**RSW Online Landlord Course**

**5. Setting up a Tenancy**

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**5. Setting up a Tenancy**

**5.1 Types of tenancy.**

**A tenancy is a contract on mutually agreed terms between a landlord and a tenant. As a landlord or agent, you should understand the various types of tenancies, which have different rights and obligations.**  
**The three main tests for a tenancy are:**

         **Exclusive possession;**

         **A fixed or periodic term;**

         **The payment of rent.**

**If these three factors are present, there will be a tenancy.**

You should also be aware of the benefits of written tenancy agreements and the procedures necessary for obtaining such an agreement.

To access a Model Agreement for an assured shorthold tenancy and accompanying guidance click [**here**](https://www.gov.uk/government/publications/model-agreement-for-a-shorthold-assured-tenancy).



Be considerate of a prospective tenant’s circumstances when dealing with people who might be disadvantaged because of their age, illness, lack of understanding, lack of linguistic ability, economic circumstances or bereavement.  
  
If any extra terms are negotiated between the parties prior to the tenancy being agreed, such as new furniture which will be provided prior to the tenant moving in, these should be written into the rental agreement.

**5.1 Types of tenancy.**

Please click on each image to find out more.



**Assured Shorthold Tenancy (AST)**

A property let without a written agreement (not recommended) is classed as an AST.

**An AST can be for any term (6 month minimum term rule was abolished in 1996) although the majority of tenancies are for at least 6 months.**   
  
**Benefits of AST:**You can recover possession of the property without needing a reason, providing the fixed term has expired and the proper form of notice (a section 21 notice) has been served.

Most mortgage companies will insist all tenancies are AST.



**Assured Tenancy**

The non-shorthold version of the assured tenancy gives tenants **long-term**

**security of tenure,** and tenants are entitled to stay in the property until

either they choose to go, or the landlord can gain possession on one of the

17 grounds listed in **Schedule 2 of The** **Housing Act 1988**.

**Possession under a section 21 procedure is not available for assured tenancies.**

You should seek advice if you are unsure which type of tenancy applies. 

You should proceed with care and seek legal advice before agreeing an assured tenancy, as it will entail loss of the right to recover possession, perhaps during a landlord’s lifetime, as these tenancies can be passed on to spouses.

**Exclusions**

In some circumstances the statutory codes set up by**The Housing Act 1988** will not apply.

**Some examples of tenancies which are excluded from being assured or assured shorthold tenancies are:**

• where the tenancy began, or which was agreed, before 15 January 1989 (this will normally be governed by the provisions of the Rent Act 1977);

• where the property is not the only or principal home of the tenants;

• where the rent is **more than £100,000 a year;**

• where the rent is **£250 or less a year** (£1,000 or less in Greater London);

• a company let;

• the tenancy has been granted to a full-time student by an educational body such as a university or college;

• a **holiday let;**

• a **letting by a resident landlord** (i.e. where the landlord and tenant live in the same building as originally constructed, most commonly where landlord and tenant share some part of the accommodation, this is usually a licence/lodger situation not a tenancy).



**Regulated Tenancy**

Most lettings by private landlords which **began before 15 January 1989 are regulated tenancies**under the **Rent Act 1977** unless the landlord and tenant live in the same house.  
  
Regulated tenants have greater security of tenure and are subject to rent control.More information can be found in the leaflet *Regulated Tenancies*available from the CLG website at [**www.communities.gov.uk**](http://www.communities.gov.uk/).

**5.1 Types of tenancy.**

Please click on each image to find out more.



**Licences**

A licence is where someone is allowed to occupy property but **does not have a tenancy**. The ‘licence’ or permission of the owner **prevents the occupier from being a trespasser.**

Some of the protective legislation for occupiers does not apply to licences.



**Joint and several tenancies**

Joint tenancies can be agreed with two or more people from the outset of the tenancy. Each can then be responsible jointly and severally (individually) for meeting the terms of the tenancy in full.

**Joint and several liability only arise where it is agreed.** If nothing is agreed they will simply be jointly liable. If a joint tenant dies, the remaining joint tenant(s) are entitled to remain in the property.



**Housing Act 1988 tenant**

A **Housing Act 1988**tenant who does **not have a written agreement** has a right to ask for a written statement of any of the following main terms of the tenancy:

• The date the tenancy began;

• The amount of rent payable and the dates on which it should be paid;

• Any rent review arrangements;

• The length of any fixed term which has been agreed.

The tenant must apply in writing to the landlord for this statement. If a tenant asks for this, it must be provided **within 28 days of receiving the request.** If their landlord doesn't, and does not have a reasonable excuse, they could be committing a criminal offence.

**5.2 Unfair terms in tenancy agreements.**

**Did you know that you have to be careful when adding items to a tenancy agreement?**There are now regulations (the **Unfair Terms in Consumer Contracts Regulations 1999**) to ensure that standard contracts between a consumer and a business are ‘fair’. These regulations apply to tenancy agreements and were administered and enforced by the **Office of Fair Trading** (OFT) until this body ceased to function. You can find out who to contact about consumer protection and how to complain about a product or service here: [**https://www.gov.uk/consumer-protection-rights**](https://www.gov.uk/consumer-protection-rights)   
  
A standard term is deemed ‘unfair’ if it **puts the consumer at a significant disadvantage in terms of their rights and obligations.** If found unfair, the term will be void and not enforceable – **but the rest of the contract will stand.**

### 5.2 Unfair terms in tenancy agreements.

**Examples of unfair terms contained within tenancy agreements may include:**

* Any clauses which attempt to **limit or exclude rights** (e.g. legal rights) which tenants would otherwise have had, unless there is a very good reason for them;
* Clauses which impose any penalty or charge on a tenant must provide for or state that the charge should be both **reasonable in amount and reasonably incurred;**
* Where a clause states that a tenant may only do something with the landlord’s written consent, this should be followed by the words **‘consent not to be unreasonably withheld**’ or similar.



Where possible, be accommodating towards prospective tenants with pets. Reasonable provision could be made within the tenancy agreement which could cover the possibility of any damage caused by pets to the property, or any furniture which may be provided with the property.

### 5.3 Making an Inventory / Schedule of Condition.

Although not a legal requirement, having an inventory (sometimes also called a schedule of condition) is essential if the property is let furnished, **and a very good idea even if it is unfurnished.**  
  
An accurate and current inventory will help to **protect the position of both you as the landlord or agent and your tenant.** You should make a **detailed list** of all the belongings and furniture provided when your tenant first moves in.  
  
Include the condition of the items as much as possible and make sure that you agree this with the tenant before they move in. **You should then check the inventory when your tenant moves out.**

A thorough and detailed inventory will help you to avoid disputes, particularly those involving the return of a deposit. It is advisable to **keep all receipts and to make a record of the meter readings in the inventory.**



Remember that if there is a dispute over the condition of the property and this goes to court or a deposit scheme adjudicator, it will generally be for you as the landlord or agent to **prove the claim**.



It is always a good idea to produce an inventory before a tenancy. The inventory should be presented to the tenant at the start of the tenancy, and the tenant should be given an opportunity to check the inventory is correct before signing up to it. The tenant and the landlord or agent should both keep a copy.

Below you can find a sample inventory provided by Shelter. This should be used as guidance as other formats can be used.

[**Inventory.pdf**](https://www.rentsmart.gov.wales/Uploads/Docs/Inventory.pdf)

**5.4 Deposits and tenancy deposit schemes.**

The **Housing Act 2004** introduced a statutory **deposit protection scheme**. This safeguards all deposits taken under an **assured shorthold tenancy after 6 April 2007 or assured shorthold tenancies that have been renewed since that date.  
  
  
Deposits relating to other types of tenancies are not covered.  
  
Deposits can cover:**

* Damaged items;
* Outstanding debts attached to the property;
* Failure of the tenant to carry out obligations set out in the tenancy agreement such as cleaning;
* Non-payment of rent;
* Other breaches of the tenancy.

**There are two types of tenancy deposit schemes:**

* **custodial** (where the scheme administrators hold the deposit and which is free of charge);
* **insurance** (where the landlord or agents holds the deposit but has to pay an insurance premium).

**5.4 Deposits and tenancy deposit schemes.**

**The Housing Act 2004 sets out the following requirements:**

* A deposit must be dealt with in accordance with **an authorised tenancy deposit protection scheme from the moment of receipt;**
* Landlords and agents must comply with their chosen scheme’s initial requirements within **30 days** of receiving the deposit;
* Landlords and agents must give prescribed information to the tenant, and to anyone who paid the deposit on the tenant’s behalf,**within 30 days of receiving the deposit.**

Where a third party provides the deposit, i.e. money changes hands as opposed to the guarantee schemes described later, then under the Housing Act 2004 that person is a **‘Relevant Person’** and needs to be provided with a copy of the prescribed information.

Below you can find the schemes operating in England and Wales:

[**Deposit Protection Service (Custodial and Insured)**](http://www.depositprotection.com/)

[**MyDeposits**](https://www.mydeposits.co.uk/)

[**Tenancy Deposit Scheme**](https://www.tenancydepositscheme.com/)

**5. Setting up a Tenancy**



Which of the following statements correctly describe how to comply with the Tenancy Deposit Protection legislation? Please read the statements carefully.

* Upon receipt of the deposit, the only thing required is to comply with the initial requirements of the scheme within 30 days.
* Upon receipt of the deposit issue the tenant and the relevant person paying the deposit with the prescribed information and comply with the initial requirements of the scheme within 30 days.
* Upon the commencement of the tenancy issue the prescribed information only to the relevant person and register the deposit within 30 days of the tenancy commencement into the appropriate scheme.

## 5. Setting up a Tenancy

### 5.5 Bond guarantee schemes.

These schemes generally replace the upfront cash deposit and instead guarantee to the landlord the cost of any damage to the property/rent arrears etc.

If at the end of the tenancy the landlord finds that they need to make a claim, they would do so via the bond bank (the organisation which holds the bond). **These types of schemes are generally only available to certain ‘vulnerable’ groups.**

### 5.6 Rent setting.

You should mutually agree the initial rent. During the first six months of a tenancy, tenants have rights to **refer the rent to the rent assessment committee** for review if they consider the rent to be above the market rent.

**If the tenancy is for a fixed term, the rent given in the agreement will last for the whole of the fixed term unless there is a rent review clause.**

**Do rent books still exist?**

If your tenants pay you rent on a **weekly basis** you are legally obliged to provide a rent book which needs to contain certain information.  You can buy standard rent books for assured and assured shorthold tenancies from law stationers and larger general stationers.

**You also need to keep a record of rent payments and provide receipts for any rent paid (particularly for cash payments) to avoid any disagreements later.**

### 5.7 Raising the rent.

**How would a landlord go about increasing the rent?**

**There are three ways to review the rent in an assured shorthold tenancy:**

1.    By way of a rent review clause in the tenancy agreement;

2.    By agreement with the tenant;

3.    By notice under **section 13 of the Housing Act 1988**(after the fixed period).



If used, rent demands should be clear and easy to read to help ensure they are understood by a tenant.  
  
Provide a receipt for the rent and/or an annual statement of rent if requested by the tenant.  
  
Agree with the tenant how the rent will be paid. The best method is considered to be by standing order. Rent should not be collected in the form of post-dated cheques.

## 5. Setting up a Tenancy

### 5.7 Raising the rent.

**Rent review clauses in the tenancy agreement**

Normally, it is not possible to review the rent during the fixed term of the tenancy unless either there is a valid rent review clause, or the tenant agrees to the review. If the tenant agrees, this should be recorded (perhaps by seeking the tenant’s signature on a new tenancy agreement).

A clause can also be included to review the rent after the fixed term has ended. The clause must comply with the provisions of the Unfair Terms in Consumer Contracts Regulations and be fair. Clauses allowing the landlord to review (and particularly to increase) the rent as he sees fit are likely to be unenforceable.

Any increase upon a valid rent review is more likely to be enforceable if it can be justified by a recognised/established factor (such as significant improvements to the property or general cost increases reflected in the Retail Prices Index).

**Rent increase by agreement**

It is also possible to review the rent by seeking the tenant’s signature to a document (such as a copy letter to the tenant proposing the new rent) which confirms agreement. Landlords wishing to do this are encouraged to speak to the tenant first to gauge whether or not they are content with the proposed new rent.

Once agreement has been reached, the landlord should send a formal duplicate letter proposing the new rent and asking the tenant to sign, date and return one copy to confirm their agreement. If the tenant fails to return the letter or fails to pay the new rent, then the rent will not have been validly reviewed.

It is not possible to increase the rent unilaterally by simply sending a letter to the tenant telling them that their rent will be increased from a specific date. If the tenant agrees to this and starts paying the rent the increase is agreed but if the tenant does not agree they can refuse to pay the increase.

### 5.7 Raising the rent.

**Rent increase by notice under section 13 of the Housing Act 1988**

If the tenancy is an assured or assured shorthold tenancy the landlord can use a formal procedure in section 13 of the Housing Act 1988 to propose a rent increase. To do this a special form is needed, which is obtainable by clicking [**here**](https://www.rentsmart.gov.wales/Uploads/Docs/Section%2013%20Notice.pdf).

The form must be completed in full, and served on the tenant.

**At least one month’s notice must be given to the tenant.** If the tenant does nothing during this period, then the rent increase will take effect. It should be noted that the **rent** **can only be increased by section 13 after the fixed term has ended**, and that this facility can only be used once every 12 months.

If the tenant feels the rent increase is too high then they can refer it to

the rent assessment committee for review. The application must be made

no later than the last day of the notice period or it will be invalid and

the increased rent will stand.

If the rent is challenged, the matter will be considered by the rent assessment committee who, if they consider the rent is not a market rent, will substitute what they consider is a market rent. The rent assessment committee’s view is not always in the tenant’s favour and it is not unheard of for them to consider that the proposed rent may be too low.

**5. Setting up a Tenancy**



Which of the following methods can be used to increase the rent during an assured shorthold tenancy?

* By telephone – contact the tenant and agree the increase, follow it up to confirm the agreement in writing.
* During a fixed term tenancy the landlord can just decide on a higher rent and notify the tenant.
* Serve a section 13 notice to increase the rent during the fixed term.

**5. Setting up a Tenancy**

**5.8 Rent Act 1977 (Regulated) Tenancies.**

Regulated tenancies are tenancies that are governed by the provisions set out in the**Rent Act 1977**.  
  
They will all have been created prior to **15 January 1989**. The **Rent Act** enables the tenant (or the landlord) to apply to have a ‘fair rent’ registered for the property. Once this has been done the **fair rent is the only rent the landlord can charge.**These are rents fixed by the local office of the Rent Service. Contact details for the local Rent Service can be obtained from the council’s housing advice service.  
  
If a fair rent has been registered, a new registration cannot be made **less than two years** after the date the existing registration came into effect, unless:

* Landlord and tenant apply jointly;
* There has been a change of circumstances, for example, major repairs, improvements or changes in the terms of the tenancy.

**5. Setting up a Tenancy**

**5.9 Renting Homes (Wales) Act 2016.**

The **Renting Homes (Wales) Act 2016** will make it simpler and easier to rent a home, replacing various and complex pieces of existing legislation with one clear legal framework.

At the heart of the Act are the new 'occupation contracts'. With a limited number of exceptions, the Act replaces all current tenancies and licences with just two types of occupation contract:

* secure contract - modelled on the current secure tenancy issued by Local Authorities;
* standard contract - modelled on the current assured shorthold tenancy used mainly in the private rented sector.

Once implemented, the Act will require landlords to issue a written statement of the occupation contract which clearly sets out the rights and responsibilities of landlords and those renting from them. To help landlords comply with this requirement, the Welsh Government will provide free model contracts.

A minimum six-month occupation period will be maintained by the Act and landlords will have to ensure the property is fit for human habitation. The Act will also help protect people from being evicted simply for complaining about the condition of a property. You can access the legislation [**here**](http://www.legislation.gov.uk/anaw/2016/1/contents/enacted).

## 5. Setting up a Tenancy

### 5.10 Housing benefit.

**There are currently three systems of housing benefit in use.**



**Rent Allowance (RA) - The Old System**

If the rent covers the cost of gas and electricity, Rent Allowance will be reduced so that the tenant must pay for these items. This also applies to water rates and any meals or other services the landlord may provide.

If a prospective tenant intends to claim Rent Allowance, the landlord or the tenant can check whether the rent will be regarded as reasonable before any agreement is signed.

Both need to complete a **Pre-Tenancy Determination** application form and send/take it to the **Housing Benefit Office** covering the area in which the property is located. They will forward it to the Rent Service, which will then value the property and send its decision to the landlord, the tenant and to the council. The target period for a decision is seven working days.

Existing claims for Rent Allowance will continue for the foreseeable future until there is a break in the claim.



**Local Housing Allowance (LHA) - The Current System**

* LHA entitlement is based on **household size;**
* It takes **no consideration of the value of a given property** (removing the previous need for the Rent Service to visit the property to make a valuation);
* LHA could previously only be paid to the landlord directly if the claimant is regarded as ‘vulnerable’ or if the claimant is in rent arrears of eight weeks or more;
* Local authorities now have **discretion when considering whether to pay a claimant’s LHA to their landlord** particularly where, ‘they consider that it will assist the customer in securing or retaining a tenancy’.

For example the local authority may consider paying the LHA direct to the landlord if the landlord has made a change to normal arrangements, enabling a tenant to secure or retain a tenancy. Examples of this include:

* Reducing the rent to the prevailing LHA rate for either an existing or a new tenant;
* Waiving the need for a new tenant to pay in advance, provided the rent is affordable;
* Waiving the requirement to pay a bond.
* 
* **Universal Credit - The New System**Housing Benefit for working age tenants is being replaced by the Housing Cost Element of Universal Credit. Universal Credit will be administered by the Department for Works and Pensions and will gradually replace 6 means tested benefits by 2021:   
    
      • Housing Benefit;
* • Working Tax Credits;
* • Child Tax Credits;
* • Income Support;
* • Income based Jobseekers Allowance;
* • Income related Employment and Support Allowance.  
    
  All Welsh Local Authorities are live with Universal Credit. New claims are currently only being accepted from single people who are unemployed and are fit for work.  However, eventually all recipients of the benefits listed will claim Universal Credit instead.   
    
  **Universal Credit must be claimed and maintained online.**  It will be paid monthly in arrears directly into a bank account and as a single payment to the household which will include any assistance towards rent.  
    
  The maximum Housing Cost Element that can be claimed through Universal Credit is calculated in the same way as Local Housing Allowance rates.  
    
  The Department for Works and Pensions may make direct payments of the Housing Cost Element to a landlord where the tenant has arrears equivalent to 2 months of rent or has been identified as vulnerable.  
    
  For further information on Universal Credit please visit this link:[**https://www.gov.uk/universal-credit**](https://www.gov.uk/universal-credit)

**5. Setting up a Tenancy**

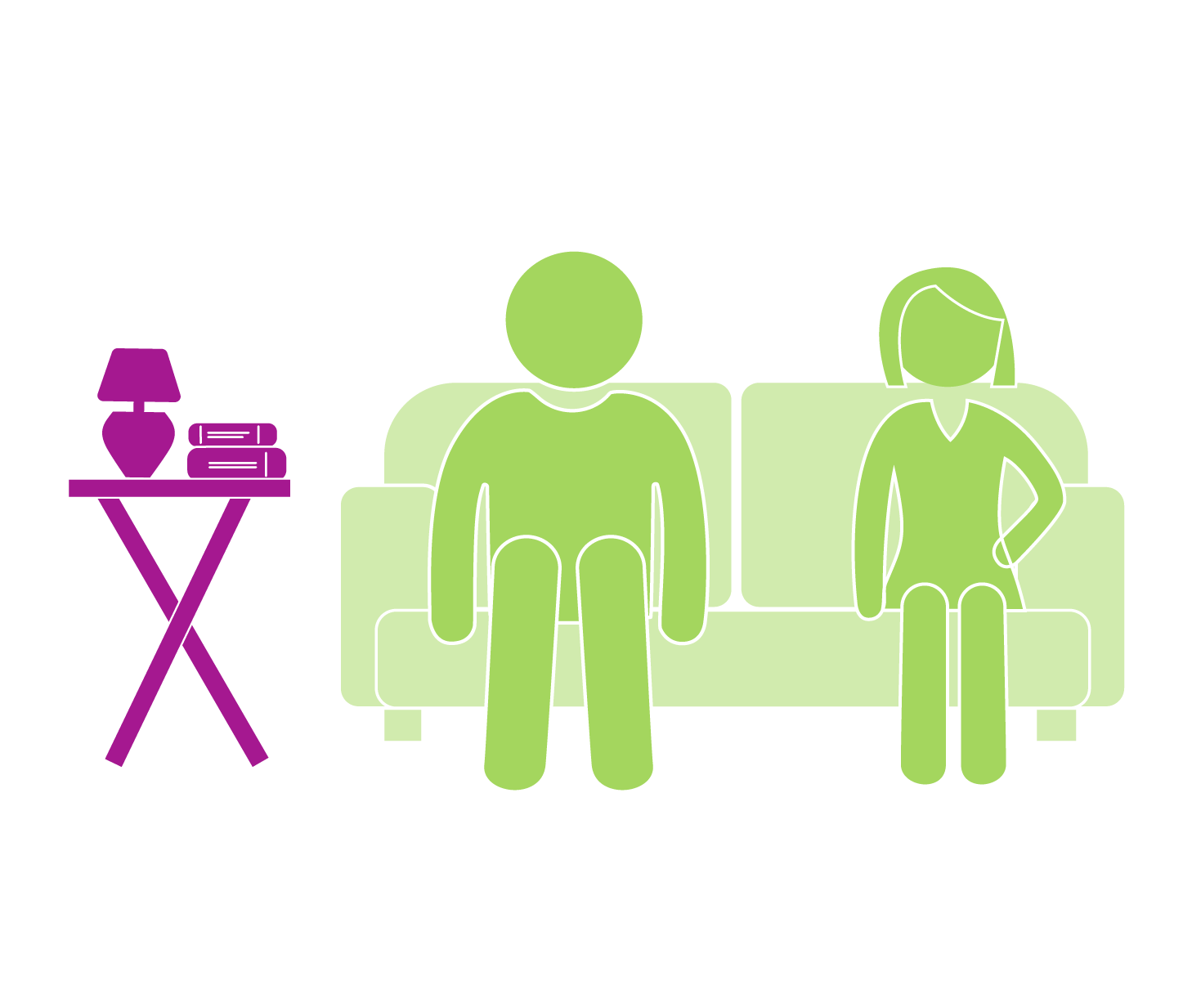


Which of the following statements is TRUE?

* A tenant can claim housing benefit without telling their landlord.
* Local Housing Allowance or Universal Credit is normally paid directly to the landlord.
* A tenant has no right of appeal to the rent level demanded on a section 13 notice.

## 5. Setting up a Tenancy

### 5.11 Tenant referencing.

As a landlord or agent, you should **interview prospective tenants carefully**, so as to assist in choosing one who will be **trustworthy and reliable**.  
  
Taking up references from a prospective tenant’s current or previous landlord, employer and bank can help to inform the tenant selection process.  
  
You might want to use a tenant referencing service, which will make checks and enquiries of a prospective tenant on your behalf.  
  
As part of the pre-tenancy referencing/checks, it is suggested that you ask thesuccessful tenant to provide details of a close family member or friend who can be contacted in an emergency or if the tenant leaves without notice.

### 5.11 Tenant referencing.

Many agents, and some landlords, ask tenants to pay the fee for using the referencing service. If this is the case, it should be made clear to the tenant that the fee will be non-refundable once the landlord has paid it to the referencing service.

In some niche markets, such as letting to students, it is difficult to obtain references because this will be the first time that a tenant has lived away from home.

To offset this risk, you may want to consider **asking for guarantors where a parent or friend guarantees to meet the cost of unpaid rent and/or damage up to a given threshold if this is not met by the tenant.**



References requested for a prospective tenant (or their guarantor, if applicable) should only ask for information relevant to the tenancy.  
  
If a previous tenant requests a reference to allow them to take out a tenancy on a new rental property, one should be provided. References should always be fair and accurate.

**5.12 Unlawful discrimination.**

There are legal obligations on you as a service provider and in some instances employer, to take reasonable steps to ensure that people are not discriminated against, directly or indirectly, due to their race, colour, gender or disability.  
  
**The specific legislation is as follows:**

* Equalities Act 2010.

Tenants should not be chosen on the basis of race, religion, marital status, disability or sexuality. **If you discriminate against any tenant on these grounds, you could be prosecuted.**  
  
**The only exception is if you are letting rooms in your own home; as the landlord you may specify the sex of prospective tenants.**

**5. Setting up a Tenancy**



Click on all those which are true:

* A landlord can refuse to rent a house to a gay couple
* You can hold a deposit in your own bank account as long as the tenant agrees
* If four people take a joint tenancy and one moves out, the remaining tenants must make up the rent

**5. Setting up a Tenancy**

**5.13 General Data Protection Regulation (GDPR)**

The **General Data Protection Regulation (GDPR)** is a European regulation, which enhances the rights of the individual to control their personal information. The principles of the GDPR are very similar to the Data Protection Act 1998, but increase the responsibilities of organisations, including landlords and agents, when handling personal data.

The Principles of the Data Protection Act 2018 (DPA) requires personal information to be:

* **used fairly and lawfully**
* **used for limited, specially stated purposes**
* **used in a way that is adequate, relevant and not excessive**
* **accurate**
* **kept for no longer than is absolutely necessary**
* **handled according to people’s data protection rights**
* **kept safe and secure**
* **not transferred outside the European Economic Area without adequate protection.**

There is balance to be struck between the benefits of landlords and agents sharing information and maintaining safeguards and privacy for tenants and employees. Both the DPA and GDPR allows data subjects (tenants and employees) to control what information is being held about them and a degree of control about its use.

[**Getting ready for the new UK data protection law - Eight practical steps**](https://youtu.be/PaHmTOUd_zM)

(Getting ready for the new UK data protection law – Eight practical steps: ICO 2018)

### 5.13 General Data Protection Regulation (GDPR)

**Landlord Responsibilities with Personal Data**

If you obtain any personal information from a tenant as well as staff, you probably need to register as a "data controller" with the Information Commissioner's Office (ICO). To find out if you need to register please complete the Information Commissioner’s Office self-assessment [**here**](https://ico.org.uk/for-organisations/data-protection-fee/self-assessment/).

Obtaining and holding personal information, whether this is stored electronically or in hard-copy makes you responsible for how this data is secured and processed and you must have a **lawful basis** for processing that data.

## 5. Setting up a Tenancy

### 5.13 General Data Protection Regulation (GDPR)

**What is a Data Controller?**

A data controller is a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed.

This is an important role, and means that data controllers are largely responsible for ensuring that a business meets its obligations in respect of data protection legislation.

As a  private landlord, this means that you are responsible for making sure that any information you hold about your tenants’ is kept safe and secure – and is only used and held for purposes for which you have a legal right to carry out.

As a data controller, you are responsible for determining:

         What personal data you need to collect,

         Your legal basis for collecting it,

         How you will use the data,

         How long you need, and are allowed, to keep the data,

         Whether you need to pass the information on to a data processor; and

         If any third party processors have a proper data handling process in place.

When selecting third party companies with which to do business (contractors, agents, referencing companies etc.) it is crucial to understand how they will manage any of your tenants’ data provided in order for them to carry out relevant activity on your behalf.

As a data controller, it is your responsibility to ensure that any data processor working on your behalf complies with their responsibilities under GDPR.

You should always ask for a copy of any contractor’s data management and/or privacy policy before engaging their services. In respect of existing relationships, you should check with current contractors and discuss their plans to ensure compliance.

As a data controller, it is every landlords’ responsibility to ensure that a legal basis for processing a subject’s data exists and is documented, these are called ‘legal gateways’ To see which legal gateways a landlord may use as a  lawful bases for processing data please click [**here**](https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/).

## 5. Setting up a Tenancy

### 5.13 General Data Protection Regulation (GDPR)

**Working with Data**

It is inevitable that landlords will collect new personal data from time-to-time; when dealing with new tenants, establishing tenancies or even just updating existing contact details. As such, it is essential that you determine the legal basis to collect and process their personal data. This justification must be explained clearly and must be documented.

When obtaining personal information you must provide the following information:

       Your name, company name, and the name of any third-parties who may be required to carry out relevant work on your behalf,

       The purpose for collecting the data and legal basis,

       What it will be used for,

       How any relevant consent for it to be processed by you or any third-party processors may be withdrawn

The most straightforward way to do this is by adopting a standard privacy policy, illustrated by a privacy or fair processing notice. A Data Privacy Fair Processing Notice should be given to a data subject (tenant) explaining how you will handle their data. The data privacy notice should be given to the tenant with the tenancy agreement. It is also advisable to add a clause to the tenancy agreement stating that the tenant has read and understood the privacy notice.

**With existing data**

The principles underlying your approach to new data must also be applied to all of the data you already hold.

Landlords should audit all of the personal data they hold, with a view to ascertaining:

         What personal data is being held,

         Is it accurate,

         Where it originated,

         When collected did you determine a legal basis for its processing,

         Do you still need it; and

         How would you securely delete it?

Crucially, having answered the above points, it is essential to have appropriate and documented legal basis to hold and use any personal data.

If you plan to rely on consent but do not have, or are unable to demonstrate that you have appropriate consent you need to obtain it.

At this point, treat the data subjects as if you were dealing with them for the first time and issue them a copy of your privacy notice. This notice should explain:

         Your purpose for collecting the data

         How the data will be used and stored

         How long the data will be stored (including any legal requirement on you for length of data stored i.e. financial records for 7 years)

         How the information will be destroyed once no longer required

         The procedure for rescinding consent (if consent is relied upon)

## 5. Setting up a Tenancy

### 5.13 General Data Protection Regulation (GDPR)

**Sanctions for non-compliance**

Sanctions for non-compliance with Data Protection under GDPR vary depending on the type of contravention, but fines are permitted equivalent to up to £17,000,000 (or 4 per cent of worldwide turnover, whichever is greater).

Whilst the majority of private landlords are highly unlikely to receive multi-million fines, a ‘proportionate’ financial sanction may be a possibility.

It is also important to note that the GDPR introduces an enhanced duty to report data breaches to the [**Information Commissioner’s Office (ICO).**](https://ico.org.uk/)Failure to report a breach, which is later discovered to have occurred, could result in an additional fine – beyond any sanctions related to the breach itself. If you suspect a breach has happened you should report it to the ICO within **72 hours**.