	<p>(029) 2087 2059</p>
<p>Cardiff Council - Development & Building Control City Hall Cathays Park Cardiff CF10 3ND buildingcontrol@cardiff.gov.uk</p>	<p>(029) 2087 1303</p>
<p>Cardiff Council - Housing Benefit Section Freepost CF429 PO Box 6000 Cardiff CF11 0WZ</p> <p>In person : First Stop Enquiry Centre Ground Floor Marland House, Central Square, Cardiff CF10 1EP</p> <p>Landlord Liaison Team :</p>	<p>(029) 2087 2087</p> <p>(029) 2053 7292</p>
<p>Student Liason Officer : www.cardiffdigs.co.uk</p>	<p>(029) 2087 1808</p>

Part Twelve – Landlord Accreditation Wales, ALMA & the Cardiff Landlord Forum

Landlord Accreditation Wales

"With the demand for rental properties increasing, there has never been a better time for landlords to gain accreditation, the scheme gives landlords the opportunity to stand out from the crowd and gives tenants the option to make an informed decision about who they let their home from. I would encourage landlords to find out more about the scheme and urge tenants to rent properties from recognised and accredited landlords".

Executive Member for Communities, Housing and Social Justice, Cllr Judith Woodman

If you find this guide useful, then this scheme is a ‘must’ for you!

Cardiff Council is a partner in the Landlord Accreditation Wales (LAW) Scheme.

LAW is a skills based scheme administered by Cardiff Council for all the Councils in Wales. There is no compulsion for landlords to join, but there are many advantages.

The aim of the scheme is to make landlords and agents more aware of their rights and responsibilities when letting. Increased awareness makes it more likely that properties will be maintained to a higher standard; that tenants' safety and health will be safeguarded and businesses better protected.

The scheme is open to any landlord or agent, and to those who are simply considering becoming a landlord.

This Council recommends that all landlords join the scheme, and it is envisaged that, in future, Councils, Universities, etc will only use or recommend accredited landlords.

What are the requirements of the Landlord Accreditation Wales Scheme?

The LAW scheme accredits the landlord, not the property. A landlord will need to:

- attend a one day development course to obtain the knowledge and skills to help operate their business successfully
- agree to follow a code of conduct
- be a fit and proper person

There are additional joining criteria for Letting Agents.

What are the benefits to landlords of being accredited?

Apart from gaining knowledge, and being recognised as a proactive landlord, there are other advantages including preferential marketing and an improved profile (including an on-line 'find a landlord' service through the scheme website). Accredited landlords will receive supporting documents such as a reference manual and become part of a wider support network. The scheme also sends out a quarterly newsletter to its members and provides information and support. Accreditation is valid in all Council areas in Wales and offers some financial incentives.

In order to find out more, or to apply to join the scheme, visit the scheme's website www.welshlandlords.org.uk

You can alternatively contact the scheme administrator at:

Landlord Accreditation Wales
C/o Private Sector Housing
City Hall
Cardiff
CF10 3ND

info@welshlandlords.org.uk

Tel: 029 2087 1815

or visit the ALMA website at www.almacardiff.co.uk

ALMA (Association of Letting and Management Agencies)

“Cardiff Council is committed to supporting good practice by landlords and letting and management agencies in the city. Too many people's lives are ruined by rogue landlords and agents. By supporting ALMA we are positively supporting an initiative which is aimed at fair play for landlords and tenants.”

Why Should I Use an ALMA Member?

You should use an ALMA member if you want a quality, professional service.

The whole idea behind ALMA is that those agencies with good practices have banded together to create an association that sets its own professional standards.

If you are a landlord or a tenant looking for a letting or a management agent, would you risk using an agency that does not come up to standard?

What Does ALMA Do?

ALMA is an Association working towards providing a high quality service to clients and is contributing to improving services within the private rented housing sector.

ALMA has a Constitution, Code of Ethics and an Equal Opportunities Statement.

ALMA represents its members to liaise with local and central government and other relevant organisations.

ALMA provides information and training to members on current issues relating to the private rented sector including updates on changes in legislation.

Joining ALMA

If you are a landlord and are interested in using an ALMA member (or if you are an accommodation agency and are interested in becoming an ALMA member) contact

ALMA

**c/o Anne Rowland,
Private Sector Housing,
Cardiff Council,
City Hall, Cardiff,
CF10 3ND**

Tel: 029 2087 1815

or visit the ALMA website at www.almacardiff.co.uk

The Cardiff Landlord Forum

The Cardiff Landlord Forum is facilitated by Cardiff Council and was established to create a better working relationship between the Council and private landlords.

No fees or finance are involved in the Forum.

The Forum meets approximately every 8 weeks (6.00 pm – 8.00 pm) in County Hall, Cardiff, to discuss any matters related to running landlord businesses.

Guest speakers in the past have presented topics such as HMO mandatory licensing, deposit schemes, landlord liability, Energy Performance Certificates, inheritance tax and other financial matters

Any good private landlord is welcome to attend meetings.

If interested please forward your name, address and telephone number to:

Douglas Haig, Local Landlord and Chair of the Forum,
c/o Private Sector Housing,
Cardiff Council,
City Hall, Cardiff,
CF10 3ND.

douglas@cardifflandlords.org.uk

All dates for the Landlord Forum can be found on the Landlord Accreditation Wales website on the 'Events' page: www.welshlandlords.org.uk/events

Part Thirteen - Further Reading

The following booklets can be obtained free of charge (contact details follow on the next page):

Cardiff Council, Housing Benefit Section:

- Housing Benefit – A Guide for Private Landlords
- A Guide to Housing Benefit and Council Tax Benefit
- Housing Benefit – Service Standards for Private Landlords.

Cardiff Council, Private Sector Housing Enforcement:

- Hazards In Property – Guidelines for Rented Accommodation Fact Sheets:
 - Fire Safety
 - Gas Safety
 - Electrical Safety
 - Security
 - Energy Efficient, Warm & Healthy Homes
 - Slips, Trips and Falls
- Licensing Information Pack
- Damp and Mould Leaflet for Landlords & Tenants

Cardiff Council: Trading Standards

- “Are they sleeping safely” Guide produced by Trading Standards.

Communities and Local Government Publications (formerly ODPM):

- Assured and Assured Shorthold Tenancies: Guide for Landlords
- Letting Rooms in your Home: A Guide for Resident Landlords
- Regulated Tenancies
- Repairs
- Notice that you must Leave – A Brief Guide for Landlords and Tenants
- My Landlord wants me Out – Protection Against Harassment and Illegal Eviction
- Landlords: Are you protecting your tenant’s deposit?
- Letting? Are you protecting your tenant’s deposit?
- Landlord Guidance on the Housing Health and Safety Rating System
- A Guide For Landlords-Energy Performance Certificates for dwellings in the social and private rented sectors
- Tenants. Keeping your deposit safe.

Local Government Regulation (formerly LACORS):

- Landlord Handbook (free to members of Landlord Accreditation Wales)
- Landlords’ Guide to Electrical Safety Energy Performance Certificate Guidance

- Thinking about renting out your home?
- Fire Safety Guidance

Community Legal Service Direct:

- Renting and Letting

Inland Revenue:

- Letting and your Home

Office of Fair Trading:

- Guidance on Unfair Terms in Tenancy Agreements

Contact Details for Further Reading

Cardiff Council

See contact details in Part 11.

Communities and Local Government Publications

Tel: 0303 444 0000

E-mail: contactus@communities.gov.uk

www.communities.gov.uk

Direct.GOV.UK

www.direct.gov.uk

HM Revenue and Customs

hmrc.gov.uk

Office of Fair Trading

Enquiries and Reporting Centre

Office of Fair Trading

Fleetbank House

2-6 Salisbury Square

London

EC4Y 8JX.

Tel: 0800 389 3158

E-Mail: enquiries@oft.gsi.gov.uk.

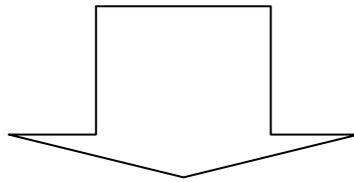
www: www.oft.gov.uk

Can you Help us?

This Guide will be regularly updated
and we would like to hear from you
if you feel we could improve it.

Any constructive ideas are welcome!

Or, if you have a question and
you're not sure who to ask



Please contact us

You can e-mail your suggestions or questions to
hau@cardiff.gov.uk

You can write to:
Denise Wheten
The Housing Advice Unit,
Marland House, Central Square
Cardiff CF10 1EP

...and you can telephone us,

02920 871050