



LETTING MANSES AND OTHER HOUSES

(Amended October 2017)

The following notes cover matters which congregations should consider if they are contemplating letting out their Manse (or any residential property) during a period of vacancy or for any other reason.

The law relating to residential tenancies in Scotland is changing significantly from 1 December 2017. Further reference is made to this below. **You should in particular be aware of the terms of paragraph 5 below as this has an important bearing on the circumstances in which congregations will be able to recover possession of houses which are temporarily let during a vacancy or for any other reason.**

1. **Ecclesiastical consents**

In all cases, Presbytery consent will be required. If title to the house is held in the name of the General Trustees, their consent is also needed. If you are unsure how title is held, you should make contact with either the Secretary to the General Trustees or one of the solicitors in the Law Department.

2. **Letting Procedures**

Where the house is held in name of the General Trustees, their staff will handle the leasing arrangements and early contact should be made with the Secretary to the General Trustees. In other cases, it is recommended that contact be made with the Law Department who can provide legal advice and prepare the necessary documentation.

3. **Private Housing (Tenancies) Scotland Act 2016**

From 1st December 2017 the type of tenancy which can be granted will change. It will no longer be possible to create Assured Tenancies (which can be terminated only on limited grounds) and Short Assured Tenancies (which must be for at least six months and can be terminated on limited grounds including the ground that the tenancy has come to an end).

Existing Assured Tenancies will continue to be assured tenancies until terminated. Short Assured Tenancies, if they roll on by what is known as tacit relocation (silent renewal) will also continue in their existing form until terminated; but if they continue by contractual arrangement (for example, on a month to month, or 6-monthly, basis) they will – as the law currently stands – immediately be converted to the new Private Residential Tenancy with effect from 1 December. Current Scottish Government guidance for landlords is not in accordance with the new Act in that it says that all existing Short Assured and Assured Tenancies will continue until either the tenant or the landlord bring it to an end by serving notice to quit the let property; and that if a tenant's Short Assured Tenancy is renewing on a contractual basis, this can continue to renew under the old legislation, the Housing (Scotland) Act 1988, until either party brings it to an end by serving notice to quit the let property.

The Scottish Government intends to enact further legislation shortly to amend the current statutory provisions so that they reflect the published guidance so far as contractual Short Assured Tenancies are concerned. **There will therefore be no need to take any action in relation to any existing Short Assured Tenancies, which should continue unchanged.**

4. Types of Occupation

After 1st December the following types of occupancy arrangement will be available:-

- (a) A caretaker arrangement. A caretaker arrangement is not a tenancy and the normal rules applying to residential tenancies will not apply to it. Some statutory provisions do apply such as the provisions with respect to the need for a House in Multiple Occupancy (HMO) licence where a house is occupied by three or more people from three different families. No rent is charged under a caretaker arrangement but the caretaker will pay Council Tax and the cost of electricity, gas and other services used. The Law Department can provide a style of a suitable agreement where this arrangement is appropriate.
- (b) A Private Residential Tenancy (PRT). As of 1st December 2017 this is the only type of tenancy which will be possible in Scotland. It is an open ended tenancy and will last until the tenant wishes to leave the property or a landlord uses one or more of the 18 grounds for eviction which are specified in the Private Housing (Tenancies) (Scotland) Act 2016.

A PRT must contain certain statutory provisions and both the General Trustees and the Law Department have style leases available. We recommend that, even when using a letting agent, congregations insist on the lease itself being drawn up by either the General Trustees or the Law Department. This will ensure that any special conditions which are required as a consequence of the ecclesiastical nature of the properties are contained in the tenancy agreement. It is also important that the landlords are correctly designed and that the landlords are the trustees who hold the property as they will be the party who should be registered as landlords on the Local Authority's records.

The most important change resulting from the new Act is that the "no fault" ground for termination will no longer be available, so that it will not be possible to terminate a lease simply because it has come to the end of the initial term. There are a number of grounds on which a landlord can regain possession, including a breach of the tenancy agreement by the tenant or the landlord wanting to sell or extensively refurbish the house.

Scottish Government guidance on the PRT for landlords is available at <https://beta.gov.scot/publications/private-residential-tenancies-landlords-guide/>

5. Regaining possession on the ground of "religious use"

At the moment, a congregation which has let a manse or other house during a vacancy can regain vacant possession, and bring the Short Assured Tenancy to an end, on the ground

that the house is required for a minister or lay missionary as a residence from which to perform the duties of his/her office. A similar provision was originally contained in the draft Bill which preceded the new Act. However, a last-minute amendment to the Bill was made which restricts the ability to trigger the “religious use” provision to those properties which have previously been occupied for that purpose. So if you let a property which has previously been occupied by a “religious worker”, then you can regain possession if the house is once again needed for that purpose; but if you let a new property, which has not been previously been occupied by a religious worker, then you do not get the benefit of the religious use provision. In such circumstances, you can only bring the lease to an end, if the tenant is not in breach, on very limited grounds. You will not be able to terminate it simply because you wish to regain possession.

What does this mean in practice?

There are two possible scenarios:

- (i) **Your congregation wishes temporarily to rent out a manse or other house which has previously been occupied by “a person engaged in the work of a religious denomination as a residence from which that person’s duties were performed”**

In this case, there will be no change. You will be able to regain possession by serving a notice on the tenant that you require possession of the house so that it can once again be occupied for this purpose. So if during a vacancy you are simply renting out the existing manse, previously occupied by the minister, you can safely continue to do so.

- (ii) **Your congregation wishes temporarily to rent out a manse or other house which has not previously been occupied by a minister or other religious worker**

This is, in effect, no longer possible. Any tenant moving into such a property has security of tenure and cannot be required to move out simply because the congregation now requires the house for occupation by a minister. If, for example, you take the opportunity during a vacancy to reconsider the manse provision and decide that a new manse is required, any new property which is purchased should not be let out before it has been used as a manse.

6. **Tenant References**

It is essential that in all cases, rigorous checks should be made as to the financial standing and previous rental history of potential tenants, with at least two references from previous landlords being obtained along with a bank reference confirming that the tenants should be in a position to meet the monthly rental. If this is not done, there is a significant risk to the congregation as it can be time-consuming and costly to remove tenants who default in their obligations. If the property is locally vested, the Law Department can assist in obtaining references.

7. Registration of Landlord

In all cases where a residential property is to be let - with the exception of a caretaker arrangement - and title is held in the name of local trustees, the trustees as owners will require to register as landlords. This should be done at an early stage as the registration number is now required for any advertisement offering the property for let. If the property is to be managed by Management Agents rather than by the Financial Board of the congregation, the Agents will also require to be registered. If the property is in the name of the General Trustees, they are already registered and the congregation will not require to register separately.

Congregations receive a 100% charitable discount on the fees which would otherwise be payable for landlords registration. Registration lasts for 3 years. Landlords who fail to register are guilty of a criminal offence and liable to a fine of up to £50,000 and suspension of rent payments.

8. Multiple Occupancy

In any case where a property is to be occupied by 3 or more unrelated persons, it is necessary to apply to the Local Authority for an HMO Licence. There are strict conditions as to room sizes and the facilities – particularly safety features - which must be available. The property requires to be inspected by the Local Authority and there is a fee for the licence. The General Trustees' policy is not to approve HMO leases.

9. The Standard of the Property

There is considerable statutory regulation not only of the way in which tenancies are conducted and what must be provided by the landlord but also of the condition of the property. Failing to comply could result in a landlord losing registration. The following matters require to be addressed:-

- (a) An Energy Performance Certificate must be obtained and placed on display within the property;
- (b) If there is gas central heating or any gas appliance, a gas safety check must be carried out every 12 months by a Gas Safe registered engineer. A record of the check has to be delivered to the tenant within 28 days of being carried out and the records require to be kept for 2 years. A gas safety certificate must be given to the tenants by the time the tenancy commences;
- (c) It is **mandatory** that at the start of each new tenancy (where an electrical check has not been carried out in the previous five years), and at least once every five years during the course of a tenancy, an Electrical Installation Condition Report Certificate and a Portable Appliance Test Certificate is obtained. The certificates require to be signed by a qualified and accredited electrician;
- (d) A fire and smoke detector and alarm require to be fitted;

- ✓ In the room which is most frequently used by the occupants for general daytime living purposes
- ✓ In every circulation space
- ✓ On each floor where there is more than one floor
- ✓ In every kitchen

All alarms must be mains powered and interlinked;

- (e) A Carbon Monoxide detector must be installed where there is a gas boiler or other gas appliance within the property;
- (f) The house must meet what is known as the “Repairing Standard” prior to and throughout the period of the tenancy. The landlord is obliged carry out all necessary work prior to the start of the tenancy and if any work becomes necessary the landlord must carry out the work. The landlord is responsible for keeping the following parts of the property in reasonable repair and working order:-
- the structure and exterior of the house
 - the water supply, gas and electricity etc
 - the fixtures and fittings supplied with the tenancy

In addition:-

- the property must be kept in a wind and water tight condition reasonably fit for human habitation
- any furnishings within the property, supplied by the landlord, must be capable of being used safely for the purpose for which they are designed
- satisfactory provision must be made for detecting and giving warnings of fires

It is a criminal offence if the Landlord fails to comply with a Repairing Standards Enforcement Order issued by the Tribunal.

Landlord/tenant disputes with respect to repairing standards are resolved before the First-tier Tribunal (Housing and Property Chamber).

10. **Deposits**

It is an offence to charge a tenant additional sums (“key money”) either to secure the tenancy or in connection with items such as preparation of the lease. A deposit of a sum of not more than two months’ rent can be collected at the start of the tenancy to cover damage done, rent arrears etc.

Any landlord receiving a deposit has a period of 30 days within which to pay that deposit to the scheme administrator of a deposit scheme approved by the Scottish Ministers and provide the tenant with written information about the operation of the scheme. At the end of the tenancy, the landlord will require to apply to the scheme administrator for repayment of all or part of the deposit. The tenant can also apply for the return of the deposit. Where

the amount to be repaid cannot be agreed the matter will be adjudicated by a dispute resolution process provided by the scheme free of charge. No interest will be paid on the deposit monies.

Where a dispute arises as to whether or not deductions should be made before the deposit is repaid, there will be an adjudication. It will be necessary to submit evidence to show why an amount should be deducted. If the issue is unpaid rent this is relatively straightforward but if the issue is the state of the property it will be necessary to provide evidence as to the condition of the property at the start of the tenancy and then again at the end. The landlords only get one shot at this which means that a full condition survey should be carried out at the start of the tenancy, especially where the property has been recently refurbished or new equipment such as a boiler or cooker installed. A written record of the condition should be made before the tenancy commences and it may help to take photographs.

11. Insurance, Council Tax etc

Property insurance should be in place and the insurers should be advised that the property is being let. The tenant should be made aware that they will be responsible for insuring any contents belonging to them.

<http://www.cosic.co.uk/component/content/article/37-news/156-the-church-insurance-scheme-is-commended-at-the-general-assembly-of-2014>

The Financial Board of the congregation is responsible for ensuring that the Local Authority is advised of the tenant's occupancy for the purpose of Council Tax Assessment. *It is important to keep the Authority advised of any periods of vacancy between Tenants, failing which the congregation may lose its right to a Council Tax rebate.*

At the start of any tenancy, gas and electricity meters should be read and the suppliers advised of the change in the person responsible for payment for the service. The telephone provider, if there is one, must be advised of the position. At the end of the tenancy it is important that meter readings are taken and all service providers advised of the change in the circumstances.

At the start of the tenancy someone from the congregation should be appointed to show the tenant round the property and in particular to show them where stopcocks and meters are located and how to operate any alarm system installed. The tenant should also be told about how any necessary repairs should be reported.

Conclusion

The letting of a property can be a complex matter and this circular is only a brief outline of some of the considerations which have to be borne in mind. If you are thinking of letting a residential property and wish to discuss any matter further, you should contact the Law Department or, if the property is held in the name of the General Trustees, the Secretary to the General Trustees Department who will be able to provide further guidance.

