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*Block HL.102*  
**SOCIAL LANDLORDS'  
RESPONSIBILITIES**

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## Preface

This Block is concerned with the legal framework which establishes the rights of social housing landlords, their staff, and their tenants. The basis of the law is the legal system of England and Wales. However, as we are concerned with current and recent legislation, the differences from Scottish law are not that significant. This is because the main changes to the law relating to the various tenures took place in Scotland at about the same time as changes in England and Wales. Nevertheless, to help students from Scotland, the relevant differences relating to legal estates in land, secure tenancies in the public sector, and housing association tenure have been identified, as appropriate, in the Block.

You are about to undertake this Block with the confidence of having gained from Block HL.101 an understanding of the structure and operation of the legal system. That understanding will now provide the foundation for looking at the substantive laws of contract and tort, and landlord and tenant. We shall build on your present understanding of the concepts of:

- statute law and case law;
- common law and equity; and
- public and private law.

You will recall that law has several sources, including:

- primary legislation;
- secondary legislation;
- European Union legislation;
- case law precedents; and
- circulars and codes of practice.

Again, remember that you are not setting out to be a lawyer with a detailed grasp of the law. Instead, you are going to continue to develop your knowledge of legal principles. In this way, you will achieve a comfortable understanding of law relevant to your activities and developing responsibilities as a housing officer.

## Learning Outcomes

By the time you have completed this Block, you will be able to:

- identify the main legal principles involved in forming contracts, as well as those principles relating to obligations and liabilities in tort;
- describe the liabilities, powers and duties of social housing landlords as an employer and as a landlord;
- distinguish between a tenancy and a licence, as well as appreciate the legal and practical significance of the distinction;
- differentiate between the various forms of social housing tenure; and
- explain how tenancies are created and ended.

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## A. Introduction

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This Block considers the powers, responsibilities and duties of social landlords. These responsibilities and duties extend to tenants, employees and to others who have dealings with social landlords. As you work through the Block you will learn that duties result from a combination of influences. These include statute law, common law, and regulations imposed by controlling bodies, such as the Housing Corporation, Charity Commissioners and the Registrar of Companies.

As regards the different forms of social housing tenancies, you will find that the rights of local authority secure tenants are defined by statute, namely the **Housing Act 1985**. However, the rights of housing association tenants are defined by contractual arrangements contained in the tenancy agreement. It will also be seen that a social landlord's responsibilities and duties to employees and others arise from both statute and common law. It is the law of contract that forms the basis of the law of landlord and tenant, as well as employment law. In addition, it is the law of tort that imposes a general duty of care in relation to negligent behaviour.

Employers are vulnerable to being sued for the actions of their employees, but only when such actions and decisions are carried out during employment. Typical actions by employees that could lead to liability of an employer could be:

- unwittingly making an agreement with others so that a legally binding contract results;
- doing anything or omitting to do anything that comes within an employee's responsibilities and results in loss or harm to another person or organisation, e.g. *negligent driving of an employer's vehicle when carrying out visits to tenants*;
- a manager suspending or sacking an employee without adhering to proper procedures;
- harassing another employee or any other person during the course of employment;
- racial, sexual or other discriminatory actions;
- making defamatory statements about others.

With the above in mind, this Block describes in Part B the law of contract and the law of tort, as well as considering their application both in contracts of employment and tenancy arrangements. Part C describes the differing forms of tenancy and the respective rights and duties of landlords and tenants.

## **Differences between English law and the law of Scotland**

Generally the law contained in this Block relates to English law, which applies in England and Wales. The law in Scotland evolved separately from the law in England and Wales. However, although there are a number of major differences between the two legal systems, most of them do not concern us in our studies. Nevertheless, for students working in Scotland, relevant differences have been identified in the following sub-sections:

### **C2 Legal Estates in Land, including leasehold**

2.9 The law in Scotland

### **C4 Secure Tenancies in the Public Sector**

4.6 The law in Scotland

### **C6 Housing Association Tenure**

6.7 The law in Scotland

## B. Application Of The Civil Laws Of Contract And Tort

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### 1. Overview of the Laws of Contract and Tort

#### 1.1 Introduction

You learnt in Block HL.101 about the different sources and divisions of law, including civil and criminal law (*see HL.101 1.2*). Also, that **housing law** is mainly made up of civil law, although criminal law does feature in some housing law provisions. It is the civil law which:

- defines the rights and duties of persons to one another; and
- provides a system of remedies as compensation when rights and duties are not complied with.

In turn, civil law is sub-divided into different branches of what is called 'substantive (*essential*) law'. Two of these branches of law, the **law of contract** and the **law of tort**, are central to an understanding of social landlords' duties and tenancies. Furthermore, the law of contract underpins **land law**, and the **law of landlord and tenant**, which form the basis of tenancy agreements. The law of contract also forms the basis of **employment law**. To avoid any confusion at this stage, simple definitions of each of these laws are given below:

**Law of Contract** - is concerned with agreements between two or more persons that give rise to promises or obligations which are recognised or enforced by law, e.g. *you may order a suite of furniture from a department store and promise to pay when the furniture is delivered.*

**Law of tort** - is concerned with providing a remedy to persons who have been harmed or suffer loss as a result of the conduct of others, e.g. *where someone might as a result of careless driving knock down and injure a pedestrian.*

**Land law** - provides the legal framework within which issues and problems relating to individual rights of ownership, possession, occupation and use of land, including buildings, are resolved, e.g. *where an owner has sold a house and wishes to transfer the legal ownership to the buyer. (Note: The key aspects of land law will be examined in Part C of this Section).*

**Law of landlord and tenant** - is concerned with the relationship between a landlord and a tenant, and provides the framework within which issues and problems relating to their respective rights are considered and resolved, e.g. *where a landlord has failed to carry out essential roof repairs to a tenant's property. (Note: The key aspects of the law of landlord and tenant will be examined in Part C of this Section).*

**Employment law** - is concerned with the relationship between an employer and an employee, and provides the framework within which issues and problems relating to their respective rights are considered and resolved, e.g. *the employer fails to provide protective clothing and footwear for carrying out visits to polluted sites or vermin-infected dwellings.*

### **Activity 1**

*Read the brief definition provided above for the law of contract and think what contracts you may have entered into at any time over the past few days. Make notes in the space below.*

***Time allocation: 5 minutes***



**Activity 1 - Response**

*You may have found some difficulty in completing the activity on the previous page. This is because you are not yet familiar with the law of contract and so do not recognise what everyday actions involve a contractual arrangement. Perhaps you think that contracts are only entered into by completing documents. As you will discover later, contracts can be entered into with or without completing documents of agreement. For example, the following are contracts:*

- *buying a newspaper;*
- *buying a ticket to travel on the bus or train;*
- *buying sweets or any other purchase in a shop; and*
- *paying the local handyman to trim your hedge and remove the clippings.*

*The following are, perhaps, what you had in mind when thinking of what might form a contract:*

- *signing forms agreeing to repay a loan from the bank;*
- *signing a tenancy agreement for a house or a flat;*
- *signing a hire purchase agreement in order to buy a new car;*
- *completing an agreement for a time-share apartment; and*
- *signing a deed to purchase a house.*

We will now study in more detail the law of contract and the law of tort. Then we will examine how these laws apply to typical employment and tenancy situations.

**1.2 The law of contract****(a) An agreement recognised by the law**

You will appreciate from the activity you have just completed that the law of contract can affect us daily in many ways, both privately or during our employment, e.g. *employment contracts; office equipment and supplies; purchase or rent of accommodation; car purchase; daily public transport; insurance; loans; and daily food and other purchases, such as newspapers.* All involve making a contract and must conform to the principles of the law of contract that provides a framework for business dealings.

What is a contract and what principles are involved? A contract establishes legal rights and duties which are enforceable in the courts. The common law (see Block HL.101 B.1.2) has developed a set of comprehensive rules relating to the formation and validity of contracts. There are also important pieces of legislation, e.g.

**Sale of Goods Act 1979 and Unfair Contract Terms Act 1977.** However, there is no code of rules. As a result, case law has established the principles and rules of the law of contract.

A contract is a legally-binding agreement between two or more parties to do or not do something. It has four essential elements, namely:

- there must be an **offer**, e.g. *to purchase a computer*;
- there must be an **acceptance** of the offer, e.g. *to sell the computer*;
- each party must give something of value as **consideration**, e.g. *the person offering to buy the computer gives consideration in the form of money, and the person accepting the offer provides consideration in the form of the computer*; and
- the parties must intend to be **legally bound**.

Each of these elements will be explained in a little more detail, but first we need to look at the types of contract. Where legal principles apply, you will see that the source law case is also included (see explanation in HL.101 Section 4.3 (b)).

#### **(b) Types of contract**

There are two classifications of contract. However, the majority of contracts are **simple contracts** and the remainder are speciality contracts called **deeds**.

- **Simple contracts**, which can be made in writing or orally, such as when you buy a pencil e.g. *You offer to pay for the pencil, the shop assistant accepts your offer, you pay and then take the pencil*. Simple contracts can take two forms:
  - Most simple contracts are **Bilateral Contracts**, where the promise of one party is exchanged for the promise of the other party.
  - There is also a **Unilateral Contract**, where one person promises to do something for an act by another person, e.g. *you lose your valuable watch and put an advertisement in the local shop window promising to pay £50 to anyone who finds and returns it*.
- **Deeds** must be made in writing, signed, witnessed and delivered to the other party. Unlike simple contracts, promises made in contracts by deed do not have to be supported by consideration (*payment in some form*), e.g. *a person or organisation may wish to give money or valuable property to another*. In addition, certain contracts are required by law to be made in the form of a deed, e.g. *the Law of Property (Miscellaneous Provisions) Act 1989 requires the transfer (sale) or lease of property to be by deed*.

### Time limitations for bringing an action in court

If somebody breaches (*breaks*) a contract, there are limited time periods in which action can be taken through the courts. There is an important practical difference between simple contracts, where the period is 6 years, and a contract by deed, where the period is 12 years.

### (c) Offer, invitation to treat and counter-offer

- (i) An **offer** is an undertaking by a person to be legally bound if the offer is accepted. However, an offer can, as held in *Payne v Cave* [1789], be revoked (*withdrawn*) at any time before it is rejected. There are two types of offer, namely:
- **Specific offer** made to a person or organisation; or
  - **Offer made to the world**, which effectively leads to a unilateral contract, e.g. *as described earlier using the example of the lost watch*.

**The legal principle of being able to contract with the world was determined by the case *Carlill v Carbolic Smoke Ball Co.* [1893].** The company in advertising their product stated that anyone catching influenza after using their smoke ball would be paid £100, which was a lot of money in the nineteenth century. Mrs Carlill caught 'flu and claimed the £100, but the company said their statement was just boastful advertising and refused to pay. The court held it was a contract with the world at large.

- (ii) An **invitation to treat** is when a shopkeeper or other person invites offers that can be accepted or rejected. The **General Rule**, as determined by case law, is that goods on display and advertised in newspapers or catalogues (*Partridge v Crittenden* [1968]) are invitations to treat.
- (iii) A **counter-offer** occurs when an intended acceptance includes any amendment or new terms to those included in the offer. As a result, the original offer is ended and the counter-offer becomes an offer that can be accepted or rejected.

**The legal principle of a counter-offer** was determined in *Hyde v Wrench* [1840]. In the case, Mr Wrench offered Mr Hyde a farm for £1,000. H. made a counter-offer of £950, which was rejected by W. H then made a supposed acceptance of the original £1,000 offer. The court held that the counter-offer of £950 effectively rejected the original offer, so there was no contract.

#### **(d) Acceptance**

The **general rule** is that acceptance of an offer is not effective unless communicated, i.e. '*Silence is not acceptance*' (*Felthouse v Brindley* [1863]). An important exception to the general rule is the **postal rule** when acceptance is made by letter, for '*Acceptance is complete when the letter is posted*' (*Adams v Lindsell* [1879]). The postal rule is a rule of commercial convenience aimed at bringing certainty to business dealings.

#### **(e) Intention to be legally bound**

Arguably, if both parties to a contract provide valuable consideration, they intend to be legally bound. However, two presumptions have been established by the courts:

- **Commercial and business agreements**, where the parties are presumed to have intended that their agreement shall be legally binding. Any denial of the agreement would have to be by express words.
- **Social and domestic agreement**, where the parties are presumed not to have intended to create a contract, and the outcome depends on individual circumstances of each case.

#### **(f) Consideration**

In English law, a simple contract is looked on as a bargain and consideration is given by each party, e.g. *A gives money (consideration) for B's car (consideration)*. However, the courts have established rules governing consideration. They are that:

- It must have some value;
- It need not be adequate, e.g. *you could sell your £9,000 car for £10 if you wished and it would not be questioned by the courts*.
- It must not be paid for an existing public duty; and
- It must not be for the performance of an existing contractual duty.

**(g) Other considerations**

The information given in sub-sections (a) to (f) outline the basic principles of the law of contract. There are many other principles that relate to such aspects as the prevention of contracts being made due to undue influence, threats and pressure, or misrepresentation of the facts. There are also statutory controls on unfair contractual arrangements, such as the exclusion of liability for such matters as death, injury, and loss. ***The Unfair Contract Terms Act 1977*** limits the effectiveness of contractual terms that attempt to exclude of liability for breach of contract or negligence. Another statute, the **Sale of Goods Act 1979** implies terms into a contract if none are provided, to provide remedies if goods are not of marketable quality or fit for the purpose they were designed for.

Finally, if one party does not carry out or breaches their duties under the contract, the other party has the right to seek the common law remedy of damages for any loss suffered. The court also has the discretion to grant an equitable remedy (*see Block HL.101, Section 1.2.(a)(ii)*) such as specific performance, e.g. *making the party in breach carry out their obligations under the contract.*

### **Self Test 1**

1. *What are the two main categories of contract?*
  - (a)
  - (b)
2. *For the two forms of contract referred to in Question 1, there are different time limits for bringing an action for breach of contract. What are they and for which form of contract?*
  - (a)
  - (b)
3. *What are the four essential requirements of a legally binding contract?*
  - (a)
  - (b)
  - (c)
  - (d)
4. *When is the intention to be legally bound not inferred by the courts?*

*Now turn to the Answers at the end of the Block*

### 1.3 The law of tort

#### (a) The meaning of tort

'Tort' is a French word meaning 'wrong'. Under the civil law, there are clearly defined acts which amount to wrongdoing and which are termed torts. As a result, the **law of tort** is concerned with providing a remedy to persons who have been harmed or suffer loss as a result of the conduct of others, e.g. *where someone might as a result of careless driving knock down and injure a pedestrian. Another example would be a tenant who is injured when the central heating boiler in their house explodes.* As with the law of contract, the main objective of the law of tort is to provide compensation.

#### Comparing the law of contract and the law of tort

Whereas the obligations under the law of contract are determined by the parties to the contract, those associated with a tort are imposed by the general law

It is possible that the same act by somebody may result in a liability in the laws of contract and tort, or criminal law, e.g. *dangerous driving which causes death or injury is a criminal offence and there will be a liability in tort. Another example would be a defective washing machine which catches fire and causes damage to property or a person. In such a case, the retailer can be sued for breach of contract or the manufacturer could be sued for negligence in tort.*

There are a number of torts that affect social housing landlords and other organisations. The major one is negligence, which includes employers' liability, and vicarious liability (*explained in B2*). Then there are the torts of trespass to property, nuisance, and occupiers' liability. We shall examine all of these in this Block. Other torts that you may hear of are defamation (*libel and slander*), liability for damage or harm caused by animals, trespass to the person (*covering assault, battery and false imprisonment*), and liability for dangerous products. Where legal principles apply you will see that the source law case is also included (*see explanation in HL.101 Section 4.3 (b)*).

### **(b) Tort of Negligence**

Negligence is defined as the breach of a duty of care owed by the defendant to the plaintiff. There are three elements to a tort:

- That the defendant owes the plaintiff a **duty**;
- That there was a **breach** (*breaking*) of that duty; and
- That **damage** or harm resulted from the breach.

#### *i. Duty of care*

It is the judge who decides whether a duty is owed, and case-law has recognised that certain relationships result in a duty to others. The important House of Lords decision in the case of *Donoghue v Stevenson* [1932] established what is known as the '**neighbour principle**' test. This requires care to be taken to avoid loss or injury to other people who may be affected by your actions or conduct. The question to be asked is whether it is **reasonably foreseeable** that others could be injured or suffer a loss as a result of your actions? If so, a duty is owed. Any breach of that duty that cause injury or loss results in a liability in tort.

#### ***Donoghue v Stevenson* [1932]**

The facts of the case were that two ladies were in a cafe. One of the ladies was drinking ginger beer. When she poured the last of the ginger beer into her glass the decomposed remains of a snail emerged from the opaque bottle. As a result, she suffered nervous shock and was ill. It was held by the House of Lords that a manufacturer of products owed a duty of care to consumers of its products.

If you think about the implications of the 'neighbour' principle, you will realise that it imposes a wide duty of care. However, a person is only liable for any loss that results from their actions if there is a duty of care.

One particular area of a wide duty owed, which is important to housing officers and other professional advisers, is that of negligent misstatements (*Hedley Byrne & Co. v Heller & Partners* [1963]). This because the relationship is one where the plaintiff relies on the defendant's skill, specialist knowledge, and statements. The liability of an adviser will be judged against the standard that would be expected of a reasonably competent professional.



*ii. Breach of a duty of care: negligence*

A plaintiff must prove that the defendant was in breach of their duty and the judge decides on the facts. Factors taken into account are the size of the risk, the potential gravity of harm, and social justification (*e.g. a fire-engine driving through a red light is unacceptable*), as well as the cost and practicality of minimising the risk. A condition of liability for a tort is negligence. The actual test for a breach of a duty of care relates to negligence and is that of the 'reasonable person' which is defined as:

*'... the omission to do something that a reasonable person would do, or doing something that a reasonable person would not do' (Blyth v Birmingham Waterworks [1856]).*

*iii. Damage*

The plaintiff must also prove loss as a result of the breach of an owed duty of care. The loss may be personal harm, damage to property, or financial loss due to a negligent misstatement. Here, the courts look into the cause of the damage and that damage was not too remote but reasonably foreseeable at the time the defendant was negligent.

*iv. Contributory negligence*

There are situations where a person may suffer harm or loss as a result of a breach of duty by another person, but have themselves been negligent. An example would be accepting a lift in another person's car and failing to put on the seat belt. In the event of an accident, had you worn the seat belt it would have helped reduce your injuries. At common law, a plaintiff whose injuries were caused partly through contributory negligence, no matter how slight, could recover nothing. However, the harshness of the common law was removed by the provisions of the **Law Reform (Contributory Negligence) Act 1945**. Now the courts may reduce the remedy of damages by an amount proportionate to the plaintiff's contributory negligence (*e.g. say 25% for not wearing a seat belt*).

## **Self Test 2**

*Think about what you have read under the law of tort and answer the following questions.*

1. *What are the three elements of a tort of negligence?*  
  
(a)  
  
(b)  
  
(c)
  
2. *What is the definition of negligence, which relates to the reasonable person, that is considered by the courts?*
  
  
  
  
  
  
  
  
  
  
3. *What effect did the Law Reform (Contributory Negligence) Act 1945 have on tort cases involving contributory negligence?*

*Now turn to the Answers at the end of the Block.*

## Summary

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1. The law of contract is concerned with agreements between two or more people or organisations. As such, it is the basis of land law, landlord and tenant law, and employment law.
2. Essentially, a contract comprises an offer, an acceptance, consideration given by both parties, and an intention to be legally bound.
3. The tort of negligence is the basis of employers' vicarious liability for actions of employees during employment, and employers' liabilities to take reasonable care of their employees.
4. Essentially, a liability in the tort of negligence comprises a duty owed by a person or organisation to others, a breach of that duty, and harm or loss suffered as a result of the breach.

## 2. Social Landlords' Liabilities as Employers

### 2.1 Employers and employees' duties

Statute law and common law impose duties on employers and employees in social housing and other organisations. Many of these duties arise from contract law and the law of tort. However, a body of employment law has also developed to provide a framework for the relationship between an employer and an employee. As advised at the beginning of this Block, contract law forms the basis of employment law. The period since the Second World War has been a period of expanding and changing employment-related legislation, regulation and case law. Initially, this was because of the need to provide rights to protect employees. However, during the past twenty years or so, much new and amended legislation has been in response to changes in the nature and pattern of employment. Some influencing factors include the increase in part-time and short-time working, as well as self-employment. Additionally, there are changes brought about because of the influence of information technology and the European Union's social legislation.

#### ***(a) Doctrine of vicarious liability***

Social housing organisations, like other organisations, have the capacity to sue and be sued. As such organisations act through their employees or agents, their tortious liability is normally vicarious. This means that an employer is responsible for the actions and acts of employees committed during employment. The doctrine of vicarious liability relates to the historic master and servant relationship. However, the modern justification for the doctrine is that the employer is better able to pay because he or she will insure against such liability.

Stop a moment and compare this liability in tort with the liability under the law of contract. In a tortious situation, the employer is liable for an employee's actions during employment. In a contractual situation, the employer is only liable if the employee has the authority to make a contract on behalf of the employer. The basic test for liability in tort is whether the employee was acting within the course of employment. We shall consider this question next.

#### ***(b) What is an employee?***

Who is an employee? This is normally an easy question to answer. In recent years there has been an increase in part-time and self-employed individuals, as well as in home working. However, the real problem arises when an employee is loaned to another employer. As a result, it is important to know how an employment relationship comes into being and what form of contract exists.

This is because it determines the legal and financial responsibilities of both employer and employee. The law recognises two forms of employment relationship:

- a **contract of service**, where employees work for the employer under a degree of supervision for a wage or salary (*here, the employer would be responsible for an employee's negligent acts committed during the course of employment. This is called vicarious liability*); and
- a **contract for services**, where the employer buys the services of someone who is self-employed, sometimes called an independent contractor (*here, the independent contractor is liable for negligent acts*).

Where there is uncertainty as to whether or not a person is an employee or an independent contractor the courts consider a number of tests. These include the nature and degree of control, the form of contract, and who is responsible for payment of tax.

#### **(c) Contract of employment**

The principles of the law of contract, offer, acceptance and consideration, apply to employment law. After an interview, the employer makes an offer of employment on specific terms, and a contract comes into being when the employee accepts the offer. The employer provides a wage or salary as consideration, and the employee provides services as his or her consideration. In view of this, we only need to identify certain matters which are of importance in relation to employment law. The employer is required by the **Employment Protection (Consolidation) Act 1978** to provide written particulars of the contract. These will include such details as names of parties, date employment began, payment, hours worked, holiday entitlement, and term of notice.

#### **(d) Duties**

The rights and duties of employer and employee come from both legislation and the common law. Even if the employer has not included certain obligations and duties in a contract or written particulars, the law will imply certain terms into a contract.

**Employer's duties** include:

- payment of remuneration (*there is no general duty to pay sick pay other than the statutory sick pay on behalf of the government: Mears v Safecar Security [1982]*);
- provision of paid holidays (*as defined in the contract*);
- paid leave for statutory duties and maternity leave;

- to provide a safe system of work;
- not discriminating in recruitment or employment on grounds of sex, marital status, colour, race nationality, or ethnic or national origins (***Sex Discrimination Act 1975 & 1986, and the Race Relations Act 1976.***)

Note: There is no duty to provide work so long as there is a contractual payment (*Collier v Sunday Referee* [1940]). Also, there is no duty to provide a reference or testimonial in respect of an employee (*Carroll v Bird* [1800]).

**Employee's duties** include:

- using reasonable skill and care;
- carrying out lawful and reasonable instructions;
- faithful service;
- respecting confidential information; and
- for money received (*a duty not to accept a bribe or commission*).

### Employment tribunals

In cases of dispute over matters relating to employment, including discrimination and dismissal, employees have statutory rights to take their complaints to an **Employment Tribunal** (*see details in Block HO.101 C.3.1*). If a complaint is upheld, the tribunal can determine remedies. These may, as appropriate to the complaint, be compensation (*max. £50,000*), reinstatement in employment, or a requirement that an employer comply with relevant legislation. In the year 2000-2001, Employment Tribunals considered 130,000 cases compared with 43,000 cases in the year 1990-1991, which represents a three-fold increase (Source: Department of Trade and Industry).

### 2.3 Employer's liability and duty of care

Employers are liable for common law negligence to employees. The rule was defined in *Wilson & Clyde Coal Ltd v English* [1938]. This means that employers are under a duty to take reasonable care of their employees through the provision of:

- **competent staff** - workers ought to be able to rely on their colleagues in a working situation. This means that employers should know or ought to know of employees' characteristics and whether they carry a risk to other employees. Duty covers liability for taking reasonable steps to eliminate practical joking and any misbehaviour that could result in harm, as held in *Hudson v Ridge Manufacturing Co.* [1957].
- **safe plant and equipment** - this includes the provision of protective clothing and safety measures relating to operating machinery, together with warnings and requirements to use the protective measures. Also, the **Personal Protective Equipment at Work Regulations 1992** impose a statutory duty for employers to provide protection and a duty for employees to use it.
- **safe system of work** - an employer must not only provide a safe system of work but also take reasonable steps to put it into operation.

#### (a) Commentary

An employer's liability in negligence for an employee extends to cover all valid employment situations that might be experienced by an employee. However, you will see that there is a distinction between vicarious liability (*see 2.2 (a) above*) and an employer's general liability. **Vicarious liability**, where the employer is liable for tortious acts of employees, normally arises from casual acts of negligence by employees which cause loss or harm to others. This contrasts with a general **employer's liability**, where loss or harm is experienced by employees due to some failure in the employer's system for ensuring employees' safety.

Many employees of social housing organisations deal directly with tenants and the public generally. Unfortunately, not everybody is well-behaved. Often the personal financial, unemployment, marital, health and other circumstances of individuals cause anxiety, stress and aggressiveness. In turn, such behaviour can put housing staff at risk. Equally, there is the likelihood that certain areas are known to be hazardous and visitors are vulnerable to abuse or physical violence. As soon as an employer is aware of risk, safeguards have to be considered.

Unfortunately, housing officers' responsibilities are frequently different from those of employees who all work in one location, such as an office or factory. Housing staff may be visiting many dwellings in different locations, each with varying characteristics, within a wide area. As a result, problems of risk to employees will vary from area to area. In some circumstances, it may be reasonable to leave the local manager in charge to devise the detail of an appropriate safe system of work. However, it would be expected that an employer would consider the circumstances and issue clear guidelines within which local managers would operate reasonable systems of safe working.

Whether dealing with a known local problem or with a constantly encountered risk, the protection provided to employees will depend on individual circumstances. In any employer's liability action, the courts will examine the reasonableness of the employee's task and the safeguards adopted.

**Example: need to interview an allegedly violent tenant**

The employer should consider the facts relating to the tenant, including his or her age, known behaviour pattern, whether living alone or with others, location and type of dwelling, reason for the interview and other relevant circumstances. In some cases, the presence of a second housing officer might be considered a reasonable precaution; in extreme cases, the assistance of the police might be needed. Other options could be to arrange for the interview to take place at a housing office where convenient support would be available.



### **Self Test 3**

1. *Employers have vicarious liability in tort for their employees, but what does it mean?*
  
  
  
  
  
  
  
  
  
  
2. *What responsibilities does an employer have for an employee's actions in relation to the law of contract?*
  
  
  
  
  
  
  
  
  
  
3. (a) *As regards employment disputes, employees can take their complaint to a Tribunal.  
TRUE? or FALSE?*
  
  
  
  
  
- (b) *What is the name of the Tribunal which considers such disputes?*
  
  
  
  
  
- (c) *What remedies can the Tribunal apply?*
  
  
  
  
  
4. *Employers have a duty of care to employees not to be negligent. In complying with this duty, what do employers have to do?*

*Now turn to the Answers at the end of the Block.*

### **3. Social Landlords' Liabilities as Landlords**

#### **3.1 Duties and responsibilities to tenants**

##### ***(a) Introduction***

Just as employers have contractual and tortious duties to employees, they also have contractual and tortious duties to their tenants. Their contractual duty stems from the tenancy agreement that imposes obligations on both landlord and tenant. These obligations will be considered in detail in section C of this Block. Their duty in tort, as explained earlier in this sub-section, arises from the common law principles that affect all organisations. However, this sub-section will briefly identify some of the liabilities that housing organisations need to consider. Importantly, detailed and expanded consideration of the problems and liabilities is provided in later sections of this Block, *i.e. Section E: Nuisance and anti-social behaviour; Section F: disrepair; and Section G: discrimination.*

##### ***(b) Tenancies and unintended contractual consequences***

Tenancies and the law of landlord and tenant will be considered in some detail in Part C of this Block. However, consideration is given here to how contractual misunderstandings can occur.

When examining the law of contract you learnt that contracts may take the form of a deed, which has to be in writing. Alternatively, they may be simple contracts, which do not have to be in writing and may be made orally (*see sub-section B.1.2 (b)*). As a result, housing officers have to be careful in discussions with tenants and potential tenants. They should also be careful about what they say to representatives of other, especially commercially-based, organisations. If not, their comments could have the unintended consequences of:

- entering into an oral contract with a potential tenant; or
- making an offer that could orally be accepted by a potential tenant. If so, a contract comes into being.

An example of how this might occur is given by the following account of a County Court decision, which was taken from the December 1996 issue of *Legal Action*.

***Jones v Lewisham LBC (1996) 10 April, Bromley County Court.***

The plaintiff had received a letter from the council stating: '*our re-housing section will be able to offer you a transfer to [property X] once works to this property are completed*'. The following day she visited the property and indicated that she was satisfied with it. She discussed with officers how the kitchen would be laid out and other details. Subsequently, the council re-assessed the plaintiff's housing needs and decided she did not require premises as large as property X and would be offered a smaller home. The plaintiff sought specific performance (*a discretionary equitable remedy giving tenancy of the house as opposed to damages - see Block HO.101 Section B.1.2 (a)(ii)*).

Assistant Recorder Plumtree rejected the council's contention that in contract terms its letter was a mere 'invitation' to contract. She found it to be an offer capable of acceptance which had been accepted and made an order requiring the council to grant the plaintiff a weekly tenancy of property X.

The grant of a new tenancy will depend on the landlord's intention to enter into legal relations, which is another essential element of a contract. In the above case, that intention could be implied from the contents of the offer letter. However, if the landlord had made it quite clear that the occupier has no right to remain, and payments are accepted, not as rent, but on a 'use and occupation' basis, no new tenancy would result.

The actions of housing officers made on behalf of their employers can also have unintended implications. For example, if payments of rent are accepted, and the landlord takes no action for a considerable period of time, then the occupier will probably be able to establish that a tenancy was granted. Equally, if the tenant moves out of a property and leaves another in occupation, landlords must be careful that a new tenancy is not created. There are important practical lessons to be learned from the following summaries of the cases of *Tower Hamlets LBC v Ayinde* [1994] and *Westminster CC v Basson* [1991].

***Tower Hamlets LBC v Ayinde [1994]*** 26 HLR 631, CA

The secure tenant invited another person to live in his council flat. He eventually left the flat, but wrote to the local authority advising them and asked that they transfer the tenancy into the name of the sharer. The other person continued paying the rent, which the housing authority accepted. It was held by the Court of Appeal that a new tenancy had been created because the council had full knowledge of the situation and accepted payment as rent.

***Westminster CC v Basson [1991]*** 23 HLR 225, CA

The defendant went to live with a couple who were secure tenants. The couple gave notice to quit their accommodation and left the defendant in occupation. Here the housing authority did not accept rent payments. Instead, they wrote to the defendant advising of possession proceedings, that a use and occupancy charge would be made, and that they did not intend to create a tenancy. The Court of Appeal found that no tenancy had been created.

**(c) Tenancies and anti-social behaviour**

During the 1990s, social landlords experienced an increase in neighbour nuisance and general anti-social behaviour on their housing estates. It takes many forms, including vandalism, burglary, damage to property, noise, physical and oral abuse, general and domestic violence, nuisance and criminal activities. This causes distress to tenants and generally undermines communities. In addition, there are capital and revenue costs associated with damaged property.

Anti-social behaviour also poses problems for landlords who have contractual liabilities to their tenants. For example, under the tenancy agreement the tenants are entitled to quiet enjoyment of their property. If this is not provided, the landlord is in breach of the tenancy contract unless steps are taken to ensure that the source of disruption ceases. To minimise such incidents, social landlords include in their tenancy agreement covenants requiring tenants not to cause any nuisance or disturbance to neighbours (*a sample tenancy agreement with such a clause is included in Section C4*). If tenants do, they are in breach of their tenancy. As a result, the landlord can take one or more of a number of available measures (*e.g. injunction, warning, eviction, arrest, etc.*) against the offending tenant (*see Block HL.103 Section E for detailed consideration of such measures*). In the following two cases, you will see that different remedies were adopted, namely an injunction followed by imprisonment, and eviction.

### **Injunction against anti-social behaviour**

In the case of *Nottingham CC v Cutts* [1999] 20 December CA (unreported), a defendant tenant had been a source of trouble and disruption on his estate since 1995. In August 1998, the council was granted a wide-ranging injunction protecting neighbours, other residents and its own staff from his further anti-social behaviour. Within a short time, the order was breached, and in October 1998 the defendant was committed to prison for 42 days. On release, the defendant's anti-social behaviour reoccurred. On a further application to commit the defendant to prison, evidence was given of threats with violence, kicking and banging doors, racist and other foul language. The defendant was committed to prison for 12 months, which was upheld on appeal by the Court of Appeal.

### **Possession order in response to anti-social behaviour**

In the case of *Newcastle Upon Tyne CC v Morrison* [2000] 10 February CA (unreported), a single parent secure tenant was unable to control her 'rampaging, destructive, intimidating and sometimes dangerous sons'. Reportedly, there had been 'quite appalling behaviour over a period of six years' involving 'plain, repeated and grave breaches of the tenancy agreement, numerous offences affecting the neighbourhood and a dreadful catalogue of incidents'. On appeal, the Court of Appeal granted a possession order based on Ground 1 (*breach of tenancy*) and Ground 2 (*nuisance*).

Social housing organisations respond to anti-social behaviour by adopting a number of civil remedies. These remedies include eviction following breach of tenancy agreements, injunctions, and nuisance control powers. More recently, additional statutory measures have been introduced and include introductory tenancies (*considered in Section C of this Block*) and anti-social orders (*see Block HO.103 Section E*).

**(d) Tenancies: nuisance and disrepair**

Tenancy agreements normally include covenants (*clauses that form the basis of the tenancy agreement*) regarding landlords and tenants' obligations and rights in relation to nuisance and disrepair. As a result, remedies can be sought for breach of a tenancy agreement, including:

- injunction (*order compelling someone to do or not to do something*);
- eviction; and
- specific performance (*order compelling performance of duty or contractual obligation*).

A private nuisance, as well as being a breach of the tenancy agreement, is a tort, remedies for which are damages and an injunction.

A landlord's liability in contract for disrepair stems from express or implied terms in the tenancy agreement. However, courts may also extend liability for disrepair to cover nuisance, as instanced in the following case.

***Arnold v Greenwich LBC* [1998] 1CL 383 QBD**

An express term in the council's tenancy agreement stated that it would 'maintain the dwelling in good condition and repair'. The tenant claimed of damp and mould from condensation, smells from a refuse bin storage area below his flat, and noise nuisance from the use of the communal refuse chute - sufficient to keep him awake. The tenant was awarded £8,750 damages for discomfort and inconvenience over almost six years.

Cases such as the above raise questions of whether the source of the problem arises from disrepair or from defective design and construction. If the latter is the cause, the court will consider whether the plaintiff tenant can reasonably be expected to remove or avoid the problem or danger. If so, then the tenant could be held negligent for the resultant harm. If not, then liability in tort will likely lie with the landlord. An example of such tortious liability can be seen in *Sharpe v Manchester MDC* [1977] 5 HLR 71 where a tenant on taking possession of a flat found that it was infested with cockroaches. Although the housing authority tried to eliminate the problem, it was found negligent for not treating the wall and floor spaces or service ducts with insecticide.

**(e) Commentary**

You will see from Section B on contract and tort that a social landlord's duties to its staff, tenants and others are extensive. As a result, its liabilities are potentially quite significant. Also, if social landlords fail to appreciate or fulfil their duties, it can be expensive both in terms of remedial work and compensation. Well-organised local authorities and housing associations will plan to eliminate such liabilities by putting good working practices into place, including awareness and other training. Obviously, maintenance and repair programmes will do much to minimise disrepair, and effective management strategies should help to reduce anti-social problems and associated claims by tenants and other people.

## Summary

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1. Statute and common law impose contractual and tortious duties on social landlords, in respect of their both employees and their tenants.
2. The doctrine of vicarious liability means that an employer is responsible for the actions and acts of employees committed during their employment. However, in a contractual situation, the employer is only liable if the employee has authority to enter a contract on behalf of the employer.
3. Employers' common law duty relating to negligence requires them to take reasonable care of their employees by ensuring that staff are competent, that there is safe plant and equipment, and a safe system of work.
4. Employers and employees' unawareness of contractual principles and tortious duty of care responsibilities can result in liability to tenants for carrying out remedial work and compensation.



## C.Tenancies: Social Landlords' Powers And Duties

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In this section, we will look at the law by examining:

- where social landlords get their powers and duties from;
- how the relationship between social landlords and their tenants is regulated; and
- the supervision of social landlords in carrying out their powers.

Then there will be an explanation of the differences between ownership and occupation of land and dwellings, before introducing a study of the different types of tenancy and the respective rights and duties of social landlords and tenants.

### 1. Sources of Social Landlords' Powers and Duties

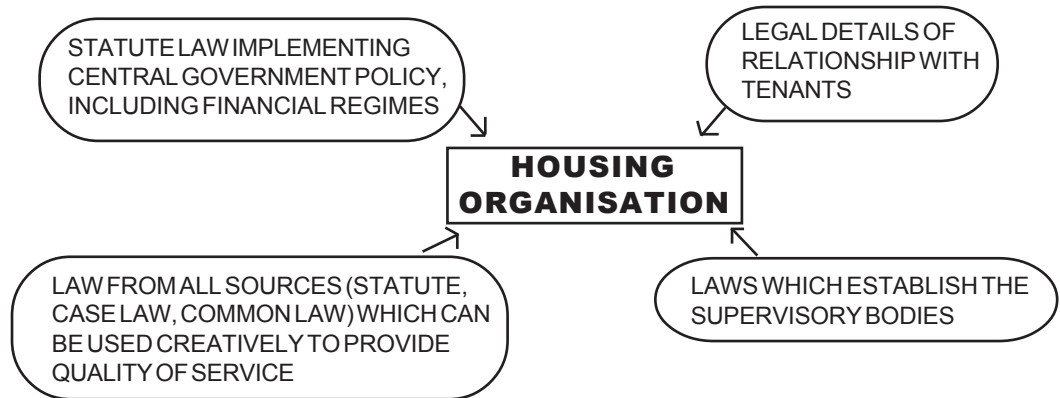
#### 1.1 Introduction

You will remember that in Block HL.101 (*see B.3*) we learnt how Parliament was supreme and passed Acts of Parliament, such as the **Housing Act 1985**. Such Acts are called **primary legislation**. We also saw that Parliament can delegate its powers to Ministers and other public bodies, such as local authorities and the Housing Corporation. The resultant regulations and controls are called **secondary legislation**.

To have a clear understanding of the framework of social landlords' powers and duties, let us pause and recap on a number of other points agreed in Block HL.101, namely:

- Social landlords include both the local authorities, who are the statutory housing authorities, and housing associations;
- Housing policy is implemented through statute law (*both primary and secondary legislation*);
- It is the combination of statute law and the common law principles, established by case law (*see Block HL.101 B.4*), that determine the powers and duties of social landlords; and
- Social landlords are supervised by either the courts (*see Block HL.101 section D*) or organisations, such as the Housing Corporation, established by statute (*see Block HL.101 D.3.2*).

When combined, the various legal influences have a significant effect on the strategies, policies, activities and management of all social landlords. A diagram showing how the law influences social landlords, in both a restrictive and positive way, would look something like this.



## 1.2 Local authorities

Local authorities are corporations (s.22 of the **Local Government Act 1972**), which means that they have a legal identity which is distinct from their members. Local authorities were both created and given their powers by Acts of Parliament.

By s.111 of the **Local Government Act 1972**, local authorities are empowered to do “*anything (whether or not involving the expenditure, borrowing or lending of money, or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.*”

So, central government gives local authorities extensive powers, but these must be used to ‘*discharge any of their functions*’, and all of these functions are laid down by statute.

There are also various statutes which enable local authorities to make their own by-laws (*secondary legislation*) on a wide range of specific issues. However, they are only effective when confirmed by the appropriate Government Minister. If someone breaks a by-law, they can be prosecuted by the local authority or by any individual, and fined if convicted in the magistrates’ court, *e.g. Hull City Council has pioneered the use of by-laws as part of their strategy to deal with neighbour disputes, for example, by having restrictions on playing loud music and preventing the use of open spaces under flats to repair cars. (Inside Housing, 15.7.94.)*

Looking more particularly at the power to rent out housing, s.17 of the **Housing Act 1985** enables a local authority to acquire land and houses. Also, s.21 of the Act places the '*general management, regulation and control*' of municipal housing in the power of the local authority.

If you look in the Housing Act 1985, you will see that ss.8 and 9 state that:

#### **Section 8**

- (1) Every local housing authority shall consider housing conditions in their district and the needs of the district with respect to the provision of further housing accommodation.
- (2) For that purpose the authority shall review any information which has been brought to their notice, including in particular information brought to their notice as a result of inspections and surveys carried out under s.605 (periodical review of housing conditions).

#### **Section 9**

- (1) A local housing authority may provide housing accommodation
  - (a) by erecting houses, or converting buildings into houses, on land acquired by them for the purposes of this Part, or
  - (b) by acquiring houses.
- (2) The authority may alter, enlarge, repair or improve a house so erected, converted or acquired.
- (3) These powers may equally be exercised in relation to land acquired for the purpose
  - (a) of disposing of houses provided, or to be provided, on the land, or
  - (b) of disposing of the land to a person who intends to provide housing accommodation on it.
- (4) A local housing authority may not under this Part provide a cottage with a garden of more than one acre.

But ss.8 and 9 must be read with an amendment introduced by s.161 of the **Local Government and Housing Act 1989**.

### **Section 161**

- (1) At the end of s.9 of the Housing Act 1985 (provision of housing accommodation) there shall be added the following subsection -

“(5) Nothing in this Act shall be taken to require  
“(or to have at any required) a local housing authority itself to acquire or hold any houses or other land for the purposes of this Part.”

- (2) At the end of s.2 of the Housing (Scotland) Act 1987 (powers of local authorities to provide housing accommodation) there shall be added the following subsection -

“(6) Nothing in this Act shall be taken to require (or to have at any time required) a local authority itself to acquire or hold any houses or other land for the purposes of this Part.”

**Self Test 4**

1. *The distinction between a power and a duty is important in law.*

(a) *Does s.8 of the Housing Act 1985 describe a power or a duty?*

(b) *What about s.9? Does it describe a power or a duty?*

(c) *How would you describe the effect of s.161 of the Local Government and Housing Act 1989?*

*Now turn to the Answers at the end of the Block.*

### 1.3 Housing Associations

You will recall from Block HL.101 (*see D.3*) that there are a variety of types of housing association, including societies, trusts, co-operatives and companies. This is because they are defined by their functions and not by their legal structure. However, they are all voluntary organisations and run by management committees, which make all decisions.

In legal terms, housing associations are independent and a type of private landlord. They do not need central government to give them the power to provide or manage rented housing. As such, they are in the same position as private individuals who can do as they wish with their own property. However, housing associations are viewed as social landlords because, since the **Housing Act 1974**, they have been eligible for public funding through the Housing Corporation. As a result, some fifty per cent of housing associations are registered with the Housing Corporation and receive Housing Association Grant.

### 1.4 Regulation of the relationship between landlords and tenants

Shortly we shall consider the requirements of the different forms of tenancy that apply within the local authority and housing association housing sectors. However, all new tenancies are now required to be:

#### (a) Local authority tenancies:

- Introductory tenancy (an optional tenancy for 12 months) (*Housing Act 1996*), or
- Secure tenancy (*Housing Act 1985*).

#### (b) Housing Association tenancies:

- Assured tenancy (*Housing Act 1988, as amended by the Housing Act 1996*).
- Assured shorthold tenancy (*Housing Act 1988, as amended by the Housing Act 1996*).

You will be interested to learn that, until the **Housing Act 1980**, local authority tenants used to have no statutory security of tenure. This contrasted with tenants of private landlords, including housing associations, who had been protected for many years through various Rent Acts (*Housing association tenancies granted prior to 1988, although protected by the Rent Act 1977, were also only granted security of tenure by the provisions of the Housing Act 1980*).

From the above, you will see that it is statute law which has been used to create particular types of tenancy. Each form of tenancy has its own rules as to the rights and obligations of tenants and landlords, as well as procedures to be followed when the tenancy is ended.

In the case of local authorities, statute law gives them the power to rent out and manage residential accommodation, and also lays down the rules which must be followed in their relationship with their tenants.

In contrast, although housing associations do not get their power to rent out and manage residential accommodation from statute law, central government *does* regulate their relationship with their tenants, through statute law. The statutory provisions define minimum standards that must be complied with. However, as we shall see shortly, many social landlords have given their tenants greater rights through their individual tenancy agreements.

## 1.5 Supervision of social landlords' powers and duties

### (a) Introduction

Local authorities are democratically elected bodies. As a result, dissatisfied tenants can, in theory, vote out councillors. In the case of housing associations, tenant representatives on the management committees can influence the way in which the housing association functions. However, the main forms of supervision come from outside the social landlords' organisations.

### (b) Supervision of local authorities' powers and duties

As local authorities have been established by statute, central government is able to control and change their functions through passing legislation. Statutes sometimes require local authorities to obtain the consent of a government minister to their proposed actions, or they can give a minister power to step in and force the local authority to comply with the law. For example, ss.164 -166 of the **Housing Act 1985** enable the government to enforce the Right to Buy of local authority properties. The breadth of statutory control over local authorities is wide and includes financial control. For example, the **Local Government and Housing Act 1989** introduced the financial reform of '*ring-fencing*' Housing Revenue Accounts. This meant that the accounts could only be used for housing purposes and not be supplemented with funds from the General Rate Fund.

Central government exercises much of its control through

secondary legislation in the form of statutory instruments and regulations (*see Block HL.101 B.3*). It is statutes which grant powers to ministers to issue regulations that are applicable to local authorities.

**(c) Supervision of housing associations' powers and duties**

Another example of the government's delegated powers is that granted to the Housing Corporation under the provisions of the **Housing Associations Act 1985**. Section 76 of the Act requires the Housing Corporation to act in accordance with directions given by the Secretary of State. One of the Corporation's duties, as required by s.75, is to supervise registered housing associations. You will also remember that three other bodies exercise regulatory control over housing associations. They are the Registrar of Friendly Societies, the Charity Commissioners, and the Registrar of Companies (*see Block HL.101 D.3.b*)



### **Self Test 5**

1. *What is the legal basis for local housing authorities' powers to act, and what defines their functions to be carried out?*
2. *Local authorities are corporations. What does that mean?*
3. *How are local authorities empowered to make by-laws?*
4. *Housing associations' powers are granted by statute, TRUE? or FALSE?*
5. *What are the present various legal forms of tenancy for tenants of social landlords?*
6. *When were these statutory tenancies introduced, and by which Act of Parliament?*
7. *Which Act introduced secure tenancies for local authority tenants?*

*Now turn to the Answers at the end of the Block.*

## Summary

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1. Local authorities, who are corporations and have a separate legal identity from elected members, are established by Acts of Parliament. Their duties and functions are also established by primary and secondary legislation.
2. Housing associations are defined by their function and not by their legal structure. They are voluntary organisations and their organisational structure can take several forms, including charities, companies and trusts.
3. It is legislation that defines the different forms of tenancy, *e.g. secure and introductory tenancies, assured and assured shorthold tenancies, and fair rent tenancies*. Each form of tenancy has its own rules as to the rights and duties of landlords and tenants.
4. Central government supervises local housing authorities through legislative approval mechanisms, regulations, annual reporting, and measures of performance.
5. Housing associations are regulated, variously, by the Housing Corporation, Registrar of Friendly Societies, Registrar of Companies, and the Charity Commissioners.

## 2. Legal Estates in Land Including Leasehold

### 2.1 Introduction

Social landlords must own property to be able to rent it to tenants. As a result, it is important to understand how the use of land, which includes dwellings and other buildings has implications for landlords as well as for owner-occupiers. We shall begin by looking at the nature of ownership as a legal concept. We shall then consider the differences between freehold and leasehold, and conclude with a review of the rights and obligations of owners. *(See sub-section 2.9 for the law in Scotland.)*

### 2.2 The nature of ownership

The laws which relate to the ownership of property (*meaning land, and the buildings on it*) are somewhat complex and have their origins in feudal, medieval England. Land has an elevated status in England and Wales because, theoretically, all land belongs to the Crown. It stems from 1066 when William the Conqueror claimed ownership of all land by right of conquest. At that time, land was a source of power rather than of income. William and subsequent monarchs parcelled out land to loyal supporters, such as the barons, in return for services and men for the Army. In turn, the barons sub-granted their land. As a result, a complex doctrine of feudal land tenure developed. The land became further complicated by the creation of various trusts, which we do not need to consider here.

Fortunately, a radical restructuring and simplification of the law of land was achieved in 1925 by the **Law of Property Act** and other complementary legislation. At this time, land registration was also introduced. This legislation simplified legal interests in land. The only two legal estates that now exist in land are the **freehold** estate and the **leasehold** estate.

### 2.3 Characteristics of freehold and leasehold estates

The legal definitions of the two types of estate are:

- i. The **fee simple absolute in possession** estate (*commonly called freehold*)

*Note: 'fee' means an estate of inheritance, and 'simple' means not restricted to a particular class of heirs.*

This is an estate created for an uncertain duration. In effect, a legal freehold lasts virtually forever.

- ii. The **term of years absolute** estate (*commonly called leasehold*).

This is an estate created for a fixed and definite duration.

In general, for a lease to confer ownership, rather than a tenancy, it must be created for a period of more than 21 years.

So, any property which is owned by an occupier or landlord may be either freehold or leasehold, depending on the period of entitlement to occupy the land. The key difference between the two estates is, therefore, whether ownership lasts, effectively, forever, or for a shorter, fixed period of time.

## 2.4 Ground rent

The owner of leasehold property must pay a rent (*called ground rent*) to the freeholder, who has the right to the land once the fixed period ends. In most other respects, there is a very little difference between the estates. Most leasehold houses are held on very long leases, of 99 or even 999, years. The purchase price will, therefore, be similar to the price of a similar freehold property unless the lease is close to expiry. However, under some circumstances, the leaseholder has a right to purchase the freehold. We shall examine this in detail shortly (see 2.7).

## 2.5 Creation of ownership

How is the ownership of the property or estate, as it is called above, created? Also, how do we know who the legal owner is?

*The legal owner is the person to whom the property was conveyed by a deed. The title (ownership or right to occupy) to the property is vested in the legal owner, by the deed which conveyed it.*

Now let us examine the terms used in this definition, to clarify what they mean.

- A **deed** is simply the document which must be used to create and transfer a legal estate. You will remember that earlier in this Block we identified a deed as a special form of contract (*see B.1.2 (b)*). Deeds used to be 'sealed' by the impression of a person's seal into wax to indicate its authenticity. This was necessary in the days when few could write and signatures could be little more than a cross. Nowadays, a red paper seal is used to symbolise the 'sealing' of the deed document.
- Historically ownership was always **conveyed**. This is why the process of transferring property is referred to as conveyancing. However, since land registration became compulsory, property, strictly speaking, should be spoken of as being **transferred** by the deed document. The deed states exactly which property is being transferred from the old owner to the new freehold or leasehold owner.

The deed is frequently referred to as the title deed, which indicates ownership.

## Activity 2

*This is a simple and fictitious example of the document which conveys the title to an estate to a new owner. Read it carefully, then answer the questions which follow.*

This conveyance is made the 9th day of July 2000 between MARY JONES of 6 Fallow Street, Durham City (hereinafter called the vendor) of the one part, and JONATHAN MILLS of Swift House, Longstone (hereinafter called the purchaser) of the other part.

Whereas the vendor is seised of the hereditaments intended to be hereby conveyed for an estate in fee simple absolute in possession free from encumbrances and has agreed to sell the same to the purchaser for the sum of £185,000.

Now this deed witnesseth that in consideration of the sum of £185,000 paid to the vendor by the purchaser (the receipt of which sum the vendor hereby acknowledges) the vendor as beneficial owner hereby conveys unto the purchaser

All the hereditaments known as 6 Fallow Street, Durham City, to hold unto the purchaser in fee simple.

In witness whereof the said parties hereto have hereunto set their respective hands and seals the day and year written above.

Signed sealed and delivered by the vendor in the presence of Peter Morrison, Solicitor.

Mary Jones (signed)                      (Seal placed here)

*When you have read the title deed (as best you can because the legal language used is a little strange in parts) try to determine:*

- (a) *Who has sold the property.*
- (b) *Who has bought the property.*
- (c) *Which property has been conveyed.*
- (d) *Whether this is a freehold or leasehold estate.*

**Time allocation: 10 minutes**

**Activity 2 - Response**

*You will have noted the unusual legal words. Some people call this legal jargon, which is always difficult for lay persons to follow. This is not from a desire to mystify, but rather because words have precise meanings in law. As a result, unless the correct term is used, legal difficulties could arise.*

*In the example above, each phrase has a precise meaning. For example, we are told that the 'hereditaments' (property and land) are 'free from encumbrances' (which means there is no mortgage, or other legal charge on the property).*

*We hope that, despite these difficulties, you were able to work out the answers to the questions above. The seller, called the **vendor**, is Mary Jones. The buyer, called the **purchaser**, is Jonathan Mills. The property conveyed is 6 Fallow Street, Durham City. Finally, the estate conveyed is in '**fee simple absolute**', which means that it is a freehold estate.*

## Summary

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1. The two forms of land ownership in English and Welsh law are freehold and estates.
2. A freehold estate is created for an uncertain duration.
3. A leasehold estate is created for a fixed and definite duration (over 21 years).
4. Leaseholders pay a ground rent to the freeholder.
5. Ownership is transferred by a deed.
6. Deeds convey the title of the estate to the new owner.
7. These title deeds prove ownership.

## 2.6 Establishing ownership

Until the creation of the **Land Registry**, proof of ownership could only be established by examining all of the past title deeds relating to the property. This meant that you would have to be sure that the title to the property had always been properly conveyed each time to the next owner. If not, successive owners would not have had the right to sell to the next buyer. Since the property may have changed hands many times, this was, potentially, an enormously time-consuming task. It also required the services of experienced solicitors, who could understand the language of the various deeds.

Nowadays, establishing ownership is becoming much easier, due to the creation of a central register to record ownership. When a property is now sold, the title is registered by the Land Registry. This means that future buyers or, more usually, their solicitors, need simply to consult the register kept by the Land Registry.

The register records information about:

- the owner;
- the property owned (*including a plan of the site boundaries*);
- in the case of leasehold properties, it also includes the lessor's name (*the person holding the freehold and to the ground rent is payable*); and
- any legal charges on the property (*such as a mortgage, which must be discharged before the property may be transferred*).

We shall now look at the circumstances in which a leasehold property can be turned into a freehold property.

## 2.7 Leaseholder's right to extend the lease or purchase the freehold

### (a) Leasehold Reform Act 1967

Until 1967, when a lease expired the land automatically reverted to the freeholder. Any buildings on the site also became the freeholder's property. Not surprisingly, this made selling a property with a short lease very difficult. Building Societies were also reluctant to lend, since such properties offered limited security for the loan.

However, Parliament passed the **Leasehold Reform Act 1967**. The Act gave the owners of certain properties the right to extend the lease by a further 50 years, or buy their freehold. However, there are certain conditions which must be met and the main ones are:



- The property must be a house, not a flat (*but see 2.9 below*). (*This is because major legal problems could arise about repairing common parts, such as the roof, lift, and staircase. Essentially, it was considered that it would be difficult to force anyone else to contribute to essential costs*).
- The lease must have been for more than 21 years. (*You will remember that only a long lease confers ownership rather than a tenancy*).
- The ground rent must be low. (*based on not being more than two thirds of the rateable value*).

Note: The low rent test has since been amended by s.106 of the **Housing Act 1996**. Now long leaseholders can apply for an extension of their lease or acquisition of the freehold even though they fail the low rent test.

- The property must have been the only or main residence of the owner for at least three of the previous 10 years.

However, the right to buy the freehold is not the same as being able to afford to buy it. The price which the landlord wants for the freehold may be too high. Usually, it will be possible to negotiate through the landlord's agents (*often, estate agents*), who collect the ground rents for the freeholder. If agreement cannot be reached, then the value may be referred to a Land Tribunal which has the power to fix the price. In general, the shorter the time to expiry of the lease the more expensive it will be. So leaseholders are advised to buy as soon as possible after occupation of the property.

#### **(b) Leasehold Reform, Housing and Urban Development Act 1993**

The rights of leaseholders were extended by the **Leasehold Reform, Housing and Urban Development Act 1993** and include:

- a collective right with other leaseholders to purchase the freehold interest in a block of flats; and
- the individual right to purchase a new 90 year lease of a flat.

Tenants must occupy two thirds of the flats in the block, and they must have long leases held at low rent. They must also have occupied the flat as their principal residence for the last 12 months or for periods of up to three years in the last 10 years. The right can be enforced through the County Court, and disputes on price may be referred to the Leasehold Valuation Tribunal.

## 2.8 Shared ownership leases

Shared ownership schemes are based on long leaseholds. They were another low-cost home-ownership policy initiative made available to people who could not afford the full market price of a dwelling. Various schemes have been introduced over time in both the local authority and housing association sectors (*under the various provisions of Housing Act 1980, Housing and Building Control Act 1984, and Leasehold Reform, Housing and Urban Development Act 1993*).

Essentially, the tenant of a shared ownership dwelling buys part of the equity scheme by paying a premium covering a percentage value of the property (*value*) usually up to 75%. In return, they are granted a long lease on the property, usually for 99 years. For schemes funded by the Housing Corporation, the share must be at least 25%. The balance of the cost is met by a housing association to whom rent is paid.

There are three forms of shared ownership scheme you should be aware of, namely:

### *i. Staircasing schemes*

All publicly-funded shared ownership schemes must now be a staircasing scheme. It provides for the tenant to buy further shares up to 100%. At this stage, the tenant will become the owner-occupier. However, if a property is sold before the tenant has purchased 100% of the equity, the housing association is paid the value of its share.

### *ii. Non-staircasing schemes*

Under this scheme, the equity remains fixed. However, the current policy no longer permits grant aid for this type of scheme.

### *iii. Leasehold schemes for the elderly*

This is a special type of scheme where, typically, purchasers buy a 75% share in the property in sheltered accommodation. Again, a long lease is granted. If a tenant leaves, the balance of the share outstanding is repaid.

## 2.9 The law in Scotland

### **(a) Introduction**

Scotland's legal system evolved quite separately from that of England and Wales. As a result, there are differences in approach to legal issues. However, most of the differences do not concern us when considering this Block. This is because they relate to the tenure of owner occupation which is not a subject considered in this Block or the Module. Nevertheless, you will remember that

early in this sub-section we considered aspects of legal estates in land in England and Wales (*see C2.1 to 2.6*). In view of this, we thought it would be helpful to briefly describe the situation in Scotland

### **(b) Ownership and owner occupation**

The system of property ownership in Scotland is basically feudal, like that in England and Wales. Originally, all land was owned by the king who granted areas of land to nobles, who subsequently granted or **feued** it to others. There is no limit to the number of times a piece of land may be feued. However, in each case, the person who grants the feu is known as the **superior** and the person to who it is feued is the **vassal** or **feuar**. The way the system operates can be compared to a tree with the king as the trunk and an increasing number of boughs, branches, stems and twigs. The feuar, who is at the end, is the person who actually possesses the land.

The superior has no right to occupy the land, but may impose conditions upon its use. If the feuar (*vassal*) sells the land, the buyer then becomes the feuar. In the past, the feuar, in return for the land, gave military service to the superior. This has now been replaced by a payment, known as *feu duty*. In 1974, the **Land Tenure Reform (Scotland) Act** stopped the creation of new feu duties. It also made it possible for owner-occupiers to redeem (*pay off*) their feu duty. This was done by making a one-off payment and then no longer being obliged to make further payments. The Act also requires that the feu duty is redeemed on all future property sales. As a result, feu duty is becoming less common, but the superior's right to impose conditions on the feuar remains.

The superior's right and the imposed conditions was an early form of planning in many Scottish towns, e.g. *conditions restricted the numbers of dwellings on a sold plot of land, as well as the height of property, the type of materials used, and how boundaries were to be constructed*.

### **(c) Establishing ownership and registration of title**

In medieval times, the transfer of land from one person to another was marked by a ceremony in the presence of witnesses. However, by the beginning of the 17th century, such ceremonies were also being marked by the drawing up of a legal document by a notary (*a person authorised to perform certain legal functions such as preparing and verifying deeds*). This gave increased security to ownership of property, and the documents were known as **instruments of sasine** (*the Scottish term 'sasine' means 'seizing'*).

In 1617, an Act of Parliament set up the **Registrar of Sasines**, after which all transfers of property were recorded. The registrar provided for the registration of **title deeds**. This led in 1979 to an Act of Parliament which set up the **Land Register of Scotland**. Now, as in England and Wales, all property transfers must be registered, and the State guarantees the validity of the title. As a result, the uncertainty of land transfer has been removed in the whole of Britain.

As in England and Wales, the property rights of owners may be restricted by:

- **statute** (*e.g. planning and building regulation control over any development*);
- the **common law** (*e.g. an owner must not use the land in such a way to cause discomfort to a neighbour or damage to the neighbour's property, which would amount to nuisance*); or
- **agreement** relating to restrictions on the use of land. In Scotland, these are called **servitudes** and in England and Wales they are called **covenants**. (*e.g. a positive servitude/covenant may require an owner to permit right of way over his or her land to an adjacent landowner to permit access to their land. A negative servitude/covenant could restrict one owner from building in such a way that it would otherwise restrict a neighbour's light or view.*)

### **Self Test 6**

1. *There are only two legal estates in land. What are they?*
  
  
  
  
  
  
  
  
  
  
2. *For a leasehold to create ownership rather than a tenancy, what must be the minimum period of time?*
  
  
  
  
  
  
  
  
  
  
3. *How is ownership of property recorded, and how can you check on the ownership?*
  
  
  
  
  
  
  
  
  
  
4. *What information is recorded on property?*
  
  
  
  
  
  
  
  
  
  
5. *Long leaseholders in blocks of flats have statutory rights to:*
  - (a) *Collectively purchase the freehold of the block:  
TRUE? or FALSE?*
  
  - (b) *Individually purchase a new lease:  
TRUE? or FALSE?*

*Now turn to the Answers at the end of the Block.*

## Summary

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1. Ownership of land in England, Scotland and Wales is registered (on transfer to a new owner) at the Land Registry.
2. The register includes information about lessors and legal interests in the (such as mortgages).
3. The ownership of unregistered land must still be proved by examination of all of the title deeds.
4. Under certain conditions, leaseholders have a right to purchase the freehold.
5. Leaseholders usually also have the right to extend their lease.
6. Shared ownership leases may be 'staircased', which permits further shares in the property to be purchased, or fixed share non-staircasing schemes such as leasehold schemes for the elderly).

### 3. Residential Tenancies Distinguished From Licences

#### 3.1 Introduction

In this and subsequent sections dealing with rented tenures, you will develop an insight into the main ways in which the legal framework shapes the nature of customer and service relationships. It is essential for housing managers to gain this understanding if they are to offer services which observe the rights, as well as meet the needs, of customers. It is also necessary for housing managers to be aware of their employers' main rights as housing providers.

First, it is important to be able to distinguish a tenancy from a licence.

#### 3.2 What constitutes a tenancy?

##### *(a) Residential tenancies*

A housing tenancy permits someone to occupy a dwelling owned by someone else, usually in return for a payment called rent. A person may occupy a dwelling without any rent being payable. This may occur where a person's employment, such as a school caretaker, may be provided with rent-free accommodation. However, such an arrangement is likely to be a licence.

There are several forms of tenancy, but the most common are:

- **Fixed term tenancies**, which runs for a fixed period of time, whether days, months or years; and
- **Periodic tenancies**, which run automatically from period to period, such as a week-to-week or month-to-month until determined by notice. This is the normal form of tenancy used by social landlords.

Most customers in rented tenures have rights of occupation which are, collectively, residential tenancies. Section 79 of the **Housing Act 1985**, in referring to secure tenancies, states that the property must be -

*"... a dwelling house let as a separate dwelling ... ."*

We need to understand the significance of each term in that phrase.

- A '**dwelling house**' can be almost any sort of (immobile) home. It may be a house or flat. What is vital is that there are premises of some description.
- '**Let**' means it must be the subject of a lease, for residential use. *You will remember from sub-section C.2 that we considered the differences between the two legal estates of freehold and leasehold. A leasehold was described as 'a term of years absolute', which means an estate created for a period of over 21 years. However, when the period is for a shorter period, we speak of occupation in terms of being a tenancy.*

There must also be a **landlord** and a **tenant**. You cannot let a property to yourself

- '**Separate**' relates to exclusive possession. *Essentially, it is a question of whether or not the tenant has to share the accommodation with other occupiers who are not joint tenants. If so, there will not be exclusive possession.*

#### **(b) Distinguishing between a lease and a licence**

There is a significant difference between a licence and a lease, inasmuch as:

- a **licence** only gives permission to occupy; whereas
- a **lease** confers an interest in land and a right of exclusive possession, which is enforceable against anyone. *(The test of exclusive possession was determined in the case of Street v Mountford [1985]).*

This means that, with a lease, a tenant has security of tenure except on permitted grounds for possession by the landlord. However, a licence offers much less security and it is easier to evict a licensee. For this reason, private landlords have traditionally preferred to grant licences so as to avoid the protection provided by Rent Acts. In general, however, the following categories are likely to have licences:

- Hostel accommodation *(e.g. for young people, victims of domestic violence, ex-prisoners, YMCA members, etc.)*
- Residential homes *(e.g. for the elderly).*
- Accommodation that is provided in order for someone to carry out their employment duties *(e.g. caretakers, resident housekeepers, pub managers, etc.).*



- Accommodation where essential facilities are shared with the landlord or others who are not joint tenants (e.g. sharing a kitchen or a living room).
- Accommodation where meals are provided (as in hotels).

While we might commonly refer to some of the above categories as lodgers, the term has no significance in law. Lodgers are licensees.

### **Activity 3**

*Imagine that you are employed in a Housing Aid Centre. You have been given the following cases to examine. Using the information given above, try to determine whether the cases involve a licensee or a tenant.*

#### **Case 1**

*Mark Brown has recently left a children's home. He was fortunate to find temporary accommodation at a purpose built hostel for young people like himself*

#### **Case 2**

*Shirley Smith is a single parent, who has been placed in temporary bed and breakfast accommodation by her local authority.*

#### **Case 3**

*The MacDonald family were made homeless following possession of their home by the building society. They were accepted as homeless by the local authority and given a permanent dwelling from the housing waiting list.*

#### **Case 4**

*Janet Cohen is a housekeeper for a wealthy family. She has her own self-contained apartment, within the family dwelling.*

#### **Case 5**

*Winston Peak is working away from home. He lodges with Yasmin Shah during the week, and travels home each weekend. Ms Shah provides his main meals, and sometimes does his laundry.*

**Time allocation: 10 minutes**

### **Activity 3 - Response**

*It is likely that only the MacDonald family cases would involve a tenancy. All of the others appear to have circumstances suggesting that they will be licensees. However, it is important to reiterate that the law relating to this issue can be complex and legal advice may need to be sought for specific cases.*

*We shall now examine the legal framework which applies to social housing tenures. You will find that different types of residential tenancy may apply. Also, that tenants of the different tenancies may have different legal rights, as well as differences in security of the tenure. They will be examined under each tenure type. However, before we progress on to public sector tenancies we would like you to carry out the following Self Test relating to leases, tenancies and licences.*

### **Self Test 7**

1. *What are the two most common forms of tenancy?*
  
  
  
  
  
  
  
  
  
  
2. *What is the difference between a licence and a lease?*
  
  
  
  
  
  
  
  
  
  
3. *What test for a lease is applied by the courts, and from which case did the legal principle arise?*
  
  
  
  
  
  
  
  
  
  
4. *Why have private landlords generally preferred to grant a licence rather than a lease?*

*Now turn to the Answers at the end of the Block.*

## 4. Secure Tenancies In The Public Sector

### 4.1 Introduction

Prior to 1980, the tenants of public sector landlords were, effectively, licensees. They held a licence rather than a tenancy, as described above. This meant that they had very limited rights compared to private sector tenants.

The **Housing Act 1980** addressed this by creating secure tenancies for most public sector tenants, with similar rights to those in private tenures. The exceptions to this are broadly those identified in our list of probable licensees (*see C3.2 (b)*). The secure tenancy provisions were later consolidated into the **Housing Act 1985**.

Secure tenancies apply to nearly all tenants of:

- Local authorities;
- Housing Action Trusts (*where housing was transferred from local authorities*);
- Housing Co-operatives (*except fully mutual co-operatives*).

Secure tenancies also apply to most tenancies which began before 15 January 1989, from:

- Housing Associations; and
- Charitable Housing Trusts.

In the case of these last two, their secure tenancies are governed by the **Rent Act 1977**, which means that rents are **fair rents** approved by the rent officer. (*We shall be looking at this in more detail when we examine housing association tenancies, in the next section*). The Rent Act does not apply to the first three types of landlord listed above.

Instead of secure tenancies, local authorities and Housing Action Trusts may choose to adopt an introductory tenancy scheme (*see C5*). This means that for the first 12 months the tenant does not have security of tenure. The purpose is to ensure that tenants who behave in an anti-social way do not become secure tenants. The introductory tenant does not have the right to buy or to sub-let the premises, but does have the right to repair (*all these rights are considered below*).

Customers with secure tenancies now have a very wide range of rights: we shall now examine these in some detail.

## 4.2 The rights of secure tenants

### (a) Security of tenure

The landlord may not evict a secure tenant without very good reason. We shall be looking at these circumstances shortly when we examine the landlord's **grounds for possession**. Basically, so long as the conditions of the tenancy agreement (*examined below*) are met, the secure tenant has a right to "quiet enjoyment" of the property.

There are also exceptions to the right of secure tenancies. These include:

- premises occupied in connection with employment;
- land let temporarily pending development;
- accommodation provided for homeless people;
- temporary accommodation provided while works are carried out

The tenant also has the right to:

- Apply to transfer to another property, even within another local authority. *However, the opportunities for transfer are diminishing, because the stock of homes is being reduced by the Right to Buy policy (described below).*
- Exchange homes with another secure tenant, with the landlord's approval. *This can only be withheld if there are good reasons, such as the home is too large for the proposed new tenant.*
- Transfer of the tenancy, which is the right of succession. *This means that the tenancy may be transferred to another family member when the original tenant dies. This is commonly a surviving spouse, or a child living in the home. Generally, it will also apply to common law spouses.*
- Transfer the tenancy to a spouse, following divorce or separation.

### (b) The right to buy the property

Secure tenants have had a right to buy their home since 1980, though councils were able to sell to tenants prior to this if they wished to. However, this right does not apply to tenants of charitable housing associations and housing trusts, who have different rights which will be described in the section on housing associations, or to housing co-operatives.

- The right to buy applies to tenants who have occupied their home for over two years.
- They may buy either the freehold interest, or, in the case of flats, a lease of 125 years.
- Discounts, which are available on the capital value of the home, vary with the length of tenancy.

However, there is a maximum discount available dependent on the location of the dwelling in the country. There is also a **cost floor**, which means that the discount must not take the sale price below the total of the costs incurred on the property in the 10 years immediately prior to the application.

There is also a right to acquire property on a **Rent to Mortgage** scheme. This is for tenants not able to afford the purchase price. The scheme allows the tenant to pay the rent towards a share of the property, with a right to purchase the remainder at some future time. However tenants in receipt of housing benefit are excluded. The Rent to Mortgage scheme was introduced following the abolition of the Right to a Mortgage scheme by s.107 of the **Leasehold Reform, Housing and Development Act 1993**.

#### **Activity 4**

*Obtain a copy of the booklet **Your Right to Buy Your Home**, published by the then Department of the Environment (now the Department of Environment, Transport and the Regions) This is available from local authority housing offices, housing advice centres and Citizens Advice Bureaux, or can be obtained direct from the Office of the Deputy Prime Minister, Eland House, Bressenden Place, LONDON SW1E 5DU. Then answer the following questions:*

- (a) What is the maximum discount available on the purchase price of a Right To Buy property?*
- (b) For how many years would the tenancy have to have been held to obtain the maximum discount?*
- (c) How is the property valued?*

*continued...*

(d) *Are there normally any restrictions or conditions on reselling the property?*

(e) *What do the tenants have to do to apply to buy their home?*

(f) *How quickly must the tenants buy the property?*

***Time allocation: 15 minutes***

**Activity 4 - Response**

*The booklet is clearly laid out, so you should have had few problems completing this activity.*

- (a) The maximum discount is 60% for houses, and 70% for flats.*
- (b) The tenancy has to have been held for 30 or more years to qualify for the maximum discount.*
- (c) The landlord, usually the local authority, has the initial right to value the property. This is stated in the **s.125 Notice**. If the tenant does not agree with the valuation, then he or she may have the value determined by the district valuer (who is a civil servant). The district valuer's valuation is final.*
- (d) If the property is sold within three years of purchase, some of the discount must be repaid. This varies from all, if sold in the first year, to one third in the third year. Some rural landlords may have the right to insist that you sell to local people. This is covered in more detail below, under exceptions and limitations to the right to buy.*
- (e) Tenants complete a Right to Buy Claim Form, and send it to the landlord, who must normally confirm the right within four weeks.*
- (f) Tenants may defer completion for up to three years, if their income will not permit them to raise sufficient mortgage funds for the purchase. Otherwise, there are rules about the time periods within which each stage must progress. For example, the **s.125 Notice**, which gives the landlord's valuation, must be sent within eight weeks of the confirmation that the tenant has the right to buy (12 weeks for a leasehold flat).*

*i. Exceptions and limitations to the right to buy*

Since the **1988 Housing Act**, the only public sector occupants who do not have the right to buy are those in sheltered accommodation. This means that a social service or special facilities must be provided to assist the occupants. So, property constructed especially for certain groups, such as the elderly or the disabled, may now be purchased by the tenants.

There are also restrictions on buyers of homes in a National Park or in an area designated as being of "outstanding natural beauty". The local authority has the right to insist on a covenant (*an agreement that binds the present and subsequent owners of the dwelling*), which says that the buyer cannot:



- resell unless the local authority has given its consent. This must be given so long as the purchaser has lived or worked in the area for at least three years;
- create a tenancy or licence to let the property, unless the proposed tenant has lived or worked in the area for the previous three years. This requires the consent of the local authority.

Restrictions have also been introduced by the Government for Right-to-Buy tenants in 42 London and South East local authorities. An Order which came into force on 27 March 2003 has reduced the maximum discount level available to tenants in the defined authorities from £37,000 to £16,000 with the aim of helping to tackle severe housing shortages and homelessness.

**(c) The right to share the property**

Secure tenants have some rights to share their home with people who are not family members. These rights are to:

- Take in lodgers. This does not require the permission of the landlord. However, the tenant's action must be reasonable and not, for example, result in overcrowding.
- Sub-let part of the house, with the landlord's written approval. Note that this does not mean that the whole of the house may be sub-let. It applies to persons sharing the home with the tenant.

**Activity 5**

*Referring to 4.2.(b) i, why do you think these restrictions on Right to Buy sales in some rural areas were made?*

*(Think about who might buy homes in beautiful rural areas, and the problems this might create for local people).*

***Time allocation: 5 minutes***

**Activity 5 - Response**

*This restriction was clearly intended to ensure that the homes remain available for people who live and work locally, rather than for those seeking a holiday home. This is a major problem in some rural areas, where buyers of second homes bid up the prices of houses in the area. The effect of this is to exclude local people from purchasing, because they cannot afford the increased prices.*

**(d) The right to repair**

Generally, under a secure tenancy, the landlord must undertake most repairs and maintenance. This would cover maintaining the structure and outside of the property, as well as internal repairs.

Normally, a public sector landlord will have a system for reporting repairs and for arranging appointments. However, on occasions, there may be unreasonable delays in undertaking the repairs. In this situation, the tenants have a right to get the repairs done themselves. Since 1985, there has been a **Secure Tenants (Right to Repair) Scheme** for local authorities. The current scheme allows the tenant to require the landlord to appoint a second contractor where the first does not carry out the necessary works within the specified times. There is then a right to compensation if there are further delays.

In extreme cases, the local authority can be taken to court by the tenant, under the statutory nuisance procedure. However, if the tenant loses the case, all costs, including those of the local authority, will have to be paid by the tenant.

**(e) The right to improve**

Improvements can be undertaken by the tenant only if the landlord agrees. Improvements include alterations, decorations, such as exterior painting, and additions including the fixing of satellite dishes and television or radio aerials. Most local authorities are likely, however, to adopt a sympathetic approach to a tenant's reasonable desire to improve their home.

If improvements are approved, the local authority may, if the tenancy is later terminated, agree to reimburse some of the cost to the tenant.

**(f) The right to be consulted**

Local authorities must consult tenants on important issues of housing management, such as the arrangements for major improvement schemes, or changes to important management rules. Many council landlords will, in practice, consult tenants about a much broader range of issues than these. Planned changes may, in future, require an expanded range of consultation measures.

### **Activity 6**

*Consultation procedures may take many different forms. Think about ways in which your organisation consults its customers, (whether or not it is a housing provider), and list them below:*

*Time allocation: 5 minutes*

**Activity 6 - Response**

*The list you compiled for Activity 6 will vary depending on the nature of your particular organisation. Some general examples might include:*

- *promoting the formation of tenants' associations, so that representatives can be elected to represent tenants' views;*
- *holding public meetings, where, for example, a number of different improvement options may be discussed with housing officers;*
- *distributing questionnaires or carrying out surveys to find out customers' views on specific issues; and*
- *having suggestion boxes or similar open access opportunities to comment on services.*

**(g) The right to a rent book (for weekly tenancies)**

This ensures that there is a clear record of payments, and it will be obvious to the tenant when rent payments are in arrears. We will see later that rent arrears constitute an important ground for a landlord gaining possession of the tenant's dwelling.

**(h) The right to information**

Public sector tenants have the right to various types of information from the housing landlord, including:

*i. An annual report on the management of the housing department.*

Local authorities must produce an annual report which covers:

- numbers and types of properties managed;
- average rent for a three bedroomed house;
- the amount received from the central government;
- how repairs are organised;
- rents collected compared to rents due;
- numbers of new tenants (including the proportions who were homeless);
- numbers of tenants housed temporarily;
- numbers of voids (*empty properties*), with explanations as to why and for how long these were empty;
- average time to process housing benefit claims;
- administrative costs; and
- numbers of staff and the salary bill.

It might also include:

- specific information about the performance of the organisation, such as the time taken to reply to correspondence. This might also include performance targets.
- organisational policies for dealing with problems affecting some tenants, such as harassment and straying dogs; and
- arrangements for special needs groups, such as people with disabilities.

### **Activity 7**

*We want you to stop at this point, and think about why local authorities have been required to provide annual reports for tenants. What is their purpose?*

*Note a few ideas here:*

***Time allocation: 5 minutes***

### Activity 7 - Response

*While there is no single answer to Activity 7, you may have suggested some or all of the points below. We think that annual reports are intended:*

- *To make local authorities more accountable to their customers. All of the information provided is indicative of how well they have been able to manage their housing stock. Whilst there may be good reasons for apparently poor performance in certain areas, it is up to the authority to provide those explanations.*
- *To enable comparisons to be made, both from one year to another and between different local authorities.*
- *To provide an incentive to local authorities to improve their performance over time.*
- *Encourage “open” consideration of authority policies affecting customers, for example on harassment. Customers may be encouraged to make suggestions for improvement.*
- *To show how efficiently a range of services, such as processing benefit claims, is being offered.*

#### ii. Access to personal files

This means that records kept by local authorities relating to their tenants may be viewed by tenants to ensure their accuracy. Under the **Data Protection Act 1998**, tenants can have access to their records and require that they be corrected or deleted as appropriate. Related to this, if a tenant claims housing benefit, they have a right to know how the entitlement was calculated. This helps the tenant to understand and check the amount awarded.

#### iii. Publication of allocation policies

This is intended to ensure that the allocation of properties is conducted fairly and openly. These policies are, perhaps, more obviously important to applicants than to existing tenants, though they should also cover the rules about **transfers** within the local authority. *(The right to transfer to another property has already been considered above).*

The rules must be available at council housing offices, and shortened versions should be available free of charge to applicants.

#### iv. Conditions of tenancy agreements

All tenants will have signed a tenancy agreement. We shall be examining these in some detail when we look at the obligations of tenants. However, the local authority must also publish the normal conditions contained in its tenancy agreements. This needs to be in easily readable terms to ensure that all tenants understand their rights and what is required of them.

### ***1. The right to transfer to another landlord***

You will recall that in sub-section 4.2 (a) we advised that tenants, under the **right to exchange**, have an individual right to transfer to another property, even with a different local authority. Until repealed by the **Housing Act 1996**, the Tenants' Choice provisions of **Part IV of the Housing Act 1988** allowed tenants to vote to collectively exercise a right to transfer to other landlords.

Now provisions for transferring local authority properties to another landlord may be made to:

- **Housing Action Trusts** under the provisions of **Part III of the Housing Act 1988**. (Only six Housing Action Trusts have been established at Hull, Liverpool, Sandwell, and the three London estates in Brent, Tower Hamlets and Waltham Forest).
- Approved registered social landlords under the provisions of **s.32 Housing Act 1985** and, if part of a programme of 500 or more dwellings, under **s.135 Leasehold Reform, Housing and Urban Development Act 1993**.

However, tenants must be consulted and vote on any transfer to a Housing Action Trust or Registered Social Landlord, who must be approved by the Housing Corporation or Housing for Wales. These registered landlords may be:

- a housing association
- a private landlord
- a tenants' organisation

To date, most transfers have been led by the local authority, in the belief that this would result in a better deal for tenants. In some cases, special housing associations have been created, to which the council stock was transferred. Some proposed transfers have, indeed, been rejected by tenants. Tenants also rejected transfer to the originally proposed Housing Trusts. The first local authority to sell off its entire stock of dwellings was Chiltern District Council in December 1988. Twelve years later, just over 70 local authorities had balloted their tenants and transferred all or part of their housing stock to registered social landlords.

## Summary

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### Rights of Secure Tenants

1. Security of tenure - including rights to transfer to another property, to exchange with another secure tenant, to succession, and to transfer on divorce or separation.
2. Right to buy the property at a discount (depending on length of tenancy), with just a few exceptions and limitations.
3. Right to share by taking lodgers or sub-letting part of the property (subject to landlord's approval).
4. Right to repair, under certain conditions.
5. Right to improve, subject to landlord's approval.
6. Right to be consulted on some issues.
7. Right to a rent book.
8. Rights to information, including:
  - an annual report;
  - access to personal files;
  - allocation policies;
  - conditions of tenancy agreement.
  - right to vote on whether to transfer to a new registered social landlord.



We have now discovered that secure tenants have a very wide range of rights. However, they also have obligations to their landlord service provider. We shall next examine these obligations and then consider the implications of failing to observe them.

#### **4.3 Obligations of secure tenants**

These may vary somewhat, depending on the precise form of the tenancy agreement. We shall be examining tenancy agreements shortly. However, most secure tenants have the following obligations.

##### ***(a) To pay rent and other charges***

This must be paid at the intervals required by the tenancy agreement. Most local authority and other secure tenancies will be periodic tenancies. This means that the letting is from week to week, or month to month. Accordingly, rent will be payable in each of these periods.

A failure to pay the rent may result in the loss of the secure tenancy (*Non-payment of rent is a ground for possession*).

Rents are set by the local authority, based on what it needs to cover its expenses and in relation to central government guidance on required or maximum increases. They are not subject to the Fair Rent legislation

Tenants are also responsible for the payment of their own Council Tax bills, as well as bills such as electricity, gas, and water charges.

##### ***(b) To take proper care of the property and not commit waste***

This is different from a requirement to repair which, generally, is the responsibility of the landlord. Tenants should take reasonable care of the property, which includes:

- ensuring that no one, family or guests, wilfully or negligently damages the dwelling;
- sweeping the chimneys or unblocking sinks, which result from everyday occupation;
- turning off the water if the property is left vacant for long periods in cold weather, so as to reduce the risk of burst pipes.

Not committing waste means that tenants should not cause the value of the property to be reduced, which is a matter for the courts to decide from the facts.

**(c) To permit inspection of the state of repair**

In order that landlords may fulfil their responsibilities of repair, they require access to properties to be able to determine what needs to be done. Such visits may only be made after making prior arrangements with tenants.

**(d) Not to cause a nuisance**

Tenants are required to be reasonably considerate towards their neighbours. However, it is up to the courts to decide whether the annoyance caused is serious enough to be considered a legal nuisance. For this to be the case, the annoyance would, generally, have to be persistent.

**(e) To comply with the other obligations of the tenancy agreement**

A tenancy agreement is the contract which is made between landlord and tenant prior to occupation, and it deals with the rights and obligations of both parties. As such, it determines the legal relationship between the housing provider and its customers.

Generally, most tenancy agreements cover very similar points but, inevitably, there will be some differences between those of different providers. As a result, it is essential that the precise agreement is examined in any particular case.

As you have already learned, the local authority must publish, separately, a list of the conditions of the tenancy agreement. Let us now examine an example of tenancy conditions.

**Activity 8**

*Read the conditions of the tenancy agreement which follows. This is taken from the Tenancy Conditions for Islington Borough Council, London, which appears in **Housing Management: A Guide to Quality and Creativity** by Anne Power.*

*As you read it, try to compile a brief list of:*

- *rights of tenants;*
- *obligations of tenants;*
- *rights of the landlord;*
- *obligations of the landlord.*

*You will find that some of these are stated explicitly, whereas others are implied in what is stated.*

*continued...*

*Think about how clearly each condition is described. Did you have difficulty understanding any particular part? Are you unclear about any of the provisions?*

*Time allocation: 45 minutes*

## **Tenancy conditions for Islington Borough Council, London**

### **1. Definitions, notices and permissions**

#### **1.1 DEFINITIONS**

In these conditions:

'You' refers to you as the tenant of Council premises.

*The tenant* refers, in the case of a joint tenancy, to the joint tenants jointly and individually.

*The Council* means the Council of the London Borough of Islington as your landlord.

*The premises* means the house, flat, room, maisonette, or other dwelling in which you live but includes the structure only if you have the tenancy of the whole of a house.

*The block* means the building in which the premises are situated but excludes any part which the Council does not own or have an obligation to repair under a lease. The term block is used in relation to flats, maisonettes and rooms only.

*The estate* means the estate (if any) in which the premises are situated (and which is named in the tenancy agreement).

*The common parts* means any part of the block or of the estate other than the premises to which the tenant, the tenant's household or visitors are permitted to go from time to time.

*The household* includes the tenant's family and other persons living with the tenant in the premises.

#### **1.2 NOTICES**

1.2/1 Where you have to give the Council written notice under any of these conditions, you must post or deliver it by hand, either to the Housing Department at its main office or to the local housing office shown on your rent card.

1.2/2 Where the Council has to give you written notice under any of these conditions this may be done either by handing it to you or by posting, or delivering it by hand to your premises, or your last known address.

#### **1.3 PERMISSIONS**

1.3/1 Some of the clauses in these conditions refer to the need for you to obtain the Council's permission. Such a permission may be subject to conditions which you must keep.

## **2. Security of tenure and termination of tenancy**

- (a) So long as the tenancy is a secure tenancy, (most tenancies usually remain so during the lifetime of the tenant) the Council may seek possession of the premises through the courts only on one or more of the grounds set out in Schedule 2 to the Housing Act 1985 and summarised in the Schedule to this agreement. Before going to court the Council must give you at least four weeks written notice.
- (b) The Council will not seize a tenant's belongings to pay off rent arrears without going through the courts.
- (c) If you wish to end your tenancy and leave the premises, you must give the Council at least four weeks written notice before you do so.

## **3. Council's duty to repair and maintain the premises**

### **3.1 COUNCIL'S OBLIGATIONS TO REPAIR STRUCTURE AND EXTERIOR**

The Council must keep in good repair the structure and outside of the premises. This includes but is not limited to:

- (a) Drains, gutters and outside pipes.
- (b) The roof.
- (c) External walls, outside doors (including frames, thresholds, hinges, handles, locks, jambs, lintels and letter boxes) and windows (including frames, sills, catches, hinges, stays, sash cords, glazing and putties) including decoration necessary to prevent deterioration of the fabric.
- (d) Internal walls, floors, ceilings, plaster, tiling, skirting boards and internal doors (including frames, thresholds, hinges, handles, lock, jambs and lintels).
- (e) Chimneys and chimney stacks

### **3.2 COUNCIL'S OBLIGATIONS TO REPAIR AND MAINTAIN INSTALLATIONS**

The Council must keep in good repair and proper working order, the installations in the premises for the supply of water, gas and electricity and for sanitation and the installation for space heating and heating water. Installations include but are not limited to:

- (a) Water pipes, gas pipes and electrical wiring.
- (b) Sockets and light fittings.
- (c) Basins, sinks, baths, toilets, flushing systems and waste pipes.
- (d) Water heaters, hot water tanks, radiators, heating controls, fire places, fitted fires, heaters and boilers.

### **3.3 NOTIFICATION OF DISREPAIR**

The Council will only be breaking its obligations under 3.1 and 3.2 if it knows about the disrepair and the repair works have not been carried out within a reasonable time.

### **3.4 COUNCIL'S OBLIGATIONS TO MAINTAIN COMMON PARTS**

The Council must take reasonable care to:

- (a) keep the common parts in a reasonable state of repair and in safe condition fit for the use of the tenant, members of the tenant's household, any sub-tenant or visitor. This includes but is not limited to paths, steps, stairs, landings, corridors, halls, play areas and communal open spaces and fire escapes.
- (b) keep the installations situated in the common parts in a reasonable state of repair and working order fit for the use of the tenant, members of the tenant's household, any sub-tenant or visitor. Installations include but are not limited to lifts, entry phones, rubbish chutes and bins, fire alarms and other fire prevention devices, fire extinguishers, lighting, communal laundries and communal drying facilities provided that in the case of each of the last two mentioned installations the Council's obligations shall not apply if the Council has withdrawn the service.

### **3.5 EXCEPTIONS TO REPAIR LIABILITIES**

The Council shall not be liable under Clause 3:

- (a) for any disrepair arising from the failure of you, your household, sub-tenant or visitor to use the premises in a reasonable manner or failure to observe these conditions of tenancy.
- (b) to rebuild or reinstate the premises in the case of destruction or damage by fire, or by tempest, flood or other inevitable accident.
- (c) to keep in repair any structural alteration made by you to the premises or installation fitted by you, if
  - i. the structural alteration has been made or the installation fitted without the written consent of the Council; or
  - ii. the Council has made it a condition of its consent that it will not be liable to repair the installation.
- (d) to keep in repair or maintain anything which you are entitled to remove from the premises.
- (e) to keep in repair or maintain any installation, equipment or similar object belonging to the London Electricity Board, North Thames Gas, Thames Water Authority, or other statutory undertaker.

### **3.6 MAKING GOOD**

Where the Council carries out repairs or improvements which involve damaging the decorations in the premises, it must make good the damage so caused and must clear up and carry away all rubbish resulting from the works.

### **3.7 REGULAR INSPECTIONS**

The Council must inspect the common parts, block and estate at regular intervals to ensure that the Council is complying with its obligations under the tenancy agreement. The Council will do its best to notify the chairperson or secretary of the appropriate tenants' association, if any, of an intended inspection so that arrangements can be made for a representative of the 'association to accompany the inspecting officer.

### **3.8 MAJOR WORKS - DEFINITION**

Major works are works of repair (but not improvement) which by their extent or nature cannot in the opinion of the Council, reasonably be carried out with you and your household remaining in occupation of the premises.

### **3.9 MAJOR WORKS - OPTIONS**

- (a) Where the Council wishes to undertake major works it may, according to the circumstances and after consultation with you (see 3.10 below) require you to move from the premises while the work is carried out.
- (b) you are required to move to enable major works to be carried out, you may choose:
  - i. to be transferred to temporary accommodation and to return to the premises once the works are completed; or
  - ii. to make your own arrangements for temporary accommodation and to return to the premises when the Council notifies you that the works are completed; or
  - iii. to be transferred permanently to suitable alternative accommodation but only if, firstly such accommodation is available; and secondly the work is estimated by the Council to take more than four weeks to complete from the date of commencement.

### **3.10 MAJOR WORKS - NOTICE AND CONSULTATION**

- (a) The Council must give you written notice of its intention to carry out major works to the premises. The notice shall include details of and reasons for the proposed works, explain the provisions of clauses 3.8 and 3.9 in these conditions of tenancy and invite comments from you.
- (b) The period of notice must be the maximum which the Council considers practicable. Except in the case of emergency major works, the notice must allow you time to comment on the proposed works.
- (c) Where the Council intends to carry out a planned programme of major works to a number of premises, including yours, it must also give the same notice to the chairperson or secretary of the appropriate tenants' association, if any.
- (d) The Council must have regard to any written comments made by you and/or the tenants association in response to such notice.

### **3.11 CARETAKING**

The Council must provide a caretaking service on flatted estates between such hours and at such frequency as the Council shall determine taking account of the general views expressed by tenants' representatives through the normal consultation procedures.

## **4. Tenant's duties**

### **4.1 RENT**

- (a) Your rent and other charges are payable weekly in advance on Monday. You must pay them promptly when due.
- (b) If at any time before you took up your present tenancy you occupied other Council premises then it should be open to the Council at any time:
  - i. debit your current rent account with any rent or charges you owe (on previous premises) and use any money paid by you to reduce your debt;
  - ii. to credit your current rent account with any overpayment of rent or charges on the previous premises.

### **4.2 LOOKING AFTER COUNCIL PROPERTY/END OF TENANCY**

- (a) You must take care of Council property and make sure that your household and any sub-tenant and visitor does so.
- (b) In particular, you must not allow them intentionally or recklessly to damage or deface the premises, any Council furnishings, fixtures and fittings or any part of the common parts, block or estate; nor must you do so yourself.
- (c) You must on demand by the Council repay to it the cost (including where necessary replacement cost) of making good any such damage or defacement caused in any of these ways.
- (d) You must notify the Council as soon as possible about any defects you find which you consider should be repaired by the Council under 3.1 and 3.2 of these conditions.
- (e) At the end of your tenancy, you must:
  - i. leave the premises and the Council's fixtures and fittings in as good a state of repair as they were at the beginning of the tenancy, except for deterioration caused by fair wear and tear or the Council's failure to carry out its obligations.
  - ii. leave the premises in a clean condition and remove all rubbish.
  - iii. take with you all your personal belongings. Anything left behind will be deemed abandoned. The Council may therefore dispose of it without accounting to you.
  - iv. secure the premises.
  - v. immediately hand in the keys to the premises to the Council which will give you a receipt.

### **4.3 CONDUCT TOWARDS YOUR NEIGHBOURS AND RACIAL HARASSMENT**

- (a) You must not cause any nuisance, annoyance or disturbance to any of your neighbours, their children or visitors or to the Council. Nor must you allow any member of your household or any sub-tenant or visitor to do so.



- (b) Your neighbours are the persons living or working in the vicinity of your premises.
- (c) The phrase 'nuisance, annoyance or disturbance' includes (amongst other things):
  - i. racial harassment;
  - ii. violence or threats of violence towards the person or property;
  - iii. threats, abuse or any harassment (sexual or otherwise) or any act or omission causing disturbance, discomfort or inconvenience;
  - iv. obstructions of any of the common parts, doorways and other exits and entrances in the block and in the estate;
  - v. making an unreasonably loud noise by shouting, screaming, playing any musical instruments or sound reproduction equipment (including television, radio and hi-fi) or using other machinery;
  - vi. any act or omission which creates a danger to the well-being of any neighbour or to his/her belongings.

#### **4.4 CONDUCT TOWARDS THE HOUSEHOLD**

4.4/1 You must not evict any person from your household otherwise than in accordance with the law.

4.4/2

- (a) You must not commit or threaten to commit any violence to a member of your household which would justify that member leaving the premises.
- (b) The Council will consider it to be evidence of a failure to keep to 'a' above if (among other things):
  - i. You have been convicted of an offence against the person of a member of your household: or
  - ii. A court order has been made against you either to leave the premises, temporarily or permanently, or concerning your future conduct towards a member of your household.

#### **4.5 CONTROL OF ANIMALS**

- a
  - i. The following animals may be kept in or brought to your premises without permission:
    - A cat;
    - Rabbits, guinea pigs, hamster, and similar small animals normally kept in cages as pets;
    - Budgerigars, canaries or similar small caged birds;
    - Fish in aquaria.

- ii. You must ensure that no other animal is kept in or brought to your premises unless you obtain the written permission of the Council, which will be given only in certain specified circumstances.
- (b) You must not let any animal kept in or brought to your premises:
  - i. cause any nuisance or annoyance to the Council or to any other person;
  - ii. foul the premises, common parts, the block and estate; be out of proper control at any time in those places.
- (c) You must on demand by the Council repay to it the cost of cleansing and of making good any damage or defacement to the premises, common parts, the block or estate caused by any such animal.
- (d) In this clause the term 'animal' includes any mammal, bird, reptile, amphibian, fish and insect.

#### **4.6 CONTROL OF USE OF CALOR GAS AND PARAFFIN**

- (a) You must not use or store liquid petroleum gas (calor gas) in your premises or your block or estate (if any) without the written permission of the Council. Such permission is not given in any circumstances for a flat or maisonette in a block.
- (b) You must not use or store paraffin in your premises, block or estate (if any).

#### **4.7 GARAGES, PARKING SPACES AND VEHICLES ON ESTATES**

- (a) You must not, without the Council's written permission:
  - i. park a vehicle, trailer, caravan or similar object on any part of the estate; keep a vehicle, trailer, caravan or similar object in any garage belonging to the Council.

Nor must you allow any of your household, sub-tenants or visitors to do so.
- (b) If you are given permission to use a numbered parking space on any estate or a Council garage, you will be required to enter into a separate agreement with the Council. This agreement will contain detailed conditions regulating the use of the parking space or garage and also specify the relevant charge for such use.
- (c) The Council may remove without notice any vehicle, trailer, caravan or similar object parked on the estate, which is considers;
  - i. is causing, or may cause, an obstruction to an emergency vehicle;
  - ii. by reason of its position or condition is a risk to the safety of any person living, working on or visiting the estate of his/her property; and the Council may charge for the cost of such removal and will not be liable for any loss or damage howsoever caused.

#### **4.8 RESIDING IN YOUR PREMISES**

- (a) You must live in the premises and nowhere else.
- (b) If you intend to stay away from premises temporarily for any period of more than three months, you must notify the Council in writing not later than two weeks before you leave, stating:
  - i. your intended date of departure;
  - ii. your intended date of return;
  - iii. the arrangements you have made for the payment of your rent and the care of the premises;
  - iv. (where possible) the address and telephone number where you can be contacted by the Council.
- (c) If you are staying away from the premises without being able to give prior notice due to circumstances beyond your control you must, as soon as you are able to do so, notify the Council in writing about your absence, giving the details listed in (ii), (iii), and (iv) above.

#### **4.9 USE OF YOUR PREMISES**

You must not use the premises or any part of it for business or other non-residential use. This means that your living accommodation should be used for living in; any garage for parking your own private vehicle; and any store only for your own personal belongings.

#### **4.10 TENANT'S IMPROVEMENTS**

- (a) You must not, without the Council's written permission, which will not be unreasonably withheld:
  - i. make any alteration or addition to the premises or to the Council's fixtures and fittings therein or to the provision of services;
  - ii. erect any radio or television aerial;
  - iii. carry out any external decoration of the premises.
- (b) If you do any of these things without the written permission of the Council, the Council may, in addition to any other action it may take against you for breaking this condition:
  - i. require you to take down and remove the alteration, addition or erection and reinstate the premises to their original state; or
  - ii. take it down and remove it itself, reinstate the premises and require you to pay the cost.

#### **4.11 LODGERS**

- (a) Subject to sub-clause 'b' below, you may take in lodgers without asking permission of the Council, but if you do so, you must notify the Council in writing of the fact within four weeks of the date on which any lodger is taken in.

- (b) If your tenancy ceases to be secure (which will only happen in exceptional circumstances), you must obtain the written permission of the Council to take in or keep lodgers and you must comply with any conditions laid down in that permission.

#### **4.12 SUBLETTING**

- (a) You must not sublet or part with possession of the whole of the premises.
- (b) You must not without the written consent of the Council, which will not be unreasonably withheld, sublet or part with possession of part of the premises.
- (c) In considering a request for consent the Council must take into account the following matters, among others:
  - i. whether consent would lead to overcrowding of the premises;
  - ii. whether the Council proposes to carry out works on the premises or on the block (if any) which would affect the accommodation likely to be used by the sub tenant;
  - iii. the suitability of the proposed sub-tenant;
  - iv. the terms of the proposed sub-tenancy.
- (d) Where the Council refuses consent it must give you written reasons.
- (e) If the Council neither gives nor refuses to give consent within four weeks from the receipt of the application, it may be taken to have withheld its consent.

### **5 Assignment and succession**

#### **5.1 TRANSFER OF TENANCY DURING TENANT'S LIFETIME ASSIGNMENT**

- (a) Subject to clauses 'b' and 'c' below, you must not assign (that is, transfer) the tenancy.
- (b) You may, with the Council's written permission, which must not be unreasonably withheld, assign the tenancy:
  - i. to a person who would qualify to succeed to the tenancy if you were to die immediately before the assignment; or
  - ii. by way of exchange, to a secure tenant who has the written consent of his or her landlord (whether or not the Council) to assign his or her tenancy to you or to another secure tenant.
- (c) The tenancy may be assigned if the assignment is made under or following a Court Order in matrimonial proceedings. You must give the Council written notice of such an assignment within fourteen days of its having taken effect.

## **5.2 TRANSFER OF TENANCY ON A TENANT'S DEATH - SUCCESSION**

- (a) In the case of a joint tenancy, if one tenant dies, the tenancy continues in the name of the surviving joint tenant or tenants.
- (b) In any other case, on the death of the tenant:
  - i. the tenancy of the premises transfer to the tenant's surviving spouse (if any) provided he or she the premises as his or her home at the date of death;
  - ii. If there is no such spouse, or if he or she does not wish to take over the tenancy, but there is another member of the tenant's family who lived in the premises continuously for period of at least twelve months up to the date of death, the tenancy of the premises transfers to that person. Where more than one person is qualified to succeed in this way and they are unable to agree between them who shall have the tenancy, the Council must choose the successor from among them.

This sub-clause does not apply where the tenant is the last survivor under a former joint tenancy.

- (c) Where the tenancy is transferred on the death of the tenant, the council may seek possession of the premises if:
  - i. the premises are larger than the new tenant reasonably requires, he or she is not the spouse of the tenant and action to seek possession is taken between six and twelve months after the tenant's death; or
  - ii. the premises are specifically adapted for a physically disabled person, there is no longer such a person resident in the premises and the Council requires possession to relet to such a person; or
  - iii. the premises are part of a group used for persons with special needs, a social service or service facility is provided nearby for such persons, there is no longer any such person resident in the premises and the Council requires possession to relet to such a person.

If the Council seeks possession on any of the above grounds, it will make available suitable alternative accommodation to the new tenant.

- (d) In this clause 'member of the tenant's 'family' means the tenant's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or common law spouse.
- (e) Where, following the death of the tenant, there is no succession under 'b' above and the tenancy comes to an end, if there is co-habitee residing in the premises at the date of the death of the tenant, the Council shall offer the co-habitee a tenancy of the premises or of other premises which the council considers suitable for the co-habitee. The co-habitee is a person who lives as the partner of the tenant in a permanent relationship whether or not of the opposite sex to the tenant.
- (f) The provisions in this clause shall not apply if the tenancy has already been inherited or transferred voluntarily to the tenant (otherwise than by way of exchange).

## **6. Miscellaneous Provisions**

### **6.1 TRANSFERS**

If you apply for a transfer to other housing accommodation, the Council must thereafter make available to you on request at all reasonable times and without charge:

- (a) the recorded particulars about yourself and your family which you have given to the Council;
- (b) the priority which your transfer application has been given;
- (c) the basis upon which that priority has been calculated.

### **6.2 ACCESS TO PREMISES BY THE COUNCIL**

- (a) In this clause the term 'agent' includes any contractor or consultant or other person authorised to act on behalf of the Council including any employee of such contractor, consultant or other person.
- (b) You must give the employees and agents of the Council access to your premises for the purpose of:
  - i. carrying out the Council's powers and duties under these conditions of tenancy including the power to inspect the state of repair;
  - ii. carrying out the Council's statutory functions as a local authority including those relating to the provision, management and improvement of housing;
  - iii. finding out whether you or the occupiers of adjoining or adjacent premises are complying with these conditions of tenancy;
  - iv. enabling the execution of works to adjoining or adjacent land or premises including the block.
- (c) If the Council employees or agents cannot get into the premises for repair or maintenance work on a first visit, then, unless it is an emergency (see 'e' below), they will leave a notice giving another date. You will be given at least seven days' notice of the further visit but if the date is not convenient, you must tell the Council as soon as possible and agree another date.
- (d) The provisions of sub-clause 'c' shall not apply in either of the following circumstances:
  - i. If you and the Council have already agreed the date of the first visit; or
  - ii. If on the first visit, you are present but are unable or unwilling to give access and on that occasion you agree with the Council's employee or agent a new date when you will be able and willing to do so.
- (e) Council employees or agents may enter the premises without notice, using such means as are necessary, if there is an emergency involving injury to any person or property or if the Council believes that this is probable. If this happens, the Council will make good any damage caused.

- (f) At all times before entering the premises employees and agents of the Council must produce identification to you, or in your absence, to the person in charge of your premises.
  - i. The term 'identification' means in the case of an employee of the Council, the current identification card issued by the Council; in any other case, it means an official works order for the premises or a letter of engagement or authority issued by the Council.
  - ii. You will not be in breach of Clause 6.2 in refusing access to any employee or agent of the Council if he or she does not produce such identification.

### **6.3 VARIATION OF RENT, RATES AND OTHER CHARGES**

- (a) In this clause the term 'gross rent' includes all the elements of the amount you are required to pay for your premises including net rent, general rates, water rates and service charges including heating charges.
- (b) The Council must give you at least four weeks prior written notice before varying the gross rent except that:
  - i. where the variation is due to a decision to alter any service charge, the Council must give at least two weeks' notice; and
  - ii. where the variation is in relation to general rates and water rates, the Council is not required to give any notice but will do so, if practicable.

### **6.4 APPLICATION OF THESE CONDITIONS TO NON-SECURE TENANTS SUCCESSION**

If your tenancy is not a secure tenancy under the Housing Act 1980 or, if having been a secure tenancy it ceases to be one (for example, by the subletting of the whole of it) then:

- (a) You must not assign, sublet or part with possession of the premises or part of them;
- (b) Clauses 2, 3.8, 3.9, 3.10, 4.10, 4.12, and 5 shall not apply; and
- (c) Nothing in these Conditions is to be taken as meaning that the Council regards your tenancy as secure.

### **6.5 TENANT'S RIGHT TO QUIET ENJOYMENT**

Except as set out in these conditions, you are entitled to have the use of your premises without any interruption or disturbance by the Council or anyone acting on its behalf.

**Activity 8 - Response**

*The lists which follow detail the rights and obligations as they arise in the conditions. To help you to check this against your own list, we have indicated the relevant numbered points in the conditions.*

*In some instances, you may find that what we have termed rights (e.g. of landlords), you might term obligations (e.g. of tenants). This distinction doesn't matter, so long as you have not entirely misunderstood who has the right or obligation.*

**Rights of tenants**

- *to choose where to move, if major works require the property*
- *to keep certain pets (4.5);*
- *to park a car etc, with the council's permission (4.7);*
- *to improve the property, with permission (4.10);*
- *to take lodgers (4.11);*
- *to sublet, with permission (4.12);*
- *to assign the tenancy, with the council's permission, to a person who would succeed to the tenancy anyway (see below) (5.1);*
- *to assign the tenancy by exchange with another secure tenant (5.1);*
- *to succession of the tenancy on death, to the surviving spouse (or close family member who occupies the home) (5.2);*
- *apply for a transfer to another property (6.1);*
- *to quiet enjoyment (without interruption by the council) (6.5).*

**Obligations of tenants**

- *to repair in the event of fire, tempest, flood etc. (3.5);*
- *to repair electricity, gas and water installations (3.5);*
- *to promptly pay the rent due (4.1);*
- *to ensure that the household and visitors take care of the property (4.2);*
- *to notify the local authority about defects (3.3 and 4.2);*
- *to leave the property empty and in good condition, if the tenancy is terminated (4.2);*
- *not to harass or annoy neighbours (4.3);*
- *not to act illegally to other members of the household (e.g. use violence) (4.4);*
- *to keep pets under control (4.5);*

*continued...*



- *not to keep petroleum gas without permission, nor paraffin (4.6);*
- *to live in the property (4.8);*
- *not to use the property for business purposes (4.9).*

***Rights of landlord***

- *to inspect properties (3.7) (you might have listed this as an obligation of the landlord) and gain access for repairs etc. (6.2);*
- *to remove obstructing or dangerous vehicles etc. (4.7).*

***Obligations of landlord***

- *to repair the structure and exterior (3.1); to repair and maintain installations (3.2);*
- *to maintain common parts (3.4);*
- *to make good damage to decorations caused by repair work, and to remove rubbish created (3.6);*
- *to provide caretaking services, where appropriate (3.11);*
- *to give four weeks' notice of a change in the rent (6.3).*

*Did you feel that all of these points were adequately expressed? Would most tenants be able to understand them?*

*We felt that, for the most part, this was a relatively clear description of rights and obligations. It was least clear when it resorted to legal jargon, as in part 6.4. Here, the list of clauses which "shall not apply" requires quite a bit of further work by the tenant.*

*Did you notice that a number of the rights of tenants, which we identified earlier, were absent from the conditions?*

### **Activity 9**

Look back at the ***Rights of Customers with Secure Tenancies***, earlier in this Block.

Compare these with our (and your answers to Activity 8.

What are the main differences? What has been omitted?

Make a list here:

***Time allocation: 15 minutes***

### **Activity 9 - Response**

*We think that the major omissions are as follows:*

- *the right to buy;*
- *the right to repair;*
- *the right to be consulted (except for specific issues, like an option about where to live during major repair works);*
- *the right to a rent book;*
- *the right to information;*
- *the right to transfer to another landlord.*

*Why might these be missing?*

*They may not be conditions of the tenancy. While many of the conditions inherently involve rights and/or obligations, they are not quite the same thing. Tenants have rights which exist outside the conditions under which they hold their tenancies. They have been created by Acts of Parliament (such as the **Housing Act 1988**).*

*Some of these obligations may have been created after the list of conditions was drawn up. As we have already discovered, the laws affecting housing, especially local authority housing, have been changing rapidly. Councils may also have difficulty in immediately redrafting their conditions following the change in the law.*

## Summary

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Obligations of secure tenants are to:

- pay the rent when due;
- pay the outgoings and charges;
- take good care of the property;
- allow the landlord to inspect the property;
- not commit 'waste';
- not commit nuisance; and
- fulfil the obligations of the tenancy agreement.

We will turn now to the **grounds for possession** which must be proved if a landlord seeks to evict a secure tenant.

#### **4.4 Grounds for possession of a secure tenancy**

A secure tenancy may be brought to an end only by the order of a court. There are strict rules about the procedures for a landlord seeking possession of a property (*see Block 103 section D3*).

##### **(a) Procedure**

- i. A **Notice of Intention to seek Possession** must be served on the tenant (*s.83 Housing Act 1985*). This must state:
  - the ground(s) on which possession is sought;
  - the earliest date on which court proceedings may begin (*at least four weeks ahead, for a normal weekly periodic tenancy, on a date on which rent is due, unless possession is sought for nuisance in which case the date can be immediate*).
- ii. A court **Summons** (to appear in court) must be issued within one year of the earliest date (specified in the notice of possession).

##### **(b) The grounds which must be proved**

The court may consider one or more of 17 grounds of possession, which may be divided into three distinct groups.

###### *Group A (Grounds 1 to 8)*

Whichever grounds are selected have to be proved by the landlord, and must also be seen to be reasonable.

What is 'reasonable' is for the court to decide in any one case. For example, a small amount of arrears, or a minor breach of conditions, may not be viewed as reasonable.

###### *Group B (Grounds 9 to 12)*

The court must order possession if one of these four grounds is proved, but there also must be "suitable alternative accommodation" available for the tenant. Normally, this would have to be another, similar, secure tenancy, equally suited to the household's needs.

###### *Group C (Grounds 13 to 17)*

The court may order possession if one of these five grounds is proved but, as with group B, only if suitable alternative accommodation is available.

The grounds are:

1. rent arrears, or other breach of the condition of the tenancy;
2. causing a nuisance to other occupiers;
3. committing an act of waste, e.g. allowing the property to deteriorate;
4. damaging furniture or common parts of the building;
5. obtaining the tenancy by making a false statement, e.g. saying you have two children when you have none;
6. payment (**premium**) was paid, to induce the tenancy to be assigned to you (including exchanges);
7. misconduct which relates to a service tenancy (see above), and which would make it difficult for the tenant to remain; and
8. the dwelling was provided temporarily, e.g. while major works were carried out at the permanent home.
9. the property is overcrowded (as defined in law);
10. the property is to be demolished, or reconstructed such that the tenant cannot remain;
11. the landlord wishes to sell the whole of a vacant estate to a private landlord to redevelop. This must be with the approval of the government or Housing Corporation (or Housing for Wales);
12. the tenant's occupation conflicts with the objectives of a charitable housing organisation, e.g. the tenant is no longer disabled.
13. a service tenancy, when the tenant is no longer an employee and the property is needed for the new employee;
14. the property is adapted for disabled persons, the tenant is not disabled, and the property is needed for such a person;
15. the landlord normally lets to specific special needs groups, e.g. some housing associations, and the circumstances are as 14;
16. the property is one of a group of properties let to special needs, and the circumstances are as 14;
17. the tenant has succeeded a spouse (or family member) and the property is unsuitable for them (e.g. too large).

#### 4.5 Possession: What happens next?

Assuming that the court has found for the landlord on one or more of the grounds, it may issue a **Possession Order**. However, it may choose to suspend or postpone the order, depending on the circumstances. For example, a tenant in arrears might be given the opportunity to repay in instalments.

#### **Activity 10**

*Use the information given above to determine whether a landlord may be able to gain possession from a secure tenant under the following circumstances. Indicate the grounds which you think are applicable.*

1. *A resident housekeeper in an old persons' home is convicted of assaulting two occupants.*
  
2. *A tenant refuses to move from the flat to which she was moved whilst her own was refurbished.*
  
3. *A tenant owes four weeks rent.*
  
4. *A local authority wishes to dispose of a block of flats let to a housing association and housing single persons. There must be vacant possession. However, there is no other accommodation is available for single persons.*

***Time allocation: 5 minutes***

**Activity 9 - Response**

*You may have found this difficult initially, because you are unfamiliar with the grounds for possession. Hopefully, you have now become slightly more familiar with them.*

*Bear in mind that it is always up to the court to decide: in many cases, this will not be certain. However, we would think that:*

- 1. Is likely to be successful. (Ground 7)*
- 2. Is also likely to be successful, so long as the original home is now available. (Ground 8)*
- 3. Is less likely to be successful, as the arrears may not be sufficient for eviction to be considered reasonable. (Ground 1)*
- 4. Is unlikely to be successful (Ground 11), since suitable alternative accommodation is not available.*

**4.6 The law in Scotland****(a) Introduction**

Public sector tenure in Scotland is directed by a separate set of Acts from England and Wales. However, during the period of the 1980s, legislation affecting both areas was enacted at broadly the same time, with the same major policy objectives. The following indicates where the main differences lie.

*i. Right to Buy provision*

The **Tenants' Rights etc (Scotland) Act 1980** created secure tenancies for Scottish tenants and established 'Right to Buy'. However, this legislation was consolidated into the **Housing (Scotland) Act 1987**. Subsequently, the **Housing (Scotland) Act 2001** introduced a single tenancy to replace existing secure and assured tenancies from 30 September 2002. Now all local authority and registered social landlord tenancies will be replaced by the **Scottish Secure Tenancy**. As a result, tenants will have the right to buy their properties. However, there are some exceptions, including:

- Tenancies of registered social landlords with charitable status.
- Tenancies of fully-mutual co-operative housing associations.
- Tenancies in group special needs housing schemes.
- Properties designed with disability design features and adaptations for people of pensionable age.
- A tenancy belonging to a registered social landlord having less than 100 properties.



Importantly, registered social landlords have a 10-year exemption until 2012 from being required to sell under the Right to Buy provision. However, they can voluntarily opt into the Right to Buy provision at any time during the exemption period. Another change is that, whereas existing tenants only need a two-year continuous tenancy to qualify for Right to Buy, where tenancies commence after 30 September 2002 the qualifying period is five years. Also, post-30 September 2002 tenants will only benefit from lower rates of discount to those granted to pre-30 September tenants.

#### *ii. Tenants' Right to Repair/Alterations*

The tenants' existing Right to Repair Scheme was consolidated into the **Housing (Scotland) Act 2001** and all secure tenants are entitled to have a '*qualifying repair*' carried out at a cost not exceeding £350. Qualifying repairs are those which if not remedied may jeopardise the health, safety or security of tenants.

#### *iii. Landlord' consent to alterations/work*

Under the provisions of s.28 and schedule 5 of the **Housing (Scotland) Act 2001** tenants cannot undertake work, other than interior decoration, without the written consent of the landlord. However, the landlord must not withhold consent unreasonably.

Generally, the rights and obligations of local authority tenants in Scotland, and England and Wales are similar, apart from slightly different possession procedures.

#### **(c) Procedure and grounds for obtaining possession**

In Scotland, the landlord must issue a **Notice of Proceedings for Recovery of Possession** (*generally known as a Notice of Possession*) which is valid for six months. This notice allows the case to go to courts 28 days later for **Proceedings for Possession**. If the landlord's application is successful, a **Decree of Eviction** will be issued.

Any notice of possession should state the grounds upon which the notice of possession is sought. There are 16 grounds for possession. If the grounds are considered reasonable, the court may grant the Decree of Eviction in relation to Grounds 1 to 7. However, in relation to Grounds 8 to 14, the landlord, if successful, would be expected to find suitable alternative accommodation for the tenant. You will see that there are two further Grounds covering the situation where it would not be reasonable for the council to provide alternative accommodation (*Ground 15*) and transfer of tenancy to a spouse of co-habitee (*Ground 16*).

*i. Grounds for possession*

1. Rent arrears or breach of tenancy conditions.
2. The tenant is convicted of using the house for illegal or immoral purposes.
3. Committing an act of waste, i.e. allowing the house to deteriorate.
4. Damaging provided furniture.
5. Failing to occupy the house over six months without reason, or the house no longer being the tenant's principal home.
6. The tenancy was obtained by making a false statement.
7. Causing a nuisance to others.
8. The tenant has caused a nuisance to others and the landlord wishes to move him to another house.
9. The house is overcrowded.
10. The house is to be demolished or to have substantial work carried out.
11. The house is designed for someone with special needs, the adaptations are no longer required for the household and the landlord wishes to let the house to someone with special needs.
12. As in 11 but where the house is part of a group with or near facilities for people needing special needs.
13. The landlord has only a lease to the house and the lease has expired, or will do so within six months.
14. In the case of an Islands Council where the house is provided for education staff where the present tenant is no longer employed as such and it would not be reasonable to expect the authority to provide alternative accommodation.
15. The landlord wishes to transfer the tenancy to the tenant's spouse or co-habitee.

Ground 15 applies where the spouse or co-habitee no longer wishes to live with the tenant, who has to apply to the landlord for the transfer to take place.

### **Self Test 8**

1. *Which types of tenants are likely to have secure tenancies?*
2. *List the main rights of secure tenants.*
3. *Which tenants do not have a right to buy?*
4. *What are the main obligations of secure tenants?*
5. *To what sort of landlord may local authority tenants transfer?*
6. *Briefly describe the purpose of a tenancy agreement.*
7. *The grounds for possession are divided into three groups. Identify the key differences between each group.*
8. *Describe the procedure for the landlord to regain possession of a property.*

*Now turn to the Answers at the end of the Block.*

## 5. Introductory Tenancies

### 5.1 Introduction

The normal tenancy for local authority tenants is, as discussed in the previous sub-section, the secure tenancy. However, since the **Housing Act 1996**, local authorities have had the option of adopting one year long **introductory tenancies** for new tenants. The **introductory tenancy**, also referred to as a **probationary tenancy**, was introduced as a one of series of measures to help overcome the increase in the anti-social behaviour of some tenants.

During the 1990s, the increase in anti-social behaviour by a minority of tenants was particularly noticeable and posed a challenge to housing organisations. Also, well-behaved and law-abiding tenants experienced considerable distress and disturbance from unacceptable and increasing levels of harassment. Unfortunately, remedial responses up to that time had been somewhat piecemeal, and there was dissatisfaction with legal remedies available. The main civil remedies included eviction, injunctions, action on breaches of tenancy agreements, and nuisance control powers (*considered in detail in Block HL.103, Section E*).

A Department of the Environment publication in 1995 '*Anti-social Behaviour of Council Estates: A Consultation Paper on Probationary Tenancies*' stated that anti-social behaviour:

*"... manifests itself in many different ways and at varying levels of intensity. This can include vandalism, noise, verbal and physical abuse, threats of violence, racial harassment, damage to property, trespass, nuisance from dogs, car repairs on the street, joyriding, domestic violence, drugs and other criminal activities, such as burglary."*

The outcome of the consultation paper was that the provisions in ss.124 to 143 of the **Housing Act 1996** provide the statutory basis for discretionary introductory tenancies that last for twelve months.

#### (a) Definition

An introductory tenancy is defined in **s.124(2) Housing Act 1996** as one that, as a periodic tenancy, would otherwise have been a secure tenancy. However, it should be noted that an introductory tenancy can also apply to a licence to occupy a dwelling house [**s.126**].

Unless terminated, an introductory tenant will at the end of the one year period automatically become a secure tenant.

## 5.2 Establishing an introductory tenancy scheme

### (a) Introducing a scheme

It is discretionary whether or not a local housing authority decides to introduce an introductory tenancy scheme, but **s.124(1)** empowers them to do so. However, before electing to introduce a scheme, housing authorities are required by **s.105 Housing Act 1985** to publish details and consult their current tenants. This is required because such a scheme would represent a change in management.

Once a scheme has been adopted, every periodic tenancy must be granted as an introductory tenancy (**s.124(2)**) and last for one year (**s.125(2)**). This means that the scheme must operate throughout the housing authority's district and not be confined to selected areas. There are exceptions (**s.142(2)**) to the requirement to implement introductory tenancies, namely when the tenant or one of the tenants was:

- a secure tenant of the same or another dwelling;
- an assured tenant of a registered social landlord; and
- where a tenancy was entered into before the scheme was adopted.

### (b) Ending a scheme

Just as the housing authority has the discretion to elect to introduce a scheme, it can also elect to bring an introductory tenancy scheme to an end.

## 5.3 Rights of an introductory tenant

An introductory tenant has the normal rights that accompany a tenancy regarding quiet enjoyment of the property. Although an introductory tenancy is a trial tenancy before the grant of a secure tenancy, tenants still have other rights, including:

- i. A written statement of the **terms of the tenancy (s.136)**;
- ii. The **right to information and to be consulted** on relevant matters of housing management (**ss.136 & 137**);
- iii. The tenant has **security of tenure** inasmuch that the landlord can only obtain possession of the dwelling through a court order (**s.127**);
- iv. There is a **right of succession** to the tenancy by a 'qualified person' unless the tenant was, in turn, a successor (**s.131**). A qualified person is someone who occupies the dwelling as his or her only or principal home at the time of the tenant's death and either is:

- the tenant's spouse; or
- another member of the tenant's family and has resided with the tenant throughout the 12 months up to the tenant's death.

Note: There can only be one succession. This means that there will be no succession where:

- the deceased was a successor because the tenancy passed on the death of the previous tenant; and
  - the deceased was formerly a joint tenant and later became the sole tenant;
- v. There is an **exceptional right of assignment**, but only in respect of a court order made under:
- **s.24 of the Matrimonial Causes Act 1973** in connection with matrimonial proceedings. This relates to the division of property following a separation or divorce.
  - **s.17(1) of the Matrimonial Cause Act 1973** relating to property adjustment following an overseas divorce.
- vi. There is a right to repair (**s.135**). This is similar to the right to repair granted to secure tenants under **ss.104 & 105 of the Housing Act 1985**.
- vii. The right to a review of a decision to seek possession of the property (**s.129**).

## 5.4 Seeking possession

### (a) Procedures

As with a secure tenancy, a landlord may only end an introductory tenancy by obtaining a County Court order. However, the court can only make an order if the landlord has first served a Notice of Seeking Possession on the tenant (**s.128**). This notice must set out:

- that the court will be asked to make an order for possession;
- the reasons for the decision to apply for an order;
- the date after which proceedings for possession may be begun;
- that the tenant is entitled to a review of the landlord's decision to seek an order for possession; and
- that if the tenant needs help or advice about the notice and what to do about it, he or she should take it immediately to a Citizens' Advice Bureau, a housing aid centre, a law centre, or a solicitor.

**(b) Reasons for possession**

Unlike seeking possession of a secure tenancy, there are no grounds for possession for an introductory tenancy. However, the landlord must give reasons and notify the tenant before the date when proceedings for possession will commence (**s.129(6)**). The **1996 Act** provides that if the landlord complies with the procedures in **ss.127 & 128**, the County Court *must make an order* granting possession. In *Manchester C.C. v Cochrane*, *The Times*, January 12 1999, 31 HLR, it was held on appeal that an order must be made even without proof of reasonableness or the availability of alternative accommodation. The reasons for seeking possession are likely to be that the tenants are behaving in an anti-social manner, which may include such breaches of tenancy as:

- violence or threat of violence;
- harassment;
- damage or threat of damage to property;
- continuing pattern of incidents, despite warnings; and
- rent arrears.

Circular 2/97, published by the Department of the Environment, Transport and the Regions, states in paragraph 19 that:

*'... it is envisaged that the majority of possession cases will relate to persistent anti-social behaviour or rent arrears.'*

**(c) Tenant's right to a review**

The right to an internal review of the housing authority's decision relating to an order seeking possession is contained in **s.129**. The procedure for a review is contained in the *Introductory Tenants (Review) Regulations 1997 Statutory Instrument 1997 No. 72*. A tenant must request the review within 14 days of the serving of the Notice of Proceedings. The landlord must then review its decision and inform the tenant of the decision of the review. If the review confirms the original decision, the landlord must give reasons for the decision (**s.129(5)**). This means that decisions must be reached that accord with the principles of public law. As such, they must be reasonable and not be irrational or inconsistent, or reached in bad faith. However, they may relate to the conduct of the tenants. You will remember that public bodies must act within their powers, so they must ensure that such powers are only used for the purpose for which they were intended. If not, and the reasons are not relevant, the courts will not grant possession. The court will consider whether the decision was proper, and, if not, refuse the order as held in *Wandsworth LBC v Winder* [1984].

If a tenant is dissatisfied with the outcome of the review on the ground of natural justice, it is possible to seek judicial review in the High Court. It was held in the case of *R v Hammersmith & Fulham L.B.C., ex.p. Quigley* [1999] JHL D46 QBD, that a decision to terminate a tenancy is reviewable.

**(d) Commentary**

As a result of the introductory tenancy provisions introduced by the **Housing Act 1996**, an increasing number of local authorities (*currently some 70*) have elected to introduce schemes. Evidence indicates that more authorities would introduce schemes if it were possible to choose which properties could be subject to introductory tenancies. However, this would likely result in a challenge in the courts on the grounds of discrimination and bias. Guidance in Circular 2/97 *Part V of the Housing Act 1996 - Conduct of Tenants* advises landlords not to use introductory tenancies against vulnerable individuals. The guidance also encourages the eviction of tenants only on grounds similar to those for secure tenants. Early research of the reasons for possession reveals that the major reason for eviction is rent arrears rather than bad behaviour. Undoubtedly, rent arrears are easier to prove than bad behaviour.

Although registered social landlords were not embraced by the provisions of the **Housing Act 1996**, the Housing Corporation provided guidance in Circular R1-01/98. This guidance advised that housing associations could use the assured shorthold tenancy to operate as a form of introductory tenancy. If tenants prove satisfactory, then the tenancy could be transferred to the more secure assured tenancy.



### **Self Test 9**

1. *Why were introductory tenancies introduced?*
  
  
  
  
  
  
  
  
  
  
2. *Local housing authorities must introduce an Introductory Tenancy Scheme to all of its properties.  
TRUE? or FALSE?*
  
  
  
  
  
  
  
  
  
  
3. *How long does an introductory tenancy last for?*
  
  
  
  
  
  
  
  
  
  
4. *If an assured housing association tenant or a secure tenant from a local authority is granted a tenancy with another local housing authority who have an introductory tenancy scheme, do they become introductory tenants?*
  
  
  
  
  
  
  
  
  
  
5. *How does a local housing authority seek possession of an introductory tenancy?*

*Now turn to the Answers at the end of the Block.*

We will now move on to examine the framework which regulates housing association tenancies. You will have already learned that, in some instances, their tenants will be secure tenants. However, there are some tenants on different tenancies. Let us now examine why this is so.

## Summary

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1. Under the provisions of the Housing Act 1996, local housing authorities can, after consultation with their tenants, choose to introduce an Introductory Tenancy Scheme. If a scheme is introduced, it must apply across all of the council's housing stock.
2. New tenancies, with the exception of applicants who were previously secure tenants or assured tenants, will be introductory tenants for 12 months. Once tenants have satisfactorily completed a year, they become secure tenants.
3. The local housing authority can end the introductory tenancy by obtaining a court order. However, a Notice of Seeking Possession must first be served stating the reasons for possession (e.g. anti-social behaviour of some form or rent arrears), and tenants have a right of review.
4. A tenant who is dissatisfied with the outcome of the review in terms of natural justice can seek judicial review in the High Court.

## 6. Housing Association Tenure

### 6.1 Introduction

You will recall that in the introduction to sub-section C4 '*Secure Tenancies in the Public Sector*' that prior to 1980, the tenants of public sector landlords were effectively licensees. This meant that they had very limited rights compared to private sector tenants. The **Housing Act 1980** addressed this by creating secure tenancies for most public sector tenants, with similar rights to those in private tenures. The secure tenancies which applied to housing association and charitable housing trust tenancies were the same as for the private sector. They are governed by the **Rent Act 1977** and are subject to fair rents approved by the Rent Officer.

Since 15 January 1989, the date of the introduction of the **Housing Act 1988**, most new tenants have **assured or assured shorthold tenancies**. We shall be examining these two types of tenancy in some detail, because the rights of tenants and associations are rather different, especially in relation to eviction.

There are, however, a few exceptions to the two main types of tenancy. This might be because of the nature of the association, *e.g. it is a fully mutual co-operative*, or due to the type of accommodation, *e.g. it is for special needs*. We shall briefly identify the main differences for these customers at the end of this section.

### 6.2 Housing Association Secure Tenancies

Almost all tenants with a tenancy which pre-dates 15 January 1989 have **Rent Act 1977** secure tenancies if they are in general purpose accommodation. It applies to tenants of:

- housing associations registered with the Housing Corporation (or equivalent in Scotland and Wales);
- charitable housing trusts;
- an unregistered co-operative (*fully mutual*) housing association (*registered co-operative housing associations are examined later, as one of the special cases*).

This tenancy is, in essence, similar to a secure tenancy, examined in the last section on public rented tenure. Most of the rights and obligations applicable to the secure tenancy apply to a housing association secure tenancy, with the following exceptions:

#### (a) Rents

The rent under a housing association secure tenancy is protected by the **1977 Rent Act**. This means that it is a fair rent, registered by a rent officer. This is in contrast to local authority rents, which are effectively determined by government policy.

Prior to the 1988 Act, rent increases had to be phased in over two years. This latest Act provides that any increase is payable immediately, though registration of the rent is still every two years.

### **(b) Right-to-Buy**

Schedule 5 of the **Housing Act 1985** defines the exceptions to the Right to Buy. As a result, Right to Buy applies to secure tenants of housing associations other than:

- a non-charitable housing associations;
- a co-operative housing association; or
- a housing association that has not received grant from public funds.

The conditions are basically the same as for local authority tenants and have similar discounts (*see C4.2 (b)*). Similarly, the *cost floor* (*see section 4.2 (b) for an explanation*) is determined by the Secretary of State.

Secure tenants of a charitable housing association, who have no right to buy, were given, instead, the **HOTCHA** (*Home Ownership Scheme for Tenants of Charitable Housing Associations*) scheme. Basically, this scheme permitted charitable housing associations to buy alternative accommodation, which was then sold to existing tenants on terms similar to Right to Buy. The existing home was then freed for another tenant. However, this has now been replaced by the Tenants' Incentive Scheme (TIS), with cash assistance toward home purchase.

The **Housing Act 1996** introduced a further right to acquire for all new tenants of registered social landlords (**s.16**). The scheme is essentially the same as for Right to Buy, although the maximum discounts are set at a lower level.

We have already indicated that almost all tenancies granted *after* 15 January 1989 are now *assured* tenancies. However, there are some exceptions, which we shall examine now.

### **(c) New housing association tenancies**

Housing association secure tenancies may still be granted after 15 January 1989, but only if one of the following circumstances applies:

- i. If the contract was entered into before 15 January 1989, the new tenant will have a housing association tenancy. This circumstance is likely to affect only a few customers who were in the process of taking a tenancy when the 1988 Act came into force.

- ii. If the new tenancy is with an existing secure tenant, for example, someone who has transferred to another home owned by the same association. These tenants do not lose their secure tenancy just because they have moved.
- iii. If the association has been granted a possession order by the courts, on the understanding that suitable alternative accommodation was available. This new accommodation must be let on the same secure terms as the previous tenancy.

*(If you need to revise grounds for possession of secure tenancies, go back to the previous section, sub-section C5.4, on public rented tenure).*

- iv. If the association buys a property with an existing private protected tenant, the tenant must become a housing association tenant. Protected tenancies have similar rights to secure tenancies.

Note: If an existing secure tenant exchanges homes with another secure tenant, including a local authority tenant, the tenancy is assigned rather than ended. This means the tenant keeps the secure tenancy, rather than a new housing association tenancy being created.

**(d) What about transfers of public sector housing stock to housing associations?**

There are two main circumstances when this can occur:

- i. Where local authorities have voluntarily disposed of their stock to a housing association. In this case, the tenants become assured tenants of the association, and so lose a number of rights which they enjoyed as secure tenants. However, they do retain the right to buy. As you will discover when we examine assured tenancies, there is not a general right to buy.
- ii. Transfer of HAT (Housing Action Trust) dwellings to a housing association landlord. Whilst the HAT is in operation, the tenants remain as secure tenants. However, once the HAT is taken over by a new landlord, such as a housing association, the tenants will have assured tenancies.

## Summary

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1. Most tenancies for general purpose accommodation, created before 15 January 1989, are housing association tenancies.
2. These are similar to secure tenancies, but have fair rents registered by the rent officer.
3. The right to buy applies only to secure tenants of associations other than charitable associations, co-operative associations, and associations that have not received grants from public funds.
4. All other tenants now have Tenants Incentive Scheme (TIS), and new tenants have the Right to Acquire.
5. There are a few circumstances in which housing association tenancies may be granted after 15 January 1989. These generally apply to existing secure tenants.
6. After 15 January 1989 most new tenancies are assured shorthold or assured tenancies.
7. Transfers to Housing Action Trusts, small scale voluntary transfers under the provisions of *s.32 Housing Act 1985*, and large scale voluntary transfers under *s.135 Leasehold Reform, Housing and Urban Development Act 1993* become assured tenancies.

## 6.2 Assured Tenancies: Introduction

It was the intention of the **1988 Housing Act** to make assured tenancies the main type of rented tenure. In general, all new tenancies after 15 January 1989, including those in the private sector, are assured, *unless* the following circumstances apply:

- i. It is a public sector tenancy. This means that local authority tenants, HATs, and fully mutual co-operative tenants cannot be assured tenants.
- ii. It is temporary accommodation for homeless persons (sch.1, para.1).
- iii. It is student accommodation, let by a specified educational institution (sch.1, para.8).
- iv. It is a holiday letting (sch.1, para.9).
- v. The landlord is resident (sch.1, para.10).

The **Housing Act 1996** also makes particular provision in relation to housing homeless persons. Where accommodation is secured for a homeless person through a registered social landlord, as part of the authority's interim duties to that person, then that tenancy cannot be an assured tenancy. Even where the authority has accepted the full two-year duty towards an applicant, any letting by a registered social landlord can only be an assured shorthold. However, an exception is when a nomination is made under the waiting list.

You should also note that since the **Housing Act 1996** all new tenancies will automatically be assured shorthold, unless the landlord gives notice or states in the tenancy agreement that the tenancy is to be fully assured.

There are a number of other exceptions, but these, largely, are not the sorts of residential tenancies we are interested in (e.g. agricultural, business, etc.).



### **Activity 11**

*Read the cases which follow, and try to determine whether the situations suggest that the customer is:*

- (a) a secure housing association tenant*
- (b) an assured tenant*
- (c) neither of these*

*Look back over the last few pages, to check your ideas, then write your answers beside the cases.*

#### **Case 1**

*Mr & Mrs Smith have occupied an association dwelling for many years. They have just transferred to a smaller home with the same association.*

#### **Case 2**

*A housing association has just taken over a local authority housing estate, following disposal by the authority.*

#### **Case 3**

*An association has some housing which is intended to be temporary accommodation for homeless families. The Johnson family have just been housed in this.*

#### **Case 4**

*The Murphy family have been living for many years in unsatisfactory private rented accommodation. They consider themselves very fortunate to have obtained a new housing association home, and moved in during 1992.*

***Time allocation: 15 minutes***

**Activity 11 - Response**

*We hope that you found the cases relatively straightforward.*

*Case 1 is clearly a housing association tenancy, because they were tenants prior to January 1989. The fact that they have transferred does not affect their secure tenancy.*

*Case 2 suggests the tenants have become assured tenants because, in this situation, there is no right to retain the secure tenancy.*

*Case 3 will depend on whether the accommodation is self-contained, although it will not be assured because of the provisions of the Housing Act 1996.*

*Case 4 is a new tenancy, so it will be assured. However, had the housing association purchased the Murphy's home from the private landlord, with the Murphys as sitting tenants, then the Murphys would have a housing association tenancy.*

*Let us go on now to examine the rights of assured tenants.*

**6.4 The rights of assured tenants**

Assured tenants have far fewer rights by law, called statutory rights, than do secure tenants. However, the government wanted housing association tenants to retain these rights, so it devised a Tenants' Guarantee scheme. Housing associations are expected to implement this scheme, expanding the rights of their assured tenants. These are now contained in the **Performance Standards**.

The Housing Corporation expects that associations will include the rights, which are no longer statutory, in their tenancy agreements. Remember that a tenancy agreement is a contract between the tenant and the landlord. This means that they are now *contractual rights (given by the contract)*, rather than *statutory rights (given by a law)*. If these are not included in the tenancy agreement, they will not form part of the tenant's rights. However, the Housing Corporation has made it clear that it expects all associations to comply with the Performance Standards. As a result, housing association assured tenants would normally be expected to have these additional rights.

Let us begin by examining the *statutory* rights of assured tenants.

**(a) Statutory rights****i. Security of tenure**

An assured tenant, like a secure tenant, may not be evicted without a court order. As long as the terms of the tenancy agreement are met, there are unlikely to be any grounds for possession. However,

the grounds for possession are different in important ways from those for secure tenants. This is examined in detail later, in **grounds for possession**.

Housing associations have been advised that the Housing Corporation does not expect them normally to use assured shorthold tenancies. However, they may and are being used as a form of introductory tenancy (*see sub-section C5.4 (d)*). These tenancies used to be fixed term but, as amended by the **Housing Act 1996**, they may be periodic or fixed term. However, no order for possession can take effect until six months after the tenancy came into being (**s.21(5)**). We will examine assured shorthold tenancies later.

Assured tenants also have a right of succession (*once only*), for spouses and co-habitees, but not for other relatives (unless the association decides to grant an extended right of succession, in terms of the tenancy agreement).

#### *ii. The right to share the property*

If the tenancy agreement permits or forbids sub-letting, that is what will apply. In the absence of any clear statement in the tenancy agreement, the property may only be sub-let with the landlord's permission. *This can be withheld*, though a housing association would not normally be expected to do so. If a premium (*payment*) has been paid for the grant of a tenancy, then the tenant has the right to sublet.

#### *iii. The right to a rent book*

Most assured tenancies will be periodic (*e.g. let on a weekly basis*), rather than fixed term (*let for a set period of time*). All tenants with weekly tenancies have the right to a rent book. This may be an essential piece of evidence in the event of possession proceedings by the landlord since, in some instances, arrears can lead to eviction. This is examined later under grounds for possession.

#### *iv. The right to refer proposed rent increases to the Rent Assessment Committee*

This is similar to the right which housing association secure tenants have in being able to apply to the rent officer to fix a fair rent. The key difference is that assured tenants are expected to pay market rents. This means that assured tenancy rents will be well above fair rent levels. The tenant cannot apply to the Rent Assessment Committee (RAC) until it is proposed that the terms of the agreement be changed. In other words, the RAC will not intervene for a new tenancy. Only when the association proposes to increase the rent can the tenant ask the RAC to determine if the rent is a *reasonable* market rent.

Since housing associations are unlikely to be trying to charge excessive rents, it seems unlikely that housing association assured tenants will have much recourse to the RAC. It is more likely to be used for private sector assured tenancies.

### **(b) Contractual Rights**

As previously mentioned, housing associations are expected to extend the range of statutory rights, which assured tenants have, to include many of the rights of secure tenants. These include:

#### *i. Security of tenure*

Housing association tenants should have the contractual right:

- to apply to transfer to another property owned by the landlord;
- to apply to exchange their dwelling with another association or local authority tenant, with the landlord's permission.

#### *ii. The right to repair*

Once again, this is a right which should be given by the tenancy agreement. It relates to circumstances where the association has failed to complete repairs in a reasonable period of time. As a result, the tenant should be able to reclaim the cost. The agreement should state which repairs are the responsibility of the association. Tenants must be informed about procedures for reporting repairs, and what to do if the requirements are not met.

#### *iii. The right to Improve*

The tenancy agreement should give tenants the right to improve their homes with the landlord's permission. The Housing Corporation says that this should not be *unreasonably withheld*.

#### *iv. The right to be consulted*

Housing associations are expected to consult their tenants about changes in housing management policies. The intention is that assured tenants should have similar rights of consultation to those of the association's secure tenants.

#### *v. The right to information*

The type of information which the Housing Corporation expects associations to make available includes:

- **Lettings and allocations policies**, which should summarise who is eligible for accommodation and how to apply;
- **Clear tenancy conditions**
- **Repairs procedures**, which must include information about:
  - who is responsible for repairs;
  - the procedures for obtaining repairs;
  - tenants' rights when the association fails to attend to the repair within a reasonable time;
  - policies on maintenance and improvement.
- **Complaints procedures**, which should ensure that tenants know how to complain, whether about the association or the actions of fellow tenants. They should also be aware of the association's policies for dealing with such complaints.
- **Access to personal files.** The **Data Protection Act 1998** provides a statutory right to examine, correct, and require, as appropriate, the deletion of personal data held by the housing association (A charge can be made for this service). Apart from this requirement, the association should allow reasonable access to such personal information.

### **Activity 12**

*Compare the rights of housing association assured tenants with the rights of those on old (pre-Housing Act 1988) housing association tenancies. Remember that the latter rights are basically the same as those of public sector tenants. These were described in the previous section.*

*Write your notes below:*

*(a) Rights which are similar.*

*continued ...*

(b) *Any rights which secure tenants have, but assured tenants do not have.*

*Time allocation: 15 minutes*

**Activity 12 - Response**

*The easiest way to tackle this question is to compare the summaries of rights, following each of the relevant sections. You will have noted that many of the rights are the same, though some are not statutory for assured tenants. They are expected by the Housing Corporation, rather than required by law.*

*(It is useful to remember, here, that not all housing associations are registered with the Housing Corporation. In general, this means that they are not eligible for Social Housing Grant. It also means that the Housing Corporation cannot influence the contractual rights that unregistered associations give tenants. These other associations are, in effect, private landlords.)*

*The right which assured tenants very clearly have lost is the right to buy. However, remember that tenants of charitable housing associations have never had this right, even with secure tenancies.*

*If you thought carefully about the question, you may also have spotted that assured tenants have lost the right to a fair rent. This is an important benefit for secure tenants. Rents are set at market levels for assured tenants. These are higher, often considerably higher, than fair rents.*

*They have also lost some of their security of tenure, in the sense that they may be evicted more easily under certain circumstances. You will be finding out more about this when we look at grounds for possession.*

## Summary

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### **Rights of assured (housing association) tenants:**

- 1. The range of statutory rights is more limited than for secure tenants. These include:**
  - Security of tenure, with rights of succession (for the partner).
  - The right to sub-let (with the landlord's permission), unless the agreement states otherwise, or a premium has been paid.
  - For weekly periodic tenancies, the right to a rent book.
  - The right to have rent increases assessed by the Rent Assessment Committee. These will be market rents.
- 2. A number of contractual rights should be available, under the Tenants' Guarantee. These include:**
  - The right to repair the property if the association unreasonably delays carrying out the work.
  - The right to improve the property, if the landlord approves.
  - The right to be consulted.
  - The right to information.



**(c) Obligations of assured tenants**

The obligations of tenants will be set out in the tenancy agreement. Some obligations are *implied* by law and so exist even if not mentioned in the agreement. However, the agreement might well include additional obligations, not identified here.

In general, all assured tenants are likely to have obligations similar to those identified for secure tenants. We will summarise these here, but for more details, look back to the section (C.4) on public rented tenure. Obligations of assured tenants are:

- to pay rent;
- to pay outgoings and charges;
- to take proper care of the property;
- to allow the landlord to inspect the state of repair;
- not to commit waste;
- not to commit nuisance; and
- to fulfil the obligations of the tenancy agreement.

We will turn now to consider what can happen if the tenant fails to fulfil his or her obligations, and whether there are grounds for gaining possession of the property.

**6.5 Grounds for possession (See also Block HL.103 section D)****(a) Introduction**

For the first time, the **Housing Act 1988** introduced mandatory grounds for possession. As you discovered with secure tenancies, in each case it is for the court to decide whether eviction is reasonable. For assured tenants, there are grounds which, *if proved*, require the court to grant possession to the landlord. The court has lost its discretion in these cases. However, there are also a number of other grounds which, like secure tenancies, are discretionary. As a result, the court may decide that, even though the ground has been proved, it is unreasonable to evict.

**(b) Procedure**

This is the same as for secure tenants:

- i. A **Notice of Intention to seek Possession** must be served on the tenant. This will give:
  - the ground(s) for possession; and
  - the period of notice. The notice must be for 2 weeks or 2 months, depending on the ground (**s.8 Housing Act 1988**).
- ii. Within 12 months, the landlord must apply to the county court for a **possession order**.

Let us now examine the grounds for possession.

**(c) The grounds for possession**

There are 16 grounds for possession. These are divided into two groups: the mandatory grounds and the discretionary grounds.

Note that all of these grounds apply to periodic tenancies, whereas only some of them apply to fixed term tenancies (*which are not usually used for housing association tenancies*). The guidance issued by the Housing Corporation recommends that housing associations use only six of the grounds listed below, namely numbers 7, 9, 10, 12, 13 and 14.

**Group A: Mandatory grounds**

It should be noted that grounds 1 to 5 require the tenant be advised before the tenancy began, that possession might be required for each of the given reasons. (*The period of notice which must be given by the Notice of Proceedings for Possession is shown in brackets after each ground.*)

**Ground 1:** *It is the landlord's only or principal home, and he or she wants it back. (2 months)*

**Ground 2:** *The landlord has defaulted on the mortgage on the property, which was granted before the tenancy began. The mortgagee requires vacant possession to sell. (2 months)*

**Ground 3:** *The property is usually a holiday let, which has been let out of season for a fixed term (of no more than 8 months). (2 weeks)*

**Ground 4:** *The property is usually let to students, and has been let for a fixed term (not exceeding 12 months). (2 weeks)*

**Ground 5:** *The property is usually let to a minister of religion, and is now needed for that purpose. (2 months)*

**Ground 6:** *The landlord wishes to redevelop the property, and cannot reasonably do so with the tenant in residence (2 months)*

**Ground 7:** *The periodic tenancy was passed to the tenant by a will (or intestacy) of the former tenant (This does not apply to a spouse, who has a right to succession). The landlord must begin proceedings within 12 months of the death. (2 months)*

**Ground 8:** *There are rent arrears of:*

- i. 8 weeks, when it is payable weekly or fortnightly.*
- ii. There are rent arrears of 2 months, when it is payable monthly.*
- iii. One quarter's rent, payable quarterly, is more than 3 months in arrears.*
- iv. Three months' rent is more than 3 months in arrears, when it is payable yearly. (2 weeks)*

**Group B: Discretionary grounds**

**Ground 9:** *There is suitable alternative accommodation available for the tenant. This must offer a tenancy similar to the existing one (2 months).*

**Ground 10:** *There are rent arrears, both on the date of the Notice of Proceedings for Possession and when the summons issued. (2 weeks)*

**Ground 11:** *The tenant has persistently delayed paying the rent. There need not be arrears at the date of the court hearing. (2 weeks)*

**Ground 12:** *The tenant has breached (broken) an obligation, other than paying rent, of the tenancy agreement. (2 weeks)*

**Ground 13:** *The tenant, or member of the household, has permitted the conditions of the property to deteriorate. (2 weeks)*

**Ground 14:** *There has been nuisance or annoyance to others in the locality, or use of the property for immoral or illegal purposes. (immediate)*

**Ground 15:** *The furniture has deteriorated through ill-treatment (2 weeks)*

**Ground 16:** *The property was let to an employee, who is no longer an employee (The landlord must pay the tenant's removal expenses if possession is granted on grounds 6 or 9).*

**(d) What happens next?**

If any of the mandatory grounds (1 to 8) are proved, the court must issue a possession order. In the case of the discretionary grounds, the court may decide to adjourn the proceedings, or stay or suspend the execution of the order, delaying the date of possession. This might happen if, for example, a tenant in arrears (Ground 10) offered to make payments to clear the arrears.

**(e) Fixed term assured tenancies**

As we have already indicated, not all of the above grounds apply to fixed term tenancies. These are tenancies created for a definite period of time, e.g. six months. Possession *cannot* be granted, during the term of the tenancy, on grounds 1, 3, 4, 5, 6, 7, 9 or 16. These would apply only when the fixed term had expired. Possession may be granted on the other grounds, *provided that* the tenancy agreement states these grounds. In other words, the tenant would have to be in breach of the contractual obligations of the agreement. The fixed term assured tenant does not have the usual right of succession. Otherwise, the rights and obligations are similar to the periodic tenant.

**Activity 13**

*What grounds for possession do you think apply in the following cases? Are they mandatory or discretionary?*

**Case 1**

*Peter Jones regularly pays his rent late. It is due each Friday, but he often pays it two or three weeks in arrears. It is now three weeks in arrears*

**Case 2**

*The housing association receives regular complaints about the Smith family. They regularly return home in the early hours of the morning, making a great deal of noise as they do so. When visited by an officer of the association, it was discovered that there was considerable damage to the property. The bathroom wash-hand basin was hanging off the wall, kitchen unit doors were destroyed, door frames and doors were chewed (apparently by the dog), and the back garden was filled with offensive-smelling rubbish.*

**Case 3**

*Mrs. Crowall has shared the home of the assured tenant, Mr. Greenham, for two years. Mr. Greenham was infirm, and Mrs Crowall was employed by him as his nurse and housekeeper. Mr. Greenham died recently, but Mrs. Crowall has remained in the home paying rent to the association.*

**Time allocation: 15 minutes**

**Activity 13 - Response**

*You should have found Case 1 quite straightforward, but Cases 2 and 3 might have posed more difficulty.*

**Case 1:** *Peter Jones has rent arrears, so ground 10 could apply. However, he has also persistently delayed paying the rent, so ground 11 is also relevant. The association would be wise to apply on both of these discretionary grounds.*

**Case 2:** *The Smith family situation is rather more complex. This type of difficult family is dreaded by most housing managers. The Smiths seem to have failed to fulfil a number of obligations, so there may be a number of different grounds for possession: all of them discretionary. Ground 14 may apply, because the Smiths may be guilty of nuisance, or at least annoyance. They have permitted the condition of the house to deteriorate, so ground 13 is relevant. They may also have broken other obligations in the tenancy agreement, so ground 12 could apply.*

**Case 3:** *Mrs. Crowall has no right of succession, so could be evicted on mandatory ground 7. The fact that she has continued to pay the rent would not mean that a new tenancy has been created.*

## Summary

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1. In seeking possession of a property, a possession order, issued by a court, is necessary for eviction.
2. There are 16 grounds for possession. Eight are mandatory and eight are discretionary.
3. The procedure for obtaining a possession order requires that a Notice of Proceedings for Possession is first issued.
4. For fixed term assured tenancies, there are fewer grounds for possession than for periodic ones.

We have now looked at the two main types of tenancy applicable to most tenants of housing associations in general needs accommodation. There are, however, other possible arrangements. We will now go on to examine these other types, and identify the main ways in which they differ from the secure and assured tenancies described above.

## 6.6 Other types of tenancy

Since these other types of tenancy only affect a minority of housing association tenants, we have had to concentrate on the more common secure and assured tenancies. However, we shall attempt here to give you a brief indication of main differences between them.

### (a) Assured shorthold tenancies

Housing associations are not normally expected to use this form of tenancy. However, there may be occasions when it is the most appropriate: for the homeless and where it is being used to combat anti-social behaviour (*see subsection C5.4 (d)*).

**Assured shorthold** tenancies are, as the name suggests, short-term agreements. They are usually for a fixed term and give a minimum of six months' security.

The main differences are:

- The agreement cannot be terminated by the landlord in the first six months, unless there is a breach by the tenant. In this event, the normal grounds for possession apply.
- After expiry of the fixed term or, if not a fixed term, after six months, the landlord has *a right to recover possession* after giving two months' notice.
- A fixed term tenancy continues as assured shorthold after expiry of the fixed term (*unless the tenant is given notice otherwise*). This means that the landlord keeps the right to possession on two months' notice.

This type of tenancy might be useful for some self-contained special needs accommodation if it were intended only to be for short-term use.

### (b) Fully mutual tenures

These tenures are those of fully mutual, co-operative housing associations. If they are not fully mutual, the normal types of tenancy will apply. All tenants must be members of the co-operative housing associations and all members must be present or intended tenants. It is this dual role which results in differences in rights and obligations. The tenancy agreement is called an **agreement to occupy**.

The **rules of the association** must be registered by the **Registrar of Friendly Societies** as complying with the **Industrial and Provident Societies Act 1985**. There may be membership qualifications determining who may become a member. Members have voting rights at meetings and so can help to determine some things for themselves. However, in many respects, the rights of tenants are limited. A **Notice to Quit** is all that is required prior to eviction (*so long as the rules of the association have been followed*) followed by a court order. Usually, a notice to quit can be given on the death of the member, though the surviving spouse may be given membership. A member can be expelled if two thirds of the membership vote for this, but there is a right to offer a defence. There is no right to buy, though in the case of co-ownership co-operatives (*see below*), the Housing Corporation has devised a special scheme.

Ordinarily, the dwelling must be the only or main residence of the tenant, and the agreement must be surrendered if the tenant ceases to be a member.

There are two types of fully mutual tenancy: co-ownership and par-value co-operatives.

#### *i. Co-ownership*

Co-ownership tenants co-own their dwellings. Thus, they are entitled to some share of the value of the property when they leave. This means that co-ownership tenants are not eligible for housing benefit.

The Housing Corporation determines the basis for calculating the value, but this is not on market value. Premiums, as the shares are called, are often very small. The Housing Corporation approves rent levels, which are calculated to cover outgoings, including repayment of the loans raised to purchase the properties.

Slightly different are the **Equity Sharing** co-ownership schemes. These were partially funded by grant, so rents are lower. However, as the Housing Corporation leases the land to the co-owners, they can apply covenants that control the use of the property. Very few co-ownership schemes remain in existence.

#### *ii. Par-value co-operatives*

Most tenants of par-value co-operatives have the protection of the **Rent Act 1977** as they pay fair rents, determined by a rent officer. Only assured tenants have been removed from rent control.

Par-value co-operatives are expected by the Housing Corporation to follow the provisions of the Tenants' Guarantee (*see sub-section C6.4*). As a result, the rights and obligations should be similar to those outlined for assured tenants.



**(c) Special needs housing**

Special needs housing refers to schemes which offer additional support of some kind to residents. Some of these will be licences, whilst others are tenancies. As you already know, the distinction between these two occupancies is not simple. However, for our purposes we can consider that *exclusive* possession of a dwelling (*which permits sharing some facilities, such as bathrooms*) is essential for a tenancy.

The Housing Corporation, Housing and Community Renewal, National Assembly for Wales (formerly Housing for Wales) and Scottish Homes recognise a wide range of different types of special needs, which include:

elderly, mentally or physically handicapped or mentally ill people, ex-offenders, people with drug dependency problems, refugees (*e.g. for victims of domestic violence*), and single persons needing support.

The types of accommodation suited to these different sorts of special needs will, of course, vary. Each type of accommodation has to be considered individually to determine the nature of the occupancy right, being either a licence or tenancy (*see sub-section C3.2 (b)*).

**i. Licences**

A licensee has no statutory protection, except protection from eviction without a court order. Some hostel licences lack even this minimal level of protection, because they are excluded licences. However, Housing Corporation guidance requires at least four weeks' notice to quit, except in emergencies.

A licence is permission to occupy a property, rather than a property right. This is likely to apply where there are dormitories, e.g. in hostels, or the landlord's provision of services requires unrestricted access, such as in homes for the elderly infirm.

**ii. Tenancy**

A tenancy is likely in most other situations where exclusive possession is granted or essential living accommodation is not shared. A tenancy created before 15 January 1989 is likely to be a secure tenancy, whereas one created after this date will be assured or assured shorthold tenancy. The terms of the tenancy agreement are important, in that this may have conditions suited to the particular special needs scheme. Housing Corporation guidance suggests that, wherever possible, special needs schemes should be provided as assured tenancies. The assured shorthold is suited to short-term schemes of at least six months.

### iii. Almshouses

Almshouse charities provide housing for persons with a low income. However, they may only grant licences. As a result, their customers have no statutory protection.

## 6.7 The law in Scotland

### (a) Introduction

Assured tenancies were introduced in Scotland for new housing association tenants from 2 January 1989 under the **Housing (Scotland) Act 1988**. The provisions were very similar to the **Housing Act 1988** that applies in England and Wales, but some differences exist, namely:

- The HOTCHA scheme (*Home Ownership Scheme for Tenants of Charitable Housing Associations*), giving tenants of charitable housing associations grants similar to right-to-buy discounts to buy in the open market which did not apply in Scotland. (*The HOTCHA scheme was replaced by the Tenants' Incentive Scheme.*)
- Housing Action Trusts were not established in Scotland.
- The Tenants' Guarantee scheme does not apply in Scotland. Nevertheless, housing associations have the ability to provide additional rights for assured tenants in their tenancy agreements. Also, guidance is provided by the Scottish Federation of Housing Association's Model Assured Tenancy Agreement.

### (b) Grounds for possession

The grounds for possession contained in Schedule 5 of the **Housing (Scotland) Act 1988** are almost identical to the grounds contained in the **Housing Act 1988**. The exception is that there is an additional discretionary ground in the Scottish Act and it relates to the expiry of notice to quit. Grounds 1 to 8 are identical and the Sheriff in the case is obliged to grant an order for possession.

### (c) Short assured tenancies

These are the Scottish equivalent of the assured shorthold tenancies that apply in England and Wales. The tenancy must not be less than six months, and the Sheriff in a case is obliged to grant an order for possession.

*Note:* Since 30 September 2002 the provisions of the **Housing (Scotland) Act 2001** have replaced, in most cases, existing secure and assured tenancies of local authority landlords and registered social landlords by the Scottish secure tenancy.

### **Self Test 10**

1. *What is the significance of the date 15 January 1989 for housing association tenancies?*
2. *What are the main differences between a public sector secure tenancy and a housing association tenancy?*
3. *Tenants of charitable housing associations lack an important right of secure tenants. What is it, and which scheme do they have instead?*
4. *List the circumstances in which a housing association may still create a secure tenancy.*
5. *If public sector stock or HAT stock is transferred to a housing association, what type of tenancy is created?*
6. *List the main exclusions from assured tenancies.*
7. *In what ways do the rights of assured tenants differ from those of secure tenants?*
8. *Explain the significance of mandatory grounds for possession of assured tenancies.*
9. *What is the significance, in terms of rights, of a fixed term assured tenancy?*
10. *What is a fully mutual co-operative housing association?*
11. *What limited rights are granted to licensees?*

*Now turn to the Answers at the end of the Block.*

## Summary

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1. Most housing association tenants will have secure (housing association) tenancies, or assured tenancies. However, there are some notable exceptions.
2. Assured shorthold tenancies are for a fixed term of at least six months, so may be used for short-term provision.
3. Fully mutual schemes are those in which all tenants must be members, and all members must be tenants. There are two types: co-ownership; and par-value co-operatives, which only have limited statutory protection.
4. Co-owners are entitled to a premium when they leave.
5. Par-value co-operatives tenancies established before the Housing Act 1988 will have fair rents, but if established later they will be market rents. Nevertheless, are expected to offer rights similar to those enjoyed by assured tenants.
6. There are a large variety of different special needs schemes. They may grant licences (e.g. almshouses, hostels), secure tenancies (pre-1989), assured tenancies, or assured shorthold tenancies (for fixed term, short period schemes).
7. The laws in Scotland differ in some detail from the laws in England and Wales, though, in general, the protection offered to tenants is similar.

## 7. Reform of Tenancies

### 7.1 Background

Having worked through this Block, you will appreciate that there are a number of different types of tenancy that apply to local authority and housing association social housing, namely:

- **Secure tenancies Housing Act 1985**, that apply to local authority dwellings in England and Wales, Scottish secure tenancies, **Housing (Scotland) Act 2001**, that apply to local authority and registered social authorities' dwellings. There is also the one year Introductory Tenancy (**Housing Act 1996**), which, if not terminated because of anti-social behaviour or rent arrears, leads to the tenant becoming a secure tenant.
- **Fair rent tenancies (Rent Act 1977)**. These are Protected and Regulated Tenancies that apply to housing association or private sector tenancies entered into before the assured tenancy regime introduced by the Housing Act 1988.
- **Assured tenancies (Housing Act 1988 as amended by the Housing Act 1996)(Housing (Scotland) Act 1988 as amended by the Housing (Scotland) Act 2001)**. These tenancies apply to all housing association and private sector tenancies entered into after 15 January 1989. *(There is also an assured shorthold tenancy. This can be terminated after a minimum of six months and is only occasionally used by housing associations. However, some housing associations have adopted it as a probationary tenancy. Again, like the local authority introductory tenancy, if not terminated because of anti-social behaviour or rent arrears, it leads to the tenant becoming an assured tenant).*

You will recall that the important difference between the tenancies is that the rights for secure tenants are defined in legislation. In contrast, the rights for assured tenants are based on the law of contract in the form of the tenancy agreement.

Each of these tenancies has its own tenancy rules, tenancy rights, rent provisions, and procedures for gaining possession. As a result, social housing tenancies appear somewhat complex and it is thought that a consistent approach would simplify and integrate the different social renting organisations. One solution would be to develop a single social housing tenancy that applies to both local authority housing and to housing association properties.

### 7.2 A single social housing tenancy?

#### (a) Emerging policy

The Chartered Institute of Housing and others have, for some time, thought that a single form of tenancy would benefit both tenants and landlords. Any new form of tenure would need to be based on

the best features of secure and assured tenancies. Also, some flexibility of approach would enable housing organisations to agree additional rights appropriate to local conditions. It was also considered to be important not to reduce rights presently enjoyed by existing tenants.

The Government's Housing Green Paper '*Quality and Choice: A Decent Home for All*' was published by the Department of the Environment, Transport and the Regions in April 2000. It had been thought that the Green Paper might have included details for a proposed single social housing tenancy. Although no details were included, there was a statement of intent, namely:

*'We believe there is merit in this proposal and will explore the benefits of, and options for, moving to a new single form of tenure. However, ... we do not propose any significant change to Right to Buy.'* (Section 9.68).

The Green Paper also indicated that consideration would be given to other new forms of tenure. This might included introductory assured shorthold tenancies, which could:

*'... for example, be suitable for tenants in foyer-type accommodation, and options to follow up our commitment to legislate to give same sex partners equivalent rights to secure or assured tenancy as heterosexual couples.'* (Section 9.71).

The government's statement of intent was aimed at providing security to tenants, whilst seeking to meet the long-term needs of social housing. At the same time, it was necessary to provide conditions that would attract landlords to invest to meet such needs. This will require a degree of flexibility in the way landlords may use their housing. As with so many policy developments, it is a question of striking a balance between tenants and landlords' needs.

In March 2001, the Law Commission published a study report entitled *Reform of Housing Law*. The study identified a number of issues within the current housing law framework that were considered to be in need of reform. In response, the Government asked the Law Commission to undertake a major review of the law surrounding housing tenure in the social and private sector housing sectors. The objective of the review being to achieve a simpler and less complex framework for housing law.

The first stage of the Law Commission's Review, Consultation Paper No. 162 *'Renting Homes 1: Status and Security'*, was published in April 2002 (for details see website [www.lawcom.gov.uk](http://www.lawcom.gov.uk)), with comments being submitted by 12 July 2002, and a summary of the outcome is awaited. Essentially, the Consultation Paper focuses on the legal framework for regulating the provision of homes by private landlords, local authorities, housing associations and other social landlords, whether in tenancies or licences. A second Consultation Paper is due for publication during 2002 and will deal with rights to succession and other matters relating to the transmission of tenancies and licences, in particular assignment and sub-letting.

The recommendations of the first Consultation Paper included replacing all present forms of tenancy agreement with two tenancy agreements. The Type I agreement, which is modelled on the local authority secure tenancy, would provide considerable security of tenure, and the Type II agreement, being similar to the shorthold assured tenancy, would provide much less security. Unlike the Scottish secure tenancy which was introduced in September 2002 by the **Housing (Scotland) Act 2001** just for social tenancies, the Law Commission recommended that the new tenancies be available to all landlords, whether social or private. However, it is anticipated that social landlords will generally use Type I agreements and private landlords the Type II agreement. It is also considered that the Type II agreement could be used by social landlords as a general probationary agreement to replace the present introductory tenancy.

The Consultation Paper sought views on many aspects of its recommendations, including whether all social landlords should be required to use Type I agreements with only specific exceptions allowing the use of Type II agreements, or whether they should have freedom to choose. You will realise that if social landlords have the option of choosing a Type II tenancy, then tenants' rights to security will be reduced. It will also be appreciated that if there was a Type I tenancy common to local authorities and housing associations and other social landlords, then one of the key objections to stock transfer, namely different tenancy terms, will be removed.

The Law Commission's recommendations extended beyond just reducing the present range of tenancies to two and included:

- The creation of a simpler and more flexible legal framework
- Two types of tenancy, one long-term and one short-term
- Written and detailed tenancy agreements



- Widely available model tenancy agreements
- A more consumer-based approach to housing law
- Landlords should have discretionary powers and not mandatory powers of possession
- Duties imposed on both landlords and tenants over anti-social behaviour.

A third and final Law Commission report is scheduled for Summer 2003 and will include a draft Parliamentary Bill. This Bill could form the basis for legislation that would rationalise and modernise the complex area of housing law. Importantly, such changes would make tenancy agreements more comprehensible to landlords and tenants. However, even if the Government accepts the draft Bill, Parliamentary time will have to be found to debate and approve intended legislation. From this, you will appreciate that any tenure changes are not likely for at least two years.

### SCOTTISH SECURE TENANCIES

You will have noticed the reference above to the fact that secure tenancies were introduced by the **Housing (Scotland) Act 2001** just for social tenancies. The provisions had their origins in a Consultation Paper '*A New Single Housing Tenancy for Scotland: Rights, Obligations and Opportunities*' which was issued in 2000 in response to comments on the proposals contained in the Housing Green Paper (February 1999). The consultation paper set out new tenancy arrangements and identified the implications for individuals and housing organisations. Essentially, there was recognition that local authorities, housing associations and other social landlords were undertaking a similar role for similar tenants, and that there were distinct advantages in having a common arrangement about the rights and obligations that each requires of the other. Following the receipt of views on the Consultation Paper, the proposals were taken forward as a Bill that became the **Housing (Scotland) Act 2001**. When the provisions came into force they modified the **Housing (Scottish) Acts of 1986, 1987 and 1988**, as well as the **Housing Association Act 1985** (*Scottish students and other interested students can access the full text of the Housing (Scotland) Act 2001 on:* [www.scotland-legislation.hmsso.gov.uk](http://www.scotland-legislation.hmsso.gov.uk)).

*continued...*



It is Part 2 of the Housing (Scotland) Act 2001 that includes the provisions affecting tenants of social landlords and, within it, Chapter 1 contains the provisions for Scottish Secure Tenancies. There are to be two forms of tenancy, the Scottish Secure Tenancy (*see sections 11 to 33*) and the Short Scottish Secure Tenancy (*see sections 34 to 37*). Again you will see that the likely legislative recommendations for England and Wales mirrors that of legislation for Scotland. The difference between the two is, as briefly mentioned above, that the new Scottish tenancies were introduced just for social landlords, whereas in England and Wales the proposals are that the two forms of tenancy are intended to be available for social and private landlords. However, this may, in the light of expressed views on the consultation paper as well as the practical outcome of the Scottish tenancies, change by the time legislation is debated and passed.

#### **(b) Influencing considerations**

Any single social housing tenancy will need to address a local authority tenant's Right to Buy their dwelling. This would seem to suggest that there should be a common right to buy for all social housing tenants, with the exception of charitable housing bodies. However, careful consideration will need to be given to the cost floor rules that enable a reduction in the discounted price to reflect previous repair and modernisation expenditure. Also, a reconsideration of dwellings to be exempted from Right to Buy would be beneficial. At present, only sheltered housing and dwellings with special disabled and other features are exempt from the Right to Buy.

It seems inevitable that any single social housing tenancy could have a significant influence on private sector tenancies. As you know from your studies of this Block, all new private sector tenancies must now be assured or assured shorthold tenancies. However, there will be at least one important difference, namely that the Right to Buy will not be included in private sector tenancies. If it were included, it would discourage private landlords from investing to provide dwellings for rent.

## Answers

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### Self Test 1

- Simple contract.
  - Deed.
- Simple contract - 6 years.
  - Deed - 12 years.
- Offer.
  - Acceptance.
  - Consideration.
  - Intention to be legally bound.
- Where there are social and domestic agreements.

### Self Test 2

- A **duty** is owed.
  - There has been a **breach** of that duty.
  - That **damage** or harm has resulted from the breach of duty
- Negligence occurs as a result of the omission to do something that a reasonable person would do, or doing something that a reasonable person would not do (*Blyth v Birmingham Waterworks* [1856]).
- Prior to the introduction of the Law Reform (Contributory Negligence) Act 1945, anyone who contributed in a negligent way to their injuries or harm could recover nothing. Since the Act came into force, successful plaintiffs can recover damages, but the amount will be reduced by an amount proportionate to their negligence.

### Self Test 3

- The employer is liable for the actions and acts of an employee during periods of employment only.
- An employer is only liable for employees' actions in matters of contract if the employee has the authority to enter into contracts on behalf of the employer.

3. (a) TRUE, employees can take their disputes to a Tribunal.  
 (b) The relevant tribunal is called an Employment Tribunal.  
 (c) If successful, an employee might, as relevant, receive compensation, reinstatement in post, or the employer instructed to comply with legislative requirements.
4. Employers, in complying with their duty of care to employees, must provide:
  - **competent staff** (need for employees to be able to rely on colleagues);
  - **safe plant and equipment** (e.g. as relevant, protective clothing, safety measures and requirements for their use); and
  - **safe system of work** (including the need to take reasonable steps to put the system into operation).

#### Self Test 4

1. (a) s.8 of the Housing Act 1985 describes a duty (something the local authority must do), i.e. “... *shall consider housing conditions ... shall review any information ...*”.  
 (b) s.9 describes a power (something the local authority does not have to do, but can if it wishes) and the key word here is “... *may ...*”.  
 (c) s.161 of the Government and Housing Act 1989 amends the Housing Act 1985 by adding to the end of s.9. The new s.9(5) clarifies the powers and duties set out in the 1985 Act, by explaining that in carrying them out the local authority is in no way obliged “... *to acquire or hold any houses or other land ...*”.

#### Self Test 5

1. Acts of Parliament grant local authorities' powers to act and define their functions.
2. As corporations, local authorities have a legal identity which is separate from their elected members and officers. This means that a local authority can sue and be sued in its own name.
3. Acts of Parliament empower local authorities to devise their own by-laws. By-laws are one form of secondary legislation (*see Block HO.101 B3.3*).
4. FALSE. Housing association powers are derived from the form of structure adopted when they were established, e.g. *charity, company, society or trust*.

5. The various legal forms of tenancy for social landlords are:
  - i. local authority **secure** tenancies;
  - ii. local authority **introductory** tenancies;
  - iii. housing association **assured shorthold** tenancies; and
  - iv. housing association **assured** tenancies.
6. The above tenancies were introduced by the following legislation:
  - i. Secure tenancy: Housing Act 1985;
  - ii. Introductory tenancy: Housing Act 1996;
  - iii. Assured tenancy: Housing Act 1988 as amended by the Housing Act 1996; and
  - iv. Assured shorthold tenancy: Housing Act 1988 as amended by the Housing Act 1996
7. The Housing Act 1980 introduced secure tenancies for local authority tenants.

### Self Test 6

1. The two legal estates are:
  - (a) Fee simple absolute in possession, commonly called freehold; and
  - (b) Term of years absolute, commonly called leasehold.
2. The minimum period of time is 21 years.
3. Checks on the ownership of property can be made by inspecting the register in the local Land Registry Office.
4. Information recorded at the Land Registry Office includes:
  - name of the owner of the property;
  - details of the property owned (*in the case of leasehold property the register will contain details of the person holding the freehold*);
  - details of any legal charge on the property, *e.g. outstanding mortgage*.
5. (a) TRUE.  
(b) TRUE.

### Self Test 7

1. The two most common forms of tenancies are:
  - (a) **Fixed term** tenancies, which run for a fixed period of time; and
  - (b) **Periodic** tenancies, which run automatically from period to period, e.g. weekly or monthly. This is the normal form of tenancy used by social landlords.
2. A **licence** gives mere permission to occupy premises, whereas a **lease** grants an interest in land and exclusive possession of property.
3. The test for a lease which is applied by the courts is that of 'exclusive possession'. The test or principle of exclusive possession was determined in *Street v Mountford* [1985].
4. Private landlords generally preferred to grant a licence rather than a lease so as to avoid the protection and security granted to tenants by the Rent Acts.

### Self Test 8

1. Tenants of local authorities and Housing Action Trusts will have secure tenancies. Housing associations, which began prior to 15 January 1989 (when the Housing Act 1988 came in force), are also secure. However, later tenants will have assured tenancies.
2. The main rights include:
  - security of tenure;
  - the right to buy;
  - the right to share property;
  - the right to repair and improve;
  - the right to a rent book;
  - the right to be consulted; and
  - the right to information.
3. Tenants of charitable housing associations, housing trusts, co-operatives, and sheltered housing schemes do not have the right to buy. Other tenants must have occupied their home for at least two years.

4. The main obligations include:
  - to pay rent;
  - to pay outgoings and charges;
  - to take proper care of the property;
  - to allow the landlord to inspect the property;
  - not to commit waste;
  - not to commit nuisance; and
  - to comply with the tenancy agreement.
5. Tenants may transfer to any landlord approved by the Housing Corporation.
6. The purpose of a tenancy agreement is to make explicit the main obligations and rights of both parties (*landlord and tenant*) to the agreement.
7. Group A grounds must be shown to be reasonable, which means that the court has discretion. If Group B grounds are proved, the court must order possession, but only if suitable alternative accommodation is available. If Group C grounds are proved, the court may order possession, but only if suitable alternative accommodation is available.
8. The landlord must:
  - serve a notice of possession;
  - serve a summons, to appear in court; and
  - be granted a possession order by the court.

### Self Test 9

1. It was a statutory response to help local housing authorities to tackle the increase in anti-social behaviour being experienced on council estates.
2. FALSE. It is an option, but if the local housing authority decides to introduce an introductory scheme, it must apply to all of its council stock.
3. The period of an introductory tenancy is 12 months, after which a non-offending tenant becomes a secure tenant.
4. No. Under s.142(2) Housing Act 1996 they would become secure tenants.

5. First the local housing authority must serve a Notice Seeking Possession on the tenant (*s.128 Housing Act 1996*) giving the reasons for possession. The tenant is also advised that he or she is entitled to a review of the decision to seek possession, and where to go if they need legal or other help about the notice or what they should do. If the tenant requests a review then, once it has been held, the housing authority must advise of the outcome of the review. If the review upholds the original decision, then reasons must be given to the tenant. The court will grant possession if the local housing authority has complied with the procedures for gaining possession.

### Self Test 10

1. All tenancies created prior to 15 January 1989 are housing association (*secure*) tenancies. From this date, they are assured or assured shorthold tenancies.
2. Unlike local authority tenants, housing association tenants are subject to fair rents, assessed by the local rent officer.
3. Tenants of charitable housing associations do not have the right to buy, but instead have a Tenants' Incentive Scheme to assist with house purchase. New tenants also have a right to acquire.
4. A new housing association secure tenancy may be created only if:
  - the tenant is an existing secure tenant;
  - a possession order was granted on the understanding that alternative accommodation was available for an existing secure tenant; and
  - the property was purchased with a 'sitting' protected tenant.
5. If the local authority or a Housing Action Trust transfers to a housing association, the tenancies become assured tenancies (*though local authority tenants retain a right to buy their property*).
6. The main exclusions from assured tenancies are:
  - public sector tenancies;
  - temporary accommodation for homeless people;
  - student accommodation;
  - holiday lets; and
  - where the landlord is resident.

7. Assured tenants lose a number of the statutory rights of secure tenants. For the most part, for housing association tenants, these should become contractual rights given by the tenancy agreement (*this is expected by the Housing Corporation*). These 'lost' statutory rights, which are now normally contractual include:
  - rights to transfer and exchange;
  - rights to repair and improve; and
  - the right to be consulted and obtain information.
8. With mandatory grounds for possession, so long as the Ground is proved, the court has no discretion. A possession order must be granted.
9. Fixed term tenants, so long as they have fulfilled the obligations of their agreement, *e.g. paid the rent regularly*, cannot be evicted until the term has ended. However, they do not have succession rights.
10. In a fully mutual co-operative, all members *are* tenants, and all tenants are members. The properties are mutually (*collectively*) owned and managed by the tenants.
11. Licensees may not be evicted without a court order, unless they have an excluded licence. This applies to only a few temporary hostels.