



Ministry of Housing,
Communities &
Local Government

Property Guardians

Non-statutory guidance for current and potential property guardians

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1. Introduction

Who is this guidance for?

1. This non-statutory guidance is for current and potential property guardians. We have produced this to raise the awareness of the rights of property guardians so that current and potential guardians can make informed decisions about their housing choices.
2. It is important that anyone currently acting as a property guardian, or considering entering such an arrangement, fully understands their rights and responsibilities. This non-statutory guidance is advisory and subject to update, so should not be seen as a substitute for independent legal advice. Free legal advice is available from local housing advice centres, or [Citizens Advice](#).
3. This guidance applies from 29 August 2020 and supersedes all previous versions.

Overview of property guardianship

4. The government does not endorse or encourage the use of property guardianship schemes as a form of housing tenure, as guardians can be asked to live in conditions that do not meet the standards expected in residential properties, but people have the right to make their own informed decisions about their housing choices.
5. In most cases, property guardianship agreements are usually licences to occupy, which differ from residential tenancies – most notably by only requiring 28 days' notice before eviction action can proceed whereas for tenancies it can be up to 2 months' notice¹. Just as with a tenancy, however, if the notice period expires and the occupier does not move out, a lawful eviction can usually only be achieved through taking legal action for possession in the local County Court.
6. However, some property guardians may have residential tenancies (Assured Shorthold Tenancies), which require a notice period of six months in most circumstances, except for the most urgent cases, due to temporary requirements introduced in response to coronavirus. These temporary measures are in force until 31 March 2021.
7. Individual agreements and circumstances will vary, so it is important that those currently in a property guardianship agreement and those considering such an agreement, should take independent legal advice in order to properly and fully understand their rights and responsibilities. You can get free legal advice from your local housing advice centre, or [Citizens Advice](#).

¹ Note that at the date of publication of this non-statutory guidance temporary protections are in place owing to COVID-19. The Coronavirus Act 2020 provides protection to social and private tenants by delaying when landlords can start proceedings to evict tenants. Further guidance on this can be found here: <https://www.gov.uk/government/publications/covid-19-and-renting-guidance-for-landlords-tenants-and-local-authorities>. You should ensure that you check the current legal position and seek independent legal advice where unsure.

8. **All buildings used for residential purposes must meet housing safety standards** and local authorities have a legal duty to keep the housing conditions in their area under review and identify any action that may need to be taken. This includes properties occupied by property guardians. However, the properties used in property guardianship schemes are generally not designed for residential use and, while many are effectively adapted, some buildings may be especially hazardous or dangerous.
9. All renters, regardless of tenure or agreement type, deserve to be and feel safe and secure in their homes. Your first point of call if you have any concerns is the property guardian company responsible for your property. You can also contact your local authority. You can find your local council's website here: www.gov.uk/find-local-council.

What is a property guardian?

10. There is no statutory or official definition of a property guardian. It is widely accepted that a property guardian is someone who has entered into an agreement to live in a building or part of a building that would otherwise be empty for the primary purpose of securing and safeguarding the property.

How many property guardians are there?

11. There are an estimated 5,000 – 7,000 people living as property guardians in the UK but the exact number is unknown.

What are property guardian companies?

12. A property guardian company finds residents ("property guardians") for unused premises that they normally don't own, for the purpose of securing and safeguarding the property. The relevant property guardian company for you will be the company who advertised the property and/ or collects the fee (rent) from you.

What sort of properties are available to guardians?

13. The properties used are often commercial or industrial buildings that are generally not intended or have not been significantly adapted to be used as residential accommodation. They can range from old factories and offices to schools and pubs. As a result, the property might not have the same facilities and fixtures that you might expect to find in a property within the Private Rented Sector. There may also be health and safety hazards which would not normally be present in traditional accommodation and which need to be properly assessed and dealt with. Sometimes residential properties may also be offered.

How much does it cost to live in one of these properties?

14. The cost of occupying a property under a guardian scheme varies and is generally cheaper than renting a property at local market value. This is because the property would otherwise be empty, the guardians may be there for the purpose of securing and safeguarding the property, and the guardians are likely to be on licences which means they are agreeing to conditions such as having to vacate the building with only 28 days' notice.

This **reduced cost does not mean that the safety standards of the property can be compromised** and, as set out below, there are certain additional considerations you should take into account before starting a property guardianship.

What sort of agreement may be in place (Tenancy or Licence) and what are the differences between these?

Licence to occupy

15. Property guardianship agreements are usually offered on a licence to occupy. A licence is a contractual right to occupy premises in return for the payment of a licence fee or performance of a service. In law, a licence arises when there is no right to exclusive possession and there is no intention to enter into a legal relationship of landlord and tenant. **However, if the licensee has exclusive possession, it will be a tenancy, even if the agreement labels it as a licence.**

Tenancy

16. A tenancy arises when a landlord grants a tenant a legal right to exclusive possession of premises for a specified period of time, in return for the payment of rent. Under any kind of lease or tenancy, a tenant is entitled to 'exclusive possession' (the right of the tenant to exclude all persons including the landlord from the property) and 'quiet enjoyment' of the premises. In other words, tenants must be free from unwarranted intrusion by anyone, including the landlord. In addition, there must be an intention to enter into a legal relationship of landlord and tenant. The most common type of tenancy is an Assured Shorthold Tenancy (AST).

Full details on the difference between Licences to Occupy and Tenancies can be found in the tables at page 12.

Can property guardians register to vote?

17. Property guardians may be eligible to register to vote at the address they are occupying. You can do it [online](#), and it only takes five minutes. The criteria for who can register to vote are the same as for anyone else living in the UK, and vary depending on citizenship and which part of the UK you live in. You can find out more at the [Electoral Commission website](#).

2. Your rights as a property guardian

18. The most common type of agreement within the Private Rented Sector is an Assured Shorthold Tenancy. Property Guardians usually enter into a licence agreement which means that they have fewer rights than those on an Assured Shorthold Tenancy.
19. There are key legal differences between a tenancy and licence that should be considered before entering into an agreement and when deciding if property guardianship is appropriate for you, but it is also useful to be aware of your rights if you are already a property guardian. Even if a document is drawn up and labelled as a 'tenancy' or a 'licence', it does not necessarily mean the courts will interpret the document to be as such. Each arrangement will have to be judged on its own facts. How the property is occupied in reality will be key to determining the presence of a tenancy or licence, rather than the label attached to the arrangement.
20. There is also an industry trade body, the Property Guardian Providers Association, which has been set up by some property guardian companies in the sector to promote best practice, safety and standards. Further information can be found here: <https://www.propertyguardianproviders.com/>

Deposits

21. As per the [Tenant Fees Act 2019](#), which became retrospective on 1 June 2020, the deposit for all properties is capped at no more than 5 week's rent/ licence fee where the total annual rent amount is less than £50,000 and is capped at 6 weeks' rent/ licence fee where the total annual sum is £50,000 or above.

Licence agreement	Assured shorthold tenancy agreement
Guardian companies are not required to protect the deposits of property guardians within a government approved scheme.	Guardian companies are required to protect the deposits of property guardians within a government approved scheme.

Repairs

Licence agreement	Assured shorthold tenancy agreement
Not covered by the Landlord and Tenant Act 1985, and property guardian companies are not obliged to carry out repairs, except any repairs that are specifically provided for in the agreement. You have the right to report health and safety concerns about the property to the local authority.	Covered by the Landlord and Tenant Act 1985, meaning that repairs to the structure and exterior, and to the installations in the property for providing gas, electricity, heating, water and sanitation, must be carried out within a reasonable period of time of you giving the landlord notice of the problem. You have the right to report health and safety concerns about the property to the local authority.

Right of entry

Licence agreement	Assured shorthold tenancy agreement
No notice needs to be provided before the landlord/anyone acting on their behalf enters the property.	A landlord or anyone acting on the landlord's behalf has the right to 'reasonable' access to the property in order to carry out repairs for which they are responsible, at least 24 hours written notice is required before entering and they must visit at a reasonable time of day. In an emergency situation, a landlord can enter without permission. For example, if there is a risk to life or a risk of severe damage to the property. Other provisions regarding rights of entry may be contained in the tenancy agreement.

Redress schemes

22. A letting agent redress scheme can resolve disputes between landlords/agents and their customers. Both landlords/agents and tenants can complain to a scheme.
23. A small number of property guardian companies have voluntarily joined a Government approved redress scheme. You can find out if they are members by going on the following website: www.gov.uk/redress-scheme-estate-agencies.
24. If they are, and you have a complaint about your property guardian company that they themselves cannot resolve to your satisfaction, then you can raise the complaint with that redress scheme.
25. If you have concerns about your property that have not been dealt with by your landlord or property guardian company, you should seek advice from an independent organisation or contact your local authority. There are a number useful links to organisations in Section 6 'Help and Advice'.

Licence agreement	Assured shorthold tenancy agreement
As above, some property guardian companies have voluntarily joined a government approved redress scheme for letting agents. In addition, members of the Property Guardian Providers Association have developed their own industry redress scheme . However, there is no general requirement for property guardian companies to provide redress to guardians who have complaints and this scheme is not Government approved.	Since 1 October 2014 it has been a legal requirement for letting and managing agents in England to belong to one of the two Government approved redress schemes.

Protection from eviction and harassment

26. The Protection from Eviction Act 1977 extends to all properties that are occupied as a dwelling. **While guardians with licences have less security of tenure than those on tenancies, they are still protected.**
27. Protection from eviction includes the right not to be unlawfully evicted and the right not to be subjected to harassment by a landlord or licensor. Tenants can enforce those rights by bringing proceedings in the local County Court. Harassment by a landlord or licensor may provide a guardian with grounds for a claim under the Protection from Harassment Act 1997. You should seek independent legal advice if you believe that these rights have been breached.
28. Local authorities can take steps to ensure property guardians' rights are protected. They have the power to prosecute offences of unlawful eviction or harassment of occupier, whether committed by landlords or licensors, under the Protection from Eviction Act 1977, and they may offer a tenancy relations service to property guardians.

Length of occupancy agreement and notice periods

	Licence agreement	Assured shorthold tenancy agreement
Length	Will usually be weekly or monthly but a longer fixed occupation period may be specified.	Will usually have a fixed term - often 6 or 12 months - but could be a periodic agreement which rolls weekly or monthly.
Ending the agreement	Your licensor does not need to provide you with any reasons for possession and can end the agreement at any time by serving a written 'notice to quit'.	Under Section 21 Housing Act 1988, the landlord does not need to provide you with any reasons for requiring possession. They can ask the Court to end the agreement and grant possession where all of the following conditions apply: <ol style="list-style-type: none"> 1. they've protected your deposit in a deposit protection scheme 2. they've provided you with an Energy Performance Certificate and a Gas Safety Certificate for the property 3. they've provided you with a copy of the government's guide How to rent: the checklist for renting in England 4. they've given you at least 2 months² written notice that they want the property back and the date you must leave 5. the date you must leave is at least 6 months after your original tenancy began (the one you had on first moving in) 6. you have a periodic tenancy – or you have a fixed-term tenancy and your landlord isn't asking you to leave before the end of the fixed term 7. you haven't made a complaint to the council about the living conditions in the property that resulted in the council serving a notice to the landlord (for tenancies starting after 30 September 2015). 8. Alternatively, your landlord can rely on reasons or 'grounds' for possession under Section 8 Housing Act 1988 to ask the Court to end the tenancy. For Section 8 cases, a shorter notice period usually applies and proceedings can be brought before the 6 months or during the fixed term.

² Note that at the date of publication of this non-statutory guidance temporary protections are in place owing to COVID-19. The Coronavirus Act 2020 provides protection to social and private tenants by delaying when landlords can start proceedings to evict tenants. Further guidance on this can be found here: <https://www.gov.uk/government/publications/covid-19-and-renting-guidance-for-landlords-tenants-and-local-authorities>. You should ensure that you check the current legal position and seek independent legal advice where unsure.

Minimum notice period	A statutory minimum notice period of 4 weeks applies. This is as a result of Section 5(1A) Protection from Eviction Act 1977. It overrides any shorter period stated in the licence agreement, but if the licence agreement provides for a longer period, that will apply. Certain licences are excluded from statutory protection. If it is an excluded licence either the notice period provided for in the agreement or 'reasonable notice' must be given, whichever is longer.	2 months ³
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³ Note that at the date of publication of this non-statutory guidance temporary protections are in place owing to COVID-19. The Coronavirus Act 2020 provides protection to social and private tenants by delaying when landlords can start proceedings to evict tenants. Further guidance on this can be found here: <https://www.gov.uk/government/publications/covid-19-and-renting-guidance-for-landlords-tenants-and-local-authorities>. You should ensure that you check the current legal position and seek independent legal advice where unsure.

Table of differences between Licence and Assured Shorthold Tenancy

Measure	Licence (not excluded licences)	Assured Shorthold Tenancy Agreement
Minimum notice period	28 days - 4 Weeks	Usually 2 months ⁴
Right to occupy	Yes	Yes
Deposit protected	No	Yes
Occupation period	No statutory minimum occupation period. Will depend on the agreement, subject to the statutory 4 weeks' notice period.	A statutory minimum occupation period of 6 months applies, unless the tenant breaches the agreement. The agreement can provide for a longer occupation period.
Protection from Eviction Act 1977	Yes. If the premises is occupied as a dwelling.	Yes
Housing Health and Safety Rating System	Yes but restricted to parts of the building occupied as a dwelling.	Yes
Electrical safety (hazards)	Yes, but restricted to parts of the building occupied as a dwelling.	Yes
Electrical safety 5 year checks	Yes but restricted to parts of the building occupied as a dwelling.	Yes
Gas Safety Regulations /provide a certificate	Yes. At the outset where it's occupied as a dwelling.	Yes. At the outset.
Smoke and Carbon monoxide alarms	Yes, where the property comprises a dwelling and is occupied as the person's only or main residence.	Smoke detector mandatory on each level; CO alarm where solid fuel burning appliance.
Breach of contract for failing to keep property free from serious health and safety hazards (Homes (Fitness for Human Habitation) Act 2018)	No	Yes
Exclusive possession of a building/ quiet enjoyment	No	Yes
Inspection of building by local authority	Local authority must give 24 hours' notice, followed by a warrant if necessary, if they suspect serious hazards are present.	Local authority must give 24 hours' notice, followed by a warrant if necessary, if they suspect serious hazards are present
Repairs to the property	Where a category 1 hazard is identified and it is deemed worthy of repair by the local authority. The licence may include repairing obligations.	Yes - through statutory repairing obligations

⁴ Note that at the date of publication of this non-statutory guidance temporary protections are in place owing to COVID-19. The Coronavirus Act 2020 provides protection to social and private tenants by delaying when landlords can start proceedings to evict tenants. Further guidance on this can be found here: <https://www.gov.uk/government/publications/covid-19-and-renting-guidance-for-landlords-tenants-and-local-authorities>. You should ensure that you check the current legal position and seek independent legal advice where unsure.

3. Things to consider when viewing properties and before you enter into an agreement

29. All buildings used for residential purposes must meet housing safety standards. However, the properties used in property guardianship schemes are generally not designed for residential use and may have unusual hazards. As such, when considering whether to occupy a property you should be conscious of the fact that it may fall short of safety standards and you should exercise extra caution.
30. All renters, regardless of tenure or agreement type, deserve to be and feel safe and secure in their homes. The legal protections can be different depending upon the occupancy status, however most of the requirements in terms of health and safety apply equally to tenancies and licences. **The local authority is required to enforce housing standards in their area, including those in guardianship properties, and has strong powers to take action if hazards are present or standards are not met.**
31. It is extremely important when viewing a property and before entering any agreement, you look out for the following common hazards:

Please note that this list is not exhaustive of all the potential risks and hazards.

Cold

A cold home is one where there is a threat to health from sub-optimal indoor temperatures. Living in cold conditions can cause serious health problems.

- Check whether the building is insulated, e.g. in loft spaces or wall cavities, as well as window glazing.
- Check if there is central heating (radiators or air vents connected to a central heat source, such as a boiler), and that it is working properly.
- If there is no central heating, make sure there is an alternative type of adequate heating, such as storage heaters.
- If you have an 'assured shorthold tenancy' (likely if you have exclusive possession of a room), then your landlord should provide an Energy Performance Certificate (EPC) (free of charge) and the building should not have an EPC rating that is less than E. A low EPC rating indicates that your property does not retain heat very well and may be very cold during the winter. You can ask the guardian company to carry out some of the recommendations in the EPC. Even if you have a licence the building may have an EPC, which the property guardian company may be able to supply.

Damp and mould

Damp and mould can cause or worsen respiratory problems, infections, allergies or asthma. It can also affect the immune system, particularly in young children or those with existing conditions which impact their immune system. Damp also contributes to excess heat loss and puts up heating bills, as well as causing damage to building fabric and contents, including clothes and furniture.

- ✓ Look out for damp patches on walls and ceilings, mould, peeling wallpaper and condensation on windows.
- ✓ Check that the property is adequately ventilated, for example ensure you can open and close windows securely.

Fire risks

Fire can cause serious harm from burns and the inhalation of smoke or gas.

- ✓ Check for working smoke alarms on each floor.
- ✓ Find the easiest way to escape in the event of a fire, and check that locks on fire exit doors can be opened without a key.
- ✓ Check to see if the property has fire blankets and/ or fire extinguishers. If these aren't available, you should consider asking the landlord or property guardian company for them.

If the property is a House in Multiple Occupation (HMO) there are additional duties on the HMO Manager regarding fire. These include:

- ✓ To ensure that fire-fighting equipment and fire alarms are maintained in good working order.
- ✓ To ensure notices indicating the location of fire exits are clearly visible to the occupiers.
- ✓ To ensure that escape routes are free from obstruction.
- ✓ An obligation to provide all occupiers with the manager's name, address and telephone number.

Electrical hazards

Faulty wiring and old, untested electrical installations can lead to shocks, burns and even death. Wired fuses or cartridges present a much higher risk and are a significant fire hazard.

- ✓ Check that the lights turn on and off and check that plug sockets are not damaged or coming loose from the wall.
- ✓ There should be no frayed or exposed cables or wires.
- ✓ Check there are Residual Current Devices (RCDs) protecting all circuits – the guardian company should be able to point these out. (An RCD is a safety device that switches off electricity automatically if there is a fault).

New regulations will require landlords to inspect the electrical installations in rented properties, including many 'property guardian' properties⁵. The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force for new tenancies and licences to occupy on 1 July 2020 and will apply to all existing tenancies and licences to occupy on 1 April 2021.

The Regulations will require that:

- Electrical installations must be inspected and tested by a qualified and competent person at least every five years;
- Electrical safety standards must be met throughout the tenancy;
- Reports (known as 'Electrical Installation Condition Reports' or 'EICRs') must be provided to tenants, and to local authorities, on request. Existing tenants must get a copy within 28 days of inspection, but for prospective tenants and local authorities can get a copy of the most recent one on making a written request.

⁵The regulations apply to all tenancies of residential premises in England which grant person(s) the right to occupy a property as their only or main residence and provide for payment of rent. This includes assured shorthold tenancies and licences to occupy.

Structural defects

Properties that have been badly maintained can lead to a risk of physical injury. Trips and falls can lead to significant injury, broken bones or loss of confidence.

- ✓ Make sure the roof looks in a good state of repair – look for any loose tiles or leaking gutters.
- ✓ The windows should open and close properly.
- ✓ There should be no cracks or holes in walls, loose panels or badly fitted partitions or structural elements.
- ✓ You should be able to access the property entrance and all rooms safely – you should not have to put yourself at risk of physical injury by climbing or walking on structurally unsafe ground, stairs or landings.
- ✓ Look for any obvious trip hazards and/or uneven surfaces (particularly on stairs, bathroom floors, at the exits of showers).

Before entering into an agreement you should also check:

Utility bills and council tax

32. Check who is responsible for the utility bills and find out if you are required to pay council tax or contribute to business rates. In some cases, utility bills are included in the price you pay whilst in others, it is the guardian's responsibility to pay for them. Whilst guardianship may be cheaper than renting alternative properties, it is important to note that, depending on the nature of the property, the cost of heating and lighting in particular may be considerably higher than usual rented accommodation.

Fixtures and fittings

33. Check whether the property will come furnished or unfurnished as you might have to purchase your own furniture.
34. As a result of the nature of the properties on offer, it is unlikely that you will be able to change any fixtures and fittings so ensure you are content with any fixtures and fittings that are provided. It is important to note that some properties may have temporary bathroom/kitchen installations which may not provide the expected functionality.
35. It is important to note that working kitchen and bathroom facilities are a legal obligation in all rented properties, including guardian properties, and that providers have a duty to address any health and safety concerns.

Compliance with Houses in Multiple Occupation (HMO) licence standards

36. When moving into a property guardianship scheme, check with your local authority whether the property is licensed as it should be and that it is compliant with those licencing conditions. The local authority must maintain a register of these licensed properties. If the property is licensed, this should mean that it meets certain standards such as room size and safety requirements. If it is not licensed, these standards may not be met.
37. Since 2018, all HMOs with five or more persons forming two or more households, who share basic facilities, are required to have a licence. This is known as [mandatory licensing](#).
38. Local authorities have powers (through 'additional licensing') to license smaller HMOs for three or more persons forming two or more households who share basic facilities. They are required to consult those affected prior to introducing a scheme.
39. For HMOs, the landlord/ HMO managers are required to:
 - Provide the manager's details to the occupiers
 - Take all necessary safety measures
 - Maintain water supply and drainage
 - Supply and maintain gas and electricity
 - Maintain common areas, fixtures, fittings and appliances
 - Maintain living accommodation
 - Provide waste disposal facilities

Restrictions on who can be a property guardian

- Age: most companies state that guardians must be over the age of 21.
- Income: you might be asked to provide proof of a regular income or be asked to have a guarantor.
- Character reference: some companies might interview applicants and ask for references.

Licence conditions

40. Individual licence / tenancy agreements will vary and might place some restrictions on guardians, and/or require them to do certain things. Make sure you ask about the different conditions for occupying each property.
41. Whilst individual agreements will vary, usually the primary responsibility of the property guardian will be to protect the property they are occupying by maintaining and securing the property. Usually the property guardian company will include a specific list of responsibilities. This could include:
- Reporting issues (e.g. leaks, broken windows) at the earliest opportunity
 - Protecting and preserving the property (reporting any threats or risks to the property)
 - Maintaining the property (not essential maintenance work)
 - Checking smoke alarms are in working order
42. Property guardians should not be required to undertake any security functions (other than occupying the property) or essential maintenance work, such as electrical, plumbing or gas. Property guardian companies will normally supply 24/7 emergency contact numbers in the event of a threat or risk to the property guardian or property.
43. If a property guardian is concerned about conditions that may be included in their agreement, then they should seek independent legal advice. Free legal advice is available from local housing advice centres, or [Citizens Advice](#).
44. Some examples of things you might want to look out for in the contract include, but are not limited to:
- Occupation period: some agreements will be for a fixed occupation period. Check to see whether the agreement allows you to end your occupation early by giving notice. If it does not, you will be making a commitment to pay for the whole period whether you remain living there or not, so make sure that the occupation period suits you.
 - Children: check to see if you're allowed to have children in the property, in most properties they are not allowed.

- Pets: check to see if you're allowed to have pets in the property, in most properties they are not allowed.
- Living with a partner: most property guardian companies only grant licences to individuals which means that if you would like to live with your partner, both of you must apply for a licence and you will then be allocated two separate spaces within the building.
- Being absent from the property: check to see how much notice you have to give the guardian company if you plan on being absent for a number of nights. If you share the building with others, the company may require that someone is always present at the property to fulfil the duty of 'guardian'.
- Guests: check if there are any restrictions on the number of guests you're allowed at one time/if you're allowed any overnight visitors, many do not allow any.
- Non-Disclosure Agreements: some licensees (i.e. property guardians) sign non-disclosure agreements, which prevents them from raising issues with the original owner and using social media or speaking to journalists regarding their living situation. Parties are able to agree terms and a non-disclosure agreement can be a legitimate part of a private contract. Nothing in a non-disclosure agreement should seek to impact upon your statutory rights including your right to raise concerns about health and safety with your local authority. We would advise anyone considering entering into a non-disclosure agreement with their property guardian company to seek legal advice (for example from Citizens Advice) on the terms of the agreement.
- Charity work: some property guardian companies may require that you carry out a certain number of hours volunteering a week.
- Additional responsibilities: in most instances, guardians will have certain roles to carry out. For example, they may have to set fire and security alarms or secure doors. Properties with multiple residents may have a 'lead guardian' who is responsible for ensuring that other guardians carry out their responsibilities.

Fees

45. To comply with the [Tenant Fees Act 2019](#), which became retrospective on 1 June 2020, all occupancy agreements (including licences) can only include the following fees:

- **Rent**. If you have a licence, the payments due may be described as licence fees or occupancy charges but the Act still applies. Property guardian companies can ask for rent in advance but you should ensure that the rent is for a specified period and the company have stated for what purpose and how much rent is covered by the payment to ensure that it is not mistaken as a deposit.
- **A refundable tenancy deposit capped at no more than five weeks' rent** where the total annual rent is less than £50,000, or six weeks' rent where the total annual rent is £50,000 or above.

- **A refundable holding deposit** (to reserve a property) capped at no more than one week's rent.
- Payments associated with early termination of the tenancy, when requested by the tenant.
- £50 or reasonable costs (if higher) for the variation or assignment of a tenancy (such as: amending the tenancy agreement to allow pets to be kept in the property, or, amending the tenancy to change the names of the tenants).
- Payments in respect of utilities, communication services, TV licence and council tax.
- Default fees for late payment of rent and replacement of a lost key/security device giving access to the housing, where required under a tenancy agreement.

46. Property guardianship is generally covered by the Tenant Fees Act, although some licences to occupy are excluded (such as those granted under Homeshare arrangements, provided necessary conditions apply).

47. You can find further information on the Act and the guidance at:
<https://www.gov.uk/government/collections/tenant-fees-act>

4. Safety- keeping the building and living accommodation safe

48. The properties used for property guardianships are generally not designed or adapted for residential use. They may be industrial or commercial buildings that might be in poor and unclean condition with poor physical security and limited access to facilities.
49. Areas of the same building may be licensed to different guardians, who may then be required to share facilities. Even when residential buildings are used, they can also be in poor condition and may have similar security concerns or poor facilities
50. A building occupied through a guardianship scheme may not always meet the same standards that apply to a residential building that is rented through a residential tenancy or licence agreement. However, this does not mean that property guardians have no protection from hazardous conditions.
51. Any building used for residential purposes, including property guardianship, must meet certain health and safety standards.

Local authority responsibilities & powers

52. Under the Housing Act 2004, **local authorities have a legal duty to keep the housing conditions in their area under review and identify any action that may need to be taken. This includes properties occupied by property guardians.** Local authorities can inspect properties on a pro-active basis or a reactive basis, in response to concerns raised.
53. The vast majority of health and safety requirements apply to licences in precisely the same way that they apply to tenancies. Guardians who are licensees should bear in mind, however, that the requirements only apply to those parts of a building which are occupied as a dwelling.
54. Local authorities assess properties using the [Housing Health and Safety Rating System](#) (HHSRS). If at inspection a Category 1 hazard (meaning there is a severe risk of harm) is found, the local authority has a **duty** to take enforcement action. If a Category 2 hazard (meaning there is a less severe but still serious risk of harm) is found, the local authority has a **power** to take enforcement action. Local authorities should respond promptly if a property guardian makes them aware of the presence of a Category 1 hazard at a property in which they are staying.
55. Once a serious hazard has been identified, local authorities have a wide range of enforcement powers. They can work informally with the landlord or they can serve a legal notice requiring certain works. In extreme circumstances the local authority may decide to carry out emergency repairs or even prohibit the use of the whole or part of the property.

Property guardian company and landlord / licensor responsibilities

56. Property guardian companies and building owners have a duty under the [Occupiers' Liability Acts 1957 and 1984](#) to take reasonable care to ensure that guardians and their visitors are reasonably safe when they are using the property in compliance with their licence agreement.
57. **A property guardian company will be liable for any injury caused by a danger that was known or ought to have been known to be present on the premises.** If you are concerned about hazards in the property you occupy, you should contact your local authority.
58. If you feel that your guardian company or property owner have failed in this duty and are considering bringing proceedings against them, you should take independent legal advice or talk to your local Citizens Advice.
59. **In addition to ensuring the property is free from serious hazards** (including but not limited to those listed in section 3) the landlord/ licensor has other safety and/ or repairing responsibilities. In most cases they will have arranged for the property guardian company to deal with these on their behalf.

Gas safety

60. [Gas Safety \(Installation and Use\) Regulations 1998](#) apply to licensors as well as landlords, meaning that property guardians are therefore protected by the same gas safety standards as those in Assured Shorthold Tenancies.
61. This means that a gas safety check must be carried out every 12 months by a 'Gas Safe' registered engineer. Property guardian companies are responsible for ensuring that checks have been done by the landlord/ licensor, they must also check with the landlord/ licensor that the requirements in the Regulations have been complied with. The landlord/licensor should provide you with a copy of the Certificate.

Carbon monoxide and smoke alarms

62. [The Smoke and Carbon Monoxide Alarm \(England\) Regulations 2015](#) places a duty on the landlord/licensor to have the alarms fitted (when the premises are occupied under the tenancy) and must ensure that the alarm is in proper working order when it is first installed (or on 1 October 2015 – if installed before this date). After this date the tenant or licensee is responsible for testing the alarms and is responsible for contacting the landlord/licensor to notify them of any defect or arrange a replacement alarm.
63. The landlord/licensor must also make sure that the alarms are working at the start of every new tenancy. HMO licences also imposes an obligation to install safety equipment on a landlord of an HMO property.

Electrical safety

64. [The Electrical Safety Standards in the Private Rented Sector \(England\) 2020](#)

Regulations came into force for new tenancies on 1 July 2020 and will come into force for existing tenancies on 1 April 2021. They require that:

- a. Electrical installations must be inspected and tested by a qualified and competent person at least every five years;
- b. Electrical safety standards must be met;
- c. Reports (known as 'Electrical Installation Condition Reports' or 'EICRs') must be provided to tenants, and to local authorities on request. Existing tenants must get a copy within 28 days of inspection, but for prospective tenants and local authorities can get a copy of the most recent one on making a written request.

[The Landlord and Tenant Act 1985](#) requires landlords to keep installations in the property, including the supply of electricity, in good repair and proper working order.

Fire safety

65. Fire safety in domestic premises is assessed using the Housing Health and Safety Rating System (HHSRS).

66. Fire safety in all non-domestic premises e.g. in a school or factory, and in the common parts of houses in multiple occupation (HMOs), is covered by the Regulatory Reform (Fire Safety) Order 2005, and enforced by Fire and Rescue Services (FRSs).

67. Section 3 sets out some of the common hazards that you should look out for when viewing a property and before entering any agreement. Please note that this is not an exhaustive list.

Where to go for help

If you consider that there is a hazard that needs to be addressed, you should ask the property owner or guardian company to address this in the first instance. As noted above, if a category 1 hazard is not addressed then the local authority has a duty to act.

Your local council's environmental health team will be able to advise you on specific cases. The local authority has a duty to take action if a serious (category 1) hazard is present and the power to take action should less serious hazards be present. You can find your local council's website here:

www.gov.uk/find-local-council

Shelter have produced advice on how to get in contact with your local environmental health team. This can be found here:

https://england.shelter.org.uk/housing_advice/repairs/complain_to_environmental_health_about_rented_housing

The government has published guidance on how to rent a safe home which is for social and private rented sector tenants and explains the main hazards which may make a property unsafe to live in. It explains tenants' and landlords' obligations and how to raise concerns. This can be found here:

<https://www.gov.uk/government/publications/how-to-rent-a-safe-home>

The Government has also published guidance setting out the roles and responsibilities of both landlords and tenants when letting or renting a property in the private rented sector. This can be found here:

<https://www.gov.uk/government/publications/landlord-and-tenant-rights-and-responsibilities-in-the-private-rented-sector>

5. Terminating a guardianship agreement

68. Some guardianship agreements will be for a fixed term and, unless renewed, the guardian will be expected to leave at the end of the term. Other agreements will be periodic, i.e. weekly or monthly with no specified end date. These will provide for either you or the guardian company to give notice to end the agreement. Some may contain provisions allowing the agreement to be terminated by the guardian company at very short notice.

69. While guardians with licences have less security than those on tenancies, the *Protection from Eviction Act 1977* extends to licensees, meaning that **notice periods of less than 28 days are unlawful**. Under the Act, the notice given by or on behalf of a landlord or licensee must be in writing and must contain certain 'prescribed information' informing you of your rights and of where you can go to seek help.

Your landlord or licensor will probably be committing an offence if they:

- change the locks whilst you're out;
- threaten you if you do not leave;
- physically throw you out; or
- stop you getting into certain parts of your home.

70. You may be able to take your own legal action in your local County Court for reinstatement/compensation, if your landlord or licensor commits such acts of harassment or unlawful eviction.

If you want to end the agreement, be aware that:

- If it is a fixed term agreement, it may not contain a provision which allows you to bring it to an end early, so you may remain responsible for all payments due until the end of the term.
- The statutory requirement to give at least a minimum period of notice applies to you too – weekly tenants, weekly licensees and monthly licensees must give a minimum of 28 days' written notice, monthly tenants must give at least one month's written notice.
- Your occupation agreement may require you to give a longer period of notice than the statutory minimum.

71. If the guardian does not leave at the end of the notice period or when a fixed term agreement expires the landlord or licensor must use the County Court possession process to regain possession lawfully. This involves issuing possession proceedings, obtaining a possession order and arranging for the County Court's bailiff to execute a possession warrant. Where a possession order is made, the guardian will usually be ordered to pay a specified sum towards the legal costs incurred by the landlord/licensor.

6. Help and advice

[Citizens Advice](#) – free, independent, confidential and impartial advice to everyone on their rights and responsibilities.

[Shelter](#) – housing and homelessness charity who offer advice and support.

[Crisis](#) – advice and support for people who are homeless or facing homelessness.

[Your Local Housing Authority](#) – to make a complaint about your landlord or agent, or about the condition of your property.

[Money Advice Service](#) – free and impartial money advice.

[The Law Society](#) – to find a lawyer.

[Gas Safe Register](#) – for help and advice on gas safety issues.

[Electrical Safety First](#) – for help and advice on electrical safety issues.

[How To Rent A Safe Home](#) – a guide to help current and prospective tenants ensure that a rented property is safe to live in.



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