



Scottish National Core Standards and Good Practice Guidance for Private Landlords



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Contents

[Click on contents list to navigate this document](#)

Introduction	4
The Types of Standard	4
The Voluntary Nature of the Standards	4
Flexibility of the Standards	5
Guidance on the Standards	5
Section 1	7
National Core Standards for Private Landlords	8
1 Communication with the Tenant	8
2 Equality Issues, Complaints and Disputes	8
3 Management of the Tenancy	9
4 Minimum Property Condition	12
5 Repairing Standard	12
6 Repairs and Maintenance	13
7 Facilities and Fittings	14
8 Energy Efficiency, Insulation and Heating	14
9 Health, Safety and Home Security	14
Section 2	17
Understanding this Guide	18
Implementing National Core Standards Guidance	20
1 Communication with the Tenant	20
2 Equality Issues, Complaints and Disputes	21
3 Management of the Tenancy	25
4 Minimum Property Condition	36
5 Repairing Standard	37
6 Repairs and Maintenance	40
7 Facilities and Fittings	42
8 Energy Efficiency, Insulation and Heating	43
9 Health, Safety and Home Security	44

Section 3	49
Introduction to the Model Tenancy Agreement	50
Model Tenancy Agreement and Guidance	52
1 Tenancy Agreement	52
2 Use of the Accommodation	55
3 Respect for Others	56
4 Repairs and Maintenance	56
5 Ending the Tenancy	59
6 Completion of Agreement	61
Appendix – Acknowledgements	63

Introduction

The National Core Standards for private landlords provides a framework for setting and monitoring the achievement of good management practice by private landlords. The Standards reflect a combination of current legislation, good practice and commonsense. They were designed to be reasonable, realistic and easy to implement. Landlords who already carry out good management practices will find themselves well on their way to achieving the Standards.

The Standards can be used in two ways. Firstly, individual landlords can benchmark themselves against the Standards to assess how well they are managing and in order to plan future management improvements. Secondly the Standards can be used to develop local voluntary accreditation schemes based on the partnership between local authorities, landlord organisations and other appropriate stakeholders. For further guidance on how to implement an accreditation scheme please refer to HomePointer 50: A Guide to Implementing Voluntary Accreditation Schemes for Private Landlords.

The Types of Standard

The Standards themselves are organised around nine categories:

- Communication with the tenant
- Equality issues, complaints and disputes
- Management of the tenancy
- Minimum property conditions
- Repairing Standard
- Repairs and maintenance
- Facilities and fittings
- Heating, insulation and energy efficiency and
- Health, safety and home security features

The Voluntary Nature of the Standards

Specific Standards within the nine categories constitute the national guidelines for good practice by private landlords. All Standards are voluntary except for those derived from statute or common law to which landlords are legally obliged to adhere.

The Standards can be used in two main ways. Firstly individual landlords can benchmark themselves against the Standards to see how well they are performing. If landlords identify areas for improvement they can plan accordingly. Secondly the Standards can also be used as the foundation for the development of local voluntary accreditation schemes based on a partnership at local level between local authorities, landlord organisations and other stakeholders (e.g. universities and others where appropriate).

Flexibility of the Standards

The National Core Standards are designed to promote a consistent philosophy and approach to tenancy and property management. They are not meant to be restrictive and can be adapted to reflect local circumstances, such as types of properties and landlords, market characteristics and urban or rural locations.

Guidance on the Standards

Most of the Standards are straightforward, relatively short statements of good practice. Generally, they have been framed as broad statements rather than in great detail, although for some Standards, precision has been necessary and unavoidable. The overall aim has been to avoid a prescriptive approach and to allow flexibility to be retained. However, it is important that landlords and others can interpret the Standards in a useful manner. Therefore, to assist landlords and future accreditation partnerships, the Standards are accompanied by Guidance.

Section 1

National Core Standards for Private Landlords

National Core Standards for Private Landlords

Note: Shaded Standards represent statutory or common-law Standards and are expressed as things the landlord must do. Other Standards are expressed as things the landlord should do.

1. Communication with the Tenant

- 1.1 The landlord should communicate clearly, promptly and informatively with the tenant on any matter that affects the property, its management and the tenant's safe and peaceful occupation of the accommodation.
- 1.2 All information provided by the landlord, including tenancy agreements, should be written in plain English.
- 1.3 Where requested, the landlord should provide summary translations of written information in relevant minority languages, Braille or large print.

2. Equality Issues, Complaints and Disputes

Equality Issues

- 2.1 In letting and managing accommodation, a landlord must ensure that no person or group of persons is treated less favourably than any other person or group of persons because of their race, colour, ethnic or national origin, sex, disability or sexual orientation.

Sources: Race Relations Act 1976, Disability Discrimination Act 1995, Sex Discrimination Act 1975

- 2.2 From the 4th of December 2006, a landlord must not unreasonably withhold consent to tenants to adapt rented accommodation to meet the needs of disabled occupants.

Source: Housing (Scotland) Act 2006: Section 52 (3)

- 2.3 The landlord should not discriminate against a tenant or prospective tenant because of their entitlement to Housing or other Benefit and should not advertise vacant properties in a manner that could be described as discriminatory.

Complaints

- 2.4 At the outset of the tenancy, the landlord should advise the tenant in writing of the way or ways that any complaints should be registered.
- 2.5 A record should be kept by the landlord of complaints made by the tenant or a third party and the outcome of the complaint should be recorded.

Disputes

- 2.6 The landlord should seek to resolve any dispute linked to the tenancy or property, involving their tenant, including a dispute with neighbours, promptly and lawfully.

3. Management of the Tenancy

‘Fit and Proper’ to Let

- 3.1 The landlord should be registered with the local authority’s Private Landlord Registration Scheme. Where a landlord operates from a company limited by guarantee, the fit and proper person test should relate to the Director(s) and Secretary of the company.

Source: Part 8 of the Anti-Social Behaviour etc (Scotland) Act 2004

- 3.2 The landlord should not have a conviction within the last three years for a criminal offence, or offences, that are relevant to carrying out residential letting.
- 3.3 A landlord letting a property to three or more unrelated individuals should provide evidence of their HMO licence.

Pre-letting Procedures

- 3.4 Permission for the property to be used for letting should be obtained from the mortgage lender, where appropriate.
- 3.5 A landlord should have adequate buildings insurance and must have third party insurance.
- 3.6 Landlords should not let accommodation where it will result in the property becoming overcrowded and must take reasonable steps to assess this before the tenancy commences.
- 3.7 Prospective tenants should be given clear and accurate details of:
 - the accommodation-to-let particulars
 - the important rights and responsibilities of the tenant and landlord
 - the rent, service charges, utility and council tax liabilities of both parties
 - any other charges for which they are responsible
 - the potential of property inspections to be undertaken including those associated with the compliance procedures of the accreditation scheme
- 3.8 No payment must be taken from a prospective tenant to have their name placed on an accommodation list.

Source: Accommodations Agencies Act 1953

- 3.9 The first rent payment and any deposit should only be taken at the point the tenancy agreement is signed. A reasonable exception is where both parties agree that a holding deposit is taken and for which a receipt is issued.
- 3.10 Any administration charges to a new tenant must reflect only actual costs incurred. No charge must be made for drawing up or copying the tenancy agreement.

Source: Housing (Scotland) Act 1988

The Tenancy Agreement

3.11 Where the let is on an Assured or Short Assured Tenancy basis, the tenant must be given a written document (the tenancy agreement) setting out the terms of the let and any relevant Notices (for example AT5).

Source: Housing (Scotland) Act 1988

3.12 The name and current address of the landlord and/or agent must be stated in the tenancy agreement.

These details are required in the AT5 form, which is signed prior to the tenancy formation to confirm it is a Short Assured Tenancy.

3.13 An AT5 Form must be issued prior to the tenancy agreement confirming the creation of a short assured tenancy.

3.14 The tenancy agreement should set out, in clear, fair and lawful terms, the rights and responsibilities of both landlord and tenant, and in particular should include:

- the term of rent and rent payment
- a statement of the repair and maintenance duties of both parties
- a statement of the standard of cleaning and of the condition in which the property should be kept, wear and tear excepted, by the tenant, throughout the tenancy and
- a statement that the tenant must not engage in any anti-social behaviour and that any such behaviour will constitute a breach of the agreement

Source: Unfair terms in Consumer Contracts Regulations 1999

3.15 The tenancy agreement must be properly executed by the signatures of the landlord (or agent) and tenant, and one witness, who must include their address.

Source: Requirements of Writing (Scotland) Act 1995 for post July 31 1995 leases

Rent and Other Charges

3.16 The tenancy agreement should set out:

- the rent due
- the period of payment
- the method of payment and
- any review period for changing the rent

and the responsibility of the tenant for:

- any service charges
- council tax
- utility costs and any other charges

3.17 The landlord should hold occupancy records relating to each property the names, dates of arrival/ departure and forwarding address of all tenants, and make this information available to authorised users under data protection legislation.

3.18 Where rent is paid weekly, a rent book must be issued and receipted for each weekly payment made.

Source: Housing (Scotland) Act 1988

Possession

3.19 A landlord must use the correct legal procedures for seeking possession of the accommodation.

Source: Housing (Scotland) Act 1988 and Rent (Scotland) Act 1984

Action on Anti-Social Behaviour

3.20 It is a legal requirement of the landlord to take lawful forms of action to resolve any issues regarding anti-social behaviour of occupants and visitors to the property in question.

Source: Anti-Social Behaviour etc (Scotland) Act 2004: Section 68

Deposit

3.21 The landlord should not discriminate against a prospective tenant who intends to obtain a deposit, rent or rent guarantee from a recognised scheme designed to help low-income tenants gain access to private rented accommodation.

3.22 Where a deposit is required, it must be no more than the equivalent of two months' rent and the tenant should receive a written statement of what the deposit (or guarantee) covers and a statement of what will require to be done, or in place, for the full deposit to be returned at the end of the tenancy. Deposits should be returned within one month of the final information being available.

Source: Rent (Scotland) Act 1984 and Housing (Scotland) Act 1988

3.23 The tenant should be provided with a receipt for a deposit. The deposit (or its balance) should be returned as soon as possible at the end of the tenancy or when any receipted tenant account(s) is settled subsequent to the tenant having left the accommodation.

3.24 If, on the return of the deposit, a deduction is made, the tenant should receive a written statement identifying the reason(s) for the deduction(s).

Inventory

3.25 At the start of the tenancy, the tenant should be provided with an inventory. The tenant should be given up to seven days to check and agree the inventory.

3.26 A revised inventory should be given to the tenant when there is an agreed change to the contents of the original inventory.

3.27 At the end of the tenancy, the landlord should check the inventory. The tenant should be invited to attend the inventory check and, if they wish to, a mutually suitable time should be arranged.

4. Minimum Property Condition

- 4.1 The tenant's accommodation, or the house within which it is located, must meet the Tolerable Standard. In other words, it must meet each of the following criteria:
- be structurally stable
 - be substantially free from rising or penetrating damp
 - have satisfactory provision for natural and artificial lighting, for ventilation and for heating
 - have an adequate piped supply of wholesome water available within the house
 - have a sink provided with a satisfactory supply of both hot and cold water within the house
 - have a water or waterless closet available for the exclusive use of the occupants of the house and suitably located within the house
 - have a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water, suitably located within the house
 - have an effective system for the drainage and disposal of foul and surface water
 - have satisfactory facilities for the cooking of food within the house
 - have satisfactory access to all external doors and outbuildings
 - in the case of a house having a supply of electricity, comply with the relevant requirements in relation to the electrical installation (i.e. electrical wiring and associated components and fittings) for the purposes of that supply and
 - have satisfactory thermal insulation

Source: Housing (Scotland) Act 1987 section 86 as amended Housing (Scotland) Act 2006 section 11

- 4.2 The landlord or letting agent should take all reasonable steps to ensure the maintenance of the common elements of the building, which are a shared responsibility with other co-owners.

Source: Tenement (Scotland) Act (2004)

5. Repairing Standard

- 5.1 The landlord should undertake a risk assessment of each property detailing potential risks, measures to mitigate against risks and any tenant responsibilities to prevent such risks manifesting. This risk assessment should be available to the tenant at the creation of a tenancy.
- 5.2 A landlord has a duty to repair and maintain the property at the start of the tenancy, and at all times during the tenancy, including a duty to make good any damage caused by carrying out this work.

Source: Housing (Scotland) Act 2006 s14: 1-2

- 5.3 Upon notification or awareness of a defect the landlord must complete the work within a reasonable time.

Source: Housing (Scotland) Act 2006 s14: 4

5.4 A private rented property must meet the repairing Standard as follows:

- the house is wind and water tight and in all other respects reasonably fit for human habitation
- the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order
- the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order
- any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order
- any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed and
- the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire

Source: Housing (Scotland) Act 2006 s13 (1)

5.5 The landlord must inspect the property before the tenancy starts for the purpose of identifying any work necessary to comply with the Repairing Standard and notify the tenant of any such work.

Source: Housing (Scotland) Act 2006 s19

5.6 The landlord must, on or before the start of a tenancy, provide the tenant with written information about the effect of the Repairing Standard in relation to the tenancy.

Source: Housing (Scotland) Act 2006 s20: 1-4

5.7 Tenants should be provided with information on how to approach the Private Rented Housing Panel and in what circumstances.

Source: Housing (Scotland) Act 2006 s22: 1-6

6. Repairs and Maintenance

6.1 a. Access to the property by the landlord (or anyone acting on their behalf) for a repair inspection or for carrying out a repair should be the subject of mutual agreement between the landlord and tenant.

b. The tenant must give the landlord reasonable access to the property but failing mutual agreement, the landlord must give 24 hours' advance notice in writing of their intention to enter the property – except where an emergency repair is required.

Source: Housing (Scotland) Act 1988 and Housing (Scotland) Act 1987 Schedule 10

6.2 The landlord should provide the tenant with a contact name and phone number for emergency and non-urgent repair requests to be made. If appropriate, emergency numbers for tradesmen should be made available to the tenant.

6.3 The tenant should be informed what types of repairs constitute emergencies and that such repairs will be carried out within 24 hours of being reported.

6.4 Where the landlord carries out major repairs or improvements to the property during the tenancy that restrict the occupancy of a room(s) or the use of facilities for a period of time, an appropriate rent restriction should be applied for the period of disruption.

7. Facilities and Fittings

7.1 Sinks, baths, showers, wash hand basins (with hot and cold water) and water closets must:

- meet the requirements of the Tolerable Standard
- be in a good working condition and
- be sufficient for the number of occupants required to use them within the house

Source: Housing (Scotland) Act 1987 section 86 as amended

- 7.2 Where cookers are part of the let, they should be in good working order and sufficient for the number of occupants required to use them.
- 7.3 The landlord should ensure there is adequate storage space within the property for the storage of refuse.

8. Energy Efficiency, Insulation and Heating

8.1 The property should provide a satisfactory level of thermal insulation and incorporate, where necessary and practical:

- draught insulation of doors and windows (or secondary or double glazing)
- lagging of immersion heaters and hot water pipes
- cavity wall insulation
- loft insulation to a depth of 250mm
- the landlord should advise tenants to replace conventional light bulbs with low energy bulbs and
- where available, the landlord should provide tenants with an NHER rating for the property and indicative fuel costs

8.2 The landlord should provide an efficient, safely designed and economical-to-run central heating system **or** an open fire with back boiler feeding room radiators **or** a space-heating appliance in each apartment in the accommodation and in the bath or shower room(s).

8.3 The accommodation should be provided with an energy efficient hot water supply.

9. Health, Safety and Home Security

Water

9.1 There should be no lead pipes within the property feeding the internal drinking supply.

Gas

- 9.2 The landlord must comply with current Gas Safety (Installation and Use) Regulations (which cover Liquid Propane Gas installations) by:
- arranging for annual gas safety checks to be completed by a CORGI registered contractor and a gas safety certificate obtained
 - ensuring all servicing, repairs and replacements to be completed by a CORGI registered contractor
 - providing tenants with a copy of the servicing certificate and
 - retaining records of safety checks for at least 2 years

Source: Gas Safety (Installations and Use) Regulations 1998

- 9.3 The landlord should provide the tenant with clear, written instructions of how to operate the central heating system safely and what action to take with a suspected gas leak or faulty gas appliance.
- 9.4 Where gas, including liquid propane gas, is supplied to the accommodation, the landlord should provide suitably located, mains-wired (with battery back-up) carbon monoxide alarm(s).
- 9.5 Before the start of the tenancy, and at regular intervals thereafter, the landlord should test that the carbon monoxide alarm(s) is operating properly.

Electricity

- 9.6 The landlord should ensure that all reasonable steps are taken to ensure that all electrical appliances supplied as part of the let are safe to use.
- Source: Electrical Equipment (Safety) Regulations 1994
- 9.7 The landlord should arrange for a qualified electrician or qualified person holding the appropriate Portable Appliance certificate to complete:
- an annual, portable electrical appliances safety test (PAT) and
 - a regular 5 year check of electrical wiring circuits and mains board

In each case, an electrical safety report should be obtained from an approved electrical contractor to ensure equipment or circuits conform to current relevant Electrical Regulations.

Furnishings and Furniture Safety

- 9.8 All furnishings and furniture supplied as part of the let must comply with relevant parts of the Furniture and Furnishings (Fire) (Safety) Regulations.

Source: The Furniture & Furnishings (Fire) (Safety) Regulations 1988

Fire Safety

- 9.9 The accommodation should have installed a mains-wired (with battery back-up) smoke detection system.
- 9.10 A fire blanket should be provided in the kitchen, or kitchens.
- 9.11 The landlord should provide the tenant with published guidance on fire safety issues.

Home Security

- 9.12 The accommodation should have secure window locks and secure front and rear access doors (where appropriate) that do not prejudice means from escape in the case of fire.

Section 2

**Implementing National
Core Standards
Guidance**

Understanding this Guidance

This Guidance was compiled to aid landlords in interpreting and implementing the Standards outlined in section 1 of this publication.

The Guidance together with the Standards can be used by individual landlords to compare themselves against the National Standards to see how well they are performing and to identify where they could improve management and property Standards.

The Guidance on the Standards will assist those responsible for setting up local voluntary accreditation schemes. Separate Guidance has been produced on promoting and developing local accreditation schemes including the key role that Standards will play in any scheme, which is contained within this publication.

The Guidance does not presume to be comprehensive in its scope. It does not address every Standard because there are a number that need no further interpretation or illustration to be understood.

For the Standards it does cover, it provides clarification and advice on how they should or may be interpreted. It recognises that in the setting of Standards at local level, flexibility and reasonableness will be necessary to respond to the different housing environments found in urban and rural Scotland.

The aim is to ensure the Standards are not only good practice but also practical.

The Guidance is presented in the same order as in section 1 of the National Core Standards for Private Landlords.

To whom does this Guidance apply

This Guidance is primarily designed for private landlords, including owners of estates and farms, involved with residential letting, and those who have purchased, or intend to purchase, properties through the Buy To Let scheme operated by banks and building societies.

However, it will also be of value to others with a stake in the private rented sector such as letting agents, universities and colleges, voluntary organisations and organisations representing the interests of tenants, private landlords, estate owners and independent advice agencies.

The original Guidance and the National Core Standards produced in 2004 followed extensive consultation involving private landlords and tenants. This process also took into account comments submitted by individual landlords and letting agents.

Since the publication of the 2004 Guidance and National Standards, Communities Scotland: HomePoint co-ordinated four pilot accreditation schemes based on the original quality framework guidance. The outcome of this process has been the development of four Scottish accreditation schemes (Quality Rent South West, Dundee Landlord Accreditation, Edinburgh Landlord Accreditation and South Ayrshire Voluntary Accreditation Scheme), each of which has contributed to the revision of the 2004 Guidance and National Core Standards to produce this updated document. In addition a number of legal revisions have been made in light of recent legislation.

A Working Group, including key stakeholders representing a range of interests across the private rented sector, has overseen the preparation of the Standards and this Guidance. These include representatives of private landlords, estate owners, private tenants and local authorities. A full list of the membership of the Working Group can be found in the Acknowledgements section of this publication.

The Standards

As the Guidance is based on the National Core Standards, it is useful to summarise the key features of the Standards before moving on to the specific guidance.

The National Core Standards address three key features of letting and managing residential property:

- property condition
- property management and
- tenancy management

The National Core Standards are designed to promote improved management and property condition. The Standards represent good practice. While designed to promote consistency in approach, they are not prescriptive. Nor are they designed to add an onerous burden to landlords' existing business.

There are two basic types of Standards:

- Those that reflect current statutory duties of landlords in terms of their management, and the condition, of their properties. These Standards add no new statutory burden and landlords that manage their properties in a professional manner should already meet these Standards.
- Those that consist of good management practices drawn from examples of good practice and from a common sense assessment of what is reasonable to expect of a landlord in letting and managing their properties. While some of the Standards may be new to some landlords, others Standards should be familiar to most landlords and may well already be part of their approach to management.

Some Standards such as those that derive from existing statute are specific and offer little room for variation. Others of a good practice nature are often expressed by broader statements and offer more opportunity for flexibility in interpretation.

This is important because, as a national framework, the Standards have to be capable of application in a variety of circumstances across the country. They are also expected to be appropriate to all private landlords, to all types and ages of property and to different market circumstances.

Local accreditation schemes should use the National Core Standards and this Guidance as a resource. Local scheme managers will need to set their own specific standards for membership of their scheme. These should be based on the National Core Standards, but in some cases will diverge from them on particular issues of local importance or necessity.

The Guidance

A number of the National Core Standards are straightforward and no additional interpretation is considered necessary. The Guidance focuses on those Standards that would benefit from interpretation or illustration.

The Guidance adopts the same numbering references as used by the National Core Standards for Private Landlords. Shaded Standards are based on statutory provisions and are expressed in terms of must do. Non-statutory good practice Standards are expressed in terms of should do and are not shaded.

Implementing National Core Standards Guidance

1. Communication with the Tenant

1.1 The landlord should communicate clearly, promptly and informatively with the tenant on any matter that affects the property, its management and the tenant's safe and peaceful occupation of the accommodation.

Good communication between landlord and tenant is fundamental to a successful tenancy. Good communication underpins achieving many of the National Core Standards.

Both parties have a responsibility to ensure good communication but the landlord has the major responsibility.

Good communication by the landlord minimises misunderstandings and mistrust and creates the basis for a healthy landlord-tenant relationship.

Tenants cannot be expected to know automatically everything there is to know about their responsibilities – or their landlord's. The landlord should make a conscious effort to ensure that their tenant is informed – not only at the outset but also at any point in the tenancy – of matters that affect the tenancy or property. The result will be fewer problems to deal with.

For example:

- ▶ if before the tenancy agreement is signed you tell a prospective tenant the main responsibilities of both parties and make clear how late rent payments will be dealt with and what the deposit covers (see Standard 3.7) there will be less chance of conflict arising at a later point
- ▶ you should tell the tenant whether the tenancy is for six months then on a month by month basis thereafter or whether there are obligations for consecutive periods of six months through tacit relocation
- ▶ before the end of the tenancy you should remind the tenant what needs to be done before the deposit will be returned (e.g. clean the property and settle all accounts) and how quickly you plan to return the deposit with an explanation of any deductions (see Standards 3.24 and 3.25) and
- ▶ it may be considered appropriate for timescales to be set to ensure prompt communication with tenants on issues such as repairs, general tenancy enquiries, rent account details and permissions

1.2 All information provided by the landlord, including tenancy agreements, should be written in plain English.

Tenancy agreements are often written in technical legalistic language, which is confusing to tenants. The model short assured tenancy agreement is available to all accredited landlords as a plain English alternative. A model tenancy agreement guide is contained in section 3 of this publication.

1.3 Where requested, the landlord should provide summary translations of written information in relevant minority languages, Braille or large print.

Although landlords should be able to provide summary translations of written information in relevant minority ethnic languages, in Braille or large print where appropriate, it is not necessary for landlords to hold a stock of such information. Alternatively, landlords should have the knowledge to access appropriate agencies which provide such services if required. For example your local authority may provide an approved list of such agencies (e.g. translators, interpreters, etc) to which accredited landlords can refer.

Good Practice Example:

- Edinburgh Landlord Accreditation provides all accreditation information including application packs and guidance in a variety of formats. In addition it also provides all documentation about the scheme for tenants in a variety of languages and formats.

2. Equality Issues, Complaints and Disputes

Equality Issues

2.1 In letting and managing accommodation, a landlord must ensure that no person or group of persons is treated less favourably than any other person or group of persons because of their race, colour, ethnic or national origin, sex, disability or sexual orientation.

Sources: Race Relations Act 1976, Disability Discrimination Act 1995, Sex Discrimination Act 1975

A private landlord has the same responsibility as a local authority and housing association to operate within the terms of the Race Relations Act 1976, the Disability Discrimination Act 1995 and Sex Discrimination Act 1975.

This means, for example, that when a landlord has a property to let, it is illegal to reject a prospective tenant (at an interview or taking an enquiry) simply on the ground of the person's race, colour, ethnic background, national origin, sex or disability.

Discrimination also arises if a landlord withholds information on a discriminatory basis, for example, withholds information that a property is still available to let from a person from a certain racial background but provides it to someone from a different racial background.

Although both the Employment Equality (Sexual Orientation) and the (Religion and Belief) Regulations 2003 deal with unfair employment treatment, there should be no unequal treatment of a prospective tenant or tenants due to their sexual orientation, religion or religious belief. Also, consideration should be given to non-discrimination on grounds of marital status or mental health.

Note: While negative discrimination is to be avoided, in some situations positive discrimination, provided it does not breach any legislation, is permissible. Common examples include 'No Smoking' and 'No pets' clauses in leases. In rural areas, landlords may justifiably favour letting to meet local needs to help sustain local communities or employment opportunities, or to retain services vulnerable to closure.

2.2 From the 4th of December 2006, a landlord must not unreasonably withhold consent to tenants to adapt rented accommodation to meet the needs of disabled occupants.

Source: Housing (Scotland) Act 2006: Section 52 (3)

From the 4th of December 2006 a landlord must not unreasonably withhold consent from tenants to adapt rented accommodation to meet the needs of disabled occupants. From December 2006 the Disability Rights Commission Code of Practice will be available for further information regarding this matter.

Whilst considering whether it is reasonable to consent to an application to carry out adaptations within their properties, or whether it is reasonable to impose a condition on such consent, landlords should have regard to:

- ▶ the disabled person's disability
- ▶ whether the work proposed is necessary for the accommodation, welfare or employment of any disabled person who occupies, or intends to occupy, the house as a sole or main residence
- ▶ the safety of the occupiers of the house or of any other premises
- ▶ any costs which the landlord is likely to incur, directly or indirectly, as a result of the proposed work
- ▶ whether the proposed work is likely
 - (i) to reduce the value of the house or of any other part of any premises of which the house forms part, or
 - (ii) to make the house or any other part of such premises less suitable for letting or for sale
- ▶ whether, if the proposed work was to be carried out, the house could be reinstated to the condition it was in before it was carried out
- ▶ any code of practice issued by the Disability Rights Commission which relates to this section or section 52

Source: Housing (Scotland) Act 2006: s53: 1

The landlord should work with the tenants' professional advisors, for example occupational therapist or social worker, to ensure the work completed meets the needs of the disabled occupant and minimises the impact to the property.

Assistance with costs, including the costs of reinstatement, may be available from the local authority.

2.3 The landlord should not discriminate against a tenant or prospective tenant because of their entitlement to Housing or other Benefit and should not advertise vacant properties in a manner that could be described as discriminatory.

A prospective tenant should not be rejected simply because they would claim housing benefit for their rent.

Where there is a reluctance to let to tenants in receipt of Housing Benefit, the issue is not about the prospective tenant personally but about the operation of the local authority's housing benefit administration on which the tenant depends for their rent to be paid.

It is important that the landlord is aware of the level of indicative rent for housing benefit purposes and is in a position to counsel prospective tenants on the affordability of the property being considered.

In addition there is often confusion between a tenant claiming housing benefit and a 'DSS Referral'. A DSS Referral is where the tenant is not chosen by the landlord but is referred by the DSS as part of an agreed arrangement.

In these circumstances the rental agreement is with the DSS or an RSL and they, not the landlord, have control over who lives in the property. However this is used much less commonly.

An equivalent situation today would be where a landlord leases a property to either a local authority or RSL for temporary homeless accommodation or a lead tenancy. This would mean the authority or RSL, not the landlord, would decide who occupies the property. In these circumstances it is likely that the type and level of insurance required would be different from that of a normal let and the landlord must clarify this with their insurer and lender.

Where a landlord is restricted in his selection of a suitable tenant by explicit contractual obligations, for example by a lender or insurer, it would be good practice for the landlord to submit written evidence of this obligation to the accreditation scheme.

Also a landlord should not discriminate against a tenant or prospective tenant because they participate in a rent deposit or rent guarantee scheme, or any recognised scheme designed to help low income tenants gain access to private rented accommodation.

Complaints

2.4 At the outset of the tenancy, the landlord should advise the tenant in writing of the way or ways that any complaints should be registered.

The landlord should tell the tenant at the outset of the tenancy how a complaint, if it arises, should be made. This is all part of ensuring good communications and will remove misunderstandings and reduce potential future dispute.

Best practice is to require a complaint to be made in writing. This is as much good protection for the landlord as it is for the tenant.

However, phone call or face-to-face complaints are clearly a quick and efficient way for tenants to communicate. In such cases, the complaint should still be dealt with but the tenant should be requested to follow it up with a note of the problem.

Tenants should be made aware of the accreditation scheme and to whom they should address complaints if the landlord's system proves unsatisfactory.

Good Practice Example:

- The City of Edinburgh and Dumfries & Galloway Councils both provided robust complaints procedures as part of their accreditation guidance to landlords and tenants.

2.5 A record should be kept by the landlord of complaints made by the tenant or a third party and the outcome of the complaint should be recorded.

All complaints should be recorded but a bureaucratic procedure is unnecessary and to be avoided. A simple register that records the nature of the complaint and the date received is all that is needed. The outcome of the complaint should subsequently be added to the register – it could be no more than noting if the complaint was successfully or unsuccessfully resolved.

Sometimes a neighbour may make a complaint to your property or possibly to your local council. In such cases it is best to insist that it is in writing. In such circumstances a copy of the complaint should be supplied to the tenant. The same recording approach (record with date and subsequent outcome recorded) should be followed.

Note: A request for a repair to be carried out should not be deemed a complaint. However, if a tenant has to get back to a landlord who has not carried out an agreed repair that would be a complaint.

Disputes

2.6 The landlord should seek to resolve any dispute linked to the tenancy or property, involving their tenant, including a dispute with neighbours, promptly and lawfully.

A dispute between landlord and tenant reflects a breakdown in communication and understanding between the two parties. The landlord should aim to resolve the cause of the dispute through prompt and direct discussion with the tenant or with the tenant's representative.

Formal mechanisms to resolve landlord-tenant disputes are uncommon. In certain situations where there is a proposed change in rent and the tenant and landlord cannot agree, either has a right to apply to a private rented housing committee that will fix a market rent. Useful guidance includes:

- ▶ Assured Tenancies in Scotland – Your Rights and Responsibilities, A Guide for Private Landlords and Tenants (Scottish Executive), www.scotland.gov.uk/housing/leaflets/atsy-oo.asp
- ▶ HomePointer 32 Private Tenants Guide (Communities Scotland), www.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/cs_006213.pdf

There is a view that where a tenant is in dispute with a neighbour, it is nothing to do with the tenant's landlord. This is not the case. The landlord should take an active interest in the issue and ascertain if the dispute relates to any tenancy or property issue. For the avoidance of doubt this includes any form of anti-social behaviour. As the source of the dispute could lie in the tenant's breach of the tenancy agreement, the landlord has a responsibility to warn the tenant of that and of the possible consequences and take appropriate action when required.

Guidance issued by the Scottish Executive on anti-social behaviour states that when a tenant or occupant of a private landlord's property behaves anti-socially, the landlord should follow their individual policies and procedures for dealing with complaints.

Options which should be considered by private landlords include:

- ▶ Warning letters
- ▶ Mediation
- ▶ Acceptable Behaviour Contracts

If after following their own policy and procedures, a landlord considers an Anti-Social Behaviour Order (ASBO) as appropriate in a particular case, the landlord should consult the local authority or RSL (if the property is in the vicinity of premises owned or managed by an RSL) over the possibility of an application. Landlords should provide evidence and an account of the steps already taken to try to resolve the matter. It would then be for the relevant authority to determine whether an application was appropriate in the light of its own policy and priorities. In addition the local authority's Anti-Social behaviour team may offer other support services for landlords.

For further guidance refer to: 'Anti-Social Behaviour etc. (Scotland) Act 2004: Guidance on Anti-Social Behaviour Orders' www.scotland.gov.uk/Publications/2004/10/20154/45720#2

Landlords should be aware that an ASBO can be made against any person irrespective of their housing tenure: i.e. owner occupiers, private sector tenants, and tenants of social landlords.

Where there is an accreditation scheme in operation and the landlord is accredited, the scheme should incorporate a procedure for resolving disputes.

3. Management of the Tenancy

'Fit and Proper' to Let

3.1 The landlord should be registered with the local authorities Private Landlord Registration Scheme. Where a landlord operates from a company limited by guarantee, the fit and proper person test should relate the Director(s) and Secretary of the company.

Source: Part 8 of the Anti-Social Behaviour etc (Scotland) Act 2004

From April 2006 all private landlords in Scotland must be registered with their local authority. The aim of landlord registration is to ensure that all private landlords in Scotland are fit and proper to let residential property. Some landlords may find the houses they let are exempt. For further guidance refer to www.landlordregistrationscotland.gov.uk

Where an accreditation scheme is in operation, in order to qualify as an accredited landlord, a landlord must provide evidence of either being registered or having applied for Landlord Registration. They must also provide the accreditation scheme with authority to contact the relevant local authority/ies to supply any information that they may have relevant to their application for accreditation.

An accreditation scheme should work in partnership with the local authority from the outset of the scheme to seek to agree criteria for meeting the 'fit and proper' person test and therefore passporting accredited landlords into Landlord Registration. However passporting is at the local authorities' discretion.

For an accredited landlord to be passported into Landlord Registration, the local authority must be satisfied that the tests involved in the accreditation scheme cover the requirements for the local authority's own 'fit and proper person' test for Landlord Registration and are therefore an acceptable substitute.

Landlords will be required to re-register with the local authority every three years. In order to ensure accredited landlords qualify for 100% discounted registration fees, where this has been agreed with the local authority, the accreditation scheme should update its 'fit and proper' person test in advance of re-registration.

3.2 The landlord should not have a conviction within the last three years for a criminal offence, or offences, that are relevant to carrying out residential letting.

To qualify as an accredited landlord, a landlord should have no convictions for offences connected to, or that could be associated with, residential letting practices. Such a Standard must have a time bar beyond which no conviction is taken account of. Three years is the recommended cut-off but if there is a very serious relevant offence, the time bar could be extended.

The relevant types of conviction that should be taken into account include:

- ▶ failure to apply for Landlord Registration
- ▶ harassment or illegal eviction
- ▶ housing benefit, council tax or social security fraud
- ▶ failure to comply with local authority statutory notices (e.g. Serious Disrepair Notice)
- ▶ failure to apply for an HMO licence when required
- ▶ Schedule One offences (against children) or
- ▶ those offences resulting in placement on the Sex Offenders Register

Some discretion should be exercised, as there may be minor misdemeanours that would not warrant a three-year exclusion from accreditation.

In applying for accreditation, a landlord should self-certificate on the issue of relevant convictions.

If a complaint is made or information is received that indicates a false declaration, an investigation should be carried out by the accreditation scheme management. Only in some circumstances will it be appropriate to carry out pre-accreditation checks. It is not intended that this requirement should imply a need for a Basic Disclosure Scotland check. However this is an additional safe-guard some authorities may wish to consider if passporting is to be accepted.

There should be an obligation on both the local authority and the accreditation scheme to inform each other of breaches of either accreditation or Landlord Registration and any actions taken as a result of such breach.

3.3 A landlord letting a property to three or more unrelated individuals should provide evidence of their HMO license.

Every house in multiple-occupation must be licensed by the local authority in which it is located.

Source: Housing (Scotland) Act 2006 Part 5 section 124

The accreditation scheme should identify and work with the relevant team within the local authority to ensure the landlord is compliant with HMO legislation.

Where landlords have licensed HMO properties the accreditation scheme should consider passporting these properties into the scheme without further inspection.

Pre-letting Procedures

3.4 Permission for the property to be used for letting should be obtained from the mortgage lender, where appropriate.

3.5 A landlord should have adequate buildings insurance and must have third party insurance.

Insurance will be required where there is a mortgage, bank loan, grant from a local authority or Communities Scotland or where there is a communal insurance policy for a building managed by a factor.

However, in certain situations the landlord, as owner, may wish to accept the full risk of non-insurance. This could arise where:

- ▶ the rented property is owned outright and not secured against a mortgage or loan and
- ▶ the rented property is a flat in a building all of which is owned by the landlord

It is in the landlord's own best interests and reflects sensible property management to ensure that there is an adequate level of building insurance and third party insurance for the rented property.

A landlord may decide to self insure the buildings but it would be unwise not to have third party insurance given they could be held liable for any damage or injury to any third party.

3.6 Landlords should not let accommodation where it will result in the property becoming overcrowded and must take reasonable steps to assess this before the tenancy commences.

Prior to a tenancy commencing, a landlord should gain details of who will occupy the property and their relationship to the tenant and where necessary, the landlord should apply to the local authority for an HMO license.

A landlord should clearly explain to the tenant the maximum number of people able to reside in the property.

By law overcrowding occurs if:

- ▶ the number of persons sleeping in a house and the number of rooms available as sleeping accommodation, is such that
- ▶ 2 persons of opposite sexes, who are not living together as husband and wife, must sleep in the same room. (For this purpose children under the age of 10 shall be excluded)
- ▶ the number of persons sleeping in a house is in excess of the permitted number, having regard to the number and floor area of the rooms of the house available as sleeping accommodation. (For this purpose no account should be taken of children under the age of 1 and a child aged between 1 and 10 is taken as a half unit.)

The legislation also states that a room can be considered as sleeping accommodation if it is normally used as a living room or a bedroom.

The permitted number of persons residing in a property is whichever is less of:

- ▶ the number specified in table 1 below, which relates to the number of rooms in a house available as sleeping accommodation
- ▶ the aggregate for all such rooms in the house of the numbers of persons in table 2 in relation to each room of the specified floor area

It should be noted that no account shall be taken in either table of rooms with floor areas of less than 50 square feet.

Table 1		Table 2	
Number of Rooms	Number of Persons	Floor Area of Room	Number of Persons
1	2	110 sq ft+	2
2	3	90 sq ft – 110 sq ft	1.5
3	5	70 sq ft – 90 sq ft	1
4	7.5	50 sq ft – 70 sq ft	0.5
5+	2 for each room		

Source: Housing (Scotland) Act 1987: Section 135-137

3.7 Prospective tenants should be given clear and accurate details of:

- ▶ the accommodation-to-let particulars
- ▶ the important rights and responsibilities of the tenant and landlord
- ▶ the rent, service charges, utility and council tax liabilities of both parties
- ▶ any other charges for which they are responsible and
- ▶ the potential of property inspections to be undertaken including those associated with the compliance procedures of the accreditation scheme

Prospective tenants should be made aware of any additional charges for which they are responsible, for example contents insurance is the tenants' responsibility.

The landlord should have available for tenants the details of the accreditation scheme including details of potential inspection and compliance procedures.

Good Practice Example:

- ▶ The provision of a tenant's handbook or a tenancy pack, which outlines the rights, responsibilities and requirements of both parties, is recommended good practice for accreditation schemes and landlords.

3.8 No payment must be taken from a prospective tenant to have their name placed on an accommodation list.

Source: Accommodations Agencies Act 1953

Requiring a payment to join an accommodation list is illegal.

However, it may be that a landlord could legitimately make an at-cost charge for providing property information, but it would have to be clear this was not, in effect, requiring a prospective tenant to pay to be on a list. The preference should always be for no charge at this stage.

In addition, there should not be a separate cleaning deposit on the property.

3.9 The first rent payment and any deposit should only be taken at the point the tenancy agreement is signed. A reasonable exception is where both parties agree that a holding deposit is taken and for which a receipt is issued.

Normal practice should be for a deposit to be taken when the tenancy is agreed and the tenant is due to take up residence.

However, a holding deposit may be taken in advance of the tenancy starting, for example:

- ▶ where the landlord wishes to offer the tenancy to a prospective tenant but intends to take up references and/or credit checks before committing themselves to an agreement and
- ▶ where the new tenant is not due to take up residence for some days or weeks

The function of a holding deposit must be clearly defined together with the circumstances for its return.

3.10 Any administration charges to a new tenant must reflect only actual costs incurred. No charge must be made for drawing up or copying the tenancy agreement.

Source: Housing (Scotland) Act 1988

Any cost charged by a landlord must be justifiable, based on actual costs and not arbitrary. It is illegal to make a charge for drawing up a tenancy agreement.

The Tenancy Agreement

3.11 Where the let is on an Assured or Short Assured Tenancy basis, the tenant must be given a written document (the tenancy agreement) setting out the terms of the let and any relevant Notices (for example AT5).

Source: Housing (Scotland) Act 1988

Short Assured Tenancies are the most common type of tenancy adopted by private landlords but the general guidance provided here applies equally to Assured Tenancies.

Tenancy agreements should be clearly written, as concise as possible and include all statutory requirements. This guidance cannot cover the details of a good tenancy agreement but a model Short Assured Tenancy Agreement has been produced and is available for use by landlords. It sets out both the essential legal requirements and best practice in relation to tenancy and property management.

3.12 The name and current address of the landlord and/or agent must be stated in the tenancy agreement.

Source: required in AT5 form used prior to tenancy to confirm it is a Short Assured Tenancy

3.13 An AT5 Form must be issued prior to the tenancy agreement confirming the creation of a short assured tenancy.

In order for a short assured tenancy to be created landlords are required to serve an AT5 notice. A short assured tenancy does not exist unless a valid notice has been served.

3.14 The tenancy agreement should set out, in clear, fair and lawful terms, the rights and responsibilities of both landlord and tenant, and in particular should include:

- the term of rent and rent payment
- a statement of the repair and maintenance duties of both parties
- a statement of the standard of cleaning and of the condition in which the property should be kept, wear and tear excepted, by the tenant, throughout the tenancy
- a statement that the tenant must not engage in any anti-social behaviour and that any such behaviour will constitute a breach of the agreement

Source: Unfair terms in Consumer Contracts Regulations 1999

3.15 The tenancy agreement must be properly executed by the signatures of the landlord (or agent) and tenant, and one witness, who includes their address.

Source: Requirements of Writing (Scotland) Act 1995 for post July 31 1995 leases

Rents and Other Charges

3.16 The tenancy agreement should set out:

- the rent due
 - the period of payment
 - the method of payment and
 - any review period for changing the rent
- and the responsibility of the tenant for:
- any service charges
 - council tax and
 - utility costs

A model tenancy agreement has been prepared complete with guidance for landlords to use. This is located in section 3 of this publication.

3.17 The landlord should hold occupancy records relating to each property the names, dates of arrival/departure and forwarding address of all tenants, and make this information available to authorised users under data protection legislation.

It is sufficient to hold the simple record for each tenancy containing the details of occupants. This record should be held by the landlord for a period of 5 years. This is good practice in dealing with enquiries that may be made some years after the tenancy, for example regarding Council Tax, Housing Benefit, utilities and tenants' references, etc.

3.18 Where rent is paid weekly, a rent book must be issued and receipted for each weekly payment made.

Source: Housing (Scotland) Act 1988

The landlord must make a range of payment methods available to the tenant.

Possession

3.19 A landlord must use the correct legal procedures for seeking possession of the accommodation.

Source: Housing (Scotland) Act 1988 and Rent (Scotland) Act 1984

Possession of tenanted property must follow statutory procedures. To remove a tenant without a Court Order is a criminal offence. Harassment and unlawful eviction are also criminal offences.

For Assured and Short Assured Tenancies, the grounds and the procedures for repossession are set out in the Housing (Scotland) Act 1988. Useful guidance is provided by the Scottish Executive leaflet Assured Tenancies in Scotland – Your Rights and Responsibilities, A Guide For Private Landlords and Tenants www.scotland.gov.uk/housing/leaflets/atsy-00.asp.

Only brief guidance is provided here. A Short Assured Tenancy is granted for an initial term of not less than 6 months. During that time, the tenant has security of tenure provided they do not break any of the terms of the Tenancy Agreement. If that happens the landlord can go to the Sheriff Court using any of the repossession grounds that can be used for an Assured Tenancy.

At the end of this time, the landlord has a right to repossession and if the tenant does not leave, having been given correct notice, the landlord must apply to the Sheriff Court for a repossession order.

Ending an Assured or Short Assured Tenancy correctly with the intent of gaining possession can involve complicated issues of timing, procedure and service of a Notice To Quit. If in doubt, a solicitor or agency that offers legal advice should be consulted.

Action on Anti-Social Behaviour

3.20 It is a legal requirement of the landlord to take lawful forms of action to resolve any issues regarding anti-social behaviour of occupants and visitors to the property in question.

Source: Anti-Social Behaviour etc (Scotland) Act 2004: Section 68

Private landlords have the same responsibility as any other type of landlord to play their part in tackling anti-social behaviour. Good tenancy management should include an active role in intervening to stop anti-social behaviour. (See Standard 2.6 for further guidance on dealing with tenant disputes).

This is not to deny that anti-social behaviour by a tenant can be difficult to resolve but there are ways in which a landlord can and should take action.

The landlord should first satisfy themselves there is genuine basis to complaints if they are made by third parties.

Most Tenancy Agreements include a clause dealing with noise, nuisance or damage and a tenant can first be warned in writing that they are in breach of the agreement which could lead to them losing the tenancy.

Local authorities have powers to require an individual landlord to take reasonable and lawful forms of action to address particular, identified anti-social behaviour of occupants and visitors to the property in question. These powers are intended for use where a landlord's failure to use normal good management practice exacerbates a problem of anti-social behaviour.

The local authority can serve an anti-social behaviour notice on a landlord who fails to take reasonable management steps in connection with a specific problem of anti-social behaviour.

The notice would identify the reasonable steps required to rectify the situation.

Failure to comply with such a notice is a criminal offence (subject to appeal) and there are also sanctions available to the local authority including rent restrictions and management control orders.

Landlord should work in partnership with the appropriate local authority service with the aim of stopping any anti-social behaviour. For example this could be the anti-social behaviour team or mediation services.

Deposit

3.21 The landlord should not discriminate against a prospective tenant who intends to obtain a deposit, rent or rent guarantee from a recognised scheme designed to help low-income tenants gain access to private rented accommodation.

Low-income tenants can face great difficulty in putting together the cost of a deposit on top of the first month's rent.

In recent years there has been an expansion in schemes designed to help such tenants. Some schemes will make an advance rental payment, some will advance the deposit and others will provide the landlord with a deposit guarantee for a particular length of time.

These schemes help tenants gain access to needed accommodation and help landlords to gain tenants at a reduced financial risk.

Landlords should note that the responsibility is on rent deposit guarantee schemes to ensure fast processing of applications for support, as schemes must recognise the market context in which landlords operate. It is unfair to penalise prospective tenants because they intend to apply for help from a recognised scheme.

3.22 Where a deposit is required, it must be no more than the equivalent of two months' rent and the tenant should receive a written statement of what the deposit (or guarantee) covers and a statement of what will require to be done, or in place, for the full deposit to be returned at the end of the tenancy. Deposits should be returned within one month of the final information being available.

Source: Rent (Scotland) Act 1984 and Housing (Scotland) Act 1988

It is common practice to ask an incoming tenant for a deposit to cover possible damage, unpaid bills and possibly non-payment of the last month's rent.

By law, the amount that can be asked must not exceed 2 months' rent.

For tenants, the treatment of deposits can be one of the most unsatisfactory features of their tenancy. Lack of clarity and nothing put in writing are two sources of dissatisfaction and future dispute.

It is good tenancy management for a landlord to set out in writing either as part of the Tenancy Agreement or separately, exactly what the deposit covers and what the tenant should ensure is done at the end of the tenancy.

At the end of the tenancy the tenant should be provided with a clear statement of any deductions from the deposit.

Wear and tear is not a basis for withholding part of the deposit.

3.23 The tenant should be provided with a receipt for a deposit.

3.24 The deposit (or its balance) should be returned as soon as possible at the end of the tenancy or when any receipted tenant account(s) is settled subsequent to the tenant having left the accommodation.

3.25 If, on the return of the deposit, a deduction is made, the tenant should receive a written statement identifying the reason(s) for the deduction(s).

Inventory

3.26 At the start of the tenancy, the tenant should be provided with an inventory. The tenant should be given up to seven days to check and agree the inventory.

When a new tenant moves in, it is good practice for a landlord – in the presence of the tenant – to confirm a list of all furnishings and equipment that are supplied as part of the let. Details of any faults, flaws, damage or disrepair of furnishings, equipment, fixtures and fittings should also be noted.

The tenant should be given a copy of the final list and a note of what will be done, and when, to fix any damage or disrepair.

Each page of the inventory should be initialled by landlord and tenant.

The landlord should consider providing a joint inspection of an inventory at start and completion of a tenancy. Landlords should offer joint inventory inspections for tenants requiring additional support in checking the inventory, for example where a tenant is elderly, disabled, etc.

There should be no additional charge for the provision of an inventory or an inventory inspection.

The realistic position is that when a tenant takes up a tenancy, possibly after a number of unsuccessful attempts to get a flat or house, checking an inventory may not be their highest priority.

It is good, sensible management to allow the tenant several days, up to a week, to check the inventory and condition report and confirm to the landlord that everything is acceptable or make any queries.

If a change is agreed verbally, it is important that the written inventory or report is revised with a corrected copy given to the tenant.

A well drawn up inventory and condition report is one of the best ways of avoiding later disputes particularly when the deposit is due to be returned.

3.27 A revised inventory should be given to the tenant when there is an agreed change to the contents of the original inventory.

3.28 At the end of the tenancy, the landlord should check the inventory. The tenant should be invited to attend the inventory check and, if they wish to, a mutually suitable time should be arranged.

While it is best practice for the tenant to be present when the inventory and condition is checked at the end of the tenancy, in practice this is not always what happens for a variety of reasons (including that the tenant has left earlier than planned).

However, a tenant should always be invited to attend and given the opportunity to check the inventory along with the landlord.

4. Minimum Property Condition

4.1 The tenant's accommodation, or the house within which it is located, must meet the Tolerable Standard. In other words, it must meet each of the following criteria:

- ▶ be structurally stable
- ▶ be substantially free from rising or penetrating damp
- ▶ have satisfactory provision for natural and artificial lighting, for ventilation and for heating
- ▶ have an adequate piped supply of wholesome water available within the house
- ▶ have a sink provided with a satisfactory supply of both hot and cold water within the house
- ▶ have a water or waterless closet available for the exclusive use of the occupants of the house and suitably located within the house
- ▶ have a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water, suitably located within the house
- ▶ have an effective system for the drainage and disposal of foul and surface water
- ▶ have satisfactory facilities for the cooking of food within the house
- ▶ have satisfactory access to all external doors and outbuildings
- ▶ in the case of a house having a supply of electricity, comply with the relevant requirements in relation to the electrical installation (i.e. electrical wiring and associated components and fittings) for the purposes of that supply and
- ▶ have satisfactory thermal insulation

Source: Housing (Scotland) Act 1987 section 86 as amended Housing (Scotland) Act 2006 section 11

Recent amendments to the Tolerable Standard will come into effect from 2007. The Tolerable Standard represents a national, minimum property condition standard that all houses and flats should meet. Although the Standard is defined in statute, an owner is not committing an offence if a property fails to meet the Standard. Nevertheless, as good practice, every landlord should aim to let only property that meets the Tolerable Standard.

However, for a landlord seeking to join a local accreditation scheme, a core requirement for membership should be that the property or properties submitted as part of the accreditation process will have to meet the Tolerable Standard.

The Tolerable Standard identifies those parts of a house that are fundamental to it providing satisfactory accommodation. It focuses on the property's construction, amenities and functioning. If a property fails any one of the 10 criteria, it fails the Standard.

The criteria in the Standard are expressed in general terms. Their interpretation should be reasonable and sensible. For example:

- ▶ some housing design characteristics could make it very difficult for a property to be brought up to the full Standard. In a rural area this might mean a flexible interpretation of the words 'suitably located' where there is an historical legacy of small cottages with bathrooms off the kitchen; and
- ▶ satisfactory facilities for cooking should not necessarily mean that a cooker has to be provided and working but it does mean that the supply and connections for a cooker must be present and in good, safe working order.

This national guidance cannot cover the detailed discussion on how the Tolerable Standard should be interpreted. Landlords should consult their local authority (its housing or environmental health service) for detailed guidance on how the criteria are to be interpreted at local level. Where there is an accreditation scheme, the detailed guidance will normally be the same as that of the local authority.

4.2 The landlord or letting agent should take all reasonable steps to ensure the maintenance of the common elements of the building, which are a shared responsibility with other co-owners.

Source: Tenement (Scotland) Act (2004)

The landlord should have in place a management system that will allow them to respond actively and promptly to any common repair or improvement requirement. This could be in the form of the appointment of a factor or agent for the property or an established owners group where common decisions regarding the property can be agreed.

The tenant should be informed of any such agreement together with the contact details for reporting any common repairs.

5. Repairing Standard

5.1 A landlord should complete a risk assessment for each property identifying where they may be below an acceptable repairing Standard.

The landlord should undertake a risk assessment of each property detailing potential risks, measures to mitigate risks and any tenant responsibilities to prevent such risks manifesting. This risk assessment should be available to the tenant at the creation of a tenancy.

The accreditation scheme should have available a simple self-assessment risk pro forma to assist landlords with this process. The key to such a risk assessment should be an objective view of whether or not any item is fit for purpose.

5.2 A landlord has a duty to repair and maintain the property at the start of the tenancy, and at all times during the tenancy, including a duty to make good any damage caused by carrying out this work.

Source: Housing (Scotland) Act 2006 s14: 1-2

The landlord must have in place a mechanism for ordering and recording repairs and provide to the tenant contact details for reporting all repairs including out of hours and emergency.

In order to achieve this the landlord should consider having available a list of approved contractors for routine repair work. It is good practice for landlords to ensure that tradesmen working in tenanted property are properly qualified for the work undertaken and operate with an appropriate customer care policy.

It should be noted that it is no longer legal for a landlord to make use of unqualified individuals for electrical and gas repairs.

5.3 Upon notification or awareness of a defect the landlord must complete the work within a reasonable time.

Source: Housing (Scotland) Act 2006 s14: 4

Where there are deficiencies, these should be attended to as a matter of priority as they may affect the integrity and safety of the property. In the event of a major defect being identified the services of a qualified surveyor should be obtained to report on the overall condition of the property.

In attending to repairs quickly, the problems associated with multi-ownership tenements and modern flat blocks is recognised. Where repairs to the building structure or other common parts are involved agreement by the owners will normally be required. This can cause a delay in taking action that is out-with the landlord's control. If there are serious delays, the local authority should be approached to ask if it is possible for it to intervene by serving a Serious Disrepair Notice (or other appropriate notice).

5.4 A private rented property must meet the repairing Standard as follows:

- ▶ **the house is wind and water tight and in all other respects reasonably fit for human habitation**
- ▶ **the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order**
- ▶ **the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order**
- ▶ **any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order**
- ▶ **any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed and**
- ▶ **the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire**

Source: Housing (Scotland) Act 2006 s13 (1)

Wind and Watertight

A private landlord is required by law to keep their property wind and watertight and in good tenable condition.

Structure and Exterior

There is also a statutory duty to maintain the external elements of the property in a reasonable state of repair. These responsibilities cannot be transferred to the tenant.

A private landlord is obliged to keep the pipes for the supply of gas and water and the electrical wiring in a good state of repair and working order. Boilers for heating and hot water are also covered by this obligation.

Water, Gas and Electric

Where gas is supplied to the property an annual gas safety certificate must be obtained from a suitably qualified and CORGI registered gas installer (also see Standard 9.2).

While Standard 9.2 outlines that annual gas certification is required any intervening breakdowns of gas appliances should be attended to by a competent CORGI registered engineer.

The services of a qualified individual, usually an electrician, should be obtained to provide an inspection report on the electrical wiring (also see Standard 9.7).

For further guidance on water safety please refer to Standard 9.1.

Fixture, Fittings and Appliances

While the landlord should ensure that fixtures and fittings, supplied as part of the let, are kept in good working order, the cost of repairing an item that has been damaged or broken by the tenant that is not due to normal wear and tear can be expected to be recharged to the tenant. A clause to this effect should be included in the Tenancy Agreement.

The term 'appliances' covers a wide range of items from major goods such as gas and electric heaters, immersion heaters, showers, cookers, fridge/freezers and washing machines to small items such as electric microwave cookers, kettles and carpet cleaners. It should be the aim of the landlord to provide appliances that are clean, in good working order and have a minimum energy rating of Band C.

Keeping such gas and electrical appliances that are part of the let in good repair will make a major contribution to safety.

A qualified electrician should be used to attend to any repairs required to electrical appliances provided as part of the let.

Furnishings

Furnishings and floor coverings are fit for purpose if they are capable of serving the purpose for which they were designed. They should be able to be safely used by the tenant, so threadbare or holed carpeting and badly cracked vinyl floor coverings would need to be replaced to meet this Standard.

All items replaced should be disposed of by the landlord in accordance with guidance from the local authority.

Fire Safety

For guidance on satisfactory provision for detecting fires and giving warning in the event of a fire or suspected fire please refer to Standard 9.9.

5.5 The landlord must inspect the property before the tenancy starts for the purpose of identifying any work necessary to comply with the Repairing Standard and notify the tenant of any such work.

Source: Housing (Scotland) Act 2006 s19

The tenant should be advised in writing of any work required to ensure the property meets the Repairing Standard, along with details of when the work will be completed and access arrangements. (Also see Standard 6.1 for further guidance).

5.6 The landlord must, on or before the start of a tenancy, provide the tenant with written information about the effect of the Repairing Standard in relation to the tenancy.

Source: Housing (Scotland) Act 2006 s20: 1-4

At the start of a tenancy, or when it is extended or renewed, the tenant should be given written information of any maintenance inspections and tasks that will take place during the tenancy.

Carrying out maintenance work helps to minimise the time, effort and cost of carrying out repairs. Repair work is reacting to a problem that has arisen. Maintenance is preventing a problem arising in the first place.

Landlords often carry out maintenance work at the end of a tenancy as it avoids disrupting the tenant. However, there is no fixed pattern to tenancy turnover and better practice is for a landlord to have a regular routine (e.g. six monthly or annually) to carry out, or organise, inspections.

Working to a maintenance routine means that the tenant can be informed if and when any inspections will take place during their tenancy.

The scale and scope of a cycle of maintenance inspections will vary with the size of the landlord's property portfolio. Typical items for inspection include:

- ▶ external windows and door paint condition
- ▶ roofs, gutters, down-pipes
- ▶ central heating boiler and gas supply
- ▶ plumbing system
- ▶ electrical installations
- ▶ satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and
- ▶ security alarm system (if present)

5.7 Tenants should be provided with information on how to approach the Private Rented Housing Panel and in what circumstances.

Source: Housing (Scotland) Act 2006 s22:1-6

Tenants who believe their landlord has failed to comply with the Repairing Standard may apply to the Private Rented Housing Panel for a determination. At the start of a tenancy a landlord should provide the tenant with a clear statement regarding their rights and who to contact in relation to the Private Rented Housing Panel.

6. Repairs and Maintenance

- 6.1 a. Access to the property by the landlord (or anyone acting on their behalf) for a repair inspection or for carrying out a repair should be the subject of mutual agreement between the landlord and tenant.**
- b. The tenant must give the landlord reasonable access to the property, but failing mutual agreement, the landlord must give 24 hours' advance notice in writing of their intention to enter the property – except where an emergency repair is required.**

Source: Housing (Scotland) Act 1988 and Housing (Scotland) Act 1987 Schedule 10

The landlord is entitled to enter the property to carry out a repair inspection or to carry out repair work. The tenant must give reasonable access and reasonable facilities for the inspection or repairs to be carried out.

By law, a landlord must give a tenant 24 hours' notice in writing of the need to gain access to the property at a reasonable time of the day for repairs that he is responsible for (unless an emergency repair is required, when the landlord can claim immediate access).

However, provided the tenant freely agrees, the advance written notice may be replaced by mutual verbal agreement for a shorter period of notice.

If the landlord wishes to do repair work but needs the tenant's agreement and the tenant refuses, the landlord should seek Sheriff Court approval to give him the right of entry.

Repair work should be well organised to minimise disruption to the tenant.

If the repair work temporarily restricts the tenant's access to rooms or facilities, the tenant should be compensated (see Standard 6.5).

If the repair work requires the tenant to temporarily move out of the property, alternative accommodation must be provided and the tenant compensated for any dislocation costs he incurs.

6.2 The landlord should provide the tenant with a contact name and phone number for emergency and non-urgent repair requests to be made. If appropriate, emergency numbers for tradesmen should be made available to the tenant.

6.3 The tenant should be informed what types of repairs constitute emergencies and that such repairs will be carried out within 24 hours of being reported.

It cannot be assumed a tenant will know what constitutes an emergency repair.

The landlord should draw up a list of items that count as an emergency and give the tenant a written copy that also includes contact details for the landlord, their agent or, if appropriate, for specific trades such as electrician and plumber. Other emergency action the tenant could take should also be stated.

Emergency repairs would include:

- no heating or hot water between October 1st and March 31st only
- no heating or hot water any time of the year if there is a vulnerable person in the property – a young baby, or someone who is elderly or disabled
- heating system giving off fumes – call Transco on 0800 111 999
- no cold water (but check with neighbours to see if it affects other homes)
- a burst or leak that at least fills a household bucket overnight. Turn off the water
- any burst, leak or water penetration that is affecting electrics. Turn off electricity
- complete or part power failure in the property
- electrical fitting smoking or scorching (also turn off the electricity)
- leaking soil pipe
- blocked toilet – but only if there is not another toilet in the property
- blocked drain with sewerage coming up
- rain coming in through the roof or windows
- flooding into the property and
- lock broken, door broken or window broken – but only if it makes the property insecure. (Include that tenant may have to pay for this repair where it is a result of tenant negligence or damage)

The tenant should be provided with an indication of the time taken to complete non-emergency repairs.

6.4 The landlord should carry out regular inspections of the fabric and structure of the property in order to identify necessary maintenance tasks.

6.5 Where the landlord carries out major repairs or improvements to the property during the tenancy that restricts the occupancy of a room(s) or the use of facilities for a period of time, an appropriate rent restriction should be applied for the period of disruption.

Should major repair or improvement work be required, the landlord should ensure it is properly planned and explained to the tenant. The start of the work, the nature of the work, the likely disruption it will cause and the time it will take should be explained to the tenant well in advance.

If the proposed start date is very inconvenient for the tenant, an alternative start date should, if possible, be agreed.

A very short period (one or two days) of minor inconvenience should not be a problem though the needs of an elderly tenant or tenant with a disability should be dealt with sensitively.

A longer period of more serious disruption that prevents access to a room or rooms or cuts off electricity, gas or water supplies should be compensated.

The level of compensation would depend on the scale and duration of the disruption and would be a matter of negotiation between the landlord and tenant. A cut in the next month's rent could be agreed although some other saving or benefit might be mutually acceptable.

Non-urgent repair requests should be carried out within 28 days or within a reasonable time from notification by the tenant.

7. Facilities and Fittings

7.1 Sinks, baths, showers, wash hand basins (with hot and cold water) and water closets must:

- ▶ meet the requirements of the Tolerable Standard
- ▶ be in a good working condition and
- ▶ be sufficient for the number of occupants required to use them within the house

Source: Housing (Scotland) Act 1987 section 86 as amended

7.2 Where cookers are part of the let, they should be in good working order and sufficient for the number of occupants required to use them.

The key point of this Standard is deciding what constitutes sufficient in number.

There is no absolute Standard. Nor is there a prescriptive Standard.

Local accreditation schemes should set a ratio for the number of tenants (residents) that could reasonably be expected to use the washing and WC facilities and any cooking facilities provided as part of the let. In terms of cooking facilities, the extent of provision will depend on whether the property is let unfurnished, part furnished or fully furnished.

7.3 The landlord should ensure there is adequate storage space within the property for the storage of refuse.

While in most cases the local authority is responsible for the provision of outside refuse disposal bins and the tenant will be responsible for ensuring their refuse is properly disposed of in the bins, the landlord has a responsibility for ensuring that within the property, there are sufficient refuse containers and storage space for them.

Where the local authority is not responsible for the provision of refuse disposal bins the landlord must ensure that there is adequate provision adjacent or close to the property.

Where there are specific arrangements for the disposal of large items or a recycling system is in operation the landlord should ensure that the tenant is made aware of such arrangements.

8. Energy Efficiency, Insulation and Heating

8.1 The property should provide a satisfactory level of thermal insulation and incorporate, where necessary and practical:

- **draught insulation of doors and windows (or secondary or double glazing)**
- **lagging of immersion heaters and hot water pipes**
- **cavity wall insulation**
- **loft insulation to a depth of 250mm**
- **the landlord should advise tenants to replace conventional light bulbs with low energy bulbs and**
- **where available, the landlord should provide tenants with an NHER rating for the property and the indicative fuel costs associated with this**

From 2006, all new homes (and other buildings) and from January 2009 existing dwellings in the UK must undergo Energy Performance Certification before they are sold or let, in order to meet the requirements of the **European Energy Performance of Buildings Directive** (Directive 2002/91/EC). This will provide the owner or landlord with an 'energy label' so that they can demonstrate the energy efficiency of the property.

It is hoped that energy labelling will raise awareness of energy efficiency, and encourage upgrading to make properties more marketable.

8.2 The landlord should provide an efficient, safely designed and economical-to-run central heating system *or* an open fire with back boiler feeding room radiators *or* a space-heating appliance in each apartment in the accommodation and in the bath or shower room(s).

Landlords should not provide portable bottled gas heaters, paraffin heaters or the like as a source of heating.

8.3 The accommodation should be provided with an energy efficient hot water supply.

9. Health, Safety and Home Security

Water

9.1 There should be no lead pipes within the property feeding the internal drinking supply.

There are health risks associated with lead in the drinking supply and the Tolerable Standard (Standard 4.1) states that there should be 'an adequate piped supply of wholesome water' within the house.

There should be no lead pipes feeding into the internal drinking water supply within the property. Where there are lead pipes, measures should be taken to remove these pipes and until such a time, the water should be tested periodically to ensure that it meets the appropriate water quality standard.

Where there is a private water supply feeding the internal drinking supply, the water should be tested periodically to ensure that the lead content is below EC guidelines. Local landlord accreditation schemes should be able to advise landlords whether there is grant funding available for the removal of lead pipes.

The tenant should be advised that for drinking purposes, only to use the sink cold-water tap.

With flatted accommodation, whether custom-built blocks or conversions, the cold-water pipe work is likely to be the common responsibility of all the owners. In such circumstances the landlord should make best endeavours to replace any lead pipes.

Outside cold water pipes to the curtilage of the house are the responsibility of Scottish Water if it is a public water supply or the landlord if it is a private water supply. Any concern about their being made of lead should be raised with Scottish Water or the landlord.

Recently there have been some concerns relating to the illegal use of lead based solders in more modern properties. If this is identified it would be the obligation of the landlord to replace such defective plumbing and seek remedy from the firm involved.

Landlords should contact their local authority to check whether assistance is available in the removal of lead piping.

Gas

9.2 The landlord must comply with current Gas Safety (Installation and Use) Regulations (which cover Liquid Propane Gas installations) by:

- ▶ **arranging for annual gas safety checks to be completed by a CORGI registered contractor and a gas safety certificate obtained**
- ▶ **ensuring all servicing, repairs and replacements to be completed by a CORGI registered contractor**
- ▶ **providing tenants with a copy of the servicing certificate and**
- ▶ **retaining records of safety checks for at least 2 years**

Source: Gas Safety (Installations and Use) Regulations 1998

9.3 The landlord should provide the tenant with clear, written instructions of how to operate the central heating system safely and what action to take with a suspected gas leak or faulty gas appliance.

While gas is an excellent fuel, it does carry attendant dangers of explosion or asphyxiation, if the supply and appliances are not properly looked after or the ventilation of the property is inadequate.

The landlord has a legal duty to ensure the premises and gas appliances are safe to use. This is the case whether the natural gas or liquid propane gas is supplied.

A CORGI registered contractor must carry out an annual gas safety inspection. Some of the key requirements are described in Standard 9.2 but the regulations should be consulted for all the requirements.

Additionally, regular checks should be carried out to ensure that the ventilation supply has not been reduced by vents or airbricks being obstructed.

9.4 Where gas, including liquid propane gas, is supplied to the accommodation, the landlord should provide suitably located, mains-wired (with battery back-up) carbon monoxide alarm(s).

It is understood that CO₂ alarms may not be achievable for all properties at the outset in some schemes but a planned approach to implanting the Standard could be taken.

It is recommended that accreditation schemes seek to work in partnership with local fire service providers to agree the appropriate type of CO₂ detectors acceptable.

For example some CO₂ detectors are designed to run from light fittings and are less expensive to fit than hard-wired alarms. However light shades and up-lighters often interfere with the operation of these devices and make them unreliable. Therefore, it is recommended a hard wired device or a long-life lithium battery operated appliance be adopted.

9.5 Before the start of the tenancy, and at regular intervals thereafter, the landlord should test that the carbon monoxide alarm(s) is operating properly.

Detectors are not a substitute for servicing, certification and regular ventilation checks.

While the safest way of protecting the health and safety of a tenant is by regular testing and servicing of gas appliances, an added layer of protection can be provided by the landlord installing mains-wired carbon monoxide alarm(s) with battery back up that meets British Standard 7860 (to be superseded by ISO 7240-6, currently in draft for consultation).

No battery-only alarms should be used. The batteries may be removed and there is the problem of who has the responsibility for ensuring the replacement of dead batteries.

The landlord should take the responsibility, not the tenant, for regular testing, including at the start of all new tenancies, that the carbon monoxide alarm is working properly. However it may be beneficial to the tenants to be able to check how to test or reset the alarm if necessary.

Alarms should be replaced every 5 years or in accordance with manufacturers' guidelines.

Electricity

9.6 The landlord should ensure that all reasonable steps are taken to ensure that all electrical appliances supplied as part of the let are safe to use.

Source: Electrical Equipment (Safety) Regulations 1994

9.7 The landlord should arrange for a qualified electrician or qualified person holding the appropriate Portable Appliance certificate to carry out:

- ▶ an annual, portable electrical appliances safety test (PAT) and
- ▶ a regular 5 year check of electrical wiring circuits and mains board

In each case, an electrical safety report should be obtained from an approved electrical contractor to ensure equipment or circuits conform to current relevant Electrical Regulations.

The requirement that all electrical appliances supplied as part of the let operate in a safe manner is a particular expression of Standard 5.1. This Standard highlights the need for checks to be carried out on electrical appliances, rather than focusing on repairs.

Electrical appliances and equipment that are part of a let must be safe to use. A qualified individual should check any old or second-hand equipment.

Appliances should be tested regularly. There is no statutory timescale. However, portable appliances (such as TVs, microwave cookers, non-fixed convector heaters, bed lamps, etc) are best checked annually by a qualified electrician. A written report should be provided and action taken promptly to deal with any failures.

In the case of the electrical wiring (including sockets), again, no statutory timescale is laid down but an inspection and test, with a report, every five years represents a reasonable time-frame (and is guidance from the IEE Wiring Regulations). Action to deal with any failures must be taken promptly.

The tenant's electrical appliances are not included in the small appliances test. It would be good practice for the landlord to offer to have the tenant's equipment tested at the same as their own. There would be a cost for the tenant but if it is reasonable and the benefits pointed out, the tenant may agree it be taken promptly.

Furnishings and Furniture Safety

9.8 All furnishings and furniture supplied as part of the let must comply with relevant parts of the Furniture and Furnishings (Fire) (Safety) Regulations.

Source: The Furniture & Furnishings (Fire) (Safety) Regulations 1988

Fire Safety

9.9 The accommodation should have installed a mains-wired (with battery back-up) smoke detection system.

It is understood that mains wired smoke alarms may not be achievable for all properties at the outset in some schemes but a planned approach to implanting the Standard could be taken.

It is recommended that where accreditation schemes are operational they should seek to work in partnership with local fire service providers to agree the appropriate type of smoke alarm acceptable.

For example some smoke detectors are designed to run from light fittings and are less expensive to fit than hard-wired alarms. However light shades and up-lighters often interfere with the operation of these devices and make them unreliable. It is therefore recommended a hard wired device or a long-life lithium battery operated appliance be adopted.

However, it is recommended that the landlord advise the tenant they should not tamper with the alarm.

9.10 A fire blanket should be provided in the kitchen, or kitchens.

There is current debate amongst professionals on fire blanket safety, giving two differing views. One view is that a fire blanket encourages the individual to stay in a potentially dangerous situation and therefore they should not be supplied. The other is that a fire blanket is useful to smother burning clothes and appliances. This guide would recommend that the landlord or accreditation scheme seek advice from their local fire service.

9.11 The landlord should provide the tenant with published guidance on fire safety issues.

The amount and type of fire safety measures provided in a property will vary with its size, layout, number of occupants and type (i.e. vulnerability) of tenants.

The National Core Standards are not designed to address the needs of shared properties subject to HMO licensing. These are addressed by each local authority's licensing scheme.

Core Standards 9.9, 9.10 and 9.11 set out minimum requirements for non-HMO properties.

The provision of a smoke detection system that is mains-wired with a back-up battery is the fundamental building block of a good fire safety plan for a property. It will warn tenants of a fire and allow them a good opportunity to escape before the fire develops.

A simple battery powered smoke detector should not be installed due to problems of battery removal and responsibility for ensuring battery replacement.

An alternative, less disruptive installation is the smoke detector that can be slotted into a ceiling lighting socket on to which the light bulb is then added. These are less satisfactory than mains wired detectors as they could be easily disconnected.

The kitchen is probably the riskiest part of a property for a fire. Here a landlord should seek advice from their local fire service on appropriate precautions.

The landlord should explain to each incoming tenant, as well as provide information within the let property, how the fire/smoke detection system works. The tenant should be advised as to sensible behaviour in using electrical and gas appliances, cooking and smoking in the property. A copy of the Scottish Fire Service information booklet A Guide to Home Fire Safety should be given to each new tenant. Copies are available from Community Fire Safety Officers with each regional Fire Brigade.

They can also be downloaded from: www.scotland.gov.uk/publications/2003/07/17322/22388

Home Security

9.12 The accommodation should have secure window locks and secure front and rear access doors (where appropriate) that do not prejudice means of escape in the case of fire.

Section 3
Model Tenancy
Agreement
Guide

Introduction to the Model Tenancy Agreement

- 1 General. This Model is published by Communities Scotland. It is the revised version to take account of legislative changes, notably those made by the Housing (Scotland) Act 2006. The text of the Model and the revised Guidance Notes also take full account of the feedback received by Communities Scotland on the first edition of this Model. It is intended for use by landlords in the private sector. It may be used as a basis for discussion within local accreditation schemes. It is consistent with the National Core Standards for Private Landlords published by Communities Scotland. It attempts to take account of the Unfair Terms in Consumer Contract Regulations 1999. It is written in plain English, wherever possible. It has been kept as simple as possible. It is intended for general guidance only. Whatever use is made of this Model, whether for an HMO or not, landlords or their agents will wish to consider whether to amend or adjust the contents of the Model to suit the particular circumstances.
- 2 While reasonable care has been taken in the preparation of the Model, no assurances whatsoever are given as to its suitability for use in any situation. Landlords intending to let out property are strongly advised to take appropriate professional advice as regards all aspects of function, including the content of the tenancy agreement to be offered. The Model should not be used as a substitute for appropriate professional advice for any aspect of the landlord/tenant relationship including termination of the tenancy. Those using this Model do so at their own risk. No liability whatsoever is accepted in respect of any losses incurred by anyone resulting from any use of or reliance on this Model, this Introduction or the Guidance Notes.
- 3 Landlords should note the requirements for the creation of a Short Assured Tenancy contained in Part II of the Housing (Scotland) Act 1988 as amended. In particular, landlords should note that in terms of section 32(2) of the Housing (Scotland) Act 1988, it is essential that the landlord properly serves a statutory notice on the tenant (form AT5) before the creation of the Short Assured Tenancy. Landlords should take legal advice if they have any doubts as to how this should be done. There are certain procedures that must be followed in order to recover possession of a Short Assured Tenancy. Again, landlords should take legal advice if they have any doubts as to how this should be done. The form AT5, other official forms and official guidance leaflets produced by the Scottish Executive, can be found at www.scotland.gov.uk/housing/leaflets. An unamended version of the 1988 Act may be found at www.opsi.gov.uk/acts.htm.
- 4 Landlords should also be aware of the licensing scheme for houses in multiple occupation under the Civic Government (Scotland) Act 1982 and the regulations that have been made under that Act: the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000 (SSI 2000/177). An original published version of that Order can be found at www.scotland-legislation.hmso.gov.uk/legislation/scotland/ssi2000/20000177.htm. Various minor amendments to that Order have been made since it was passed which can be found on the same website. (See SSI 2002/161 and SSI 2003/463) Detailed guidance on HMO legislation can be obtained freely from the local authority. If the accommodation is a 'house in multiple occupation' as defined by the legislation, it requires to be registered with the local authority. A licence will only be granted if the HMO conforms to certain standards. If the house is not an HMO (for example because it is occupied by one family only) the landlord will wish to ensure that it does not fall into the definition by, for example, the tenant subletting part of the accommodation. Landlords are advised to seek legal advice on the operation of this legislation if they have any concerns about its applicability to their own properties. This Model prohibits sub-letting or assignation or parting with possession of the accommodation without the written consent of the landlord. That provision is intended to ensure, among other things, that the accommodation does not fall within the definition of an HMO inadvertently. It should be noted that Part 5 of the Housing (Scotland) Act 2006 makes wide scale amendments to the licensing of HMOs. Once this Part is brought into force, the Orders noted above will be revoked in their entirety.

- 5 It is suitable for use if a landlord wishes to provide short-term housing for homeless persons. After the initial period of the tenancy it continues from month to month by tacit relocation and so can be terminated by either party on two months' notice after the initial period. The Working Group who established the Core Standards considered that this form of tenancy provided an appropriate balance and security between the landlord and tenant. It should also be noted that there can be considerable problems for some landlords if an Assured Tenancy is required because the financial institution providing the borrowing are not likely to agree such a tenancy and could withdraw funding. This was a concern raised by several landlords during consultation on the Standards.
- 6 A copy of this Model, in Microsoft Word format, can be downloaded from www.communities.scotland.gov.uk and adapted for use free of charge by landlords and tenants. It may be freely reproduced and adapted for use in individual cases, providing that it is not sold and the source is acknowledged.
- 7 This Introduction, and the Guidance Notes in the text of the Model, are intended for assistance in the use of this Model and are not intended to be used as an aid to the construction of the Model by courts or tribunals. Neither this Introduction, nor the Guidance Notes, should be included in the tenancy agreement concluded by the landlord and tenant. It is strongly advised that this Introduction and the Guidance Notes be considered before the Model is used.

Model Tenancy Agreement and Guidance

1. Tenancy Agreement

1.1 **The parties.** This Short Assured Tenancy ('the tenancy') is between

..... (the landlord)

whose address is,

..... and

..... (the tenant)

and is on the following terms and conditions:

Guidance Note Insert the name of the landlord, the address of the landlord and the name of the tenant. If there is more than one tenant, the names of all the tenants should be included and the Model adapted accordingly throughout.

1.2 **The accommodation.** The tenancy is of the following accommodation:

.....
.....
.....

Guidance Note Insert the address of the accommodation. If the accommodation is a flat, the flat should be identified. If the accommodation is simply a room in a flat or hostel, the room should also be identified. If the accommodation consists of some accommodation, such as a room, together with the right to use other parts of the flat or house in common with other people, that should be specified. If the accommodation includes the use of the common parts, this should be specified. For example: 'room 2, flat 2/2, 7 Horsbery Road, Auchintatler, and the shared use of the kitchen, bathroom and living room and the garden to the rear of the flat'.

1.3 During the period of the tenancy the tenant is entitled to make use, in the accommodation, of the fixtures, fittings, furniture and furnishings specified in the inventory checked and signed by the landlord and the tenant.

Guidance Note The landlord should prepare an inventory of all the fixtures and fittings, furniture and furnishings in the accommodation. The inventory should be signed by both parties, preferably at the same time as the agreement, and both parties should have a copy of it.

1.4 **Period of tenancy.** The tenancy starts on (the entry date) including the whole of the day. This is regardless of the date that this tenancy agreement is signed by the landlord and the tenant. The initial period of the tenancy is for six months from the start of this tenancy. Unless the landlord or the tenant has brought the tenancy to an end at, or before, the end of the initial period, the tenancy will continue thereafter on a month to month basis until terminated in terms of paragraphs 5.1 to 5.4 of this agreement.

Guidance Note Insert the entry date. The default period of the tenancy is six months, which is the minimum period under the 1988 Act. The parties are free to agree a longer initial period if they wish (for example one year). If a longer initial period is desired, the period of six months should be deleted and the longer period inserted. The maximum period is 20 years.

The first day of the tenancy is included in the calculation of the period. So, if the tenancy begins on January 1st and is for an initial period of six months, it ends at midnight on June 30th. After the end of the initial period, the tenancy continues from month to month. If that provision were not there, and the tenancy were not brought to an end as at the end of the initial period by either of the parties, the tenancy would automatically renew for the same period as the initial period (or one year if the initial period were longer) under the legal rule known as tacit relocation ('silent renewal').

There is some misunderstanding about how to calculate the period of a lease. In particular, it is sometimes said that a six month lease should always start and finish on the same day of the corresponding month (e.g. from the 1st January to 1st July) or even to the following day (e.g. 1st January to 2nd July). This is not so as a matter of law. The question in all cases is the proper interpretation of the lease or the tenancy agreement. They are contracts. The usual rules on interpretation apply. The cardinal rule is what is meant by what the parties said.

There are many complex legal arguments about how to calculate a period of time including the question of when a day starts and finishes and whether the first and last day are included. However none of these arguments (which it is necessary to set out here) are relevant in the case where the parties have clearly expressed their intention. In this tenancy agreement the parties state clearly that the lease begins on a particular day and that the lease includes the whole of that day. It also says that the lease ends six months later. Therefore, as a matter of ordinary English usage, a six month period that starts on the 1st day of the first month, and includes the whole of that day must end at the end of the last day of the sixth month.

It follows from this that this tenancy agreement does have an ish. (The ish of a tenancy is its termination date). The ish is calculated as above. If the entry date was 1st January and the period was six months, it follows that the ish is 30 June. There is no need to state that in the tenancy since it is implicit. However, there is no reason why the landlord cannot simply make the date of the ish explicit by adding an extra sentence if he wishes to do so.

The lease provides that the entry date is as stated regardless of the date that the lease is signed. A clause of this type is almost universally found in both lease and tenancy agreements. This is because, whilst it is good practice for entry not to be given until after the lease is signed, in practice landlords do sometimes allow entry subject to the execution of a lease afterwards. Where this occurs, in order to avoid any argument about the entry date, the tenancy agreement settles the matter. Neither the Model nor the Guidance Note advocates that such a practice be followed. Instead it provides some protection if that is what the landlord chooses to do. Of course, it is always possible that the tenant may take entry then refuse to sign. That is a good reason why a landlord should not be advised to do this.

- 1.5 **Rent.** The rent is £ per payable in advance on the day of the (This includes the sum of £..... for the following services)
The rent should be paid in the following way:

Guidance Note Insert the amount of rent, the frequency of payment (week or month), the day of payment (e.g. the 1st), the period of payment (week or month) and the method of payment. If services are included in the rent (such as cleaning, gardening, etc.) those services and the amount for each of the services should be specified. If there are no services, the sentence in [] should be deleted.

Although it is lawful to do so, this agreement does not make provision for payment of interest on the rent which is paid late. If the landlord raises an action for payment of rent arrears (with or without a claim for recovery of possession) interest is normally claimed at the judicial rate of 8% per annum from the date of the commencement of the action.

- 1.6 **Rent increases.** The landlord is entitled to increase the rent as at the anniversary of the entry date and each anniversary thereafter save that the landlord shall not be entitled to increase the rent during the initial period of the tenancy. At least two months' written notice of any rent increase will be given. The tenant will be entitled, on receipt of such a notice, to terminate the tenancy as provided for in paragraph 5.1 of this tenancy agreement, before the increase takes effect.

Guidance Note This clause has the following effect. The landlord cannot increase the rent for the first year even if the initial term of the tenancy is six months. The landlord can increase the rent once a year. The landlord is required here to give two months' notice of an increase. This period, which is contractual and not imposed by law, is thought fair so that the tenant has around one month to decide whether the increased rent is acceptable before having to give the 28 day's notice to quit required by paragraph 5.1. It is thought that without a reasonable period for the tenant to consider their position, the rent increase clause as a whole might fall foul of the Unfair Terms in Consumer Contract Regulations 1999. It should be noted that in terms of section 34 of the Housing (Scotland) Act 1988, a tenant can refer a rent under a Short Assured Tenancy to the rent assessment committee. If the rent is significantly higher than the rents for other assured tenancies in the area, the committee may reduce it. That very seldom happens however.

- 1.7 **Bills.** The tenant is solely liable for the payment of all charges for the supply of utilities (such as electricity, gas and telephone), council tax, water and sewerage charges in respect of the accommodation. The tenant will take all reasonable steps to transfer such utilities into his/her own name and will advise the local authority's council tax department of the date of the commencement of the tenancy. The tenant must not seek, or allow, disconnection of any utility, or alter the identity of the supplier without the written permission of the landlord.
- 1.8 **Deposit.** The tenant is required to pay a deposit of £..... The deposit will be held in trust by the landlord. The deposit will be returned to the tenant at the end of the tenancy subject to any deductions for any sums whatsoever owed by the tenant to the landlord under this tenancy agreement.

Guidance Note If a deposit is charged, the amount should be inserted here. An amount equal to one month's rent is common. Two months' rent is the legal maximum. The deposit may be used to compensate the landlord for any breach of the tenancy agreement by the tenant, including failure to pay rent.

Part 4 of the Housing (Scotland) Act 2006 allows the Scottish Ministers to introduce a 'tenancy deposit scheme' by regulation. The effect of that scheme, if brought into force, will be that the landlord will not hold the deposit. Instead, the deposit will be held on behalf of the landlord and tenant by a third party. If that scheme is brought into force, appropriate amendments to this clause will require to be made.

- 1.9 **Breach.** If the tenant is in material breach of any term or condition of this tenancy agreement, the landlord is entitled to terminate the tenancy, by means of a notice to quit, and take steps to recover possession of the tenancy. Material breach includes non-payment of any amount of the rent or service charges (regardless of the reason for non-payment) for a period of 14 days or more from the date that the rent becomes due in terms of this tenancy agreement. Furthermore, if the tenant is in breach of any term or condition of this tenancy agreement, whether the breach is material or not, (and whether or not the tenancy is terminated as a result), the tenant is liable to the landlord for any losses resulting from the breach.

Guidance Note The term material breach is a legal term. It is not easy to define. It is important that this clause exists so that the landlord can take action to terminate the tenancy and recover possession if it occurs. A material breach is one that entitles the landlord to terminate the tenancy agreement. A material breach is one that affects the root and substance of the tenancy agreement (as opposed to one which is minor and incidental). Whether a breach is material is always one of fact and degree. For example, repeated and severe anti-social behaviour by the tenant may well amount to a material breach as would a refusal by the landlord to carry out important repairs to the accommodation. (If the landlord has failed to carry out its obligations however, on the 'mutuality principle' the tenant's obligations are suspended). On the other hand, it is unlikely that an isolated noisy party would be a material breach or a failure by a landlord to fix a broken cupboard door immediately. As far as rent or service charges are concerned, the clause explicitly makes non-payment of rent for a period of 14 days or more a material breach of the tenancy agreement entitling the landlord, if he decides to do so, to terminate the tenancy and seek recovery of possession. However, any such legal action would have to establish, among other things, that one or more grounds in schedule 2 of the 1988 Act were satisfied. Expert legal advice in such a situation would be highly advisable. Finally, this clause allows the landlord to recover from the tenant compensation for any losses caused to him by any breach of the tenancy agreement, whether or not the breach is material. The losses can be recovered from the deposit: see clause 1.8 above. The losses that may be claimed under this clause include rent arrears. For more provisions regarding termination of the tenancy, see Part 5 below.

- 1.10 Joint and several liability. Joint tenants are jointly and severally liable for all obligations of the tenancy.
- 1.11 Service of notices. Any notices or documents may be served on or sent to the landlord at the address in paragraph 1.1 above. The landlord shall be entitled to send, serve or deliver any notice or document to the tenant at the accommodation.
- 1.12 Permissions. Wherever in this agreement the permission of the landlord is required, that permission will not be unreasonably withheld.

2. Use of the Accommodation

- 2.1 **Only or principal home.** The tenant must occupy the accommodation as his/her only or principal home and for no other purpose. The tenant must not allow the accommodation to be shared with any other person whatsoever, whether in return for payment or otherwise, without the written permission of the landlord.
- 2.2 **Assignment etc.** The tenant is not entitled to assign the tenancy, sub-let any part of the accommodation, take in lodgers or other paying guests or otherwise part with possession of any part of the accommodation without the written permission of the landlord.
- 2.3 **Take reasonable care.** The tenant, and those living with or visiting the tenant, must take reasonable care not to cause or allow damage to be caused to the accommodation, decoration, fixtures, fittings, furnishings, the common parts and property of neighbours. The tenant will keep the accommodation reasonably well heated and ventilated.
- 2.4 **Security.** The tenant will take all reasonable steps to safeguard the accommodation. In particular, the tenant will lock the external door at night and lock window locks and turn on any intruder alarm, whenever the accommodation is unoccupied. The tenant will inform the landlord in advance if the accommodation is to be left unoccupied for more than two weeks.
- 2.5 **Business use.** The tenant must not run any kind of business from the accommodation without the written permission of the landlord.

- 2.6 **No illegal or immoral use.** The accommodation must not be used for illegal or immoral purposes.
- 2.7 **Pets.** The tenant must not keep any kind of pet in the accommodation without the written permission of the landlord.
- 2.8 **Common parts tidy.** The tenant must take his/her turn in keeping the common parts, (including any common close, stair, garden, back green or other communal area) clean and tidy. The tenant must not use any of the common parts for the storage or deposit of their property without the written permission of the landlord.
- 2.9 **Refuse.** The tenant must put all the household rubbish for collection in the bin store or other proper place allocated for it. If no such place exists, rubbish must not be placed anywhere in the common parts and should be put out for collection only on the day designated for collection.

3. Respect for Others

- 3.1 **Anti-social behaviour.** The tenant, those living with the tenant and visitors to the accommodation must not harass, or act in an anti-social manner to, any person in the neighbourhood on any ground, including that person's racial or ethnic origin, colour, religion, sex, gender, sexual orientation, age, disability or other status.
- 3.2 Anti-social means causing, or likely to cause, alarm, distress, nuisance or annoyance to any person or causing damage to anyone's property. Harassment of a person includes causing the person alarm or distress.

4. Repairs and Maintenance

4.1 Landlord's Responsibilities and Rights

- 4.1.1 **The repairing Standard.** The landlord will ensure that the accommodation meets the 'repairing Standard' at the start of the tenancy and at all times during the tenancy. The repairing Standard is defined by section 13 of the Housing (Scotland) Act 2006. The main provision of the repairing Standard are as follows:
 - The house is wind and watertight and in all other respects reasonably fit for human habitation. Regard is to be had to the extent to which the house by reason of disrepair or sanitary defects falls short of the provision of any building regulations
 - The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order. Installations include installations outside the accommodation which serve the accommodation and which the owner is legally liable to maintain whether alone or in common with others
 - Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order
 - Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed
 - The accommodation has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. Regard is to be had to the building regulations and any guidance issued by the Scottish Ministers in deciding whether this repairing Standard has been met

- The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and proper working order. If the accommodation is a flat forming part of a larger premises, this part of the repairing Standard includes reference to those parts of the premises which the landlord is legally responsible for maintaining whether alone or in common with others. However, the landlord is not obliged to carry out work unless any part of the premises, or anything in it, which the tenant is entitled to use, is adversely affected by the disrepair or failure to keep in working order. Regard is to be had to the age, character and prospective life of the accommodation and the locality in determining whether this part of the repairing Standard has been met

4.1.2 The landlord will inspect the accommodation before the start of the tenancy to identify any work necessary to ensure that the house meets the repairing Standard and will notify the tenant of that work. During the course of the tenancy, the landlord's duty to meet the repairing Standard will only apply if the tenant notifies the landlord of the work that requires to be done or if the landlord is otherwise aware of the work that needs to be done. Work done during the course of the tenancy to meet the repairing Standard will be completed within a reasonable time of the landlord being notified of the need for the work, or the landlord otherwise becoming aware of the need for work to be done.

4.1.3 **Exceptions to the landlord's repairing duty.** The landlord's repairing duties specified above do not oblige the landlord to:

- Do work for which the tenant is liable by virtue of his duty to use the house in a proper manner (even if the landlord has undertaken to do the work). Therefore, the landlord is not responsible for repair or maintenance caused through fault of the tenant, anyone in the household or visitors. If the landlord chooses to repair such damage the tenant is liable for the cost. This paragraph does not apply to fair wear and tear
- Rebuild or reinstate the accommodation destroyed or damaged by storm, flood or other inevitable accident or
- Repair or maintain anything which the tenant is entitled to remove from the house

The landlord is not to be treated as having failed to comply with his repairing duties specified above if the reason why the work was not done was because the landlord lacked the necessary rights (such as rights of access) to carry out the work despite having taken reasonable steps to get those rights.

Guidance Note If the tenancy is for a fixed term of three years or more, the tenancy agreement can oblige the tenant to carry out works. There could then be a further exception to this clause: see section 16(1)(a) of the Housing (Scotland) Act 2006.

4.1.4 **Gas safety.** The landlord will inspect the gas installations annually and will provide the tenant with a copy of the current gas safety certificate. The landlord will provide the tenant with full instructions on the operation of gas appliances and the action to be taken in the event of any malfunction of gas appliances or installations.

4.1.5 **Fire Safety.** The landlord will provide a fire blanket in the kitchen area. The landlord will provide the tenant with instructions on the action to be taken in the event of fire in the accommodation.

4.1.6 **Right of entry.** The landlord has the right to enter the accommodation for inspection or to carry out repairs or maintenance to the accommodation or the utilities serving it, at reasonable times during the day on 24 hours' written notice. If the tenant does not allow entry, the landlord has the right to make forcible entry for these purposes providing that reasonable written notice is given of the landlord's intention to do so. In an emergency affecting the accommodation or adjoining property, the landlord has the right to make forcible entry to the accommodation without notice. In this paragraph, 'landlord' includes those authorised by him.

- 4.1.7 **Common parts.** The landlord will, in conjunction with other co-owners, take reasonable steps to keep the common parts which the tenant is entitled to use (such as the close, common stair, back green, storage areas) in repair and fit for use by the tenant.

Guidance Note The section above reflects closely the provisions of sections 12 to 19 of the Housing (Scotland) Act 2006. [This Model was drafted before those provisions came into force and assumes that they are in force. Landlords are advised to check the position if in any doubt]. Those provisions replace and update the previous statutory provisions contained in schedule 10 to the Housing (Scotland) Act 1987. They also effectively put in statutory form much of the common law (such as the duty to inspect before the commencement of the tenancy and the duty to carry out repairs within a reasonable time). The 2006 Act provisions do contain some innovations such as the duties regarding fire alarms and fixtures provided by the landlord (although similar provisions are standard in relation to registration of HMOs). In practice, there is little difference between the effect of the repairing provisions in the previous version of this Model and this Model. Since this Model glosses the precise statutory provisions in the 2006 Act, reference should always be made, if in doubt, to the terms of the Act since a landlord cannot contract out of the terms of the repairing provisions of the 2006 Act without the consent of the sheriff: sections 17 and 18. Section 20 of the 2006 Act provides that the landlord must before or at the start of the tenancy provide the tenant with written information about the effect of Chapter 4 of the 2006 Act (which includes the repairing Standard). These clauses attempt to do that.

4.2 Tenant's Responsibilities and Rights

- 4.2.1 **Duty to report.** The tenant must report any damage to the accommodation, or the common parts, or the need for repairs or maintenance, as soon as reasonably practicable. The tenant must immediately report to the landlord any emergencies affecting the accommodation including interruption to the supply of water, gas and electricity.
- 4.2.2 **Reasonable care and maintenance.** The tenant is responsible for taking reasonable care of the accommodation. This includes carrying out minor routine maintenance, replacement of consumables and internal decoration. This includes, but is not limited to:
- replacement of light bulbs, batteries, fuses, filters, etc. In addition, the tenant is responsible for the replacement of lost and broken keys. The tenant must keep the accommodation in a reasonable state of cleanliness and decoration. However, the tenant is not responsible for carrying out repairs due to fair wear and tear.

Guidance Note Landlords may wish to exclude internal decoration as a tenant responsibility in furnished accommodation. Landlords may wish to add a clause dealing with upkeep of gardens etc. where they are part of the accommodation let.

- 4.2.3 **Repairs due to tenant fault.** The tenant is responsible for repair (including replacement) of damage to the accommodation, or loss of any of the fixtures, fittings and items in the inventory, caused through the fault of the tenant, anyone in the household or visitors.
- 4.2.4 **Cold weather.** If the accommodation has central heating, the central heating must be kept in operation at no less than frost protection when the external temperature is at or below freezing point or it is reasonably likely to fall to, or below, that level.

4.2.5 **Alterations.** The tenant is not entitled to:

- alter, improve or enlarge the accommodation
- add new fixtures or fittings to the accommodation
- install external satellite aerials or dishes
- erect any type of sign, flag or advertisement visible from outside the accommodation
- put up a shed, garage or other structure
- decorate the outside of the accommodation
- change any of the locks in the accommodation or add new locks without the written permission of the landlord

However, the tenant has the right under certain conditions (under section 52 and 53 of the Housing (Scotland) Act 2006), to carry out adaptations to the house in connection with disability needs or in connection with certain energy efficiency works.

Guidance Note Sections 52 and 53 of the 2006 Act provide for a new right to carry out the type of works specified above in some circumstances. The landlord's consent is still required and must not be unreasonably withheld.

4.2.6 If the landlord fails to perform his repairing responsibilities specified above, the tenant may make an application to the Private Rented Housing Panel.

Guidance Note Sections 21 to 29 of Part 4 of the Housing (Scotland) Act 2006 provides for the circumstances in which a tenant may complain to the PRHP about the failure of a landlord to fulfil his repairing responsibilities. At the time of drafting this Model, those sections had not come into force. Until they do, this paragraph should be omitted from the Model. See also the Guidance Note above to paragraph 4.1.9.

5. Ending the Tenancy

The tenancy may be ended in any one of the four following ways. If the tenant fails to remove at the end of the tenancy, the landlord requires a court order to recover possession.

- 5.1 By written notice to quit from either the landlord or the tenant, to the other, terminating the tenancy on at least 28 days' notice. The notice to quit may be served by the landlord for one or more of the following reasons:
- To prevent tacit relocation
 - In response to a material breach of this tenancy agreement (as defined in paragraph 1.9 above)
 - If any of the grounds contained in section 5 to the Housing Scotland Act 1988 are satisfied

Neither party is entitled to give notice to quit which would have effect before the expiry of the initial period (as defined by paragraph 1.4) except in the case of material breach of the tenancy by the other party, or if any of the grounds contained in schedule 5 to the Housing (Scotland) Act 1988 are satisfied.

Guidance Note The minimum period of notice to quit is just that. More may be required in some cases. 40 days will probably be required if the notice to quit is to terminate the tenancy as at the end of the initial period of let. The period of notice for the purposes of the notice to quit should be distinguished from the period of notice that the landlord requires to give the tenant under section 19 of the Housing (Scotland) Act in the statutory form AT6. That period of notice is either two weeks or two months (depending on the ground for recovery of possession) of the landlord's intention to raise legal proceedings. That notice has no effect on the tenancy agreement itself. The form AT6 is not a notice to quit. This clause sets out the reasons why a notice to quit may be served. The first reason is where the landlord simply wishes to recover possession of the short assured tenancy at the end of the term under section 33 of the Housing (Scotland) Act 1988. The second reason is where the tenant is in material breach of the terms of the tenancy. This is what might be termed an irritancy clause. It enables the landlord to terminate the tenancy before the lease as a precursor to commencement of proceedings for recovery of possession. The third reason will normally be unnecessary to rely on. It is intended as a partial failsafe in the event that for some reason the tenancy is not properly terminated by a notice to quit and therefore there is still a contractual tenancy in existence: see **Royal Bank of Scotland v Boyle** 1999 HousLR 63. Section 18(6) of the 1988 Act allows the sheriff to grant decree where there is a contractual tenancy in force (on some grounds only though) only if the tenancy agreement makes provision for the tenancy to be terminated on the ground in question (even though it has not in fact been terminated on that ground). It is not advised that reliance be placed on that route. Appropriate professional advice should always be obtained about the procedures for termination of the lease and recovery of possession.

- 5.2 By written agreement between the parties at any time.
- 5.3 By obtaining an order from the court for recovery of possession in accordance with Part II of the Housing (Scotland) Act 1988.
- 5.4 On the death of the tenant (or all of the joint tenants), the tenancy terminates automatically.

5.5 Succession to the Tenancy

On the death of the tenant, the spouse (including a person living with the tenant as husband or wife) or civil partner of the tenant who was living in the accommodation as his or her only or principal home may be entitled to succeed to the tenancy in terms of section 31 of the Housing (Scotland) Act 1988.

Guidance Note Under the legislation noted, a spouse, co-habitee or civil partner (see schedule 28 to the Civil Partnership Act 2004) may be entitled to succeed to (i.e. inherit) the tenancy even though the death of the tenant terminates the contractual tenancy. This clause does not give a contractual right of succession: it merely refers to the statutory right. If succession occurs, the succession is to a statutory Short Assured Tenancy. See section 31(1) and section 16 of the 1988 Act.

5.6 Responsibilities of the Tenant Before Moving Out

Before moving out of the accommodation, the tenant must do the following:

- leave it in a clean and tidy condition and in good decorative order
- remove all property not belonging to the landlord
- make sure any lodgers, sub-tenants and anyone else living in the accommodation leaves at the same time
- allow the landlord and his/her agents access to the accommodation, at reasonable times, to show round new tenants or prospective purchasers
- return the keys to the landlord

- remove any fixtures and fittings installed without the landlord's written permission and put right any damage caused
- do the repairs the tenant is obliged to do
- replace any of the fixtures, fittings or furnishings in the accommodation which have become lost
- give the landlord a forwarding address

6. Completion of Agreement

IMPORTANT NOTICE TO THE PROSPECTIVE TENANT

By signing this tenancy agreement below, you are making the following declarations and also entering into a legally binding agreement. You should only sign this agreement if the declarations are true, you have read and understood the terms of this tenancy agreement and you want to enter into this tenancy agreement. If you have any doubt about the meaning of anything contained in this agreement, you should obtain independent advice before signing this agreement.

6.1 Declarations by Tenant

The signature of the tenant below confirms the following:

- that the tenant has not knowingly or carelessly given false or materially misleading information to the landlord in connection with the obtaining of this tenancy
- that the tenant made a full and true disclosure of all information sought by the landlord in connection with the grant of this tenancy
- that prior to signing this agreement, the tenant received a notice (the AT5) under section 32(2) of the Housing (Scotland) Act 1988 notifying the tenant that this tenancy is a Short Assured Tenancy

6.2 Parties' agreement. The signatures of the tenant and landlord below acknowledge that the parties have read and understood this agreement and agree to the tenancy of the accommodation on the terms and conditions contained in this Short Assured Tenancy agreement.

Guidance Note The name, signature and date of signature of the landlord should be inserted as indicated. The signature should be witnessed. (This is required even if the tenancy is for an initial period of less than one year: see section 30(1)(b) of the Housing (Scotland) Act 1988 read together with schedule 4(1)(1) to the Requirements of Writing (Scotland) Act 1995. It is in any event sound practice). The witness should insert the details where indicated. The witness may be anyone aged 16 or over who is not legally incapacitated. Although the witness may be a relative or an employee of the landlord or tenant, it is preferable that the witness should be unconnected with the parties. The tenant should also complete the part where indicated. If there is more than one tenant, the other tenants should complete the agreement in the same way. The tenant's signature should also be witnessed. The Model envisages that the agreement is signed at different times by the parties. If, however, the agreement is signed at the same time by the parties, the same witness may witness all the signatures at the same time. In that case, the text of the Model should be amended accordingly. The tenant should be given a copy of the signed agreement immediately both parties have signed it, or as soon as possible after completion.

Signed for the landlord

Name:

Signature:

Date of Signature:

Name of Witness:

Signature:

Date of Signature:

Address of Witness:

.....

.....

Signed by the tenant

Name:

Signature:

Date of Signature:

Name of Witness:

Signature:

Date of Signature:

Address of Witness:

.....

.....

Appendix – Acknowledgements

Working Group

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