**Guidance: Assured Shorthold Tenancy Agreement**

An Assured Shorthold Tenancy (or ‘AST’ for short) is the most usual type of residential tenancy used by private landlords. If you have a mortgage for the property, you should check whether you are permitted to let it out and, if you are, whether you are required to use an AST and if your lender has any particular requirements.

**NB Wales:** Only use this document if you are granting a tenancy in England. For residential properties in Wales, a new regime is being introduced under the Renting Homes (Wales) Act 2016. While this includes a tenancy called a ‘standard occupation contract’ that is based on an AST, there will be important differences. Please check at the time on [Gov.uk](https://www.gov.uk/government/publications/how-to-rent/how-to-rent-the-checklist-for-renting-in-england), on the Welsh government’s [website](http://gov.wales/topics/housing-and-regeneration/legislation/rentingbill/?lang=en) or with a solicitor.

This document is not suitable for Scotland or Northern Ireland.

You can use this document for letting a house or flat, or a room in a house or flat (as long as you do not live there yourself) and you are charging market rent (i.e. the best rent reasonable) for the property: there are options for each of these in the online questionnaire. If you intend to let a room in your own home to a lodger, the agreement is not suitable and you should use our Agreement to Share Your Home With a Lodger instead; you will find these in the ‘Home Life and Housing’ section.

Most ASTs are for short periods of six months or a year. You can let a property under an AST for longer periods and our agreement can be used for ASTs of up to three years, ending on the day before the third anniversary. When deciding how long the AST will last, you need to understand the rules about ending an AST, as set out below.

If you want to grant an AST for longer than three years, please contact us for more information.

If you are letting the whole house or flat to more than one person (for example, to a family or group of friends) you should use one AST document and name all the adult occupiers as tenants. For legal purposes, an adult is anyone aged 18 or over.

If you are letting individual bedrooms or bedsits in a shared house, it may be more suitable to use a separate AST for each room. There are pros and cons for both landlord and tenant in either form of joint tenancy. This AST includes an option to include use of shared areas, such as bathroom, kitchen and living room.

**1. Important features of an AST**

An AST is a type of tenancy (also known as a lease) that allows a tenant to live at a property to the exclusion of anyone else, including the landlord, for an agreed period, known as the ‘term’. The law about ASTs is set out in the Housing Act 1988 and related legislation.

Any residential tenancy that started on or after 28 February 1997 is an AST, unless special conditions or
circumstances apply. If you are renewing a tenancy that started before this date, you should take legal advice about it. You should also carefully read the list below for special types of tenancy that cannot be an AST.

Unlike other forms of tenancy, an AST allows the landlord to get the property back at the end of the agreed term without having to give the tenant a reason. However, this does **not** mean that you can evict a tenant at any time without involving the court.

How long an AST lasts and how it ends depends on whether it is a fixed-term or periodic tenancy.

An AST can be granted:

* For a specified length of time (e.g. six months), making it a fixed-term tenancy (see below); or
* Without an end date on a specified rolling basis. For example, the tenancy may run from week to week, month to month or quarter to quarter. This is a periodic tenancy.

It is important to note that a fixed-term AST automatically converts to a periodic tenancy if the tenant stays and you accept rent after the last day of the fixed term but he or she does not enter into a new fixed-term tenancy with you.

Usually, a fixed-term AST is granted for a short period of either six or 12 months (although you can grant an AST for a fixed initial term of up to three years). The start and end dates must be agreed at the outset and stated in the agreement. This online AST agreement gives you the option to do this.

When considering what fixed-term period to agree with your tenant, it is important to note that unless there are exceptional legal grounds and you involve the court, you cannot take your property back before the fixed term has ended.

**When this agreement is not suitable**

This agreement is not suitable in any of the following circumstances:

* Where the landlord shares the same property. In this case, you should use our Agreements to share your home with a lodger: you will find them in the ‘Home Life and Housing’ section;
* Where an agricultural worker is granted a tenancy as part of his or her employment;
* Residential lettings to a company or other business rather than to individuals;
* Lettings where the rent is very low (currently less than £250 a year or £1,000 in Greater London) or very high (more than £100,000 a year);
* Holiday lettings.

If you are letting a property in the above circumstances, you should take legal advice: contact us for more information.

**2. Fairness of AST terms**

When deciding what terms to include in your AST, you need to bear in mind that tenants are protected by consumer legislation, under the Consumer Rights Act 2015 (formerly under the Unfair Terms in Consumer Contracts Regulations 1999). This law aims to protect tenants from one-sided agreements in the landlord’s favour, ensure that agreements are clear and use plain English, and make sure that tenants are given opportunity to read and understand agreements before they sign them.

The former Office of Fair Trading (OFT) published detailed guidance on many types of clause and whether they would be considered fair or unfair; this AST takes the guidance into account. In April 2014, the OFT’s role was replaced by the Competition and Markets Authority (CMA) and the OFT guidance published in September 2005 was republished by CMA under its own name on 1 April 2014. Although it predates the Consumer Rights Act, this remains the most up-to-date detailed advice valid on what is fair or unfair in tenancy documents pending any CMA review.

If you include a term that could be considered one-sided or unfair, even if it has been individually negotiated, the tenant could challenge it in court. You may find the entire clause is effectively crossed out of your agreement and you will not have the protection that you hoped to have by including it.

**3. Number of tenants**

This agreement can be used if:

* The tenant is an individual;
* The tenant is an individual renting a bedroom or bedsit in a house or flat where there are other rooms rented separately to other tenants and there are shared areas.

The above are both types of ‘sole tenancy’ and you need to use one AST agreement.

The agreement can also be used for:

* More than one tenant, if they are a family, couple or group of friends who are renting self-contained accommodation (e.g. a flat or house) together. You need one AST agreement but should name every adult in the ‘Tenant’ section. The agreement gives you the option to name up to eight people as tenants;
* A couple renting a bedroom or bedsit together in a house or flat, where there are other rooms rented separately to other tenants and there are shared areas. You need one AST agreement for each bedroom or bedsit and should name each adult in the ‘Tenant’ section.

The above are both types of ‘joint tenancy’.

In sole tenancies, each tenant is only responsible for their own rent and a fair share of any costs relating to shared utilities.

However, when more than one person is a tenant under a joint tenancy, the agreement states that the tenants are ‘jointly and severally liable’ to the landlord. This means that each person is responsible to you individually and as a group for doing everything that the tenants must do under the agreement. Therefore, if one tenant leaves before the end of the tenancy, the remaining tenants must pay the rent for the entire house, flat or room – not just their share of it – until the end of the tenancy. This would be the case even if the tenants made separate arrangements between themselves, such as making a house or flat agreement for sharers.

**4. Payments**

This agreement is for payment of rent for fixed periods, usually of a week or month in advance.

If the rent is paid weekly, you must by law provide a rent book to the tenants. Many high street stationers and post offices sell them.

Usually, tenants under an AST agreement are directly responsible for paying utility bills themselves and for paying council tax. However, if you are using the AST for a room in a shared house or flat, you can word the agreement so that you are responsible for paying utilities and council tax bills, and the tenant reimburses you.

The agreement does not allow for tenants to pay or reimburse you for any service charges (e.g. any costs involved in maintaining the communal areas of a flat) or any management company charges for maintaining the property. You must therefore ensure that the rent you charge covers these.

This AST agreement has an option that gives tenants of bedrooms or bedsits the right to use shared areas, e.g. kitchens, bathrooms and living rooms. The agreement assumes that you will include the cost of providing and maintaining shared areas in the rent but does not allow you to charge a separate service charge for these shared areas. All-inclusive rent is simpler for both tenant and landlord, and avoids disputes with tenants of rooms over whether the service charge is fair overall or what share of such costs they should each pay for shared areas.

If you ask your tenant to pay any outgoings, you must provide invoices or other evidence of the costs. This arrangement ensures that you are not out of pocket if you pay for services that the tenant would otherwise have to pay for him or herself as a usual household expense.

If the property is divided into bedrooms or bedsits in a shared house or flat, you need to decide whether you want each tenant to pay a fixed percentage of the outgoings or a fair share (without specifying a percentage). The agreement includes options for both situations.

Because the AST will usually be for a relatively short period, we have not included an option that allows you to increase the rent. You can agree the rent with your tenant at the beginning of the original tenancy and should revisit it before you start a new AST after the original has ended.

**5. Health and safety**

As landlord, you are responsible for ensuring that the house or flat is safe. This responsibility is set out in the Occupiers’ Liability Act 1957. The AST agreement includes statements about the main duties relating to fire-resistant furniture, gas and electricity, and you need to ensure that you can make these statements truthfully.

**Fire safety**

If you are providing the tenant with any furniture and furnishings under the Furniture and Furnishings (Fire Safety) Regulations 1988, you must ensure they are made of fire-resistant material. The labels on furniture and furnishings (including cushions, pillows, duvets and upholstery) should state that they are fire resistant. If you do not comply with these regulations, you may be fined or imprisoned.

Although there are some exceptions for antique or vintage furniture produced before 1950, you should not rely on these exceptions as a landlord. If in any doubt, you should take advice from your local fire authority.

**Solid Fuel appliances** – **new regulations:** under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015, landlords of any residential tenancy granted on or after 1 October 2015 must have at least one smoke alarm installed on every story of their let property. The landlord must also test smoke alarms at the start of each new tenancy.

**NB:** We recommend that you use a check-in inventory and note on it that, as at the check-in date, you checked that every smoke alarm was tested and was working.

**NB:** We recommend that you use a check-in inventory and note on it, that as at the check-in date you checked that every smoke alarm was tested and was working.

You can be fined for failing to provide working smoke and carbon monoxide alarms.

**Furniture and furnishings**

If you provide furniture and furnishings, you must ensure they are made of fire resistant materials, under the Furniture and Furnishings (Fire Safety) Regulations 1988. If you fail to comply with these regulations you may be fined or imprisoned. Additional strict regulations and a requirement for an annual fire-risk safety assessment apply to HMOs.

**Gas safety**

You must ensure that gas fittings and flues are safe and arrange annual gas checks.

**New regulations:** If you provide any solid-fuel burning appliances, under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015, from the 1 October 2015 you must, as a landlord, provide a carbon monoxide alarm in each room containing such appliance for any tenancy starting on or after that date. This includes every room containing for example, a wood-burning stove or a coal fireplace, unless it is a non-functioning and purely decorative fireplace.

**NB:** As for smoke alarms above, we recommend that you use a check-in inventory and note at the start of every tenancy that you have tested the alarm.

**Warning:** additional strict regulations and a requirement for an annual fire-risk safety assessment apply to Houses in Multiple Occupation (also known as HMOs) under the Regulatory Reform (Fire Safety) Order 2005 and to any shared areas if you are letting rooms or bedsits in a house separately, even if it is not technically an HMO. See the guidance on HMOs below for more information.

**Gas safety:** under the Gas Safety (Installation and Use) Regulations 1998, you must:

* Ensure gas fittings and flues are maintained and safe;
* Arrange annual gas checks by a Gas Safe (previously known as CORGI) registered engineer;
* Give your tenants a copy of the gas safety certificate before he or she moves in, within 28 days of a renewal certificate and also whenever asked by your tenant.

For more information, see the Health and Safety Executive’s gas safety guidance for landlords.

**Electrical safety:** you must ensure that any electrical equipment you supply is safe; appliances manufactured after 19 January 1997 must bear a CE mark. This is required under the Electrical Equipment (Safety) Regulations 1994.

Unlike gas safety, there is no specific regulation on how frequently you must inspect electrical equipment and you do not have to provide your tenant with a copy of the inspection certificate. However, the Electrical Safety Council recommends testing fixed electrical fittings every five years. Its guidance for landlords gives more information about this. The Housing and Planning Act 2016 envisages additional regulations may be imposed on residential landlords. These are awaited but, in the meantime, you should ensure that all wiring, sockets etc at your property comply with electrical safety standards and provide a copy of electrical safety certificate to the tenant.

**Energy Performance Certificates (EPC):** if you rent out a house or flat, you must provide a copy of an EPC by law. An EPC is valid for ten years, so you do not need one every time you let the property to new tenants, only if it is out of date. Bear in mind that from 1 April 2018, all new tenancies will be subject to Minimum Energy Efficiency Standards (MEES) and it will be illegal to enter into new tenancies where the EPC shows an efficiency rating of F or G. On 1 April 2023, these standards will also apply to any renewal tenancy. There will be heavy financial penalties for breach and there are some exemptions but the regulations are complex; if your property falls into category F or G we recommend you take advice from a surveyor with expertise in EPC regulations. The new MEES also allow a tenant to make energy efficiency improvements, despite any restrictions on them carrying out works in their tenancy. A tenant can also require the landlord to make energy efficiency improvements in certain circumstances. How and when these MEES provision apply in practice is not straightforward and if you receive a request of this type, please take advice from a specialist surveyor or contact us.

**NB:** From 1 October 2015, you cannot serve a valid Section 21 notice to end the tenancy if you have not provided an EPC to your tenant.

**6. Deposit and guarantor**

There are options in the agreement that ask the tenant for a deposit and to appoint someone to stand as security (i.e. a guarantor) if the tenant:

* Does not pay the rent;
* Does not pay the outgoings;
* Causes damage that you have to pay to put right.

For example, if your tenant is a student, you may want to ask his or her parents to be guarantors.

If you ask for a deposit, we recommend charging up to and no more than:

* Five weeks’ rent, where the annual rent in respect of the tenancy immediately after its grant, renewal or continuance is less than £50,000;
* Six weeks’ rent, where the annual rent in respect of the tenancy immediately after its grant, renewal or continuance is £50,000 or more.

**NB:** if you charge more than two months’ rent (i.e. more than one-sixth of the annual rent) you may be granting your tenant automatic rights to sell or sublet their interest in the property. This is not usually permitted (or desirable) under an AST. If you are considering this, please contact us for more information.

**7. Deposit protection schemes**

Since April 2007, landlords who let residential property on assured shorthold tenancies have been required by law to protect tenants’ deposits in a government-authorised tenancy deposit protection scheme within **30 days of receiving the deposit**. The law also states that you must send your tenant information about how the deposit is being protected **within 30 days of receiving the deposit**.

This agreement includes the option for you either to name the deposit protection scheme you have chosen or to include wording that the deposit must be protected with a deposit protection scheme, so that you can provide the information later.

In either case, you need to send the tenant the information required by law within 30 days.

For more information about the different schemes, see read the guidance for the Letter to Tenants Giving Formal Notice That Their Deposit is With an Authorised Deposit Protection Scheme; you will find this in the ‘Home Life and Housing’ section. We also provide the document that tells your tenant their deposit has been protected.

**NB:** the law on deposits also applies when:

* An AST signed before 6 April 2007 is renewed by a new fixed term; or
* When a fixed-term tenancy has expired and the tenant stays at the property on a rolling periodic tenancy. Landlords must still protect the deposit and provide the information within 30 days of the start of the periodic tenancy but the Deregulation Act 2015 has clarified that, provided the parties remain the same and the deposit is protected with the same scheme as under the fixed term, you do not need to re-serve the prescribed information: only do so if it has changed;
* If you are granting this tenancy as a renewal tenancy, please check with the individual deposit protection scheme that you are using as they will have requirements for you to notify them in order to continue to protect any deposit under a previous tenancy.

**8. Landlord’s insurance**

When insuring your property, you must tell the insurance company or broker that you do not live in the property yourself and that you are letting it to tenants.

**Buildings:** you need insurance to cover the usual domestic property risks, such as fire and flood. If you have a mortgage for the property, you should also check what insurance they require you to have.

**Contents:** you do not need to provide insurance for your tenant’s personal possessions but you should make it clear that they need to take out their own insurance for this. If you are providing any furniture and furnishings, you need insurance for them.

**Public liability:** you should take out public liability insurance in case anyone is hurt at the property, for example, if one of the tenant’s visitors trips over and is hurt.

**Loss of rent:** you may also want to take out insurance to cover your losses and legal costs if the tenant fails to pay rent.

Specialist landlord’s insurance policies are available, which you can arrange through your own insurance company.

**9. Repairs and inventories**

As landlord of a home rented under an AST, under the Landlord and Tenant Act 1985 you must keep:

* The structure and exterior (including gutters, drains and pipes) in good repair;
* The installations for the supply of water, gas, electricity and sanitary conveniences (including basins, sinks, baths and lavatories) in good repair and in proper working order;
* The installations, heating and hot water in good repair and in proper working order.

This repair duty is set out in the agreement. What it means in practice will depend to some extent on the age and type of property but it does not mean that if the property was in an inadequate state of repair at the start of the tenancy, you will not have to put it into a good state of repair. However, you will usually need to have been aware of the problem and given a reasonable period of time to put it right.

It is also important to be aware that an AST tenant has only limited responsibility for repairing and decorating the property. At the end of the tenancy, the tenant must leave the property in the same state that it was in at the beginning and must not cause any damage. It is important to understand that this does not mean the tenant must give the property back in exactly the same condition it was in at the beginning of the tenancy, because they do not have to put right or pay for any fair wear and tear caused by their use of the property. For example, if your tenants are a family with children, fair wear and tear could include scuff marks to walls and skirting, and you should expect carpets and any furnishings to need replacement or commercial cleaning more regularly than if, for example, you let to an adult couple. If you are holding a deposit, you may be entitled to deduct the legitimate cost of putting right any damage at the end of the tenancy but you cannot deduct costs for putting right fair wear and tear.

You should also bear in mind that landlords are usually responsible for repairing and replacing any furnishings or appliances provided as part of the letting, including ovens, fridge-freezers and washing machines. Some landlords decide not to provide any appliances and most provide only the minimum. If tenants provide their own appliances, you will not have control over their quality and safety. It is in your interest to ensure appliances are safe and to avoid damage to the property as well as to people.

Although it is not a legal requirement for you to use an inventory, we recommend you do.

If your tenant breaches the obligations of the tenancy by, for example, causing damage to the property, you may be entitled to claim compensation for this breach, either by taking court action or – more usually – by deducting money from the tenant’s deposit.

In all cases, it is up to you to prove you are entitled to compensation. To do this, you need to keep written evidence of the state of repair and cleanliness of the property and its contents at the start and end of the tenancy. An inventory combined with photographs is the best way to do this and can be used in conjunction with a check-out list and photographs at the end of the tenancy.

It is particularly important to use an inventory where, in the case of an AST such as this one, the deposit is subject to the rules of a government-approved deposit protection scheme. Even though each scheme has its own guidelines, they all require the landlord to prove that he or she has lost money because of the tenant’s breach of the agreement: the only practical form of evidence is an inventory that has been agreed and signed at the outset by both landlord and tenant.

**10. Witnesses**

We recommend that you and your tenant each sign the AST in the presence of a witness. It underlines the seriousness of signing a legal document and can also be useful in case of any disputes. However, it is not a legal requirement. If you do use witnesses, they must be over the age of 18 and independent (i.e. not related to you). The same person can witness both your and your tenant’s signatures.

**11. Summary of information and documents you must provide to the tenant**

Before you can take back the property you must, by law, have provided certain information and documents to the tenant. Ordinarily, these should be provided at the start of the tenancy (or shortly after) though if you have failed to do so, you should provide them as soon as possible after you realise. If you have not provided these documents, you cannot take back the property (details below).

You must provide:

* Energy Performance Certificate;
* Gas Safety Certificate (copy);
* A copy of the latest version of the Local Government’s publication [*How to rent: the checklist for renting in England;*](https://www.gov.uk/government/publications/how-to-rent)
* Required information about the deposit in order to comply with tenancy deposit legislation.

The following may also apply:

* In addition, if your property requires a licence (e.g. HMO) you cannot take it back if you have not obtained a licence;
* If there are any solid fuel appliances at the property you must also be able to prove that smoke and carbon monoxide alarms were present and working at the start of the tenancy.

**12. Taking back the property**

Usually, the landlord can take back property rented under an AST after six months or the end of the fixed term (if it is longer than six months) by serving at least two months’ written notice.

However, it is important to note that even if an AST is granted for a fixed term on the last day of that term, it will not automatically end unless the tenant moves out.

If the tenant stays at the property without signing a new tenancy, the fixed term will automatically convert to a statutory periodic tenancy. This means that the tenancy period will run continuously from one rent payment date to the next until either the landlord or tenant ends the tenancy by giving the other notice. Depending on the frequency with which rent is paid, the AST will become a weekly, monthly or yearly periodic tenancy. This situation (known as ‘holding over’) may be agreed and convenient for both tenant and landlord. However, problems can arise if the landlord has not agreed to it.

Before you set up an AST, it is important that you know how to end it by sending the tenant formal notice (known as a ‘Section 21 notice’). Even if you correctly serve the Section 21 notice, you must still get a court order before evicting a tenant who does not move out willingly but the process will be simpler and quicker. We recommend that you refer to the guidance for our Section 21 Notice to Tenants to End Their Assured Shorthold Tenancy, which you will find in the ‘Home Life and Housing’ section. If you are in doubt, take legal advice. Also bear in mind:

* For a fixed-term or periodic AST agreement to end, either the landlord or tenant must serve formal notice. The landlord’s notice is called a Section 21 notice;
* Since 1 October 2015, the standard form of Section 21 notice *must* be used for all tenancies created after that date. It may also be used for all tenancies created before then (including statutory periodic tenancies arising because the tenant is ‘holding over’ a fixed-term tenancy granted before 1 October 2015). We therefore recommend that you use the standard Form 6A: Notice seeking possession of a property let on an Assured Shorthold Tenancy, published by the department for Communities and Local Government.

Form 6A states that a section 21 notice cannot be used (i.e. a notice is invalid) where:

* The tenant has lived in the property for less than four months;
* The landlord is prevented from ‘retaliatory eviction’. Retaliatory eviction is defined in the Deregulation Act 2015 and covers situations where, as a result of a tenant complaint, the local authority has issued an improvement notice or emergency remedial action notice on the landlord. There are specific exceptions and if you are in this situation please contact us;
* The landlord has not complied with the requirements to provide an EPC, Gas Safety Certificate and copy of the government’s *How to Rent* guide (i.e. the information as set out in 11 above);
* The landlord has not protected the tenant's deposit under a tenancy deposit scheme;
* The property requires a licence but is unlicensed.

 NB: Different rules about notices apply for tenancies granted before or after 1 October 2015. If you want to end a tenancy granted before 1 October 2015, we recommend you take advice from a solicitor.

**Tenancies granted on or after 1 October 2015**

When and how to serve a notice to end the tenancy:

* Notices must in most cases be on Form 6A (while not compulsory for every type of tenancy, it is best to use it for all);
* Notices must not be served within the first four months of the tenancy or, in the case of a replacement tenancy, within the first four months of the original tenancy;
* Notices cannot be served under new protection laws protecting tenants from retaliatory eviction where a tenant has raised a legitimate complaint about the condition of the property (protection under section 33 of the Deregulation Act 2015);
* Notices can only be served where the landlord has complied with the legal requirement to provide an EPC, a gas safety certificate and the prescribed information about the rights and responsibilities of the landlord and tenant under the AST (see above);
* When ending any type of periodic tenancy, the notice no longer needs to specify the last day of a period of the tenancy to be the date specified in the notice (section 35 Deregulation Act 2015);
* You can also end the tenancy before the last day of any fixed term if the tenant breaches any of the tenancy terms, so long as the agreement contains a forfeiture clause, as ours does. However, before you do this, you must ensure that you are able to prove one of the legal grounds that the court will require and you must also serve a different type of notice (known as a ‘Section 8 notice’) on the tenant. For more information, contact us.

Your tenant should leave at the end of the notice period. However, if they do not, you **must not use any threats or force against them**: doing so may be a criminal offence. If your tenant does not leave, you should take legal advice. Contact us for more information.

NB: You cannot serve a valid Section 21 notice if you did not protect the deposit with a deposit protection scheme or did not give your tenant the necessary information about the deposit protection scheme you used. Please read our guidance for the Letter to Tenants Giving Formal Notice That Their Deposit is With an Authorised Deposit Protection Scheme in the ‘Home Life and Housing’ section for more information.

If the tenant appears to have left the property before the end of the tenancy, you should take great care before assuming that the property has been vacated. You can use your rights to inspect to check whether the tenant has removed belongings, which is usually a good indication that they have vacated the property. However, we recommend that you do not simply assume that they have left the property and instead ensure that you serve one of the appropriate notices on the tenant to make sure you end the tenancy legitimately. If you find yourself in this situation, it is wise to take legal advice: contact us for more information.

NB: There is no legal requirement for a tenant to give a landlord notice to end a fixed-term tenancy, provided they leave on the last day of the fixed term. A tenant must give notice if they do not leave and ‘hold over’ or if they were granted a periodic tenancy at the outset. If you are served with such notice and require further advice as to whether to accept it, we recommend you contact us.

**Tax**

Tax is a complex area that we cannot advise you about in this guidance. However, as a general rule, landlords must declare rental income and pay income tax (or corporation tax, if they have set up a company). You need to keep accurate records of your expenses, as these can be deducted from your rental income and will reduce the amount on which tax is calculated.

When you sell the property, Capital Gains Tax will usually apply to any profit.

You should take specialist advice from an accountant about tax issues.

**13. Houses of Multiple Occupation**

If your property is occupied by three or more people who are not part of the same household (i.e. not related by blood, marriage, civil partnership or cohabitation), it may be classed as a House of Multiple Occupation (HMO) and strict licensing and regulations may apply.

**What is an HMO?**

An HMO is defined in Sections 254 to 260 of the Housing Act 2004. However, it is not straightforward:

* Your rental property is an HMO and subject to compulsory licensing by the local authority if it has three or more floors **and** is occupied by five or more people who are not a single household (i.e. are not related by blood, marriage, civil partnership or cohabitation). NB: a live-in carer for a person with disabilities may also be counted as part of the household.
* Your rental property may also be an HMO and subject to optional licensing by the local authority if it is occupied by three or more people who are not a single household (as described above) and who share facilities, such as a kitchen, bathroom or toilet.

Local authorities **must** license an HMO in category 1) above. They may also (but do not have to) license an HMO in category 2) above.

In practice, a local authority may impose HMO regulations on properties in areas where there are many shared student households. If one student (or his/her parents) owns the property and the other rooms are occupied by student friends as tenants or lodgers, strict HMO regulations will apply.

If you are unsure whether your home is an HMO and you want more information, contact your local authority’s housing or environmental health department or your nearest Citizens Advice.

**14. Changing the tenancy agreement**

If you buy or inherit a property that is already subject to a tenancy, it is your responsibility as the new landlord to notify the tenants of your name and address, in writing, no later than two months after the change. It is a criminal offence not to give this notice and you may be fined if you do not.

With joint tenancies, it is not uncommon for one or more of the tenants to leave during the tenancy and they may propose someone to take their place. This can be tricky for the landlord because, although technically the outgoing tenant is obliged to pay rent for the entire term of the lease and the remaining tenants are liable under the principle of ‘joint and several liability’, in practice you may not be able to recover the rent in this way.

If the outgoing tenant proposes an alternative tenant that the others are happy with, you may decide to accept them. If you do, make sure it is recorded in writing, in what is known as a ‘variation agreement’ or ‘deed of variation’, which must be signed by all the parties, outgoing and incoming, including any guarantors.

Even if you do not record the agreement in writing, the effect of the change is to end the existing AST agreement and start a new one (known as ‘surrender and regrant’).

NB: if the AST is a fixed-term agreement, this change will affect the earliest date you will be able to end the agreement, usually pushing it back by six months. If in doubt, we recommend you take legal advice. Contact us for more information.

**15. Other information**

**Identity checks: Immigration Act 2014 ‘the Right to Rent’**

In May 2014, Parliament passed the Immigration Act 2014. This law became applicable nationwide to all tenancies starting from 1 February 2016. However, it was in place in some pilot scheme areas from 1 December 2014. These were in the West Midlands – Birmingham, Walsall, Sandwell, Dudley and Wolverhampton. All landlords must now check that any prospective tenant is entitled to live in England and Wales, known as the ‘right to rent’. We recommend that you follow the Home Office’s Immigration Act guidance notes and booklets [available here](https://www.gov.uk/government/news/right-to-rent-checks-introduced-for-landlords-in-england).

The law is intended to help tackle illegal immigration and makes it an offence not to check the immigration status of someone moving into your rental property, punishable by a fine for each illegal immigrant. For a landlord, the fine for a first offence will be £1,000 (or £3,000 if you have previously failed to carry out checks).

Please note that the Immigration Act 2016 makes failing to check and/or to evict illegal immigrants a criminal offence punishable by a prison sentence and by higher fines, as well as the civil offence introduced by the 2014 act. The relevant parts of the 2016 act came into force on 1 December 2016. They do not change how and what checks you should make but as the penalties are high, it is even more important to ensure that you make the checks and keep accurate records. If you employ an agent to make such checks you should ensure that you protect yourself in case they fail to do so, by having a written agreement with them.

The 2016 act also makes it easier for private landlords to evict immigrants who do not have the right to rent, e.g. who have outstayed their Home Office visa. However, it also imposes a duty on private landlords to take steps to evict illegal immigrants within a reasonable time; if you find yourself in this situation, we recommend you read the government’s own guidance for landlords, as this will be updated from time to time, and if in any doubt, take legal advice and read the government guidance [here](https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice/code-of-practice-on-illegal-immigrants-and-private-rented-accommodation-for-tenancies-starting-on-or-after-1-february-2016) and [draft guidance](https://www.gov.uk/government/publications/ending-a-residential-tenancy-agreement-draft-guidance) on what a landlord’s duty to take reasonable steps means.

You would have a defence if you could show that you checked the prospective tenant’s immigration status by obtaining one or more of the required documents set out in the Home Office guidance. This guidance includes a ‘right to rent tool’, which enables landlords to fill in a series of online questions and answers to ensure they have done what they need to do. The government’s [right to rent check pages](https://www.gov.uk/government/publications/right-to-rent-document-checks-a-user-guide) also provide publications, including a printable checklist of documents that are acceptable as proof of a prospective tenant’s right to rent and that you must have obtained in order to establish a statutory defence to a fine.

NB: it is not sufficient simply to see the documents– you must also keep a copy or record of their contents – the Home Office guidance requires landlords to ‘Obtain, Check and Copy’. This must include checking the documents in the presence of the prospective tenant (or by video-link, such as Skype), keeping an electronic or paper copy of the documents and recording the date you made the checks.

Also ensure that if documents are in a different name to that used by the tenant, any supplementary proof of change of name (such as a marriage certificate) is obtained and a copy kept.

If it turned out that a tenant supplied a forged document, you would not be penalised, as long as the forgery was not reasonably apparent.

The Home Office also provides a free online checking service to confirm whether someone has a right to rent, as well as a helpline: 0300 069 9799.

Bear in mind that if you buy or inherit a property that already has a tenant living in it predating 1 February 2016, you may not need to check. However, if the tenancy was granted in a pilot scheme area you will need to check that the right to rent checks were made from the date of the pilot scheme. Also, if the original parties to an AST renew it after 1 February 2016, they do not have to repeat the checks, provided strictly that the renewal is made between the same parties and there has been no break in the tenant's occupation.

NB: Generally, British citizens, and nationals of the European Economic Area and Switzerland will be able to provide a passport or national identity card or a certificate of registration or naturalisation as a British citizen. There are various other documents and combinations of documents that you can accept if the person does not have a passport or ID card. In other circumstances, a non-EEA or non-British citizen may produce a valid passport or other travel document that has been endorsed by the Home Office to show that they are allowed to stay in the UK for a time-limited period. If a time-limited document is produced, you may be required to carry out further checks in future.

In each case, please refer to the Home Office guidance for details.

Please note that, Under the Immigration Act 2016, a landlord may have to end an AST where a tenant does not have or has lost his or her right to rent. You should take legal advice and check Home Office advice in these circumstances.

**European Economic Area (EEA) citizens**

The EEA includes all EU countries, i.e. Austria; Belgium; Bulgaria; Croatia; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Ireland; Italy; Latvia; Lithuania; Luxembourg; Malta; the Netherlands; Poland; Portugal; Romania; Slovakia; Slovenia; Spain; Sweden; and the UK *plus* Iceland, Liechtenstein and Norway.

Although Switzerland is not in the EEA, Swiss nationals have the same rights to live and work in the UK as other EEA nationals.

NB: It unlawful for landlords to discriminate against prospective tenants on grounds of race, religion, sexual orientation, disability, pregnancy and maternity, and other protected characteristics or equality grounds as specified in the Equality Act 2010. This means that you must comply with the obligation to check an applicant’s ‘right to rent’ without, for example, refusing to consider applicants of a particular religion.