

Code of Practice



Foreword and Application of the Code

- * Breach of this Code does not have the effect of creating a criminal offence or create civil liability. However, the contents of the Code may be used in evidence and taken into account, if relevant in court and tribunal proceedings, especially those for the appointment of a new manager where landlords have failed to comply with the Code (See s. 24, Landlord and Tenant Act 1987, as amended by s.85, Housing Act 1996).
- * This Code has been prepared to assist in promoting desirable practices in respect of the management of residential property. It is intended to apply to landlords who manage their own properties. Successful management can only be achieved through cooperation and a mutual understanding of the procedures necessary for the effective control of property as well as of the problems that can arise. Although directed at landlords, the Code is intended to be read by landlords, tenants, occupiers, and managers. Landlords who employ agents or managers to act on their behalf should ensure that they operate under the RICS Rent Only Residential Management Code with which this Landlords' Code concurs.
- * The Code applies only to properties in England and Wales but it deals with flats, houses and all other dwellings whether in towns or in the country, on estates, in groups or on their own. It covers all lengths of leases and all types of contractual tenancies, as well as statutory tenancies, where the rent payable is not a ground rent (See paragraph 1.6 of the Code). The Code does not apply where a social landlord is an agent managing for a private sector manager.
- * In this Code, whenever a statutory reference is given, there is a legal obligation to act in accordance with the statute.
- * In considering the guidance given, such factors as the age and location of the property, the terms of occupation, the level of payment for services and the management fee need to be taken into account. Fundamentally, these factors should be considered when taking management decisions to reflect this Code; statutory requirement, cost effectiveness, convenience, efficiency, reasonableness, quality of service and the terms of the tenancy agreement. Whilst compliance with the guidance given is not mandatory, managers should be able to justify departures from it.
- * This Code applies subject to any changes in legislation and the law subsequent to its publication.
- * This Code is subject to and should be read in conjunction with the Rules Of Association of Barnsley Residential Landlords Association..
- * Whilst every effort is made to ensure that all information is correct, Barnsley Residential Landlords Association cannot be held legally responsible for errors and/or omissions in procedures, or any inconvenience caused thereby. No material may be reproduced in whole or in part without permission from the Association.

1. Definitions Applicable in this Code

It is difficult to avoid using terms which are complicated or which have different meanings to different

people. Some of the words in this Code are therefore defined.

Assured and Assured Shorthold Tenancies

- 1.1. By virtue of the Housing Act 1988 most residential tenancies created after 15 January 1989 are assured tenancies (including assured shorthold tenancies). The definition of an assured tenancy requires that the tenancy is granted to an individual and the residence is the tenant's principal home. Some tenancies are excluded because they are at a low rent or because they are excluded by Schedule 1, Housing Act 1988. Any tenancy created on or after 28 February 1997 is normally an assured shorthold tenancy. To create an assured tenancy on or after 28 February 1997, which is not an assured shorthold tenancy, a notice must be served to this effect before the tenancy is entered into.
- s.1 Housing Act 1988 - s.20 Housing Act 1988 - s.96 and Sch. 7 Housing Act 1996.*

Landlord

- 1.2 The person or company which owns the freehold or superior leasehold interest in and has the ultimate control over the running of, the property.

Flat

- 1.3. The word "flat" covers any dwelling unit separated from others horizontally and/or vertically, or from commercial premises. The "flat" could be a maisonette or duplex on more than one floor, and can be in purpose-built blocks as well as conversions.

Gender

- 1.4 References to "he" or "his" cover also she or her and the neuter and may also include the plural and words in the plural usually include the singular.

House

- 1.5. Any dwelling which is not a "flat" is referred to as a "house".(This definition is not the same as the definition of "house" contained in the Leasehold Reform Act 1967).

Leaseholder

- 1.6. It is necessary on occasion to distinguish between a person who has a long lease and pays a relatively small rent, usually called a ground rent, and one who pays a fuller rent, technically known as a rack rent, who usually has a relatively short tenancy. Both have a landlord and both are called leaseholder/tenant, so in this document a distinction must be made. A "leaseholder" is party to a long lease and pays a ground rent or peppercorn rent. Throughout this document where the word "tenant" is used it may, in appropriate cases, also apply to a leaseholder.

Local Housing Authority

- 1.7. The council which is responsible for the administration of housing powers and duties in the area in which the property is situated.

Management Company

- 1.8. An organisation which provides services and arranges maintenance of the property, but which does not necessarily have any legal interest in the property.

Manager

- 1.9. In this Code the person having day-to-day control of the management of a dwelling is called the 'manager'. This person could be the landlord personally, a member of staff of a corporate landlord, a managing agent, or a group of flat owners who have formed themselves into a formal management or maintenance company (which could be limited by shares or guarantee) or an informal residents' association. (Informal residents' associations may not have all the legal obligations referred to in this Code, but should nonetheless comply with them).

Managing Agent

- 1.10. A person or organisation which acts on behalf of the landlord within terms of reference and/or

instructions from the landlord, subject to any legal restrictions therein. Normally the managing agent will be the manager as defined above.

Must/Should

- 1.11. In this Code the word “must” is used to indicate a legal obligation. Breaches could lead to either civil and/or criminal action. The word “should” is used to indicate good practice.

Occupier

- 1.12. The “occupier” is person who is living in the dwelling.

Policies and Procedures

- 1.13. These will depend on the nature of accommodation provided by the landlord and the size of the property portfolio. They will vary from a detailed set of instructions for a landlord with a large number of tenancies, to an unwritten policy of judging each case on its merits and taking appropriate action for a landlord with one or two tenancies.

Regulated Tenancies

- 1.14. This refers to tenancies created under the Rent Act 1977, and includes most private residential tenancies which commenced before 15 January 1989.

Rented Property

- 1.15. Refers to property where rent is payable to the landlord, who is usually responsible for the cost of repairs.

Tenancy Agreement

- 1.16. This sometimes referred to as a lease, is a legally binding document (or oral agreement) which creates a contract between a landlord and a tenant. It should set out clearly and concisely the terms under which the property is occupied and the obligations of both parties.

Tenant

- 1.17. Under a tenancy the “tenant” pays rent, usually weekly, monthly or quarterly, which may include any service and/or maintenance element. A tenancy can be contractual or statutory, regulated or assured (which includes both assured and assured shorthold). For the purposes of this Code the term “tenant” is used also to include a licensee.

You

- 1.18. Except where otherwise stated all the requirements are for the landlord, who is therefore addressed as “you”.

2. Aims Of The Code

- 2.1. To provide a statutory statement of standards for all private residential landlords, in particular those landlords who adopt this Code.
- 2.2. To help ensure a good standard of service and provision within the private rented sector which is recognised by local authorities and other bodies connected with the industry.
- 2.3. To help ensure compatibility with standards which guide managing agents and letting agents.
- 2.4. To help clarify relevant statutory obligations.
- 2.5. To provide the basis for an inexpensive, quick and effective way of resolving disputes by means of arbitration through a third party.
- 2.6. To provide a national standard for the provision of housing, which local authorities and other bodies

connected with the private rented sector will endorse.

2.7. To comply with the obligations and requirements of HHSRS under the Housing Act 2004.

3. Business Conduct

3.1. Business methods involving dishonesty deception or misrepresentation should not be used.

3.2. All legitimate bills shall be paid promptly and within the terms of payment.

3.3. References obtained should not be disclosed to outside parties without the consent (preferably in writing) of the subject tenants(s) and referee(s), unless there is a legal obligation to do so.

3.4. The principles expected of good landlords and the laws relevant to residential landlords will at all times be observed.

4. Management Duties

4.1. In undertaking a management function you must comply with the law and all local authority requirements which have statutory powers. As a matter of good practice tenancies should be granted in accordance with the law and on terms that are fair and not unreasonably onerous on either party.

4.2. You should respond promptly and suitably to reasonable requests from tenants for information and observations relevant to management of the property, providing relevant information subject to payment of a reasonable charge, if the tenancy agreement permits or is reasonable and first agreed with the tenant. You must not deliberately mislead tenants.

4.3. Where you are not the manager, there should be a written management contract between you and the manager. Contracts between landlords and managing agents are normally governed under the Supply of Goods and Services Act 1982, which implies into such contracts terms to the effect that services shall be provided to a reasonable standard, within a reasonable time (and costs have not been previously agreed) at reasonable cost.

4.4. Subject to the requirements of legislation, the landlord often has the ultimate authority over any manager. You should not ask any manager to contravene the Code and should take reasonable steps to ensure any manager observes the Code.

4.5. Where you are not a resident landlord you must not discriminate on the grounds of sex or race, and you should not do so on grounds of sexual orientation, age, religion, marital status or disability, save that positive discrimination is a necessary element of fulfilling the declared objectives in providing the accommodation you manage. Where you are a resident landlord you should not so discriminate.

*Sex Discrimination Act 1975 - Race Relations Act 1976 - Employment Act 1944.
Disability Discrimination Act 1995.*

4.6. All rights as set out in the tenancy agreement shall be respected.

4.7. You must not do anything likely to interfere with the peace or comfort of residential occupiers, or persistently withdraw or withhold services reasonably required for the occupation of the premises with the intent of causing the occupier to give up possession or refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof.

s.1(3) and s.3A Protection From Eviction Act 1977, as amended by s. 29 Housing Act 1988

4.8. You should have policies and procedures for responding to allegations of harassment. For example, you should be prepared to support tenants who are harassed or victimised on racial grounds and you should remove racist graffiti from properties under your management without delay.

- 4.9. You should have effective and fair policies and procedures for dealing responsibly with management matters.
- 4.10. When communicating with tenants you should be accurate, clear, concise and courteous.
- 4.11. You should dispatch communications by whatever means are appropriate, so that they reach the intended recipients promptly and you should be aware that you may need to prove to the satisfaction of a court the service of certain documentation.
- 4.12. Tenants should be given a contact address and/or telephone number at which the manager can normally be contacted.
- 4.13. Tenants should be given a telephone contact number or procedure to be followed in the event of an emergency occurring. You should ensure that this procedure works in practice.
- 4.14. You must give notice of an address at which the tenant may serve notices (the address must be in England and Wales).
s. 48 Landlord and Tenant Act 1987.
- 4.15. You and/or a person effecting a letting on your behalf must not cause or permit a dwelling to be overcrowded as defined in Part X, Housing Act 1985. Every rent book or similar document must contain a summary of Part X, Housing Act 1985 along with a statement of the number of persons permitted in the dwelling.
s. 331 Housing Act 1985 - s. 332 Housing Act 1985.
- 4.16. So far as is reasonably practicable and consistent with statutory and contractual obligations, you should keep confidential and not disclose personal information about tenants to other people without their consent.
- 4.17. You should, if requested, assist tenants with understanding their tenancy agreement or other terms of occupation, and/or refer them to an independent body for advice.
- 4.18. You should deal with written applications for permissions expeditiously and, when an application is refused, give reasons.
s. 11(6) Landlord and Tenant Act 1988.
- 4.19. You should have procedures to inspect the property at regular intervals having regard to the type of property, the nature of the occupation and the complexity of the facilities provided. In most circumstances, you must give at least 24 hours' notice in writing to enter the premises let, at reasonable times of the day. However, you should give tenants as much notice as possible that you require access and have due regard to their valid difficulties in providing access during normal working hours.
- 4.20. You must levy rents and other charges in accordance with the law.
s. 11(6) Landlord and Tenant Act 1985.
- 4.21. You should maintain efficient records relating to the building and decide for how long to keep records during statutory periods of limitation of action. Broadly speaking, court proceedings can be brought up to three years after an incident which injures someone, six years after a breach of contract or of any other obligation which gives another person a legal remedy, and twelve years in certain cases involving land. Legal advice may be needed in specific cases about the documents which ought to be retained and the length of time they should be kept as there are exceptions and qualifications to the time limits set out above.

- 4.22. You must register under the Data Protection Act and comply with the data protection principles.
Data Protection Act 1998.
- 4.23. You should consult with representative organisations where necessary and must do so when required by law.
- 4.24. You should advise tenants to seek advice where you think they may have right to housing benefit and other statutory benefits.
- 4.25. You should take steps to keep yourself informed as to developments in the law affecting residential management, to enable you to keep wholly within the law.
- 4.26. Where services are provided by local or national associations which enable the member to offer an improved service, members should use these facilities.
- 4.27. If your usual place of abode is outside the UK, income tax must be deducted from any rent payments and these deductions must be paid direct to the Inland Revenue, even if such payments are made into a UK bank account. The Inland Revenue publishes a booklet, "Non Resident Landlords, their Agents and Tenants" (International Services IR140) on the tax obligations of all parties and the procedures involved.
- 4.28. It is recommended that you provide each household with a Tenant File. This should contain appliance instructions, emergency numbers, certificates, etc.

Dispute Resolution

- 4.29. Where not provided for in the tenancy agreement, you should consider whether to suggest arbitration or mediation by agreement, rather than litigation, as a means of settling particular disputes, and the tenant should be advised to seek legal advice on any such suggestion.
- 4.30. On receipt of a complaint in writing, you should investigate and (if appropriate) seek to enforce the conditions of occupancy on the tenant(s) in the building subject to consideration of cost implications, legal requirements and the tenancy agreement.
- 4.31. You should have clear policies and procedures for handling tenant disputes and complaints about nuisance between neighbours. You should deal fairly with all parties. You should carefully consider whether there are grounds for civil or criminal action. Also you should have regard to the difficulties created by your intervention, e.g. cost implications, increased animosity between the parties.

5. Accounting for Payments from Tenants

- 5.1. You should keep account records to differentiate clearly the money which you hold for different tenants.
- 5.2. You should keep properly written-up records in respect of each tenant to :
- (a) show all your dealings with the tenant's money received, held or paid on behalf of that tenant, and,
 - (b) enable the current balance of that tenant account to be shown.
- 5.3. At least once every 14 weeks, you should reconcile your tenant ledger balances with rent and other monies due. Discrepancies should be investigated.
- 5.4. You should send a written account to your tenant for all tenant money held, paid or received (whether or not there is any payment due to/from your tenant) at appropriate intervals agreed with your tenant, but not less than once a year or whenever in arrears.

6. Deposits

- 6.1. The tenancy agreement may make provision for the holding of a deposit. For regulated tenancies under the Rent Act 1977, the deposit is limited to two months' rent. For assured and assured shorthold tenancies there are no provisions in the 1988 Act limiting deposits or premiums.

However, under this Act a deposit of more than two months' rent counts as a premium and this may give the tenant the additional right to assign the tenancy without the landlord's consent unless this is precluded by the terms of the tenancy agreement.

s. 128, Rent Act 1977, as amended by s. 79, Housing Act 1980.

s. 15, Housing Act 1988, as amended by Sch. 11, para 102, LG Housing Act 1989.

- 6.2. An agreement should be made at the commencement of the tenancy with the tenant, stating the reasons the deposit may be withheld. A written inventory should be given.
- 6.3. Deposits should be returned promptly to the tenant when legitimately due. Where all or part of the deposit is withheld you should give the tenant reasons why and be prepared to account for the deduction.
- 6.4. You should abide by the law in relation to taking deposits and abide by the rules of any tenancy deposit scheme of which you are a member.

7. Rent Payments

- 7.1. Rent demands should be clear and easy for tenants to understand, and should specify precisely what rates, taxes, services or other similar charges are included. You should avoid the use of codes and abbreviations wherever possible. Where these are used, they should be explained.

- 7.2. Weekly tenants must be given a rent book (see paragraph 13.3). You should keep this up to date and when necessary ask the tenant to send it to you for updating. In other cases, a receipt should be given where requested, and sent by post, if a prepaid envelope is provided by the tenant.

s. 4, Landlord and Tenant Act 1985.

- 7.3. You should give tenants an explanation as to how arrears have arisen, if requested.
- 7.4. You must give tenants reasonable warning of your intention to take action which may deprive them of their homes. Notice to seek possession must be served before possession can be obtained from an assured or an assured shorthold tenant, and the notice must take the necessary form. Such notices must normally be served at least two months before possession is required although, dependent on the grounds sought for possession, a shorter or longer period may apply. You should suggest to tenants that they seek advice from an appropriate source. Where an occupier is not a tenant, common law requires that the landlord give "reasonable notice".

ss. 8 and 21, Housing Act 1988.

Review of rent

- 7.5. The rent for regulated tenancies (generally those entered into prior to the Housing Act 1988, which came into force on 15 January 1989) can be reviewed by referral to the Rent Officer once every two years (with the right of appeal to the Rent Assessment Committee or through a formal rent agreement which must include certain statutory wording). Statutory notice of a rent increase must be served before the increase can become effective.

s. 67 and Sch. 10, para 6, Rent Act 1977, as amended by s. 59(2) Housing Act 1980.

s. 51(4), Rent Act 1977, as amended by s. 68(1), Housing Act 1980, s. 45 and s. 49, Rent Act 1977.

- 7.6. The terms of the rent reviews for tenancies entered into on or after 15 January 1989 will normally be agreed at the outset of the tenancy and incorporated into the tenancy agreement. Otherwise, if you wish to increase the rent you must serve notice in the prescribed form. The tenants may refer this to

the Rent Assessment Committee if they are unhappy with the proposed increase. Assured shorthold tenants also have the right to refer their rent to the Rent Assessment Committee, but only once, and only during the initial term of their tenancy. In the case of an assured shorthold tenancy to which s.19A, Housing Act 1988 applies (i.e. one entered into when s.96, Housing Act 1996 is operative) the right is operative only in the first six months of the original tenancy.

s. 13 and s. 22, Housing Act 1988 - s. 100, Housing Act 1996.

Housing Benefit or Local Housing Allowance Applications

- 7.7. You should co-operate, where appropriate, with a Tenant's claim for housing benefit, supplying any necessary information promptly to ensure that the claim can be processed as quickly as possible. At the discretion of the local authority, payments of Housing Benefit or Local Housing Allowance can be made directly to you, although in some cases the consent of the Tenant is required. (In some circumstances it may be found subsequently that the Tenant was not entitled to housing benefit or the sum awarded. You may be required to repay the overpayment and where this allowance is legitimately due this should be repaid promptly on receipt of a correctly prepared notice).

8. Services

- 8.1. The range of services will normally be governed by the terms of the tenancy agreement.
- 8.2. You should routinely monitor the cost effectiveness of contracts, aiming always to maintain services that provide value for money.
- 8.3. You must comply where appropriate with the terms of Part II of the Environmental Protection Act 1990 in so far as they affect the management of residential properties. You must ensure that all waste in your care is transferred safely.
Environmental Protection Act 1990, Part II,
- 8.4. You must be aware of your duties to keep water supplies wholesome. In particular where the water supply is provided otherwise than by a water undertaker the supply should be monitored.
Private Water Supplies Regulations S. 1, 1991/2790
- 8.5. Except where there is a lease for seven years or more, you must comply with your obligations in connection with installation, maintenance and the use of gas installations and fittings.
The Gas Safety (Installations and Use) Regulations SI 1994/1886
The Gas Safety (Installation and Use) (Amendment) Regulations 1996 S1, 1996/550
- 8.6. You must be aware of your duty of care. In particular the electrical system and equipment provided by the member should be safe for those using it. An annual electrical inspection is recommended for appliances and connections
Electricity at Work Act Regulations S. 1 1989/635.
- 8.7. Unless it is a Tenant's obligation, you should arrange for the regular cleaning of all internal common areas including e.g. corridors, staircases, glass in doors and windows accessible from common areas. You should consider requests by Tenants to be allowed to undertake such cleaning themselves, subject to their arranging insurance cover. Cleaning materials must be stored safely. Landings and staircases should be kept clear and safe
Health and Safety at Work etc. Act 1974
- 8.8. Unless it is a Tenant's obligation, you should keep shared garden areas tended to a reasonable standard consistent with the quality of the development. The gardening service should normally include:
(a) grass cutting and lawn maintenance;

- (b) weeding, pruning; and
- (c) occasional replacement of shrubs, trees and plants.

Garden waste should be removed or composted on site in a suitable screened compound remote from any dwelling, or removed by a suitably licensed contractor. You should consider requests by Tenants to be allowed to undertake these roles themselves, subject to their arranging insurance cover.

Health and Safety at Work Act 1974

- 8.9. You must arrange for the regular maintenance and repair of communal space heating and domestic hot water systems. You should have regard to the requirements of insurance inspectors.
The Pressure Systems and Transportable Gas Container Regulations S. 1, 1989/2169

- 8.10. You must comply with your obligations under the Fire Precautions Act 1971 in respect of having the required fire certificates for relevant properties.

Fire Precautions Act 1971

- 8.11. In respect of furnished properties you must comply with your obligations under the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended) in respect of furnishings and upholstery. Breaches of these regulations could lead to civil and/or criminal action.

SI 1989/2358 - SI 1993/207

- 8.12. Where there is a master electricity meter and electricity is resold to the Tenants, the charge should be reasonable and you must have regard to the maximum resale price set by the Director General of the Office of Electricity Regulation. Where there is a coin-operated telephone, the charges should be reasonable.

S 44, Electricity Act 1989

- 8.13. You should use your best endeavours to ensure that tenants, where applicable, make satisfactory arrangements with the public utility companies for the supply of their services and those bills are paid on termination of their tenancy.

- 8.14. If you directly employ staff you must comply with your duties under the Health and Safety at Work etc. Act 1974 to ensure the health and safety of your employees and others who might be affected by your work activities. That includes: providing a safe place of work; the safe maintenance of plant (including the regular inspection of lifts and boilers by qualified personnel) and safe systems of work. The Pressure Systems and Transportable Gas Containers Regulations 1989 outline the maintenance and inspection regimes you should apply to boilers.

Health and Safety at Work etc. Act 1974

The Pressure Systems and Transportable Gas Containers Regulations SI 1989/2169

- 8.15. If you directly employ staff you must regularly assess the risk to the health and safety of your employees and of anyone else who may be affected by your work activity and appoint competent personnel to enable you to discharge your statutory safety obligations. The assessment should identify the preventative and protective measures you need to take to comply with health and safety law.

The Regulations also include matters such as organising yourself to deal with health and safety, emergency procedures, providing information to employees on health, co-operation and co-ordination among employees sharing a work place.

Management of Health and Safety at Work Regulations SI 1992/2051

9. Contractors

- 9.1. Where contractors are used you should select contractors suitable to provide the service involved to a satisfactory standard having due regard to the size and nature of the contract, and must comply

with the Construction (Design and Management) Regulations 1994 where appropriate. Contractors should, where possible, be members of a relevant trade organisation which has published a code of practice for the assessment of its members.

The Construction (Design and Management) Regulations SI 1994/3140)

- 9.2. When you engage contractors for major work you should define their duties. You should take all reasonable steps to ensure that contractors carry out their duties promptly and to a reasonable standard, e.g. by use of competitive tender, written contracts with detailed provisions, arrangements for staged payments and liquidated damages.
- 9.3. You should require that all contractors comply with the Health and Safety legislation and Health and Safety Executive Guidance Notes, and to take appropriate care as to the security and the avoidance of damage to Tenants' possessions and unreasonable disturbance while undertaking the works. There should be a procedure to deal with complaints by Tenants alleging shoddy work or damage. Harassment of Tenants must be strictly forbidden.
ss. 27 and 28, Housing Act 1988, as amended by Sch 2, para 79(1) Planning (Consequential Provisions) Act 1990 - See also ss. 1(3) and 1(3A) Protection from Eviction Act 1977 as amended by ss. 29(1) and 29(2) HA 1988. Protection from Harassment Act 1997
- 9.4. You should require contractors to have public liability insurance.
- 9.5. You or your management company should be the employer under any contract.
Specific Landlord responsibility
- 9.6. You should comply with H.M. Revenue and Custom requirements in respect of the Construction Industry Scheme.

10. Repairs

- 10.1. The responsibilities of the parties with regard to repairs should be set out in the tenancy agreement. The extent of a Manager's authority to deal with repairs should be clearly defined in writing.
- 10.2. If the tenancy was granted on or after 24 October 1961 (for less than seven years), by law the landlord is normally responsible for the repair of the structure and exterior of the dwelling. The landlord is also responsible in most cases for keeping in repair and proper working order the basins, sinks, baths and other sanitary installations along with installations for supplying water, gas and electricity and for heating water and for space heating, but is not responsible for other fixtures, and fittings for making use of those utilities.
s. 11 Landlord & Tenant Act 1985 as amended by s. 116 Housing Act 1988
- 10.3. Some tenancies will not have the benefit of the implied statutory obligation on the Landlord to repair.
- 10.4. For most new tenancies of flats granted for less than seven years on or after 15 January 1989 the Landlord is also responsible for the repair of most common parts of the buildings and installations if they are owned by the Landlord or are under his control. These obligations can be varied only by a court.
s. 11, Landlord & Tenant Act 1985, as amended by s. 116 Housing Act 1988
- 10.5. You have a duty to take reasonable care to repair paths, driveways and car parking areas so that they are reasonably safe to use. Gutters, downpipes and gullies should be cleared when necessary.
s. 4(i), Defective Premises Act 1972
- 10.6. You should notify Tenants regarding how, and to whom, repairs should be reported, and you should have Policies and Procedure for dealing with urgent repair work, particularly out of office hours.

Any on-site staff should be aware of the extent of their authority to order urgent repair work. It is recommended that there is a procedure for dealing with after-hours emergencies.

- 10.7. You should deal promptly with Tenants' reports of disrepair the remedy of which is your responsibility, in a manner appropriate to their urgency.
- 10.8. Where you are responsible under the terms of the tenancy agreement, or by statute, for repairs the tenancy agreement may stipulate the procedure for you to inspect the property and to view its condition. If the agreement does, comply with it. If not, you should inspect the condition and state of repair of the property at reasonable times of the day, provided that the Tenant has been given reasonable notice in writing (at least 24 hours). (see clause 10.11)
s. 16 Housing Act 1988, as amended by s. 3 Rent Act 1977
s. 11(6), Landlord & Tenant Act 1985
- 10.9. It is a legal requirement of all assured and protected tenancies that Landlords are given access and reasonable facilities to do repairs.
s. 148 Rent Act 1977, s. 16 Housing Act 1988
- 10.10. You should, however, give Tenants as much notice as possible that you require access and have due regard to their valid difficulties in providing access during normal working hours.
- 10.11. The tenancy agreement should contain provision for entry in emergencies. You should consider forcing an entry only if the Tenant is unavailable or does not answer, and in an event such as a fire, gas, electrical emergency or escape of water. You are advised to try to obtain alternative key holders for emergencies and warn that if this information is not forthcoming or updated, emergencies could involve forced entry and expenses including your own costs which could be charged to the Tenant. In the absence of the emergency services, you should consider seeking an independent witness to a forced entry.
- 10.12. You should arrange for repairs to be executed to completion within a reasonable time and, if necessary, to a pre-agreed programme. Works you arrange should be carried out so as not to cause undue inconvenience. You should consult Tenants before a programme of works is set down unless urgency or the tenancy agreement dictates otherwise.
- 10.13. Works you arrange should be carried out to a reasonable standard so that, unless they are of a temporary nature, they do not need to be repeated within a short period of time relative to their nature and reasonable expectations of them. Repair work should be cost effective, taking into account its durability and expense. In the long term it may prove more cost effective to replace than to continue to repair. In certain circumstances, work which is considered not to be of a reasonable standard can be the subject of court action on the basis of a breach of contract.
- 10.14. Where there is a Managing Agent you should discuss with them a programme of cyclical maintenance for communal parts of buildings, including plant and services, which require regular maintenance. The programme should reflect realistically the cost of maintenance, including periodic redecoration work.
- 10.15. You should consider the use of experienced or qualified building consultants/specialists, having regard to the size and complexity of the project. Their use should also be considered for carrying out periodic inspections to identify defects. The building specialist should also inspect reported defects before work is done if it is likely to be complicated, costly or if it was poorly defined when reported.
- 10.16. You must comply with statutory codes of practice to ensure safety to residents and workforce and for efficiency of repairs. Codes of practice approved under the Health and Safety at work etc. Act 1974 may be used in evidence in criminal proceedings.

- 10.17. There are extensive Health and Safety Codes and Regulations which may affect the management of residential property and it is important that you take steps to identify the ones which are applicable.

11. Development Works

- 11.1. When arranging new construction works you should be aware that Tenants are entitled to the quiet enjoyment of their homes, and should seek to minimise disruption.

Common Law

- 11.2. You should consult Tenants on the details of and programme for carrying out such works and reasonable allowance should be made in the programme for Tenants' absence, for example, if they are away from the property when the works are being undertaken and access is required.

12. Insurance

- 12.1. It is recommended that the obligations of the parties be set out in the tenancy agreement. You should ensure that you or your Manager makes the Tenant aware of their responsibilities and the desirability of insurance.

- 12.2. Normal risks against which the property and all its facilities are exposed should be insured.

- 12.3. You or your Manager should have available sufficient detail of the building insurance to enable a claim to be made if necessary.

- 12.4. When a Tenant requests that a claim be made (in respect of the tenanted property) you should process it promptly. You should not judge the merits of a claim but if you are not satisfied that it is justified you should ask the Tenant to sign the claim form.

- 12.5. When it is the Landlord's responsibility to insure the particular matter, you should pursue any claim and take specialist advice if necessary.

- 12.6. You should also consider insuring for the provision of alternative accommodation, if necessary over and above that provided for in a standard policy for flats. Where appropriate, insure for employers' liability, legal fees, fidelity, engineering, public liability and communal contents so as to protect the parties as far as reasonably possible from unexpected liabilities.

- 12.7. You should arrange the various insurances in accordance with the tenancy agreement. You should periodically review the extent of cover and the level of premiums.

- 12.8. You should notify insurers of claims at the earliest opportunity. You should be aware that Tenants have a right to notify insurers of possible claims.

- 12.9. When a claim has to be made for damage caused by an insured risk on a buildings policy, it is increasingly common for the claim to be the subject of an excess imposed by the insurance company. This should be considered part of the cost of insurance, otherwise it would be impossible to insure certain buildings without excess, or alternatively the premium would be extraordinarily high and uneconomic. In these circumstances, you should consider whether the terms of the tenancy agreement contain a provision that where an insurance claim is as a result of a negligent act by the Tenant, you are entitled to recover the excess from the Tenant. Alternatively, where the Tenant has paid a damage deposit you should consider whether you are entitled to deduct the excess from the deposit.

Landlord & Tenant Act 1985, as amended by s. 43(2) Landlord & Tenant Act 1987

- 12.10. Any person or limited company that employs direct labour is required to display a copy of his current "certificate of employer's insurance" at each place of business at which he employs staff who may be covered by the insurance. (N.B. a block of flats would not necessarily be a place of business.)

Employer's Liability (compulsory Insurance) Act 1969
Employer's Liability (Compulsory Insurance) Regulations 1971

- 12.11. In selecting the insurance company, you should have regard to your experience of that company's handling of claims and general terms as well as the premium being charged. You should also consider consulting an independent insurance broker in appropriate cases.

13. Information

Landlord's Name and Address

- 13.1. You must provide the Tenant with an address in England and Wales for the service of notices. This could be the Landlord's own address. Until such information is provided any rent is deemed not to be lawfully due from the Tenant.

s. 48 Landlord & Tenant Act 1987

- 13.2. You should, at the commencement of the tenancy, and must within 21 days of a written request, give the Tenant your name and address. Failure to do the latter without reasonable excuse is a criminal offence. If the Landlord is a company and the Tenant makes a further request, after receiving the name and address of the Landlord, then you must also give the name and address of the directors and secretary of the company within 21 days of that further request.

ss. 1 and 2 Landlord & Tenant Act 1985.

You must provide a rent book or similar document to a weekly Tenant unless the rent includes a substantial proportion for 'board'.

- 13.3. The rent book must contain the name and address of the Landlord and particulars of the rent. The rent book must also contain information as prescribed by the Secretary of State. Again, if the Landlord is a company you must give the Tenant the names and addresses of every director and the company secretary.

s. 4 Landlord & Tenant Act 1985

s. 5 Landlord & Tenant Act 1985, as amended by Sch. 17, para 67, Housing Act 1988

s. 6 Landlord & Tenant Act 1985

Landlord's Change of Address

- 13.4. Where you employ a Manager you should inform the Manager of any change of address, especially if you are going abroad, having regard to the requirements of the Taxes Management Act 1970 and the Income and Corporation Taxes Act 1988.

s. 6 Landlord & Tenant Act 1985

New Landlord

- 13.5. If you have just acquired the property you must give notice in writing of the purchase and of your name and address to the Tenants not later than the next day on which rent is payable under the tenancy, or if that is within two months after the assignment, not later than the end of that period of two months. Where the Tenant has 'rights of first refusal' additional information must be given: that the Tenant had such rights may (with other qualifying Tenants) have rights to information about the disposal and to acquire the Landlord's interest, and the time limit for exercise of these rights. There are criminal penalties for failure to provide this information.

s. 3 Landlord & Tenant Act 1985 as amended by s. 50 Landlord & Tenant Act 1987

s. 3A Landlord & Tenant Act 1985 as amended by s. 93 Housing Act 1996

- 13.6. You will be committing a criminal offence if you are a new Landlord and fail to give this information without reasonable excuse; a local housing authority is among those who can prosecute. The previous Landlord as well as the new one is liable for any breaches of the

Landlord's covenants etc. until the Tenants have been notified of the identity of the new Landlord (by either the former Landlord or the new one).

*ss. 3(3A) and 3(3)B Landlord & Tenant Act 1985 as amended by s. 50 Landlord & Tenant Act 1987,
s. 34 Landlord & Tenant Act 1985*

Change of Manager

- 13.7. You should tell Tenants of any change of Manager or if your contract with a Manager is terminated.

Specific Landlord Responsibility

Statement of Terms of Assured Shorthold Tenancy

- 13.8. Where a Tenant under an assured shorthold tenancy, created on or after 28 February 1997, applies in writing for any of the following, generally the Landlord must provide him with a written statement if the matter is not evidenced in writing already:

- the date on which the tenancy began;
- the rent payable and the dates on which it is payable;
- any term providing for a rent review;
- the length of any fixed term for the tenancy.

s. 20A Housing Act 1988 as amended by s. 97 Housing Act 1996 - s. 96 Housing Act 1996

Energy Performance Certificate

- 13.9. You should abide by the law in relation to energy performance certificates.

14. Residents'/Tenants' Associations

- 14.1. The creation of an association can bring advantages to the management in general and in particular the easing of communication with the Tenants to establish what they want and to appreciate the differing points of view. It is desirable to establish how representative the Association is and, to this end, seek a copy of its constitution and, at regular intervals, its membership list.

15. Disputes between Occupiers

- 15.1. You should have clear Policies and Procedures for handling disputes between Tenants and complaints and nuisance from neighbours. The procedures you adopt for handling disputes should be available and their existence made known and should include response times for their various stages.
- 15.2. You should deal fairly with all parties. On occasion it may be appropriate to remind complainants that the individual who is the subject of their grievance may be able to produce counter-arguments in their defence or counter-allegations which are equally significant to them as the complainant's. It may be appropriate to remind a complainant of the need for objectivity and confidence as to the grounds for the complaint. Guard against over-reaction to a situation which others find acceptable; on the other hand, consider whether, if you fail to act, there may be an action for breach of 'quiet enjoyment'.
- 15.3. On receipt of a complaint in writing, you should investigate and, if appropriate, seek to enforce the conditions of occupancy on other residents in the building subject to consideration of cost implications, the requirements of the tenancy agreement and the possibility of an action for breach of 'quiet enjoyment' if you do not act.
- 15.4. In considering enforcement action you should have regard to the availability of supporting evidence and the willingness of others to attend any hearing that may be necessary.

16. Complaints and Disputes about Managers by Tenants

- 16.1. You should have a clear Policies and Procedures for Tenants' complaints and grievances. These

should include a series of steps which dissatisfied Tenants can take to resolve problems or misunderstandings.

- 16.2. Where staff is directly employed the procedures should provide for complaints about your staff to be made to a responsible principal and for them to be investigated quickly and fairly.
- 16.3. The procedures should be available and their existence made known and should include response times for its various stages.
- 16.4. Where you are not the manager, the procedure should allow for the Tenant to complain direct to you.
- 16.5. The tenancy agreement may contain a disputes procedure such as arbitration. Such formal arrangements may involve extra costs. It is desirable to try to resolve the dispute by informal means before turning to any formal provision in the tenancy agreement.

17. Arrears

- 17.1. You should monitor closely whether rents are received when due and, if not, communicate promptly with the Tenant. Where Housing Benefit is being paid direct to you or your agent, you should inform the Tenant promptly if benefit payments cease or are varied.
- 17.2. To try to avoid legal costs you should make direct contact with the Tenant in cases where arrears continue to accumulate and advise them to seek independent advice, e.g. from a Housing Advice Centre, Citizens Advice Bureau or a solicitor.
- 17.3. If legal proceedings are necessary it is best to consult with a solicitor as in most cases it is necessary to serve a prescribed form of notice prior to seeking possession of the premises through the courts from the Tenant. You should make the Tenant aware that his home is at risk if he fails to pay sums, which are lawfully due to the Landlord. Distress must not be levied on an assured Tenant without a court order.

*s. 8 Housing Act 1988 - Sch. 2, Housing Act 1988 - s. 98 Rent Act 1977
Sch.5 Rent Act 1977 - s. 19 Housing Act 1988*

18. Terminations of Tenancies and Vacation

- 18.1. To terminate a tenancy the prescribed statutory notice must be served and court action to obtain possession taken if necessary.
*s. 3 Protection from Eviction Act 1977, as amended by s. 32 Housing Act 1988 s. 8 Housing Act 1988
s. 21 Housing Act 1988, as amended by Sch. 11, para 103 Local Government and Housing Act 1989*
- 18.2. You should be aware that you cannot obtain possession of the property until the tenancy comes to an end and the Tenant has vacated or a court order is obtained and enforced. Harassment of Tenants in an attempt to gain possession is a criminal offence carrying substantial penalties and damages in the civil courts for unlawful eviction.
s. 1 Protection from Eviction Act 1977 as amended by ss. 29(1) and 29(2) Housing Act 1988
- 18.3. You should have a system in place to monitor the response from a Tenant regarding the vacation of a property when notice has been served. Except where the tenancy agreement defines a procedure, the following is suggested:
 - (a) contact the Tenant one month prior to vacation and advise him of the vacation procedure; and
 - (b) issue guidance to the Tenant explaining what he should do prior to vacation.

*s. 27 Housing Act 1988
s. 28 Housing Act 1988 as amended by Sch 2, para 79(1) - Planning (Consequential Provisions) Act 1990*

- 18.4. When a property is about to be vacated it should if possible be inspected prior to vacation, and in any case within twenty four hours of vacation, to establish whether it has been returned in the condition specified in the tenancy agreement. You should consider whether to invite the Tenant to be present.
- 18.5. The Tenant's deposit should not be refunded until the final inspection has taken place and you are satisfied that the deposit is refundable. Partial or total non-return must be in accordance with the initial agreement in this respect. The grounds for any retention should be provided to the former Tenant in writing if requested. You should abide by the rules of any Tenancy Deposit Scheme of which you are a member.
- 18.6. The local authority and utility companies should be notified of the change in or discontinuance of occupation.
- 18.7. If the Tenant fails to vacate on the due date the position should be investigated immediately and if necessary legal advice taken at once. The legal protection insurers should be advised if a policy is in existence in this respect.

19. Tenancy Renewals

- 19.1. Tenancies which began before 15 January 1989 are generally regulated tenancies under the Rent Act 1977. This means that even where a tenancy which was for a fixed term has ended, the Tenant may have a statutory right to remain in the property. So long as the Landlord and Tenant remain the same, any new tenancy entered into will continue to be covered by the Rent Act. Where a protected shorthold tenancy comes to an end, any new tenancy subsequently entered into will be an assured shorthold tenancy.
- 19.2. Tenancies which began on or after 15 January 1989 are usually assured or assured shorthold tenancies under the Housing Act 1988. Tenancies created on or after 28 February 1997 are assured shorthold tenancies unless a prescribed notice has been issued in which case the tenancy becomes an assured tenancy. Assured shorthold tenancies may be for a fixed term or periodic. As with regulated tenancies, tenants may have a statutory right to remain in the property after a fixed term tenancy has ended. In such cases a statutory periodic tenancy will arise unless a new tenancy is granted. Periodic assured tenancies continue until ended by notice in the prescribed form.

s. 8 Housing Act 1988 as amended by Housing Act 1996

- 19.3. If the tenancy is to be renewed you should obtain any consents required. If there is a mortgage on the property the lender's consent may be necessary. If there is a headlease, the head lessee's consent may be required.
- 19.4. If a further tenancy is granted by the same Landlord to the same Tenant of the same premises, let on an assured shorthold tenancy, this will be deemed to be an assured shorthold tenancy. In the absence of a new assured shorthold tenancy being granted by the Landlord, a statutory periodic assured shorthold tenancy comes into existence and continues until determined by notice in the prescribed form on the same terms as the original assured shorthold tenancy. The Landlord can apply to increase the rent payable during statutory continuation by serving a notice in the prescribed form. It is important to note that the further statutory assured shorthold tenancy will be an assured shorthold tenancy only if it is of the same or substantially the same premises and is made between the same parties.

s. 20(4) Housing Act 1988

- 19.5. Relatives living with Tenants of properties where the tenancy was entered into prior to the Housing Act 1988 may have rights of succession on the death of the Tenant, and legal advice should be obtained in all cases.

- 19.6. A spouse (a person who was living with the Tenant as his or her wife or husband) of a Tenant under an assured periodic tenancy may have rights of succession on the death of the Tenant. The spouse must occupy the dwelling, as their only or principal home, immediately before the Tenant's death.

s. 17 Housing Act 1988