

# SUPPLEMENTARY PAPER 1

## THE LAW ON HOUSING CONDITIONS AND UNLAWFUL EVICTION

### INTRODUCTION

- 1.1 In Part 3 of the consultation paper,<sup>1</sup> we touched briefly on two aspects of the law relating to housing conditions: section 11 of the Landlord and Tenant Act 1985, and the Housing Health and Safety Rating System (“HHSRS”) introduced by part 1 of the Housing Act 2004. In this paper, we present a brief overview of the variety of legal provisions which relate to housing conditions, and on the law relating to unlawful eviction and harassment.

### HOUSING CONDITIONS

- 1.2 One of the key objects of housing policy is to ensure that accommodation is fit for people to live in. Since the 19<sup>th</sup> century, there has been legislation relating to housing conditions. The legislation has sought to define minimum standards which accommodation should reach. It has also provided mechanisms for enforcement. In more recent years, there has been a focus on a variety of issues relating to health and safety, not just relating to the structure of the premises but also to the fittings and furniture in them, particularly those – such as gas appliances – that can be lethal if not fit for purpose. The Law Commission reviewed the law on housing conditions in detail in 1996.<sup>2</sup> We provide only a short summary here.

#### **Legal obligations on the landlord**

- 1.3 The landlord is subject to a number of legal obligations which arise both from the common law and from statute.

#### ***Common Law***

##### NUISANCE

- 1.4 A landlord is liable in nuisance, if the nuisance complained of emanates from the property retained by the landlord (for example, water damage caused by blocked drain pipes under the landlord’s control).<sup>3</sup>

<sup>1</sup> Ensuring Responsible Letting (2007) Law Commission Consultation Paper No 181, available at [http://www.lawcom.gov.uk/housing\\_renting.htm](http://www.lawcom.gov.uk/housing_renting.htm).

<sup>2</sup> Landlord and Tenant: Responsibility for State and Condition of Property (1996) Law Com No 238, available at <http://www.bailii.org/ew/other/EWLC/1996/238.pdf> (last visited 22 June 2007).

<sup>3</sup> Landlord and Tenant: Responsibility for State and Condition of Property (1996) Law Com No 238, para 3.5, available at <http://www.bailii.org/ew/other/EWLC/1996/238.pdf> (last visited 22 June 2007).

## FITNESS OF FURNISHED ACCOMMODATION

- 1.5 While there is no general common law requirement that accommodation must be fit for human habitation when let,<sup>4</sup> where accommodation is let furnished, the landlord is under an implied contractual duty to ensure that it is reasonably fit for human habitation at the start of the lease (but not to keep it fit thereafter).<sup>5</sup> Unfitness includes inadequate drains, pest infestations, infections, water supply problems and premises that are unsafe to occupy, but not necessarily disrepair alone.<sup>6</sup>

## NEGLIGENCE

- 1.6 Landlords who carry out work or repairs on premises, even if they are under no duty to do so, may be exposed to liability if the repairs or work are carried out negligently. Specific obligations are also imposed on landlords who designed, built or oversaw the building of the premises both at common law,<sup>7</sup> and under section 1 of the Defective Premises Act 1972. Repairs or work carried out before<sup>8</sup> or after<sup>9</sup> a tenant moves in may expose a landlord to liability at common law and under the Defective Premises Act, if done negligently. Despite the absence of a general duty of care, a landlord may be liable for failure to carry out repairs if they knew of the risk of harm to the tenant.<sup>10</sup>

<sup>4</sup> Although section 8 of the Landlord and Tenant Act 1985 implies a covenant into leases requiring landlords to ensure that property is fit for human habitation, as it only applies where the rent is very low (less than £80 per year in London) it is effectively a “dead letter”.

<sup>5</sup> *Smith v Marrable* (1843) 11 M & W 5; 152 ER 693; *Sarson v Roberts* [1895] 2 QB 395. About 30% of private lettings are of furnished accommodation: ODPM and ONS, *Survey of English Housing, 2003-2004, Provisional Results*, Table 14, p 16, available at [http://www.communities.gov.uk/pub/411/Summary0230804SurveyofEnglishHousingProvisionalResults200304PDF301Kb\\_id1156411.pdf](http://www.communities.gov.uk/pub/411/Summary0230804SurveyofEnglishHousingProvisionalResults200304PDF301Kb_id1156411.pdf) (last visited 25 June 2007).

<sup>6</sup> Landlord and Tenant: Responsibility for State and Condition of Property (1996) Law Com No 238, para 3.9, available at <http://www.bailii.org/ew/other/EWLC/1996/238.pdf> (last visited 22 June 2007).

<sup>7</sup> *Targett v Torfaen BC* [1992] 3 All ER 27; *Rimmer v Liverpool City Council* [1985] QB 1; *Batty v Metropolitan Property Realisations* [1978] QB 554.

<sup>8</sup> See *Adams v Rhymney Valley DC* (2001) 33 HLR 446. The council was held to have discharged its duty in the case, but it was not disputed that the council was under a duty to take care to ensure the safety of windows installed before the tenant moved in.

<sup>9</sup> *AC Billings and Sons Ltd v Riden* [1958] AC 240.

<sup>10</sup> For example, in *Stockley v Knowsley MBC* [1986] 2 EGLR 141, a landlord who knew about frozen pipes but failed to take reasonable action was liable for damage when they burst.

## COMMON LAW IMPLIED TERMS

- 1.7 There are circumstances where terms may be implied into a letting agreement. Where the tenancy is of only part of a building (for example in a house in multiple occupation (HMO) where the tenancy agreements give the residents the right to occupy only part of the building (for example their individual bed-sitting rooms) while allowing them to use common or shared parts (such as a shared kitchen)), there is an implied duty on the landlord to take reasonable care that that part of the building retained by him is not in such a condition to cause damage to the tenant or to the premises let to the tenant.<sup>11</sup> The landlord must also take reasonable care to maintain the common parts over which the tenant has rights.<sup>12</sup>

### **Statute law**

- 1.8 Statute law has extended the common law by implying further terms and duties.

## IMPLIED REPAIRING COVENANT: LANDLORD AND TENANT ACT 1985, SECTION 11

- 1.9 Section 11 of the Landlord and Tenant Act 1985 implies a covenant into all leases of a dwelling house for less than seven years.<sup>13</sup> Landlords must keep in repair the structure and exterior of the dwelling house (including drains, gutters and external pipes) and keep in repair and in proper working order the installations in the house for the provision of water, heating, electricity, gas and sanitation (including basins, sinks, baths and sanitary conveniences but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity).<sup>14</sup> It is not possible to contract out of section 11: attempts to do so are void.<sup>15</sup>
- 1.10 The landlord's obligations under section 11 are limited in several important ways.
- (1) The landlord need not repair anything which the tenant must repair under their common law duty to use the premises in a "tenant-like manner"; which the tenant would be liable to repair but for an express covenant on their part; or which the tenant can remove at the end of the lease.<sup>16</sup>

<sup>11</sup> *Duke of Westminster v Guild* [1985] QB 688 at 701.

<sup>12</sup> *Liverpool City Council v Irwin* [1977] AC 239. See also Law Com No 238 para 3.10, available at <http://www.bailii.org/ew/other/EWLC/1996/238.pdf> (last visited 22 June 2007). For short-term leases, this ground is now largely covered by subsections 11(1A), (1B) and (3A) of the Landlord and Tenant Act 1985.

<sup>13</sup> Landlord and Tenant Act 1985, ss 13 and 14.

<sup>14</sup> Landlord and Tenant Act 1985, ss 11(1)(a) to (c). For leases granted after 15 January 1989 in respect of only part of a building, similar repairing obligations are imposed relating to other parts of the building or installations owned or controlled by the landlord, and which serve and affect the tenant's enjoyment of the part let: ss 11(1A) and (1B).

<sup>15</sup> Landlord and Tenant Act 1985, s 12(1).

<sup>16</sup> Landlord and Tenant Act 1985, ss 11(2)(a) and (c). It is possible for a landlord to obtain an order from the county court to exclude or modify the obligations imposed on landlords (s 12(2)).

- (2) The implied covenant only applies to matters where there is lack of repair. A common problem is condensation arising from design defects, rather than lack of repair. These are outside the scope of the repairing covenant.<sup>17</sup>
- (3) The landlord need not rebuild or reinstate the premises if damaged or destroyed by fire, tempest, flood or other “inevitable accident”.<sup>18</sup>
- (4) The standard of repair required is tempered by the age, character and prospective life of the dwelling and the locality in which it is situated.<sup>19</sup>
- (5) Where the premises form only part of a building, the landlord need not carry out repairs if they have insufficient rights over the part of the building or the installation in question to carry out the repairs and have reasonably tried but failed to obtain those rights.<sup>20</sup>
- (6) Landlords need carry out their section 11 repairing obligations only when they have received actual notice of the disrepair, for example from the tenant, a third party (such as an environmental health officer) or by inspecting the premises.<sup>21</sup> (No notice is required however if the disrepair occurs in a part of the premises retained by the landlord.<sup>22</sup>)
- (7) Having received notice of the disrepair the landlord will have a reasonable time to carry out the necessary work. The Office of Fair Trading considers unfair any term purporting to allow delay.<sup>23</sup>

<sup>17</sup> *Quick v Taff Ely Borough Council* [1986] QB 809.

<sup>18</sup> Landlord and Tenant Act 1985, s 11(2)(b).

<sup>19</sup> Landlord and Tenant Act 1985, s 11(3). The “prospective life of the dwelling” was considered by the Court of Appeal in *London Borough of Newham v Patel* (1978) 13 HLR 77. See also *Anstruther-Gough-Calthorpe v McOscar* [1924] 1 KB 716, *Wainwright v Leeds City Council* (1984) 13 HLR 117.

<sup>20</sup> Landlord and Tenant Act 1985, s 11(3A).

<sup>21</sup> *McGreal v Wake* (1984) 13 HLR 107.

<sup>22</sup> *Melles & Co v Holme* [1918] 2 KB 100.

<sup>23</sup> OFT Guidance on unfair terms in tenancy agreements (2005) OFT356, para 3.29, available at [http://www.offt.gov.uk/shared\\_offt/reports/unfair\\_contract\\_terms/oft356.pdf](http://www.offt.gov.uk/shared_offt/reports/unfair_contract_terms/oft356.pdf) (last visited 22 June 2007). The Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999 No 2083) protect consumers against unfair standard terms in contracts they make with suppliers, including tenancy agreements, made after 1 July 1995. The OFT, together with trading standards and certain other bodies, can take legal action to prevent the use of potentially unfair terms.

- 1.11 Should the landlord fail to perform their repairing obligations, the legal remedy is action for breach of contract. The housing disrepair pre-action protocol now regulates the timing and content of notices a tenant should send to the landlord before starting legal proceedings.<sup>24</sup> Damages for breach of section 11 obligations are designed to put tenants in the position they would have been in had the landlord carried out his repairing obligations.<sup>25</sup> This includes the cost of alternative accommodation if the disrepair made the premises uninhabitable, redecorating costs, and compensation for loss of comfort and inconvenience. Tenants can also seek an order for specific performance of the landlord's section 11 repairing obligations.<sup>26</sup>
- 1.12 Some tenants carry out repairs themselves, where the landlord fails to do so, and withhold rent to cover the cost. This is very risky. If the correct procedure is not followed, the tenant may risk eviction for rent arrears.<sup>27</sup> The housing advice charity, Shelter, includes on its website the following advice to tenants on carrying out repairs themselves, where the landlord fails to do so, and withholding rent.<sup>28</sup>

You must follow a specific procedure if you want to pay for repairs and take the cost out of your rent. Otherwise, your landlord can evict you.

Be sure to keep copies of all correspondence, and keep accurate records of what you have paid and when. We've produced a series of sample letters, which may be helpful.

The process is as follows:

**Step 1:** report the repairs to the landlord in writing and allow time for them to be done. Keep a copy.

**Step 2:** write to your landlord again, explaining that you intend do the work yourself and take the costs out of your rent unless the repairs are done within a certain time (eg two weeks). Keep a copy. See sample letter 1.

**Step 3:** once this time has passed, get three quotes/estimates for the work from reliable contractors

<sup>24</sup> The housing disrepair pre-action protocol can be found on the Department for Constitutional Affairs website at [http://www.dca.gov.uk/civil/procrules\\_fin/contents/protocols/prot\\_hou.htm](http://www.dca.gov.uk/civil/procrules_fin/contents/protocols/prot_hou.htm) (last visited 22 June 2007).

<sup>25</sup> Encyclopaedia of Housing Law and Practice, para 1-2326.1.

<sup>26</sup> Landlord and Tenant Act 1985, s 17.

<sup>27</sup> See Shelter: <http://england.shelter.org.uk/advice/advice-4081.cfm> (last visited 26 June 2007).

<sup>28</sup> <http://england.shelter.org.uk/advice/advice-4081.cfm> (last visited 26 June 2007).

**Step 4:** send the quotes to your landlord with a letter explaining that you are going to go ahead with the cheapest quote unless your landlord arranges for the repairs to be done within a certain time (eg a further two weeks). See sample letter 2.

**Step 5:** once this time has passed, if your landlord hasn't responded, arrange for the work to be done by the contractor that gave the cheapest quote

**Step 6:** pay for the work yourself and send a copy of the receipt to your landlord, asking them to refund the money. See sample letter 3.

**Step 7:** if your landlord does not give you back the money, write and confirm that you are going to deduct the money from your future rent. Explain exactly when the deductions will start and how long you will withhold rent for. See sample letter 4.

If you are claiming housing benefit, tell the housing benefit department what you are doing, and ask them not to make payments directly to your landlord. Your HB payments might be suspended temporarily until the issue is resolved.

#### LIABILITY IN TORT: DEFECTIVE PREMISES ACT 1972

- 1.13 At common law, landlords are not generally liable in negligence to occupiers and visitors for damage caused by defects in their property.<sup>29</sup> Where, however, express or implied repairing obligations exist,<sup>30</sup> section 4 of the Defective Premises Act 1972 requires a landlord to take reasonable care to ensure that “all persons who might reasonably be expected to be affected by defects in the state of the premises” are reasonably safe from personal injury and damage to their property caused by a relevant defect.<sup>31</sup> It allows visitors to sue in tort for personal injury or property damage suffered (while the tenants would usually sue in contract). A landlord may be liable in tort for failure to maintain or repair the premises even if they have not received actual notice. Under section 4(2) a landlord will owe a duty of care if they knew or “ought in all the circumstances to have known” of the relevant defect.
- 1.14 The duty of care is limited to the premises subject to the agreement (and not to other premises the landlord must repair). It is also limited to personal injury or damage caused by a defect the landlord is obliged to repair,<sup>32</sup> and not, for example to design faults leading to mould contributing to a tenant’s asthma.<sup>33</sup>

<sup>29</sup> *Cavalier v Pope* [1906] AC 428. See also Landlord and Tenant: Responsibility for State and Condition of Property (1996) Law Com No 238 para 3.4 available at <http://www.bailii.org/ew/other/EWLC/1996/238.pdf> (last visited 22 June 2007).

<sup>30</sup> For example, Landlord and Tenant Act 1985, s 11.

<sup>31</sup> Defective Premises Act 1972, s 4(1). This applies to licences and tenancies: Defective Premises Act 1972, s 4(6).

<sup>32</sup> Defective Premises Act 1972, s 4(3).

<sup>33</sup> *Ratcliffe v Sandwell MBC* [2002] EWCA Civ 6 (2002) 1 WLR 1488.

## LIABILITY IN TORT: OCCUPIERS' LIABILITY ACT 1957

- 1.15 Occupiers, including resident landlords and landlords who retain control over common parts,<sup>34</sup> owe a duty to all visitors “to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.”<sup>35</sup> This would include the duty of a landlord to ensure the safety of tenants when using common parts.<sup>36</sup> This duty cannot be excluded in relation to “visitors” who were not party to the tenancy agreement or licence.<sup>37</sup> The Office of Fair Trading would object to any attempt to exclude liability in relation to a tenant or licensee.<sup>38</sup> Unlike the Defective Premises Act 1972, liability is not limited to damage caused by defects the landlord was under a duty to repair. Nor is the landlord required to have had actual or constructive notice about the defect before liability can result. However, the occupier is not liable for risks willingly assumed by the visitor,<sup>39</sup> nor for damage resulting from faulty work or repairs carried out by an independent contractor if the occupier took reasonable steps to ensure that the contractor was competent and that the work had been properly done.<sup>40</sup>

## STATUTORY NUISANCE: ENVIRONMENTAL PROTECTION ACT 1990 (“THE 1990 ACT”) PART 3

- 1.16 Local authorities must, from time to time, inspect their area to detect statutory nuisances. Statutory nuisances include any premises in such a state as to be prejudicial to health or a nuisance.<sup>41</sup> If a person living in the area makes a complaint, the authority must also take steps to investigate.<sup>42</sup> If after investigating they are satisfied that a statutory nuisance exists, or is likely to occur or recur, they must serve an abatement notice on the person responsible for it.<sup>43</sup> This is the premises’ owner where the statutory nuisance is caused by a structural defect.<sup>44</sup> An abatement notice can be appealed to the magistrates’ court.<sup>45</sup>

<sup>34</sup> *Jordan v Achara* (1988) 20 HLR 607. See also *Ribee v Norrie* (2001) 33 HLR 777.

<sup>35</sup> Occupiers’ Liability Act 1957, s 2.

<sup>36</sup> See the discussion in *Berryman v Hounslow LBC* [1997] PIQR P83 at P85.

<sup>37</sup> Occupiers’ Liability Act 1957, ss 2(1) and 3(1).

<sup>38</sup> Office of Fair Trading, *Guidance on Unfair Terms in Tenancy Agreements* (September 2005) para 3.10, available at [http://www.offt.gov.uk/shared\\_offt/reports/unfair\\_contract\\_terms/oft356.pdf](http://www.offt.gov.uk/shared_offt/reports/unfair_contract_terms/oft356.pdf) (last visited 22 June 2007).

<sup>39</sup> Occupiers’ Liability Act 1957, s 2(5).

<sup>40</sup> Occupiers’ Liability Act 1957, s 2(4)(b).

<sup>41</sup> Environmental Protection Act 1990, s 79(1)(a).

<sup>42</sup> Environmental Protection Act 1990, s 79.

<sup>43</sup> Environmental Protection Act 1990, s 80(1).

<sup>44</sup> Environmental Protection Act 1990, s 80(2)(b).

<sup>45</sup> Environmental Protection Act 1990, s 80(3).

- 1.17 Failure to comply with an abatement notice is a summary offence punishable by a fine.<sup>46</sup> If an abatement notice is not complied with, the local authority can execute the notice and abate the nuisance, whether or not it takes proceedings for an offence,<sup>47</sup> and recover its reasonable expenses from the person responsible.<sup>48</sup>
- 1.18 Section 82 of the 1990 Act allows any person aggrieved by a statutory nuisance to complain to the magistrates' court, after giving at least 21 days notice. If satisfied that the alleged nuisance exists or is likely to occur, the court must order its abatement, and may fine the defendant. Failure to comply with the order is an offence. If the nuisance renders the premises unfit for human habitation the court can prohibit their use for human habitation until they are made fit. Proceedings are to be brought against the person responsible for the nuisance, but in the case of structural defects, against the premises' owner.
- 1.19 A person who, without reasonable excuse, contravenes any requirement or prohibition imposed by an order under subsection (2) shall be guilty of an offence and liable on summary conviction to a fine of up to £5,000, plus a further daily fine of up to £500 per day for each day on which the offence continues after the conviction.<sup>49</sup> It is a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance,<sup>50</sup> but only, broadly speaking, where the nuisance arises on industrial, trade or business premises, or in the case of light pollution, from a relevant sports facility, and not if the nuisance renders the premises unfit for human habitation.<sup>51</sup>
- 1.20 The court can order the defendant to pay the complainant compensation for any expenses properly incurred by him in the proceedings, where it is proved that the alleged nuisance existed at the date of the complaint.<sup>52</sup> If the person responsible and the owner or occupier of the premises responsible for the nuisance cannot be found, the court can direct the local authority to do anything which it would have ordered the owner or occupier, or responsible person, to do.<sup>53</sup>
- 1.21 The Department of the Environment commissioned research back in the mid 1990s into the use of section 82, in particular in the context of its use against local authorities and housing associations by their tenants seeking to improve their housing conditions.<sup>54</sup>

<sup>46</sup> Environmental Protection Act 1990, ss 80(4) and (5).

<sup>47</sup> Environmental Protection Act 1990, s 81(3).

<sup>48</sup> Environmental Protection Act 1990, s 81(4).

<sup>49</sup> Environmental Protection Act 1990, s 82(8).

<sup>50</sup> Environmental Protection Act 1990, s 82(9).

<sup>51</sup> Environmental Protection Act 1990, s 82(10).

<sup>52</sup> Environmental Protection Act 1990, s 82(12).

<sup>53</sup> Environmental Protection Act 1990, s 82(13).

<sup>54</sup> <http://www.communities.gov.uk/index.asp?id=1155874> (last visited 26 June 2007).



HOUSING HEALTH AND SAFETY RATING SYSTEM (HHSRS): HOUSING ACT 2004

- 1.22 Fitness for habitation is now judged according to the Housing Health and Safety Rating System (HHSRS) in part 1 of the Housing Act 2004.<sup>55</sup>
- 1.23 It replaced the “fit for human habitation” standard, contained in the Housing Act 1985, but which had existed in some form since the mid-nineteenth century.<sup>56</sup> The old fitness standard was based on a number of criteria that were set out in the 1985 Act. If one or more of the criteria were not met and that resulted in the dwelling being no longer reasonably suitable for occupation, the local authority was under a duty to take remedial action. The standard, and the criteria upon which it was based, were criticised for being too narrow and rigid and for not taking into account the cumulative impact that deficiencies could have on the health and safety of an occupant.<sup>57</sup>

<sup>55</sup> In force in England on 6 April 2006, and in Wales on 16 June 2006: Housing Act 2004 (Commencement No 5 and Transitional Provisions and Savings) (England) Order 2006 (SI 2006 No 1060); Housing Act 2004 (Commencement No 3 and Transitional Provisions and Savings) (Wales) Order 2006 (SI 2006 No 1535).

<sup>56</sup> Landlord and Tenant: Responsibility for State and Condition of Property (1996) Law Com No 238, p 46, available at <http://www.bailii.org/ew/other/EWLC/1996/238.pdf> (last visited 22 June 2007).

<sup>57</sup> See ODPM, *Regulatory Impact Assessment: Housing Act 2004 – Part 1: Housing Conditions* (2005) p 4, available at [http://www.communities.gov.uk/pub/846/RegulatoryImpactAssessmentHousingAct2004Part1HousingConditionsPDF389Kb\\_id1161846.pdf](http://www.communities.gov.uk/pub/846/RegulatoryImpactAssessmentHousingAct2004Part1HousingConditionsPDF389Kb_id1161846.pdf) (last visited 26 June 2007). See also H Carr, S Cottle, T Baldwin and M King, *The Housing Act 2004: A Practical Guide* (2005) para 2.6.

- 1.24 The Government has issued operating guidance on the HHSRS.<sup>58</sup> It involves assessing individual elements of dwellings (such as staircases, doors) for 29 types of hazard, against an ideal, to see if they are worse than average for the property age and type.<sup>59</sup> The types of hazard are grouped into four categories: physiological requirements (for example cold, lead, dampness and mould); protection against infection (for example, water supply safety); protection against accidents (including fire, structural collapse, falls) and psychological requirements (including overcrowding, entry by intruders, light and noise). If the hazard is obviously worse than the average for the age and type of dwelling being assessed, the likelihood of the hazard, and the severity of harm it could cause to the most vulnerable potential occupier,<sup>60</sup> are considered, and a score for the hazard calculated. This score determines whether the hazard is “category 1” or “category 2”.<sup>61</sup>
- 1.25 Local authorities must review housing conditions in their area.<sup>62</sup> Inspections of premises for hazards may follow a review, or if the local authority thinks it is appropriate for any other reason, such as a complaint from a tenant or a member of the public, or an official complaint from a justice of the peace.<sup>63</sup>
- 1.26 Local authorities must take appropriate enforcement action if they consider that any residential premises contain a category 1 hazard,<sup>64</sup> and can (but need not) if there is a category 2 hazard.<sup>65</sup> Enforcement actions available are:

<sup>58</sup> ODPM, *Housing Health and Safety Rating System: Operating Guidance* (2006) available at [http://www.communities.gov.uk/pub/843/HHSRSOperatingGuidancePDF914Kb\\_id1161843.pdf](http://www.communities.gov.uk/pub/843/HHSRSOperatingGuidancePDF914Kb_id1161843.pdf) (last visited 22 June 2007); Welsh Assembly Government, *Housing Health And Safety Rating System: Operating Guidance (Housing Act 2004: Part 1) (English Only)* (2006 No. 45) available at <http://newydd.cymru.gov.uk/660245/660256/660274/housing/hhsrspperatingguidance?lang=en> (last visited 22 June 2007).

<sup>59</sup> ODPM, *Housing Health and Safety Rating System: Operating Guidance* (2006) Annex D and para 2.18 available at [http://www.communities.gov.uk/pub/843/HHSRSOperatingGuidancePDF914Kb\\_id1161843.pdf](http://www.communities.gov.uk/pub/843/HHSRSOperatingGuidancePDF914Kb_id1161843.pdf) (last visited 22 June 2007); Welsh Assembly Government, *Housing Health And Safety Rating System: Operating Guidance (Housing Act 2004: Part 1) (English Only)* (2006 No. 45), Annex D and para 2.18 available at <http://newydd.cymru.gov.uk/660245/660256/660274/housing/hhsrspperatingguidance?lang=en> (last visited 22 June 2007).

<sup>60</sup> ODPM, *Housing Health and Safety Rating System: Operating Guidance* (2006) paras 4.14 and 4.16 available at [http://www.communities.gov.uk/pub/843/HHSRSOperatingGuidancePDF914Kb\\_id1161843.pdf](http://www.communities.gov.uk/pub/843/HHSRSOperatingGuidancePDF914Kb_id1161843.pdf) (last visited 22 June 2007); Welsh Assembly Government, *Housing Health And Safety Rating System: Operating Guidance (Housing Act 2004: Part 1) (English Only)* (2006 No. 45), paras 4.14 and 4.16 available at <http://newydd.cymru.gov.uk/660245/660256/660274/housing/hhsrspperatingguidance?lang=en> (last visited 22 June 2007). A hazard from cold must be always rated even if it is the national average.

<sup>61</sup> Housing Health and Safety Rating System (England) Regulations 2005 (SI 2005 No 3208), reg 8; Housing Health and Safety Rating System (Wales) Regulations 2006 (SI 2006 No 1702) (W 164), reg 8.

<sup>62</sup> Housing Act 2004, s 3.

<sup>63</sup> Housing Act 2004, ss 4(1), (2) and (3).

<sup>64</sup> Housing Act 2005, s 5.

<sup>65</sup> Housing Act 2004, s 7.

- (1) improvement notices (requiring remedial work);
- (2) prohibition orders;
- (3) hazard awareness notices;

and for category 1 hazards only,

- (4) emergency remedial action;
- (5) emergency prohibition orders;
- (6) demolition orders and
- (7) declaration of a clearance area.<sup>66</sup>

It is an offence not to comply with an improvement notice or prohibition order.<sup>67</sup>

- 1.27 The person who is required to receive an improvement notice depends on the type of accommodation and whether it is the subject of a licence or not.<sup>68</sup> Where a landlord does not comply with an improvement notice, or where there is a category 1 hazard and an imminent risk of serious harm to health and safety, the local authority can undertake remedial action,<sup>69</sup> and recover its expenses.<sup>70</sup>

#### THE REGULATORY REFORM (FIRE SAFETY) ORDER 2005

- 1.28 The Regulatory Reform (Fire Safety) Order 2005,<sup>71</sup> which came into force on 1 October 2006 and replaces existing fire safety legislation,<sup>72</sup> generally excludes domestic premises from its ambit, with two exceptions. It applies to the common parts of premises used by the occupants of more than one private dwelling.<sup>73</sup> It therefore imposes obligations on the owner of a block of flats or an HMO in respect of the common parts,<sup>74</sup> relating to matters such as risk assessment; escape routes; and provision and maintenance of fire detecting equipment.<sup>75</sup>

<sup>66</sup> Housing Act 2004, ss 5(2) and 7(2). Demolition and clearance area declarations are contemplated by ss 5(2)(f) and (ground) and 7(2)(d) and (e), and would require the Secretary of State to prescribe conditions first. There are no current plans to make the more drastic enforcement measures available to tackle category 2 hazards.

<sup>67</sup> Housing Act 2004, ss 30 and 32. Failure to comply could lead to a £5,000 fine on summary conviction.

<sup>68</sup> Housing Act 2004, sch 1. For a licensed HMO, the notice must be served on the licence holder: see para 1.

<sup>69</sup> Housing Act 2004, s 40 and sch 3 part 2.

<sup>70</sup> Housing Act 2004, s 42 and sch 3 part 3.

<sup>71</sup> SI 2005 No 1541.

<sup>72</sup> See sch 4. The main piece of legislation being repealed is the Fire Precautions Act 1971.

<sup>73</sup> Regulatory Reform (Fire Safety) Order 2005 (SI 2005 No 1541), art 2.

<sup>74</sup> DCLG, *Fire Safety, Risk Assessment: Sleeping Accommodation* (May 2006) p 4, available at [http://www.communities.gov.uk/pub/417/SleepingAccommodationfullguide\\_id1500417.pdf](http://www.communities.gov.uk/pub/417/SleepingAccommodationfullguide_id1500417.pdf) (last visited 26 June 2007).

<sup>75</sup> Regulatory Reform (Fire Safety) Order 2005 (SI 2005 No 1541), arts 8, 9 and 11 to 18.

- 1.29 The Order also applies for the purposes of prohibition notices to domestic premises that are not houses occupied as single private dwellings.<sup>76</sup> Prohibition notices allow local fire and rescue authorities<sup>77</sup> to prohibit or restrict the use of premises, where they think that the continued use poses a serious risk to an occupier, until the risk is remedied.<sup>78</sup> Inspectors could uncover these risks.<sup>79</sup> The risks may include anything affecting occupiers' escape in the event of fire.<sup>80</sup> A prohibition notice can be served on the owner, or person having control of the premises, such as an occupier, if the notice's requirements relate to matters under his control.<sup>81</sup> The local authority should be notified, where practicable, before a prohibition notice is served in respect of an HMO.<sup>82</sup>

#### SPECIFIC HEALTH AND SAFETY OBLIGATIONS: THE CONSUMER PROTECTION ACT 1987

- 1.30 Regulations made under the Consumer Protection Act 1987 impose obligations on landlords and agents as "suppliers" of specific regulated products in the course of business.
- (1) The Electrical Equipment (Safety) Regulations 1994;<sup>83</sup> require electrical equipment such as washing machines to be safe and meet standards.
  - (2) The Plugs and Sockets etc (Safety) Regulations 1994;<sup>84</sup> require plugs to be appropriately marked, and sometimes information to be supplied.
  - (3) The Gas Cooking Appliances (Safety) Regulations 1989;<sup>85</sup> require landlords to ensure gas appliances supplied comply with specified safety requirements, and to give tenants instructions on their safe use.<sup>86</sup> Heating appliances and oil heaters are similarly regulated.<sup>87</sup>
  - (4) The Furniture and Furnishings (Fire) (Safety) Regulations 1988;<sup>88</sup> require furniture and furnishings to meet fire resistance standards.

<sup>76</sup> Regulatory Reform (Fire Safety) Order 2005 (SI 2005 No 1541), arts 6(1)(a) and 31(10).

<sup>77</sup> They are the "enforcing authority" for the purposes of serving prohibition notices relating to domestic premises: Regulatory Reform (Fire Safety) Order 2005 SI 2005 No 1541, art 25.

<sup>78</sup> Regulatory Reform (Fire Safety) Order 2005 SI 2005 No 1541, arts 31(1) and (3)(c).

<sup>79</sup> Regulatory Reform (Fire Safety) Order 2005 SI 2005 No 1541, arts 27 and 31(10).

<sup>80</sup> Regulatory Reform (Fire Safety) Order 2005 SI 2005 No 1541, art 31(2).

<sup>81</sup> Regulatory Reform (Fire Safety) Order 2005 SI 2005 No 1541, arts 3(b), 5(3) and 31(1).

<sup>82</sup> Regulatory Reform (Fire Safety) Order 2005 SI 2005 No 1541, art 31(6).

<sup>83</sup> SI 1994 No 3260.

<sup>84</sup> SI 1994 No 1768.

<sup>85</sup> SI 1989 No 149.

<sup>86</sup> Gas Cooking Appliances (Safety) Regulations 1989 (SI 1989 No 149), regs 3(1) and 4(1).

<sup>87</sup> Heating Appliances (Fireguards) (Safety) Regulations 1991 (SI 1991 No 2693); Oil Heaters (Safety) Regulations 1977 (SI 1977 No 167). There is also a general prohibition on the supply of gas catalytic heaters containing asbestos: Gas Catalytic Heaters (Safety) Regulations 1984 (SI 1984 No 1802), reg 3.

<sup>88</sup> SI 1988 No 1324.

In the absence of detailed regulations, there is also a general obligation on landlords and agents not to supply dangerous products and to keep documentation and provide information on the risks of products to tenants.<sup>89</sup>

- 1.31 Because the regulations affect landlords as “suppliers”, landlords who rent on a one-off, short-term basis are exempt from the requirements of the regulations since they are not acting in the course of business.<sup>90</sup>
- 1.32 These obligations are enforced by local authority trading standards officers.<sup>91</sup> But they are unlikely to act unless a failure to comply is brought to their attention, as they do not actively monitor private accommodation.<sup>92</sup> On summary conviction, the defendant can be fined, imprisoned or both.<sup>93</sup> A breach of an obligation owed under a safety regulation is also actionable in private law.<sup>94</sup>

#### THE GAS SAFETY (INSTALLATION AND USE) REGULATIONS 1998

- 1.33 Specific safety requirements are imposed on landlords by the Gas Safety (Installation and Use) Regulations 1998,<sup>95</sup> made under the Health and Safety at Work Act 1974. They apply to all lettings of residential premises, including licences, for a term of less than seven years.<sup>96</sup> Regulation 36 requires gas fittings and flues to be maintained in a safe condition to prevent injury to lawful occupiers. Gas appliances and flues must be inspected at least yearly by a registered CORGI gas installer. Landlords must keep detailed inspection records and give tenants a copy. The regulations also prohibit a person, including a tenant, from using or allowing a dangerous gas appliance to be used.<sup>97</sup> They must also take action to stop and report gas leaks.<sup>98</sup>
- 1.34 Landlords who provide rented accommodation as part of a business are also under a general duty, as self-employed persons, to ensure that tenants are not exposed to risks to their health or safety.<sup>99</sup>

<sup>89</sup> The General Product Safety Regulations 2005 (SI 2005 No 1803) reg 8, made under s 2(2) of the European Communities Act 1972.

<sup>90</sup> DTI, Guide to the Furniture and Furnishings (Fire) (Safety) Regulations, p 5: <http://www.dti.gov.uk/files/file24685.pdf> (last visited 26 June 2007).

<sup>91</sup> Consumer Protection Act, 1987, s 27(1) and Weights and Measures Act 1985, s 69. See the General Product Safety Regulations 2005, reg 10.

<sup>92</sup> Letlink, *Fact Sheet 3: Furniture and Furnishings (Fire) (Safety) Regulations 1989*, available at <http://www.letlink.co.uk/letting-factsheets/factsheets/factsheet-3---furniture-and-furnishings-regulations.html> (last visited 26 June 2007).

<sup>93</sup> Consumer Protection Act 1987, s 12(5).

<sup>94</sup> Consumer Protection Act 1987, s 41(1).

<sup>95</sup> SI 1998 No 2451, reg 36.

<sup>96</sup> Gas Safety (Installations and Use) Regulations 1998 (SI 1998 No 2451), reg 36(1).

<sup>97</sup> Gas Safety (Installations and Use) Regulations 1998 (SI 1998 No 2451), reg 34(1).

<sup>98</sup> Gas Safety (Installations and Use) Regulations 1998 (SI 1998 No 2451), regs 37(2) and (3).

<sup>99</sup> Health and Safety at Work Act 1974, s 3(2).

- 1.35 Breach of the Act or regulations is an offence, punishable by a fine.<sup>100</sup> Breach of a duty imposed by the regulations may also result in civil liability.<sup>101</sup> The Health and Safety Executive (HSE) enforces the Gas Safety Regulations as they relate to domestic premises.<sup>102</sup> Their policy is not systematic monitoring, but reactive enforcement, responding to tenants' or local authorities' reports, with ad hoc initiatives.<sup>103</sup>

#### THE BUILDING REGULATIONS 2000

- 1.36 The Building Regulations 2000<sup>104</sup>, made under the Building Act 1984, control how buildings are designed and built and regulate how certain works are carried out in a dwelling. Schedule 1, part P focuses on electrical safety. Proposed works to electrical fittings must be notified to a local authority or an approved inspector or be carried out by an electrician in a self-certification scheme. Most maintenance and repair work is exempt, unless a new circuit is being installed.<sup>105</sup>

#### ***Houses in multiple occupation (HMOs)***

##### LICENSING

- 1.37 Landlords who let accommodation in a house in multiple occupation (HMO) may be subject to licensing under part 2 of the Housing Act 2004.<sup>106</sup> The statutory definition of HMO is extremely complex and the subject of some uncertainty.<sup>107</sup> The Act imposes mandatory licensing for certain HMOs (those comprising three or more stories, and which are occupied by five or more persons forming two or more households),<sup>108</sup> and permits local authorities to impose licensing on others.

<sup>100</sup> Health and Safety at Work Act 1974, ss 33(1)(a) and (c), (1A), (3).

<sup>101</sup> Health and Safety at Work Act 1974, s 47(2).

<sup>102</sup> Health and Safety at Work Act 1974, s 18(1).

<sup>103</sup> HSE, *Gas Safety Procedure and Enforcement Advice, OC 440/30*, paras 11 to 12, available at [http://www.hse.gov.uk/foi/internalops/fod/oc/400-499/440\\_30.pdf](http://www.hse.gov.uk/foi/internalops/fod/oc/400-499/440_30.pdf) (last visited 26 June 2007).

<sup>104</sup> SI 2000 No 2531.

<sup>105</sup> ODPM, *Electrical Safety – Dwellings: Approved Document P (2006)* p 7, available at [http://www.planningportal.gov.uk/uploads/br/BR\\_PDF\\_ADP\\_2006.pdf](http://www.planningportal.gov.uk/uploads/br/BR_PDF_ADP_2006.pdf) (last visited 26 June 2007).

<sup>106</sup> This came into force in England on 6 April 2006, and in Wales on 16 June 2006: Housing Act 2004 (Commencement No 5 and Transitional Provisions and Savings) (England) Order 2006 (SI 2006 No 1060); Housing Act 2004 (Commencement No 3 and Transitional Provisions and Savings) (Wales) Order 2006 (SI 2006 No 1535).

<sup>107</sup> Housing Act 2004, ss 254 to 258 and the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 (SI 2006 No 371) and the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (Wales) Order 2006 (SI 2006 No 1712). See H Carr, S Cottle, T Baldwin and M King, *The Housing Act 2004: A Practical Guide* (2005) paras 3.70 to 3.74 and 3.78.

<sup>108</sup> Housing Act 2004, s 55; Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 (SI 2006 No 371) and Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (Wales) Order 2006 (SI 2006 No 1712).

- 1.38 Through licence conditions, local authorities may impose additional obligations on landlords relating to the condition of the property and health and safety. Schedule 4 to the Housing Act 2004 prescribes conditions that must be present in every HMO licence, including conditions requiring the landlord to provide the local authority with information about gas safety certificates, electrical appliances and furniture, and smoke alarms.<sup>109</sup> Local authorities also have a broad discretion to impose conditions relating to the “condition and contents” of the HMO.<sup>110</sup> These may relate to the standards, maintenance and repair of facilities and equipment in the HMO (for example, bathrooms, kitchens, laundry facilities).<sup>111</sup>
- 1.39 Local authorities can also impose HMO licence conditions requiring the licence holder or manager of the HMO to attend training courses in relation to any applicable code of practice approved under section 233.<sup>112</sup> Three codes of practice have already been approved relating to the management of student housing.<sup>113</sup> Although failure to comply with an approved code of practice does not of itself give rise to any criminal or civil liability,<sup>114</sup> non-compliance with a code of practice can be taken into account by the local housing authority in deciding whether a person is a fit and proper person to be an HMO licence holder or manager,<sup>115</sup> and by a residential property tribunal in deciding whether to make an interim management order in respect of an HMO.<sup>116</sup> One of the approved codes notes that “the code may be used as evidence of good practice by a court or tribunal.”<sup>117</sup>
- 1.40 The licensing scheme is intended to work in tandem with the HHSRS and not to replace it. Local authorities must therefore refrain from attempting to deal with category 1 and 2 hazards through licence conditions,<sup>118</sup> even though some license conditions may overlap with the local authorities’ powers to deal with hazards under part 1 of the Act.<sup>119</sup>

<sup>109</sup> Housing Act 2004, sch 4 paras 1(2) to (4).

<sup>110</sup> Housing Act 2004, s 67(1)(b).

<sup>111</sup> Housing Act 2004, ss 67(2)(c) to (e).

<sup>112</sup> Housing Act 2004, s 67(4)(f).

<sup>113</sup> Housing (Approval of Codes of Management Practice) (Student Accommodation) (England) Order 2006 (SI 2006 No 646); Housing (Approval of Codes of Management Practice) (Student Accommodation) (Wales) Order 2006 (SI 2006 No 1709 (W 171)).

<sup>114</sup> Housing Act 2004, s 233(5).

<sup>115</sup> Housing Act 2004, s 66(1) and (2)(d).

<sup>116</sup> Housing Act 2004, s 102(6).

<sup>117</sup> Universities UK/SCOP Code of Practice for the Management of Student Housing (2006), para viii, available at [http://www.universitiesuk.ac.uk/acop/UUK\\_Cop\\_Mar\\_2006\\_No\\_Buildings.pdf](http://www.universitiesuk.ac.uk/acop/UUK_Cop_Mar_2006_No_Buildings.pdf) (last visited 26 June 2007).

<sup>118</sup> Housing Act 2004, s 67(4)(a).

<sup>119</sup> Housing Act 2004, s 67(4)(b).

- 1.41 Breach of any of the licence conditions is an offence under the Act and can, if serious or repeated, lead to the licence being revoked.<sup>120</sup> Not having a licence when one is required can lead to a fine, and/or a rent repayment order, and prohibits a landlord from serving a notice under section 21 of the Housing Act 1988 to terminate any assured shorthold tenancies in the dwelling.<sup>121</sup>

#### MANAGEMENT

- 1.42 Regulations relating to the management of HMOs have been made under the Housing Act 2004, section 234.<sup>122</sup> These impose on the manager of an HMO additional repairing obligations as well as requirements relating to cleanliness; repair and condition of fixtures and fittings; general, gas, fire and electrical safety; water supply and waste. Non-compliance with them is an offence.<sup>123</sup> They apply to all HMOs, save pre-1991 flat conversions, even if not required to be licensed, and are “arguably the most onerous part of the ... Housing Act 2004”<sup>124</sup>.

#### Selective Licensing

- 1.43 The Housing Act 2004 also empowers local authorities to require non-HMO private sector landlords,<sup>125</sup> to be licensed in areas where the local authority is satisfied that there is, or is likely to be, low housing demand or which are experiencing significant and persistent anti-social behaviour problems.<sup>126</sup> These are currently the only reasons for which selective licensing can be introduced. However, there is scope to add to these reasons by regulation.<sup>127</sup>
- 1.44 Local authorities must first consider other courses of action and must be satisfied that imposing selective licensing will help solve the problem.<sup>128</sup> They must consult with persons likely to be affected,<sup>129</sup> ensure that licensing is consistent with their overall housing strategy,<sup>130</sup> and obtain approval for the licensing designation, from the appropriate national authority (which can give general approval for designations of a particular description).<sup>131</sup>

<sup>120</sup> Housing Act 2004, ss 70 and 72(3).

<sup>121</sup> Housing Act 2004, ss 72(6), 73 to 75.

<sup>122</sup> The Management of Houses in Multiple Occupation (England) Regulations 2006 (SI 2006 No 372) and the Management of Houses in Multiple Occupation (Wales) Regulations 2006 (SI 2006 No 1713) (W 175).

<sup>123</sup> Housing Act 2004, s 234(3).

<sup>124</sup> David d'Orton Gibson, Director of training organisation, Training for Professionals, quoted in *Letting Update Journal* (2006) Issue 2, Vol 14, July 2006, p 6.

<sup>125</sup> Properties let by registered social landlords, licensed HMOs, council houses, student buildings, resident landlords, holiday lettings and farm, pub and business properties are exempt: Housing Act 2004, ss 79(3) and 85(1)(a); Selective Licensing of Houses (Specified Exemptions) (England) Order 2006 (SI 2006 No 370); Selective Licensing of Houses (Specified Exemptions) (Wales) Order 2006 (SI 2006 No 2824) (W 247).

<sup>126</sup> Housing Act 2004, part 3.

<sup>127</sup> Housing Act 2004, s 80(2)(b).

<sup>128</sup> Housing Act 2004, ss 80(3)(b) and (6)(c), 81(4).

<sup>129</sup> Housing Act 2004, s 80(9).

<sup>130</sup> Housing Act 2004, s 81(2).

<sup>131</sup> Housing Act 2004, s 82(1).



- 1.45 Where selective licensing is imposed, the same mandatory conditions (mostly health and safety related) that apply to HMO licences apply.<sup>132</sup> Local authorities can include additional conditions “they consider appropriate for regulating the management, use or occupation of the house concerned.”<sup>133</sup> Unlike the provisions on HMO licensing, however, there is no general power to impose conditions relating to the “condition and contents” of a dwelling. Although local authorities must refrain from attempting to deal with category 1 and 2 hazards through licence conditions as opposed to the HHSRS, they can still require licence holders to make facilities and equipment available and to keep them in repair and proper working order.<sup>134</sup> This is not limited by the fact that some conditions may overlap with the power of local authorities to deal with category 1 and category 2 hazards under part 1 of the Act.<sup>135</sup>
- 1.46 Not having a licence when one is required is an offence which can lead on summary conviction to a maximum £20,000 fine.<sup>136</sup> Not having a licence when one is required can lead to a rent repayment order,<sup>137</sup> and prohibits a landlord from serving a notice under section 21 of the Housing Act 1988 to terminate any assured shorthold tenancies of the whole or part of the unlicensed house.<sup>138</sup> A person who breaches a condition of the licence is liable on summary conviction to pay up to £5,000.<sup>139</sup>

<sup>132</sup> Housing Act 2004, s 90(4) and sch 4.

<sup>133</sup> Housing Act 2004, s 90(1).

<sup>134</sup> Housing Act 2004, s 90(3).

<sup>135</sup> Housing Act 2004, s 90(5)(b).

<sup>136</sup> Housing Act 2004, ss 95(1) and (5).

<sup>137</sup> Housing Act 2004, ss 96 and 97.

<sup>138</sup> Housing Act 2004, s 98.

<sup>139</sup> Housing Act 2004, ss 95(2) and (6).

## **Management orders**

- 1.47 Local authorities can, and sometimes must step into the shoes of landlords, and make an interim management order allowing them to take over the management of a property, where such an order is necessary to protect the health, safety and welfare of occupiers and neighbours. They must do so when a house which should be licensed is not, and where there is no reasonable prospect of it being licensed or re-licensed in the near future.<sup>140</sup> They can do so for an HMO that is not required to be licensed, with the approval of a residential property tribunal.<sup>141</sup> For areas not covered by selective licensing, local authorities can also apply to a residential property tribunal for a special interim management orders if prescribed conditions are satisfied.<sup>142</sup> Interim management orders may be, or sometimes are required to be, transmuted into final management orders if the conditions which make the property un-licensable still persist at the end of the interim management period.<sup>143</sup>
- 1.48 The actual powers conferred on a local authority by an interim management order are substantial: the authority have the rights to possession of the house (subject to existing occupiers); to do in relation to the house anything which a person having an estate or interest in the house would be entitled to do;<sup>144</sup> and to enter to any part of the house to carry out works.<sup>145</sup> While the order is in force rent is payable to the local authority and they may deduct any sums for reasonable expenses before passing it on to the landlord.<sup>146</sup> Once an interim or final management order takes effect the local authority is responsible for any furniture provided with the accommodation.<sup>147</sup>

## **Guidance and codes of practice**

- 1.49 In addition to legal obligations, codes of practice and guidance can impose duties on landlords. Although generally voluntary, a conscientious and professional landlord may be subject to significant further requirements.

<sup>140</sup> Housing Act 2004, ss 102(2) and (3).

<sup>141</sup> Housing Act 2004, s 102(4).

<sup>142</sup> Housing Act 2004, s 103.

<sup>143</sup> Housing Act 2004, s 113.

<sup>144</sup> Housing Act 2004, ss 107(3)(a) and (b).

<sup>145</sup> Housing Act 2004, s 131.

<sup>146</sup> Housing Act 2004, s 110.

<sup>147</sup> Housing Act 2004, s 126.

### ***The Royal Institution of Chartered Surveyors' codes of practice***

- 1.50 The Secretary of State can approve codes of practice which promote desirable practices related to the management of rented accommodation<sup>148</sup> by landlords or property managers.<sup>149</sup> Though not legally binding, such codes can be used as evidence of reasonable conduct in court.<sup>150</sup> The RICS Rent Only Residential Management Code has been so approved.<sup>151</sup>
- 1.51 The aim of the RICS Rent Only Code is to “promote desirable practices in respect of the management of residential property.”<sup>152</sup> It states managers’ legal obligations and gives detailed guidance on management practices. Part 9 deals with repairs, covering for example regular inspections,<sup>153</sup> prompt response to tenants’ repair requests,<sup>154</sup> and time scales.<sup>155</sup> Part 7 refers to health and safety, outlining legal obligations, and imposing a general duty on managers and landlords to ensure that the property is maintained in a safe condition.<sup>156</sup> Part 8 sets out guidelines for the use of contractors to carry out work on the premises.

### ***Landlord organisations' codes of practice***

- 1.52 Three of the four UK wide private sector landlord organisations – the National Federation of Residential Landlords (NFRL), the National Landlords Association (NLA) and the Residential Landlords Association (RLA) – have codes of practice to which members are required to adhere as a condition of membership.<sup>157</sup> They generally require members to comply with legal obligations as to repairs and health and safety, and then impose additional requirements, but they vary as to their aims, coverage and detailed content.

<sup>148</sup> This includes dwellings let on licences as well as leases: Leasehold Reform, Housing and Urban Development Act 1993, s 87(9).

<sup>149</sup> Leasehold Reform, Housing and Urban Development Act 1993, s 87(1)(a) and s 87(8)(a).

<sup>150</sup> Leasehold Reform, Housing and Urban Development Act 1993, s 87(7).

<sup>151</sup> Approval of Codes of Management Practice (Residential Property) (England) Order 2004 (SI 2004 No 1802); Approval of Codes of Management Practice (Residential Property) (Wales) Order 2006 (SI 2006 No 178 (W 29)). The Association of Retirement Housing Managers’ *Code of Practice for Private Retirement Housing* has also been approved (except for appendices 4 to 6): see Approval of Code of Management Practice (Private Retirement Housing) (England) Order 2005 (SI 2005 No 3307) and Approval of Code of Practice (Private Retirement Housing) (Wales) Order 2007 (SI 2007 No 5508 (W 50)).

<sup>152</sup> RICS, Rent Only Residential Management Code (2nd ed 2004), p 7.

<sup>153</sup> RICS, Rent Only Residential Management Code (2nd ed 2004), para 3.17.

<sup>154</sup> RICS, Rent Only Residential Management Code (2nd ed 2004) para 9.7.

<sup>155</sup> RICS, Rent Only Residential Management Code (2nd ed 2004), para 3.3

<sup>156</sup> RICS, Rent Only Residential Management Code (2nd ed 2004) para 7.8.

<sup>157</sup> The 2000 member Guild of Residential Landlords does not have such a code.

- 1.53 There are also local and regional landlords' associations,<sup>158</sup> some of which have their own codes of practice.<sup>159</sup> The Dorset Residential Landlords Association Code requires landlords of an HMO to keep the common parts clean, safe and properly lit, and inspect the HMO regularly.<sup>160</sup>

***Letting agent organisations' codes of practice***

- 1.54 Letting agents affiliated to a professional association must also abide by a code of practice, or meet certain service standards, as a condition of membership. Two associations, the Association of Residential Letting Agents (ARLA) and the National Association of Estate Agents (NAEA), also have association bylaws or rules of conduct imposing further administrative standards on members.
- 1.55 ARLA's is the most comprehensive and detailed code for letting agents. It covers most aspects of a letting agent's business, including property management. It imposes specific obligations relating to repairs, both before a letting (to inform landlords of any works needed to bring the property up to an acceptable condition<sup>161</sup>) and during the tenancy (to take reasonable steps to ensure that contractors chosen to carry out repairs are properly insured and hold the necessary professional qualifications<sup>162</sup>).

<sup>158</sup> See the list of regional associations at [http://www.landlordzone.co.uk/dir/landlord\\_associations.htm](http://www.landlordzone.co.uk/dir/landlord_associations.htm) (last visited 26 June 2007).

<sup>159</sup> See for example the *Dorset Residential Landlords Association Code of Practice* (2002) para 1(1), available at [http://www.bournemouth.gov.uk/Library/Office%20Docs/Business/Environmental\\_Health/Accreditation%20Scheme%20-%20Landlords%20Code%20of%20Practice%20220405.doc](http://www.bournemouth.gov.uk/Library/Office%20Docs/Business/Environmental_Health/Accreditation%20Scheme%20-%20Landlords%20Code%20of%20Practice%20220405.doc) (last visited 26 June 2007).

<sup>160</sup> *Dorset Residential Landlords Association Code of Practice* (2002) para 4(4), available at [http://www.bournemouth.gov.uk/Library/Office%20Docs/Business/Environmental\\_Health/Accreditation%20Scheme%20-%20Landlords%20Code%20of%20Practice%20220405.doc](http://www.bournemouth.gov.uk/Library/Office%20Docs/Business/Environmental_Health/Accreditation%20Scheme%20-%20Landlords%20Code%20of%20Practice%20220405.doc) (last visited 26 June 2007).

<sup>161</sup> *ARLA Code of Practice*, version 9/03, para D(IV), available at [http://digitalnation.fileburst.com/arla/arla\\_code\\_of\\_practice.pdf](http://digitalnation.fileburst.com/arla/arla_code_of_practice.pdf) (last visited 26 June 2007).

<sup>162</sup> *ARLA Code of Practice*, version 9/03, para M(III), available at [http://digitalnation.fileburst.com/arla/arla\\_code\\_of\\_practice.pdf](http://digitalnation.fileburst.com/arla/arla_code_of_practice.pdf) (last visited 26 June 2007).

### **Local authority accreditation schemes**

- 1.56 Many local authorities run accreditation schemes aimed at private sector landlords in their area, often in partnership with a landlord association, university or charity.<sup>163</sup> For example, the Bournemouth Responsible Landlord and Tenant Accreditation Scheme is run by the Dorset Residential Landlords Association in conjunction with Bournemouth Borough Council. Joining the scheme allows the landlord to advertise their accredited status with the property. They can display the accreditation certificate in each property rented and use the accreditation logo in their advertising.<sup>164</sup> Landlords who join must certify that they, and all of their rental properties within the Bournemouth area, meet the scheme standards. A proportion of each landlord's properties are inspected for compliance. If a landlord does not meet the standard, he may be given a property improvement plan outlining changes to be made before accreditation can be granted.<sup>165</sup> A condition of accreditation is that landlords must join the Dorset Residential Landlords Association, and be bound by its code of practice.<sup>166</sup> The standards for the landlord's properties cover health and safety and property condition including fitness for habitation, fire, gas and electrical safety, security, heating, furniture and furnishings, decoration, visual amenities, insurance, emergency contacts, facilities, lighting and ventilation and internal layout.<sup>167</sup>

### **Legal obligations on the tenant**

#### ***Landlord and Tenant Act 1985, section 11: implied repairing covenant***

- 1.57 Although section 11 does not impose any duties on tenants to carry out repairs, it does require a tenant to allow a landlord, or a person authorised by him, to inspect the state of repair of the premises on 24 hours' notice.<sup>168</sup>

<sup>163</sup> The Accreditation Network UK, an organisation set up to promote and co-ordinate the use of accreditation schemes in the UK, lists 65 local authorities in England and Wales that currently have an accreditation scheme.

<sup>164</sup> Bournemouth Borough Council, *Bournemouth Responsible Landlord and Tenant Accreditation Scheme*, p 4, available at [http://www.bournemouth.gov.uk/Library/PDF/Business/Environmental\\_Health/Accreditation%20Scheme%20bklt.pdf](http://www.bournemouth.gov.uk/Library/PDF/Business/Environmental_Health/Accreditation%20Scheme%20bklt.pdf) (last visited 26 June 2007).

<sup>165</sup> Bournemouth Borough Council, *Bournemouth Responsible Landlord and Tenant Accreditation Scheme*, p 4, available at [http://www.bournemouth.gov.uk/Library/PDF/Business/Environmental\\_Health/Accreditation%20Scheme%20bklt.pdf](http://www.bournemouth.gov.uk/Library/PDF/Business/Environmental_Health/Accreditation%20Scheme%20bklt.pdf) (last visited 26 June 2007).

<sup>166</sup> Bournemouth Borough Council, *Bournemouth Responsible Landlord and Tenant Accreditation Scheme*, p 1, available at [http://www.bournemouth.gov.uk/Library/PDF/Business/Environmental\\_Health/Accreditation%20Scheme%20bklt.pdf](http://www.bournemouth.gov.uk/Library/PDF/Business/Environmental_Health/Accreditation%20Scheme%20bklt.pdf) (last visited 26 June 2007).

<sup>167</sup> Bournemouth Borough Council, *Bournemouth Responsible Landlord and Tenant Accreditation Scheme*, pp 5 to 9, available at [http://www.bournemouth.gov.uk/Library/PDF/Business/Environmental\\_Health/Accreditation%20Scheme%20bklt.pdf](http://www.bournemouth.gov.uk/Library/PDF/Business/Environmental_Health/Accreditation%20Scheme%20bklt.pdf) (last visited 26 June 2007).

<sup>168</sup> Landlord and Tenant Act 1985, s 11(6).

### **Contract**

- 1.58 Tenants' repairing obligations are usually imposed by the express terms of the contract. Most residential tenancy agreements reflect the familiar default common law position (see below) that tenants must treat the property in a tenant-like manner, including carrying out small repairs that a reasonable tenant would do, excepting fair wear and tear. In theory express terms could impose additional repairing duties on tenants. This is infrequent in practice.<sup>169</sup> The Office of Fair Trading regards as potentially unfair any term purporting to transfer the landlord's statutory repairing obligations to the tenant or making the tenant liable for fair wear and tear, even where the landlord is not under any statutory repairing obligations.<sup>170</sup>

### **Common law**

- 1.59 In the absence of any express terms to the contrary, a term is implied in all tenancies that tenants will use the premises in a "tenant-like" manner.<sup>171</sup> It is unclear whether this requires the tenant to carry out positive acts, although Denning LJ described the duty as requiring doing "little jobs about the place which a reasonable tenant would do."<sup>172</sup> It does not make the tenant liable for disrepair caused by "fair wear and tear", lapse of time or any reason not caused by the tenant.<sup>173</sup>
- 1.60 A court can grant the landlord a possession order, where it is reasonable to do so, in respect of a dwelling let on an assured tenancy or assured shorthold tenancy for breach of an obligation of the tenancy,<sup>174</sup> which includes breach of any repairing obligations.

<sup>169</sup> Some agreements do impose an obligation on tenants to keep clear "drains, gutters and pipes". This is an unfair term, transferring the landlord's section 11 repairing obligations to the tenant: see OFT, *Guidance on Unfair Terms in Tenancy Agreements* (2005) OFT356, p 74, available at [http://www.offt.gov.uk/shared\\_offt/reports/unfair\\_contract\\_terms/offt356.pdf](http://www.offt.gov.uk/shared_offt/reports/unfair_contract_terms/offt356.pdf) (last visited 22 June 2007).

<sup>170</sup> OFT, *Guidance on Unfair Terms in Tenancy Agreements* (2005) OFT356, para 3.15, available at [http://www.offt.gov.uk/shared\\_offt/reports/unfair\\_contract\\_terms/offt356.pdf](http://www.offt.gov.uk/shared_offt/reports/unfair_contract_terms/offt356.pdf) (last visited 22 June 2007).

<sup>171</sup> The Law Commission has noted that this is a vague phrase with a potentially wide ambit: *Landlord and Tenant: Responsibility for State and Condition of Property* (1996) Law Com No 238, paras 10.26 to 10.29, available at <http://www.bailii.org/ew/other/EWLC/1996/238.pdf> (last visited 22 June 2007).

<sup>172</sup> *Warren v Keen* [1954] 1 QB 15, 18 to 21.

<sup>173</sup> *Warren v Keen* [1954] 1 QB 15, 18 to 21.

<sup>174</sup> Housing Act 1988, sch 2, ground 12.

- 1.61 A tenant is also under an obligation not to commit waste. However, the scope and applicability of the law of waste to different types of tenancies and to licences is the subject of much uncertainty.<sup>175</sup> In the absence of express contractual terms it is doubtful whether the law of waste would impose positive repairing obligations on the tenant, other than to make good any damage the tenant caused to the property. Due to the uncertainty, the Law Commission has recommended that the law of waste be excluded from residential tenancies and licences.<sup>176</sup> Possession of a dwelling let on an assured or assured shorthold tenancy can also be ordered for acts of waste, neglect or default by the tenant causing the condition of the house or common parts to deteriorate.<sup>177</sup>
- 1.62 The landlord could also bring a court claim for breach of contract against the tenant, to recover damages for breach of repairing obligations. In practice, the most common remedy is for the landlord to retain an appropriate proportion of any security deposit that the tenant had paid to cover damage caused by the tenant (but not reasonable wear and tear).

### ***The Management of Houses in Multiple Occupation Regulations 2006***

- 1.63 The Management of Houses in Multiple Occupation (England) Regulations 2006<sup>178</sup>, and their Welsh equivalent,<sup>179</sup> impose obligations on occupiers of HMOs. In particular, regulation 10(d) requires the occupier of an HMO to take reasonable care to avoid causing damage to anything which the manager is under a duty to supply, maintain or repair under these regulations. Non-compliance by an occupier is a summary offence.<sup>180</sup>

### **Codes of practice and guidance: tenants' obligations**

- 1.64 Appendix 2 to the RICS Rent Only Residential Management Code<sup>181</sup> provides additional advice to landlords, tenants, and agents. Tenants should be made aware of their duty under the code to notify managers about disrepair, and should make arrangements for inspections and access during their prolonged absence from the property.<sup>182</sup> Tenants should also be made aware of what responsibilities fall within their duty to act in a tenant like manner, including turning off water, protecting the property from frost and unstopping the sink. They should also be made aware of their liability for damage done to the property.<sup>183</sup>

<sup>175</sup> Landlord and Tenant: Responsibility for State and Condition of Property (1996) Law Com No 238, paras 10.1 to 10.25, available at <http://www.bailii.org/ew/other/EWLC/1996/238.pdf> (last visited 22 June 2007).

<sup>176</sup> Landlord and Tenant: Responsibility for State and Condition of Property (1996) Law Com No 238, para 10.35, available at <http://www.bailii.org/ew/other/EWLC/1996/238.pdf> (last visited 22 June 2007).

<sup>177</sup> Housing Act 1988, schedule 2, ground 13.

<sup>178</sup> SI 2006 No 372.

<sup>179</sup> Management of Houses in Multiple Occupation (Wales) Regulations 2006 (SI 2006 No 1713) (W 175).

<sup>180</sup> Housing Act 2004, s 234(3).

<sup>181</sup> RICS, *Rent Only Residential Management Code* (2nd ed 2004).

<sup>182</sup> RICS, *Rent Only Residential Management Code* (2nd ed 2004) App 2, para 5.1.

<sup>183</sup> RICS, *Rent Only Residential Management Code* (2nd ed 2004) App para 5.2.

- 1.65 Some local authorities run accreditation schemes for tenants as well as landlords. For example in Bournemouth, tenants who rent from an accredited landlord can become accredited. They must sign and abide by a tenants' code of practice, which imposes obligations relating to access by the landlord, repairs, cleanliness and condition of the premises, fire safety and security.<sup>184</sup> After six months, the landlord can recommend that the tenant receive accredited status. The tenant can use this as evidence of their reliability to secure further accommodation or even employment.<sup>185</sup>

### **Comment on the law relating to housing condition**

- 1.66 It can be seen that there is a great deal of relevant law and other forms of guidance relating to housing conditions. It is very complex. There are:

- (1) different but overlapping types of regulation applying to a single dwelling (for example different statutory obligations, some conferring private law rights on occupiers, some enforceable by local authorities or other public bodies as well as common law duties in contract and tort);
- (2) different regulatory regimes applying to different types of dwelling (for example provisions applying only to houses in multiple occupation, or to some such houses);
- (3) different rules applying to dwellings in different areas (if local accreditation schemes or local landlords' associations exist, voluntary membership of which imposes further duties),
- (4) complex links between landlords' and occupiers' obligations (for example requiring an occupier to take certain steps to allow a landlord to perform his obligations, or where the landlord's obligations arise on notification by an occupier).

- 1.67 The recommendations in Renting Homes are designed at least to ensure that landlords and occupiers have better information about their basic rights and obligations relating to housing conditions. Under the Renting Homes scheme, landlords would be required to give contract-holders a written statement of the occupation contract. This would include terms setting out the landlord's repairing obligations (which would largely mirror the section 11 obligations), and which could not be modified in a way which would reduce the protection given to the contract-holder. There would also be a term requiring the landlord to ensure that there is no "category 1" hazard on the premises. The contract-holder's duties, for example to allow the landlord access to the premises to carry out repairs, would also be set out in the written statement of the contract. A guidance booklet giving more detailed information would accompany the contract.

<sup>184</sup> Bournemouth Borough Council, *Bournemouth Responsible Landlord and Tenant Accreditation Scheme*, pp 25 to 27, available at [http://www.bournemouth.gov.uk/Library/PDF/Business/Environmental\\_Health/Accreditation%20Scheme%20bklt.pdf](http://www.bournemouth.gov.uk/Library/PDF/Business/Environmental_Health/Accreditation%20Scheme%20bklt.pdf) (last visited 26 June 2007).

<sup>185</sup> Bournemouth Borough Council, *Bournemouth Responsible Landlord and Tenant Accreditation Scheme*, pp 14 to 15, available at [http://www.bournemouth.gov.uk/Library/PDF/Business/Environmental\\_Health/Accreditation%20Scheme%20bklt.pdf](http://www.bournemouth.gov.uk/Library/PDF/Business/Environmental_Health/Accreditation%20Scheme%20bklt.pdf) (last visited 26 June 2007).



## THE LAW ON UNLAWFUL EVICTION AND HARASSMENT

- 1.68 Since the law prescribes how and when landlords can lawfully recover possession of rented homes, it must logically provide for sanctions where landlords evict tenants without following the prescribed procedures. In addition, behaviour on the part of landlords that is not solely focussed on evicting the tenant, but nonetheless undermines the ability of the tenant to enjoy his property is also the subject of legal sanction. The generic label given to this body of law is harassment and unlawful eviction.
- 1.69 In our initial 2001 Scoping Paper on housing law we highlighted the complexity of both the civil and criminal law relating to these matters.<sup>186</sup> Indeed, the original terms of reference for the Law Commission's programme of work on the reform of housing law contemplated a review of this area of law.<sup>187</sup> Although as explained in Part 1 of the consultation paper, the scope of this project is broader, this is the context in which we consider the relevant law, summarised here.

## RELEVANT CRIMINAL OFFENCES

### Protection from Eviction Act 1977

- 1.70 This Act contains one offence of unlawful eviction, and two of harassment. The offences are triable either way, and on conviction, the defendant can be fined or imprisoned.<sup>188</sup> Local authorities can prosecute for these offences.<sup>189</sup> The Commission for Local Administration considers that local authorities must consider whether to institute proceedings after a complaint has been made, and that failure to consider this would amount to maladministration.<sup>190</sup>
- 1.71 The offences can only be committed against a residential occupier. This is defined as a person "occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving the right to remain in occupation or restricting the right of any other person to recover possession of the premises."<sup>191</sup>

<sup>186</sup> Law Commission, Reform of Housing Law: A Scoping Paper (2001), paras 86 to 93.

<sup>187</sup> See Renting Homes: The Final Report (2006) Law Com No 297, para 1.7, available at [http://www.lawcom.gov.uk/docs/lc297\\_vol1.pdf](http://www.lawcom.gov.uk/docs/lc297_vol1.pdf).

<sup>188</sup> Protection from Eviction Act 1977, s 1(4). On conviction, the magistrates court may impose a fine of up to £2,000 and/or imprison the defendant for up to six months; a Crown Court may impose an unlimited fine and/or imprison the defendant for up to two years. In the "worst" cases, a local authority may exercise its powers of compulsory purchase: see *R v Secretary of State for the Environment ex parte Kensington & Chelsea RBC* (1987) 19 HLR 161.

<sup>189</sup> Protection from Eviction Act 1977, s 6.

<sup>190</sup> See 94/A/3711 (Wealden DC); 90/A/1356 (Barnet LBC); 89/A/1581 (Lewisham LBC); 97/C/4882 (Nottingham CC).

<sup>191</sup> Protection from Eviction Act 1977, s 1(1). These rules do not apply where the occupier is sharing accommodation with the landlord. Shared accommodation in this context means not only shared living accommodation but also includes the right to share any accommodation other than storage, staircase, passage, corridor or other means of access: Protection from Eviction Act 1977 ss 3A(4) and (5).

- 1.72 The unlawful eviction offence is committed where “any person unlawfully deprives the residential occupier of any premises of [that person’s] occupation of the premises or any part thereof”; or where any person attempts to do the same.<sup>192</sup> The act must have the character of an eviction whereby the occupier “effectively has to leave the premises and find other accommodation”.<sup>193</sup> An eviction is usually unlawful when the owner does not use the correct legal procedure to terminate a person’s occupation. It is a defence to believe, or have reasonable cause to believe, that the residential occupier no longer lives there.
- 1.73 The first harassment offence is committed whenever any person intends to cause the residential occupier to give up occupation of, or to refrain from exercising any right or pursuing any remedy in respect of, the premises or any part thereof. The act(s) (not a mere omission to act) must be “likely to interfere with the peace or comfort of the residential occupier or members of his household”.<sup>194</sup> The offence can also be committed when the defendant “persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence”,<sup>195</sup> other than services the landlord voluntarily provided.<sup>196</sup> The need to prove the defendant had the specific intent makes this offence very hard to prove in practice.<sup>197</sup>
- 1.74 The second harassment offence can only be committed by the landlord or his agent.<sup>198</sup> The harassing conduct prohibited is the same, but the mental element that must be proved is different. The landlord or agent must know, or have reasonable cause to believe, that the acts are likely to cause the residential occupier to give up occupation of the premises or any part thereof, or to refrain from exercising any right or pursuing any remedy in respect of the premises or any part thereof. It is a defence to prove there are reasonable grounds for the act or service withdrawal.<sup>199</sup>

### **Criminal Law Act 1977, section 6(1)**

- 1.75 It is an offence for any person (other than a displaced residential occupier or protected intending occupier<sup>200</sup>) intentionally or recklessly to use or threaten violence to secure entry to premises on which someone opposed to the entry is present. To be liable, the defendant must know that there is a person there who is opposed to the entry.<sup>201</sup>

<sup>192</sup> Protection from Eviction Act 1977, s 1(2).

<sup>193</sup> *R v Yuthiwattana* (1984) 16 HLR 49, 63.

<sup>194</sup> It is the cumulative effect of the acts on the victim, not in isolation from each other: *R(McGowan) v Brent Justices* [2001] EWHC Admin 814, (2002) 34 HLR 55 974, 981.

<sup>195</sup> Protection from Eviction Act 1977, s 1(3).

<sup>196</sup> This is controversial: A Arden, D Carter & A Dymond, *Quiet Enjoyment: Arden and Partington’s Guide to Remedies for Harassment, Illegal Eviction and other Anti-Social Behaviour* (6th ed 2002) p 147.

<sup>197</sup> See, for example, *Schon v Camden LBC* (1986) 18 HLR 341.

<sup>198</sup> Protection from Eviction Act 1977, s 1(3A).

<sup>199</sup> Protection from Eviction Act 1977, s 1(3B).

<sup>200</sup> Defined in Criminal Law Act 1977, s 12A.

<sup>201</sup> Criminal Law Act 1977, s 6(1).

### **Protection from Harassment Act 1997**

- 1.76 Although enacted in response to concern about stalkers, the ambit of this Act extends further than that. It is a summary offence for a person to pursue a “course of conduct” which amounts to harassment of another and which that person knows or ought to know amounts to harassment of the other.<sup>202</sup> “Ought to know” is judged against what a “reasonable person in possession of the same information would think”.<sup>203</sup> In the same circumstances, the person to whom the harassment has occurred may claim damages and an injunction. Breach of that injunction entitles that person to apply for a warrant of arrest.<sup>204</sup>
- 1.77 A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if he knows or ought to know that his course of conduct will cause the other to fear on each of those occasions.<sup>205</sup> This offence is triable either way (can be tried either in the magistrates’ court or Crown Court).<sup>206</sup>
- 1.78 On conviction, the defendant can be fined, imprisoned,<sup>207</sup> and made subject to a restraining order.<sup>208</sup>

### **Administration of Justice Act 1970, section 40**

- 1.79 This lists offences relating to the unlawful harassment of debtors, potentially relevant to landlord and tenant disputes. Such unlawful harassment may include making demands for payment which, because of their frequency, how they are made, or any threat of publicity, are calculated to subject the debtor or his family to alarm, distress or humiliation. It is also an offence to falsely claim that non-payment of the sum is a criminal offence; that the person harassing is authorised in some official capacity to claim or enforce payment; or that documents have some official character (knowing this not to be the case). These offences are punishable by a fine of up to £5,000.

<sup>202</sup> Protection from Harassment Act 1997, ss 1(1) and 2.

<sup>203</sup> Protection from Harassment Act 1997, s 1(2).

<sup>204</sup> Protection from Harassment Act 1997, s 3.

<sup>205</sup> Protection from Harassment Act 1997, s 4.

<sup>206</sup> Protection from Harassment Act 1997, s 4(4).

<sup>207</sup> Protection from Harassment Act 1997, s 2(2). For harassment in breach of sections 1 and 2, the maximum penalties are a fine of up to £5,000 and/or up to six months imprisonment. For breach of section 4, the maximum penalties on conviction on indictment are an unlimited fine and/or up to 5 years imprisonment, and on summary conviction, up to six months imprisonment and/or a fine of up to £5,000.

<sup>208</sup> Protection from Harassment Act 1997, s 5.

## THE CIVIL LAW

### Statutory tort: Housing Act 1988, sections 27 and 28

- 1.80 This is defined in similar terms to the offence of attempted unlawful eviction and the second harassment offence in the Protection from Eviction Act 1977. The tort can be committed by the landlord or any person acting on his behalf.<sup>209</sup> It can be committed, for example, by granting a new tenancy of the property to persons other than the existing residential occupier.<sup>210</sup>
- 1.81 No liability arises if, before the proceedings are finally disposed of, the occupier is reinstated in the premises or the court orders reinstatement.<sup>211</sup> Reinstatement does not consist in merely handing the tenant a key to a lock which does not work and inviting her to resume occupation of a room which has been totally wrecked.<sup>212</sup> The tenant can choose whether or not to be reinstated.<sup>213</sup> The landlord also has a complete defence if there are reasonable grounds (a) to believe the occupier had ceased to live there, or (b) for committing the wrong complained of.<sup>214</sup> A mistake of belief of fact or as to the law may be relevant.<sup>215</sup>
- 1.82 The most important feature of these provisions was that the Act prescribed the measure of damages that was to be payable, if the alleged unlawful behaviour was established before the court. This was done because at the time the measure was introduced by the Housing Act 1988 there was criticism that awards of damages were – at least without an award of exemplary damages – far too low to deter unlawful action by the landlord.
- 1.83 The basic principle is relatively straightforward. Damages, payable only by the landlord, are to be assessed as the difference between the value of the landlord's interest, assuming the residential occupier continues to have the same right to live there, and the value without the occupier's right.<sup>216</sup> The measure was designed to deny the landlord the "windfall" of the increase in the capital value of the premises arising on regaining vacant possession of the premises.

<sup>209</sup> Housing Act 1988, ss 27(1) and (2).

<sup>210</sup> *Abbott v Bayley* (2000) 32 HLR 72.

<sup>211</sup> Housing Act 1988, s 27(6).

<sup>212</sup> *Tagro v Cafane* (1991) 1 WLR 378.

<sup>213</sup> *Tagro v Cafane* (1991) 1 WLR 378. Where the tenant refuses an offer of reinstatement, this may affect the quantum of damages: section 27(7)(b).

<sup>214</sup> Housing Act 1988, s 27(8).

<sup>215</sup> *Wandsworth v Osei-Bonsu* (1999) 31 HLR 515, 524; cf *West Wiltshire DC v Snelgrove* (1997) 30 HLR 57, 63.

<sup>216</sup> Housing Act 1988, s 28(1).

- 1.84 Despite the straightforwardness of the basic principle, there are two problems in practice. First, in many circumstances the exact calculation can be difficult.<sup>217</sup> If only one of several occupiers is unlawfully evicted, the calculation reflects the difference in value without only that person, not the difference between the value of the premises occupied and its value with vacant possession.<sup>218</sup> Damages may be reduced where the evicted occupier was only one of several occupiers, or due to the occupier's conduct, and refusal of reinstatement.<sup>219</sup>
- 1.85 Second, the creation of the assured shorthold tenancy, with its very limited amount of security of tenure, means that the difference in values is pretty small, given the relative ease and the short time period within which the landlord can lawfully regain possession.<sup>220</sup> The deterrent effect of the statutory measure of damages is now very significantly weaker than when private tenants were protected by the provisions of the Rent Acts, and where their security had a major effect on the capital value of the property.

### Other civil claims

- 1.86 A number of other causes of action are, at least in theory, available to a tenant who has been subject to harassment by the landlord.<sup>221</sup>
- (1) Tenants may also sue their landlord for breach of the express or implied covenant of quiet enjoyment ("that the tenant's lawful possession of the land will not be substantially interfered with by the acts of the lessor or those lawfully claiming under him"<sup>222</sup>).
  - (2) They may sue for breach of the implied obligation not to derogate from the grant.<sup>223</sup>
  - (3) They may be able to sue for breach of some other term of the contract.
  - (4) They may be able to bring an action in tort, for example: trespass to land or goods; conversion of goods; misrepresentation; threats; intimidation; conspiracy to injure; procuring a breach of contract; breach of the Protection from Eviction Act 1977; or breach of the Protection from Harassment Act 1997. Aggravated and/or exemplary (punitive) damages may be awarded for tortious wrongs.<sup>224</sup>

<sup>217</sup> See *Jones v Miah* (1992) 24 HLR 578, 588; *Melville v Bruton* (1997) 29 HLR 319; *King v Jackson* (1998) 30 HLR 541; *Mehta v Royal Bank of Scotland* (2000) 32 HLR 45, 61-3.

<sup>218</sup> *Melville v Bruton* (1997) 29 HLR 319.

<sup>219</sup> Housing Act 1988, s 27(7).

<sup>220</sup> See *King v Jackson* (1998) 30 HLR 541. Against this background, the award of £100,000 to a mere licensee in *Mehta v Royal Bank of Scotland* (2000) 32 HLR 45 looks hard to justify.

<sup>221</sup> For details see, for example, A Arden, D Carter and A Dymond *Quiet Enjoyment: Arden and Partington's Guide to Remedies for Harassment, Illegal Eviction and other Anti-Social Behaviour* (6th ed 2002) pp 20 to 31.

<sup>222</sup> See *Southwark LBC v Mills* [2001] 1 AC 1, 10 Lord Hoffmann.

<sup>223</sup> This applies only where the landlord retains part of the property in the grant.

<sup>224</sup> See, for example, *Mehta v Royal Bank of Scotland* (2000) 32 HLR 45, 63 to 69.

- (5) There may be circumstances in which it may be possible to obtain an anti-social behaviour order against a landlord who has behaved aggressively toward a tenant.<sup>225</sup>

<sup>225</sup> See "Welsh landlord jailed", *Inside Housing*, 31 March 2006.