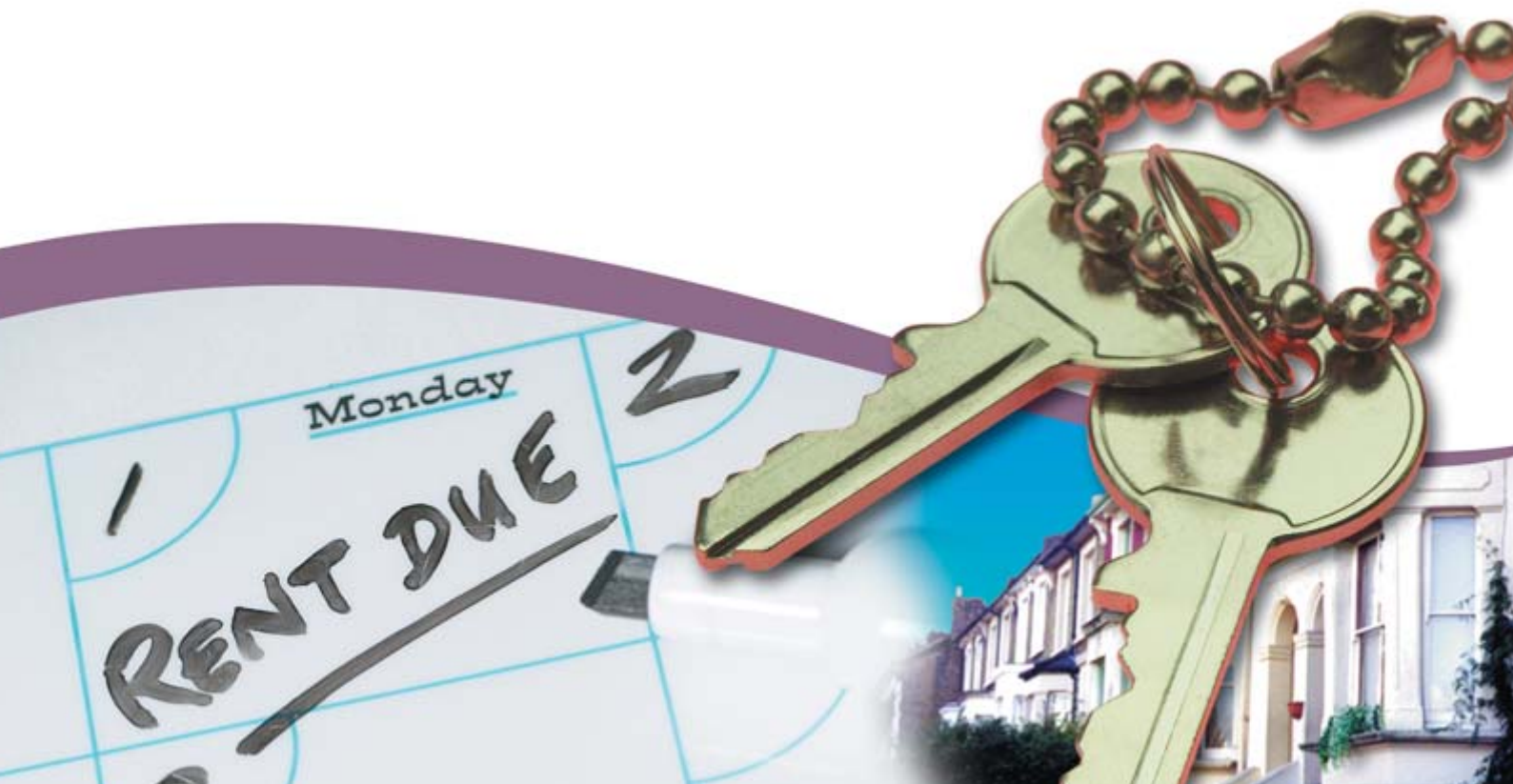




Residential Letting

Guidance Manual

The contents of this Manual have been approved by Tessa Shepperson, BA, LLB, solicitor, under English law, and by Neill Clerk & Murray, solicitors, under Scottish law.



This is an excerpt from Lawpack's *Residential Lettings Kit*.

To obtain all the legal forms, tenancy agreements, legal notices and background information that you need to rent your property, without the expense of a solicitor or letting agent, [click here](#).

Important Facts about this Lawpack Kit

This Lawpack Kit contains the information, instruction and forms necessary to handle your own residential letting agreement. It is not suitable for commercial or agricultural tenancies.

The forms included in this Lawpack Kit cover the most common letting situations, but we cannot cater for all circumstances. This Lawpack Kit is only for people creating either an Assured Shorthold Tenancy in England or Wales or a Short Assured Tenancy in Scotland. It is not suitable for Northern Ireland.

The information contained in this Lawpack Kit has been carefully compiled from professional sources, but its accuracy is not guaranteed, as laws and regulations may change or be subject to differing interpretations. The law is stated as at 1 April 2009.

Neither this nor any other publication can take the place of a solicitor on important legal matters. This Lawpack Kit is sold with the understanding that the publisher, author and retailer are not engaged in rendering legal services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

As with any legal matter, common sense should determine whether you need the assistance of a solicitor rather than relying solely on the information and forms in this Lawpack Kit.

We strongly urge you to consult a solicitor if:

- substantial amounts of money are involved;
- you do not understand the instructions or are uncertain how to complete and use a form correctly, or
- what you want to do is not precisely covered by the forms provided.

Note: throughout this Lawpack Kit, for 'he', 'his' and 'him' read 'he or she', 'his or her' and 'him or her'.

EXCLUSION OF LIABILITY AND DISCLAIMER

Whilst every effort has been made to ensure that this Lawpack Kit provides accurate and expert guidance, it is impossible to predict all the circumstances in which it may be used. Accordingly, neither the publisher, author, retailer, approving solicitors nor any other supplier shall be liable to any person or entity with respect to any loss or damage caused or alleged to be caused by the information contained in or omitted from this Lawpack Kit.

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Loose-leaf forms

For England & Wales:

Assured Shorthold Tenancy Agreement	2 copies
Section 21 Notice Requiring Possession	1 copy
Section 8 Notice Seeking Possession (rent arrears)	1 copy
Section 213 Notice	2 copies

For Scotland:

Short Assured Tenancy Agreement	2 copies
AT5 Notice of a Short Assured Tenancy Agreement	1 copy
Section 33 Notice to Terminate	1 copy
AT6 Notice of Intention to Raise Proceedings for Possession (rent arrears)	1 copy
Notice to Quit	1 copy

EPCs

From 1 October 2008 under the Energy Efficiency Regulations, landlords will need to provide prospective tenants with an Energy Performance Certificate (EPC). This must be obtained from an accredited Domestic Energy Assessor (there will be a fee involved). To find an Energy Assessor in your area, visit www.whatstheidea.net. EPCs will enable prospective tenants to see at a glance how energy efficient and environmentally friendly rented properties are and how much they cost to heat. You do not have to carry out any improvements to your property as a result of any recommendations made by the Energy Assessor, however your property is likely to be more attractive to tenants if it is energy efficient.

The EPC must be provided, free of charge when property particulars are given to prospective tenants or when they are first shown round the property. At the very latest it must be provided before the tenancy agreement is signed. Failure to comply with the regulations may result in a penalty charge notice being served, which carries a fine of £200.

The Tenancy Deposit Protection Scheme

Most landlords will want to take a damage deposit to have a fund to draw on at the end of the tenancy if the property needs repairs or the contents need repairing or replacing. It is normal for a landlord to take between one and two months' rent for this purpose. However, the Housing Act 2004 set up a new Tenancy Deposit Protection Scheme in England and Wales (this does not apply to Scotland). With effect from 6 April 2007, all landlords who take a damage deposit for an Assured Shorthold Tenancy after 6 April 2007, or who grant a new tenancy to a tenant where a damage deposit was taken before 6 April 2007, will need to arrange for the deposit to be protected under one of the three government-authorized Tenancy Deposit Schemes.

There are two types of scheme:

Custodial scheme

This is where the landlord must pass the deposit money over to the scheme administrators who will hold it during the period of the tenancy. This type of scheme is free of charge (the running costs will be paid by the interest paid on the deposit money). There is only one custodial scheme operating at present. This is called The Deposit Protection Service Ltd, with a website at www.depositprotection.com. You can contact them by telephone on 0870 7071707.

Insurance-based schemes

This is where the landlord is entitled to hold the deposit money. However, the landlord will have to pay a fee to the scheme administrators and comply strictly with the scheme rules. The scheme administrators have to have insurance cover in place

to protect them if the landlord fails to pay over the money, in which case they have to pay the tenant themselves. There are two insurance-based schemes: Tenancy Deposit Solutions Ltd and the The Dispute Service Ltd. Tenancy Deposit Solutions Ltd is sponsored by the National Landlords Association and is aimed mainly at landlords. It has a website at www.mydeposits.co.uk and the telephone number is 0871 703 0552. The other scheme is run by The Dispute Service Ltd and is aimed mainly at lettings agents and has a website at www.thedisputeservice.co.uk. Their telephone helpline number is 0845 226 7837. However, both schemes are set up to protect deposits held either by landlords or by agents. They are slightly different in the way that they operate and the fee structure is different. Note that the The Dispute Service Ltd have special terms and conditions that they will require their members to use which are not included in this Lawpack agreement.

Note that all of the schemes will have their own rules, and you will be required to act in accordance with these at all times. All the scheme administrators will prefer information to be provided electronically via their websites, and although paper applications will be accepted, they are not encouraged, and with the insurance based schemes they may incur an extra charge.

For further information please contact the scheme administrators direct.

The procedure under the schemes

You should complete the deposit section of the tenancy agreement on page 1, to show the amount of the deposit.

You are required under the regulations to provide the tenant with certain prescribed information within 14 days of the deposit having been paid to you. You can use the Lawpack Section 213 notice which you will find with this Kit. The form contains guidance notes, and provided that you follow these carefully and complete the form in full, you will have complied with your statutory obligations in this regard.

At the end of the tenancy you should try to agree with the tenant whether any deductions should be made from the deposit and if so how much. Hopefully the property will have been left in a good condition and you will be able to repay all the deposit to the tenants. If agreement can be reached:

- For deposits protected under the custodial scheme, you will need to inform the scheme administrators and follow the procedure prescribed under their rules.
- For deposits protected under one of the insurance-based schemes, you should pay the money to the tenants and inform the scheme administrators in accordance with the scheme rules that the tenancy has now ended.

If you are unable to reach agreement with the tenant you should inform the scheme administrators following the procedure laid down under their rules. If you are holding the money under one of the insurance-based schemes, you will also have to pay to the scheme administrators the part of the deposit which is in dispute. The other part should be paid to the tenant or kept by you as agreed between you.

The dispute will then be referred to the scheme's arbitrators. You can, if you wish, have the dispute decided by a County court, however this is not advisable as it will

take far longer to resolve and will involve court fees. The arbitration service provided under the Tenancy Deposit Scheme is free of charge.

You will need to provide full details of your claim under the damage deposit to the arbitrator together with a copy of the tenancy agreement, a copy of the inventory and any other evidence of the condition of the property such as photographs. Note that although an inventory is not mandatory under the Tenancy Deposit Scheme, your chances of success in an arbitration will be very slight if you do not have one. You can purchase a Property Inventory Kit from Lawpack at www.lawpack.co.uk. You will also be expected to provide invoices for all repair and other work done, and receipts for replacement items purchased, and any other expenses you may have incurred which you are claiming from the tenant.

The arbitrator will then normally decide the case on the paperwork. The deposit money will be paid by the scheme administrators in accordance with the arbitrator's decision within 10 days of being informed of it.

If the tenant disappears at the end of the tenancy leaving no forwarding address, you should contact the scheme administrators and follow the rules for the particular scheme you are using. However, if the tenant left leaving damage and/or rent arrears, you will be able to claim these from the damage deposit, although the case may have to be referred to arbitration first.

Penalties for non-compliance

The government has put in several measures to prevent landlords avoiding the Tenancy Deposit Scheme. Note the following points:

- Although the scheme only applies to deposits taken after 6 April 2007, it will also apply to deposits taken before that date when a new tenancy agreement (or renewal document) is given to the tenant after 6 April 2007.
- The Housing Act prohibits deposits which are not money.
- If you take a deposit for an Assured Shorthold Tenancy which is not protected under one of the three schemes, your tenants can go to court asking for:
 - The deposit to be returned to them; or
 - The deposit to be protected under the custodial scheme; and
 - An order that you pay them a fine of three times the amount of the deposit money, within 14 days.
- Note also that you will not be entitled to evict the tenant using the notice-only procedure under Section 21 whilst the deposit is not protected under one of the statutory schemes. The Housing (Scotland) Act 2006 introduces a Tenancy Deposit Protection Scheme to Scotland but this is not yet in force and not likely to become law until sometime in 2008.

Avoiding the Tenancy Deposit Protection Scheme

Some landlords are unhappy about using the Tenancy Deposit Protection Scheme

and seek alternatives to taking a deposit which will be subject to these. Generally, these alternatives are unsatisfactory. Below are some of the ways that landlords have tried to avoid the Tenancy Deposit Scheme:

- Taking a deposit which is not money. This is specifically prohibited under the Housing Act 2004.
- Letting under an Assured rather than an Assured Shorthold tenancy. If this is done the landlord need not comply with the Tenancy Deposit Protection Scheme. However, it is most inadvisable, as the 'notice only' shorthold ground for possession will no longer be available. Landlords doing this may find it impossible to evict their tenant in the future.
- Taking a guarantee. As no money changes hands, guarantees are not subject to the Tenancy Deposit Protection Scheme rules. If the guarantee is from a Local Authority under one of their bond schemes, this is an excellent alternative. However, a guarantee taken from a friend or relative of the tenant may be less satisfactory. The guarantor may prove difficult to find when the money is needed, or may refuse to pay, making time-consuming County court proceedings necessary. If it turns out that the guarantor has no assets it may be difficult to enforce this.
- Taking two months' rent in advance instead of a month's rent and a deposit. This seems superficially satisfactory, as the tenant will normally pay the same amount of money at the start. However, as the money is for rent rather than damage, it cannot be used for anything other than rent, and the landlord will be left without a fund for damages at the end of the tenancy. Be warned that in some circumstances a Judge may consider advance rent to be a deposit which requires protection.
- Insurance-based alternatives. These have been developed by some insurance companies. Generally they will only be available where tenants have passed the insurance companies' referencing procedure, so cannot normally be used for the tenants most likely to cause problems.
- Putting up the rent instead of taking a deposit. This is a valid option, however it may make the property less attractive to tenants. Also, if the tenant successfully challenges the rent to the Rent Assessment Panel (on the basis that it is not a market rent), they have the power to reduce the rent to a market figure for the remainder of the fixed term. In this case the landlord will be left with a lower rent and no deposit.
- Finally, you may decide not to take any deposit at all..

Note that the alternatives discussed above do not give the tenant the incentive to look after the property that the prospect of losing their deposit will provide.

The Inventory

As mentioned above, having a proper detailed inventory of the property's condition and contents is very important, and landlords will find it difficult to make any recovery from the damage deposit if this is not done.

You can purchase a Property Inventory Kit from Lawpack at www.lawpack.co.uk. You

should go through the house room by room, noting on the Property Inventory all the items in each room. Even if you are letting a property unfurnished it is a good idea to have an inventory to record the condition of the walls and carpets, etc., in case of future dispute.

It is a good idea to also make a note of the condition of the items on the Property Inventory, for example, if there is a stain on the carpet or rug, so that the tenant is not blamed for this at the end of the tenancy.

The Property Inventory should be checked with the tenant before he moves into the property. You then retain the signed copy of the Property Inventory which you should copy for your tenants to assist them at the end of the tenancy. One copy per house is sufficient.

When the tenant is about to leave, the landlord (or his agent) should meet him at the property and go through the Inventory with him again, room by room. If there are any missing or damaged items, it is often possible to sort out how much should be deducted from the damage deposit there and then.

If you do not want to prepare an Inventory, you can delete the Inventory section on the first page of the Tenancy Agreement. However, we strongly recommend that an Inventory be prepared for all agreements. Even if the property is let unfurnished, an Inventory can contain useful information about the condition of doors and windows, the paintwork, light fittings and carpets.

If you do not have time to prepare an inventory yourself, there are many professional inventory clerks who can do this for you, for a fee. You can locate some from The Association of Independent Inventory Clerks (AIIC) who have a website at www.theaiic.co.uk.

Guarantors

If you are worried about a prospective tenant's ability to pay the rent, it might be wise to take a guarantee from a third party. For example, guarantees are often taken from parents of students when they sign tenancy agreements. However, you should take up references and do credit checks on guarantors, as you would on a tenant; it is no good having a guarantor who is as impecunious as a tenant.

It is unwise to allow the tenant to take the tenancy agreement away to get the guarantor to sign it; it has not been unknown for tenants to forge guarantors' signatures in these circumstances. If the guarantor does not sign the agreement in front of you, make sure the signature is witnessed by someone you can trust, who can vouch for the guarantor's identity. If the agreement is signed in front of you, you should arrange for someone independent to witness the signature.

Terms in the tenancy agreement

One of the main reasons for having a form of tenancy agreement is to set out the landlord's and tenant's obligations to each other (known by lawyers as 'covenants'). Having a clear and comprehensive tenancy agreement can help prevent future disputes.

The Lawpack tenancy agreements included in this Kit have the main terms on the front

page and standard terms in the middle two pages. You should read these carefully.

Some of the clauses included are discussed briefly below. For a more detailed consideration of the clauses that go into a tenancy agreement in England and Wales, see Lawpack's *The Complete Guide to Residential Lettings* available from Lawpack at www.lawpack.co.uk.

Date of agreement – The agreement can be dated at any time after everyone has signed it. This date should be the same as the date on which the term is to begin.

The property address – It is also useful to add here details of any parking spaces which may go with the property.

The designated room and the shared parts – Applies to England and Wales agreement only and if your tenancy is for individual rooms. Delete if not applicable.

The landlord's address – For Assured Shorthold Tenancy agreements it is important that the agreement gives an address for the landlord in England or Wales. This is because section 48 of the Landlord and Tenant Act 1987 provides that the rent does not fall due until a notice of an address in England and Wales for the service of notices and documents has been provided to the tenant. If the landlord is resident abroad or living in Scotland, there should always be a contact address given in England or Wales. If this is not possible, the landlord should consider using a letting agency. Although not a legal requirement for letting properties in Scotland, it is normal practice and prudent to provide a contact address in Scotland.

The tenant – Make sure that all the tenants are listed on the agreement and that they all sign the agreement.

The term – In England and Wales, this can be for any period of time (but bear in mind that no order for possession under the shorthold ground will be granted by a court until six months from the beginning of the term). Note that in Scotland, the initial term must be at least six months.

It is advisable not to make the term too long, particularly if you are letting to a new tenant; remember that you will not, generally, be able to get the property back during the fixed term, which could cause you difficulties if you have an unsatisfactory tenant.

In England and Wales, it is normal for the term to be six months. The tenancy will, unless a notice to terminate is served, continue after the end of the fixed term. It is not strictly necessary to give the tenant a new fixed-term agreement. When a tenancy continues after the end of a fixed term, it is generally referred to as a 'periodic tenancy', the period being monthly or weekly, depending on how rent is paid.

In Scotland, at the end of the fixed term, if no new tenancy agreement is entered into and no termination notices have been served, the tenancy continues automatically for the same term as the original term of the tenancy, e.g. if the tenancy was for seven months, it continues for a further seven months by procedure known as 'tacit relocation'.

The rent – If the rent is too high, it may be subject to challenge during the first six months of the tenancy agreement in England and Wales. In Scotland, you can seek a rent determination from The Private Rented Housing Panel at any time during the tenancy. If rent is payable weekly, you will have to provide your tenant with a rent book (failure to do this is a criminal offence). Lawpack's Rent Book is available from stationers or www.lawpack.co.uk.

Your own terms and conditions

The Lawpack agreements provide a space on the final page for you to put any additional terms and conditions that you would like to have included. For example, you may use it to require the tenant to allow a gardener access once a month to maintain the garden; to consent to let the tenant keep a specified pet (e.g. 'one cat') under clause 1.7 of the Assured Shorthold Tenancy for England and Wales and clause 2.7 of the Short Assured Tenancy for Scotland. Or, if the property is for a room in a shared house, you might like to insert some 'house rules'. You can also use this space if you want to include a rent review clause (e.g. that the rent will be increased from £400 per month to £450 per month after one year) or to provide for the rent to increase in line with increases in Council Tax, if the landlord is paying this.

Any of the terms and conditions in the agreements that are inappropriate can be deleted, and all deletions should be initialled by both landlord and tenant(s). You should note, however, that some things are laid down in the housing legislation and cannot be altered. For example, you cannot contract out of your responsibility to keep the structure and exterior of the property and the installations for essential services in proper repair (as set out in clause 2.3 of the Assured Shorthold Tenancy agreement for England and Wales; clauses 4.4, 4.5 and 4.6 of the Short Assured Tenancy agreement for Scotland). Any clause making the tenant responsible for these things will be void.

Bear in mind that the tenancy agreements are designed to cover most situations. Note also that there are regulations in force (the Unfair Terms in Consumer Contracts Regulations 1999) which provide that if a term is 'unfair' (for example, if it seeks to take away tenants' legal rights or imposes onerous obligations on the tenant during the tenancy, such as excessive cleaning requirements), that term will be void and unenforceable. If you do not know what you are doing when altering tenancy agreement terms, it is easy to invalidate them, particularly if you are making them less favourable to the tenant. Lawpack agreements have been designed to comply with these regulations. If you want to make substantial alterations, you should seek legal advice before doing so.

Witnesses

In England and Wales, if the agreement is being signed in advance of the tenancy start date, it is essential to have signatures witnessed. Otherwise, if the term starts immediately, has a market rent and is for a period less than three years, strictly speaking there is no need to have the signatures witnessed, although it is advisable to do so. Plus, as stated above, any guarantor's signature should be witnessed in any event. The witness can be the same person for all signatures on the agreement. The witness should be someone independent.

In Scotland, it is recommended that the tenancy is witnessed, as it then becomes self-proving.