

### LEGAL OBLIGATIONS - TENANCY AGREEMENTS

The exact obligations on landlords depend on the type of tenancy or occupancy arrangement in place.

Where an Assured or Short Assured Tenancy exists, a **written agreement** must be provided giving the details of the **landlords name and address**.

The landlord must follow the correct legal procedures for seeking possession of the accommodation (if the tenant does not leave when they are asked to). In most cases this means giving proper notice, and ultimately getting a Court Order. Under the Rent (Scotland) Act 1984, it is a criminal offence to evict a tenant unlawfully, or to use harassment to try to make them leave.

Various rules apply to the charging and handling of rents and deposits:

- No charge must be made for a person to have their name put on a list for accommodation
- No charge must be made for drawing up or copying the tenancy agreement
- If a deposit is required, it must be no more than the equivalent of two months rent
- A deposit should not be withheld unreasonably i.e. because of general wear and tear that could reasonably be expected to occur
- The tenant cannot be required to pay rent before the start of the rental period to which it relates
- If rent is paid weekly, the landlord must issue a rent book and enter a receipt for each weekly payment
- Proper procedures must be followed before changing the amount of rent to be charged

The landlord must keep the **accommodation wind and watertight** and generally fit for human habitation (in practice this normally means the house should meet the Tolerable Standard). In particular, the landlord is responsible for keeping the structure and exterior of the property in good repair, including drains, gutters and external pipes, and must make sure the installations for the supply of water, electricity and gas, and the appliances for heating the house and heating water, are kept in good repair and in working order. The Housing (Scotland) Act 2006 will extend this to cover fixtures, fittings and furnishings provided as part of the let, and require the landlord to carry out an inspection prior to the beginning of every tenancy.

All rented properties with gas fittings require an **annual gas safety certificate** under the Gas Safety (Installation and Use) Regulations 1998 (regulation 36). The test must be carried out by GAS SAFE registered engineers and the tenant must be given a copy of the current gas safety certificate. Old certificates must be retained

for a period of two years. The maximum fine for failing to meet these standards is £5,000.

Energy Performance legislation came into force on 4<sup>th</sup> January 2009 and since that date a landlord must provide their tenants with an **Energy Performance Certificate** for the property they rent; it is advised that this be on display within the rental property.

All furniture and furnishings provided by the landlord must comply with the Furniture and Furnishing (Fire) (Safety) Regulations 1988. For further information Scottish Borders Council Trading Standards section can be contacted on 01896 823922.

The landlord has a general duty to make sure that the electrical installations and appliances provided as part of the let are safe to use (Electrical Equipment (Safety) Regulations 1994).

The landlord must comply with any statutory notices requiring property owned by them to be repaired, brought up to a higher standard, closed or, if it is an HMO, provided with additional facilities or means of escape from fire.

The owner of an HMO must hold a licence from the local authority and must comply with the conditions of the licence.

In addition, the local authority must consider whether the applicant has 'practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business':

- The Equal Opportunities Commission ([www.eoc.org.uk](http://www.eoc.org.uk)) provides advice on its website for organisations and individuals who provide accommodation
- The Commission for Racial Equality ([www.cre.gov.uk](http://www.cre.gov.uk)) has produced a Rented Housing Code of Practice to help landlords comply with their duties under the Race Relations Act 1976
- The Disability Rights Commission ([www.drc.org.uk](http://www.drc.org.uk)) provides extensive guidance for suppliers of goods and services (which include landlords) on the duty to make reasonable adjustments to make their services accessible to disabled people. The Disability Discrimination Act 2005 will extend the requirements on landlords to make reasonable adjustments or provide auxiliary aids and services to enable a disabled person to enjoy all the facilities of their home.
- A copy of all Acts passed by the Scottish Parliament can be found at [www.opsi.gov.uk](http://www.opsi.gov.uk).

For further details from Scottish Borders Council please contact the Housing Strategy Team on 01896661392 or email [privatelandlordregistration@scotborders.gov.uk](mailto:privatelandlordregistration@scotborders.gov.uk)

**Commencement of Section 11 of the Homelessness etc (Scotland)  
Act 2003**

The Scottish Government is strongly committed to preventing homelessness wherever possible and ensuring it is tackled effectively where it does occur. Central to the Government's homelessness policy is the target to give all unintentionally homeless households access to settled accommodation by the year 2012. The Scottish Parliament has passed legislation which strengthens the rights of homeless households to accommodation and places greater responsibilities on local authorities to plan and deliver homelessness services and on other organisations to help local authorities perform their duties.

From 1st April 2009 Section 11 comes into force placing **a duty on landlords and creditors to notify the relevant local authority when they raise court proceedings for possession**. The aim of placing this duty on landlords to inform local authorities of repossession proceedings is to alert authorities to households at risk of homelessness. Local authorities have statutory duties to people who are homeless or threatened with homelessness and early notice of potential homelessness means that they may be able to respond on an individual basis. This might include the early provision of advice and information to tenants facing eviction, including discussion of rights and responsibilities.

Further guidance is available at <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/access/homeless/s11>. The aim of this guidance is to explain the purpose of section 11 and to help landlords and creditors carry out their duties under it. The Guidance includes sample forms of notice for landlords and creditors to download. Forms of notice should be sent to Administrative Officer, at [smein@scotborders.gov.uk](mailto:smein@scotborders.gov.uk) or to Scottish Borders Council Homelessness Services, Galashiels Area Office, Paton Street, Galashiels TD1 3AS.