

Letting of manses and other residential properties

1. This note deals with the main legal and practical considerations surrounding the letting of manses and other residential property. It does not apply to accommodation provided for occupation by lay employees as a condition of employment – see Guidance Note 13 “Employee accommodation”.

2. Churches generally let their manses when not required for occupation by a minister or church related community worker. Letting prevents the deterioration associated with property empty for long periods and also discourages squatters and the problems they bring. Letting also provides income to the church which may be used for general church purposes. Houses which are let are still subject to the quinquennial surveys in the normal way and some allocation should be made from rental income for maintenance. Any other house from which the church benefits can usually be let in a similar way.

3. It is important to get the arrangements and the paperwork right when letting any kind of residential accommodation (for simplicity “house” in this note), and because it may be necessary to go to court to regain possession of the house. The main points to consider are reviewed below. They are:

- URC procedure
- letting agent
- choice of tenants
- energy performance certificate
- licensing of landlords and agents
- deposits
- rent and outgoings
- type of tenancy
- ending the tenancy
- safety requirements and condition of the house
- property insurance
- fees and charges

URC procedure

4. Resolutions and approvals

The first step towards letting is for the church meeting to agree that the house should be let. If it is held on the trusts for residences for ministers and other church workers (see Guidance Note 3 “Title deeds and other documents”) the church must also obtain the approval of Thames North Synod, given on its behalf by the Grants Loans and Property (“GLP”) Committee. The letting of houses held on other trusts for the benefit of the local church usually requires only the decision of the church meeting.

5. The landlord

The only person entitled to grant a tenancy is the person holding the legal ownership. For most church houses this is URC Thames North Trust (“TNT” or “the Trust”). The day to day oversight of the house is the responsibility of the elders meeting, and a letting agent is often appointed to deal with the details. The rent is paid to the church, and the costs involved in the letting are payable by the church.

Letting agent

6. The local church should engage a reputable local estate agent to advise on rent and to find a tenant satisfying the church's criteria having regard to the considerations described in paragraphs 8-12 and to make appropriate arrangements for the tenant's deposit (see paragraph 17). The church may also wish to appoint the agent to manage the tenancy on a day-to-day basis. The agent's fees may be negotiable, but typical fees range from 10% of the rent for the initial period (up to a year) for finding a tenant to 15% for this and subsequent management. Standards of service vary, but should include rent collection, dealing with the tenant's deposit, making inspections from time to time, day-to-day management of the house, and dealing with questions and problems raised by the tenant (referring to the church as appropriate).

Energy Performance Certificate

7. An energy performance certificate (EPC) has to be obtained for all residential property to be let. This certificate has to be issued by an approved Domestic Energy Assessor. The letting agent can arrange for this to be done with the cost being borne by the church. The certificate should be sent to the Trust for safe-keeping. It is valid for ten years, but it is open to churches to obtain an up to date certificate within that time before a new tenancy if there have been relevant changes to the premises.

Choice of tenants

8. Flexibility

The earlier in a pastoral vacancy that a letting is arranged, the longer the initial letting of a manse can be without the risk of wanting to have the house available for church use before the letting period runs out. Even so, letting a manse for more than a year is usually best avoided – as explained in paragraph 22, the tenant can stay on if the house is not needed. Later in a pastoral vacancy, if the house is being re-let, a commitment limited to six months helps to keep options open (though it may also make it harder to find a tenant). Generally, if there are problems with tenants, it is simpler to recover possession at the end of a relatively short fixed term than to take court proceedings for possession for specific reasons during a longer tenancy.

Broadly, therefore, the length of time that a tenant is seeking to be housed should be matched with the expectation of the earliest time when the house may be needed for ministerial occupation. This should minimise the risk that the tenants will not leave when required, leading to the expense and delay of legal action to recover possession.

9. Council-assisted tenants

Special consideration should be given to the implications of accepting as new occupants of manses tenants known to be seeking financial assistance with the rent ("local housing allowance", formerly housing benefit). Experience has shown that if tenants seek local authority assistance with re-housing (and these are usually people receiving assistance with the rent), some local authorities are unwilling to make any arrangements until a court has made an order entitling the landlord to possession of the property (or, even worse, until a court bailiff has been instructed to evict the tenant). Apart from the expense to the church, this process is likely to cause delay in housing the minister at the start of a new pastorate. The same difficulty in recovering possession may, of course, be encountered in the unforeseeable event of a change in circumstances resulting in the tenant beginning to claim local housing allowance during the tenancy.

10. Naming the tenant

Not more than four people may have a legal interest in a tenancy. As there can be complications resulting from the recognition of additional people as occupants, the maximum number of people sharing occupation of the house as tenants is four, whether or not they are related in any way. In the tenancy agreement "the tenant" comprises each adult occupant (including any spouse or partner) to be held responsible for the performance of the tenant's obligations under the agreement.

11. **Unrelated occupants**

Special considerations apply to houses let to three or more unrelated individuals who are living as two or more households. Such a house is called a “house in multiple occupation” (HMO). The house must be maintained in a condition which complies with statutory standards (see paragraph 27), which may result in the provision of features which are not usually found in houses intended for ordinary family living.

Licensing The landlord and any managing agent of an HMO has to be licensed by the local authority if the property is of three or more storeys (including any basement, attic or mezzanine room available for use as living accommodation). The potentially severe consequences of not being licensed when necessary are outlined in paragraph 14.

Policy In view of the implications of the HMO legislation for Trust-owned houses of three or more storeys and their return to normal use, the Trust will not enter into any tenancy of residential property with prospective occupants whose circumstances would risk the property being subject to the licensing requirement. Consequently **tenants of properties with living accommodation on three or more levels must always be a single family or not more than two people living separately.**

12. **References**

These should always be taken up for all of the people to be named as tenant in the agreement. Letting agents should be asked to provide copies to the local church. The church may decline to accept the prospective tenant(s).

13. **Conflicts of interest**

Elders The elders meeting and the Trust are jointly the “charity trustees” of church property (see Reports to General Assembly 2006, page 183). One consequence of this is that a house cannot be let to a serving elder, or a person “connected” to a serving elder without the specific consent of the Charity Commission. As such consent is unlikely to be readily forthcoming, the church may find it more realistic to seek a different tenant.

Other members of the congregation Any church wishing to arrange for a property to be let to any other person associated with that church should take advice from a local letting agent about the proposed rent.

Licensing of landlords and agents

14. **When required**

The Housing Act 2004 provides for licensing of landlord and agents in three situations.

- “mandatory licensing” of larger HMOs under section 55 of the Act as described in paragraph 11
- “additional licensing” of smaller HMOs if the local authority is satisfied that licensing would contribute to the effective management of HMOs in a designated area to reduce problems caused by HMOs to their occupants or the public (section 56)
- “selective licensing” of all rented property within a designated area if the authority is satisfied that it is an area of low housing demand in which licensing would contribute to an improvement in the social or economic conditions in the area or to the reduction of anti-social behaviour (section 80).

Additional and selective licensing may be applied for not more than five years at a time. The introduction of either of these forms of licensing requires local consultation and publicity, and central government approval.

Non-compliance If an HMO should be licensed but is not, the landlord cannot recover possession of property let on an assured shorthold tenancy (see paragraph 22) by giving notice under the Act requiring possession as described in paragraph 25. Failure to be licensed and non-compliance with licence conditions may result in the landlord being fined a potentially substantial amount and being ordered to repay up to a year’s rent and, if applicable, housing benefit.

15. Administration

The Trust has not had any experience of local authorities making use of the additional or selective licensing powers. It is difficult to assess the extent to which Trust-owned property may be situated in locations to which the HMO legislation in its additional or selective form may be applied.

Because of the complications which arise from dealing with a licensable property, when any property of less than three storeys is being let or relet, the church (without relying on a letting agent) must ask its local authority whether the property is in a location where additional or selective licensing of landlords is in operation or for which there is a current proposal to apply either of them.

- If “additional licensing” of HMOs applies or is proposed, the Trust will accept as tenants of those houses only families or not more than two people living separately;
- In order to be able to ensure that the Trust/church can regain possession of property already in multiple occupation when “additional licensing” of HMOs is proposed, all tenancies to three or more people will be granted for six months only. This will not prevent the tenants remaining in occupation as statutory periodic tenants (see paragraph 22) if licensing is not introduced.
- If a church becomes aware that it has a tenanted house which would be included within a proposal by the local authority for “selective licensing” of all landlords, the Trust should be informed immediately. It is likely to be in the interest of the church in maintaining control of the house if action is taken to end the tenancy as quickly as possible. It is likely that the house will have either to be sold or to be left empty while the licensing requirement applies.

Deposits

16. Purpose

The tenant should be required to pay a deposit (normally equal to a month's or six weeks' rent) refundable on leaving provided that the rent is up to date, the utility bills paid, the property is confirmed as being in appropriate condition on checking against the inventory (see paragraph 27), and that there are no other unpaid claims against the tenant (eg for costs of possession proceedings). The Trust's standard tenancy agreement provides for this.

17. How it works

From April 2007 any security deposit paid by a tenant under a new letting agreement (including deposits of existing tenants renewing agreements, but not those continuing (“holding over”) as statutory periodic tenants as explained in paragraph 22 must be administered in accordance with deposit protection legislation. This requires deposits to be covered by procedures for resolving disputes about the amount of the deposit to be returned at the end of the tenancy. Details of the arrangements made must be given to the tenant within 14 days of receipt of the deposit by the landlord. Court action to recover possession of the property cannot be taken unless this has been done, and other penalties on landlords may also apply.

In practice The Trust has not registered as a landlord to take part directly in any government approved administration schemes. Letting agents should therefore be informed that deposits are to be brought within whichever scheme the agent uses. In order that churches can continue to have the benefit of the interest on the deposit as provided in the tenancy agreement (churches should ensure that they receive the interest from the agent when the tenant leaves), the agent must be using one of the insurance-based schemes approved by the Government.

Rent and outgoings

18. Amount

To comply with the requirements of charity law, the Trust must be satisfied having regard to competent professional advice that the terms agreed, including the rent, are the best that can reasonably be obtained. A statement by the agent to this effect should be sent to the Trust with the information required for preparation of the tenancy agreement (see paragraph 23).

Concessionary rent Complications may arise if the church wishes the property to be occupied at a concessionary rent by someone connected with the church (see paragraph 13) or by someone in

difficult circumstances who is perceived by the church as deserving of accommodation at a concessionary rent. Strictly speaking the elders' meeting, as charity trustees, should not agree to such a rent, which reduces the potential income receivable by the church. However, the Trust will not reject a tenancy on this basis if the proposed concession is recommended by the elders' meeting and approved by the church meeting, duly informed of the extent of the concession by reference to an agent's written opinion of the potential open market rent. As tenancies may last much longer than the initial contractual period (see paragraph 22), the maximum duration of the concession should be decided and recorded at the outset. The Trust should be sent a copy of the church meeting minute certified as a true copy by an officer of the church for the tenancy agreement to be drawn up.

19. **Rent review**

In principle rents for houses may be adjusted annually by agreement with the tenant. Churches may find it acceptable to leave any review of the rent until a tenancy appears likely to continue into a third year. The agent's advice on the rent should be sought, and any change negotiated with the tenant. The revised rent must be incorporated in a new tenancy agreement issued by the Trust. This will commit both parties to a new fixed term. Concessionary rents (see above) should be reviewed in the same way.

20. **Payment and arrears**

Payment The rent is to be paid direct to the local church, via the letting agent if managing the property, not to the Trust. Churches collecting rents themselves should note that by law the name and address of the landlord (ie the Trust) must be shown in any rent demand.

Arrears Any arrears should be followed up with the tenant promptly by the church or letting agent. The Trust should be informed of anything beyond minor delay in payment. This opens the way to considering, while the amount involved is relatively small, whether to initiate legal action (at the church's expense) to end the tenancy and try to recover the arrears. Early action helps to minimise the loss of rent to the church when, as is often the case, accumulated arrears are found not to be recoverable.

21. **Council tax and other outgoings**

The tenant is responsible for payment of council tax, water and sewerage rates and charges, and gas, electricity, telephone and television charges to the relevant authorities and suppliers. The relevant authorities and suppliers must be informed at the start and end of the tenancy.

Type of tenancy

22. **Description**

There is a presumption in current housing legislation that a tenancy granted to individuals (not a company or business) is an "assured shorthold tenancy" (AST). Tenancies of houses held by the Trust for local churches will be ASTs unless the annualised rent exceeds £25,000 per year, or the house has been tenanted by the same person from a date before the AST legislation came into force in 1989 or the tenancy is clearly stated not to be an AST.

Assured shorthold tenancy The main features of this kind of tenancy are:

- it lasts for a pre-determined fixed period (but may include provisions for ending it early)
- having given at least two months' notice to the tenant, the landlord can obtain a court order to regain possession from a tenant who does not leave voluntarily when required to do so, provided that the tenant has been in occupation for at least six months
- the tenant has no right to have the tenancy renewed but
- if possession is not required by the landlord at the expiry of the fixed period, the tenant may remain in occupation on the same terms without affecting the landlord's right to regain possession on two months' notice (this does not require a new agreement). The tenancy is then known as a "statutory periodic tenancy" and the tenant is often said to be "holding over".

23. Documentation

Form The Trust has its own standard form of AST agreement, approved by its lawyers. Specimen copies are available from the Trust on request and should be supplied to the letting agent. The Trust does not accept agreements prepared by letting agents.

Variations Some circumstances require variations to the standard document. Requests for these should be referred to the Trust for decision before accepting the prospective tenant.

Preparation When a tenant has been found, details must be sent to the Trust so that the agreement and any variation clause required can be prepared. The information needed by the Trust for preparation of the agreement is listed in the Annex to this Note. This information should be sent to the Trust by the church or the letting agent at least two weeks before the tenancy is due to begin.

Signature Two copies of the tenancy agreement are produced. The “counterpart agreement” is sent (usually via the agent) for signature by the tenants before they move into the property. This is to be returned promptly to the Trust which will then issue to the tenant (usually via the agent) the “agreement” signed on behalf of the Trust. A copy of the completed document is sent to the local church and letting agent.

Landlord’s approvals The tenancy agreement allows for various details to be changed with the landlord’s prior written consent. The letting agent should be instructed to refer requests for approval to the church for consideration, whether arising before the tenancy begins or later; it is not necessary to inform the Trust. Decisions are to be confirmed by letter to the tenant and this can be done by the letting agent. Some agents charge for the processing of requests for approval after a tenancy has begun. The tenancy agreement provides for these charges to be paid by the tenant.

Ending the tenancy

24. Procedure

The tenancy may be brought to an end before, at or after the end of the period stated as “the term” in the tenancy agreement. The procedure is the same in all cases.

Tenant’s notice The tenant has to give one month’s notice expiring on the last day of the tenancy month. The notice should be in writing but does not have to be in any special form. It can be sent to the letting agent or the Trust.

Landlord’s notice When the church needs to recover possession of the property (for church purposes, for sale or for any other reason), written notice is given by the Trust (not the letting agent, nor the local church). The church, direct or through the agent, can tell the tenant informally of the intention to end the tenancy. The Trust must be informed at the earliest opportunity so that the written notice is given to the tenant in the correct form and at the right time. A minimum of two month’s notice has to be given by the Trust expiring on the last day of the tenancy month, whether at the end of the fixed term or some other month. Churches should note that putting together the monthly date by which notice must be received by the tenant, the two months’ notice period and allowing a month to carry out any work needed before re-occupation, it takes a minimum of three months between the church instructing the Trust to give notice and the house being ready for occupation.

Court proceedings It is unlawful for a landlord to re-enter tenanted property without the agreement of the tenant or the authority of a court order. Consequently if the tenant does not leave in accordance with the landlord’s notice, the Trust must be informed. Arrangements will be made for solicitors to institute court proceedings. The costs are payable by the church except to the extent that they can be recovered from the tenant.

25. Ending at different dates

Ending early - by the tenant Although the expectation is that the tenancy will last for the whole period agreed at the start, there may be changes in circumstances, whether anticipated or unexpected, which may cause the tenant to wish to leave early. In order to keep control of the occupation of the house, it is not acceptable from the Trust’s/church’s standpoint to allow the tenant to pass the benefit of (“assign”) the tenancy to someone else. Instead, the Trust’s agreement allows the tenant to end the agreement early by giving at least one month’s notice

effective at the end of at least three months in a tenancy for six months and after six months in a tenancy for a longer time.

Ending early - by the landlord The Trust's agreement also allows the Trust as landlord to bring a tenancy for more than six months to a premature end after a minimum of six months. This may be helpful if the tenancy proves to be an unhappy one or if the house is required unexpectedly early for church purposes. Use of the early termination option does not prevent the Trust from taking court action to enforce possession before the end of the fixed term if the tenant does not comply with the notice voluntarily.

Ending on time or after expiry In either of these circumstances the tenancy can be brought to an end on two months' notice by the landlord or one month's notice by the tenant as described in paragraph 24.

Safety requirements and condition of the house

26. Statutory duties

There is a legal duty for landlords to ensure that premises are fit for their intended use, in reasonable repair with services and appliances in working order. The local church must ensure -

- that any gas installation and appliances are inspected and serviced annually by a CORGI registered contractor
- that any foam-filled furniture (including loose cushions) provided by the church/landlord is covered and filled with non-toxic flame resistant material and labelled accordingly
- that the fixed electrical system is checked on a change of occupant and at least every ten years for safety by an appropriately qualified electrician
- that all electrical equipment provided by the landlord/church is checked annually.

27. Housing standards for HMOs

In administering HMO licensing (see paragraphs 11 and 14) local authorities have to determine the permitted number of occupants for individual properties. Regulations made under the Housing Act 2004 (see Schedule 3 in Statutory Instrument 2006 No 273) provide the following criteria -

- each unit of living accommodation must have adequate means of heating
- any communal kitchen must be equipped for food preparation and storage (including refrigeration and freezing), cooking and waste disposal, and with appropriate extractor fans, fire blankets and fire doors
- where washing and toilet facilities are shared, for every five sharing occupants, there must be
 - one separate toilet and wash hand basin and one bathroom (which may contain a toilet)
 - a wash basin in every unit of living accommodation.

These criteria, and possible requirements by the local authority for alterations, should be borne in mind by the church in considering the way a house is to be used when not required for occupation by a minister or other church worker. In ordinary household living it is unusual to find fire doors; fire blankets – and emergency lighting – are rarely part of the provision the church makes in its manse. There is even less likely to be a wash basin in every room of a manse occupied by separate tenants.

28. Inventory

At the start An inventory (a thorough record of the condition and contents of the house) is a worthwhile protection against disputes at the end of the tenancy over damage etc during the tenancy. Although this may be prepared by the local church, it will usually be preferable to use the expertise of the letting agent. The inventory should be accepted in writing by the tenant as provided in the tenancy agreement.

At the end When the house is to be vacated, its condition and contents should be checked against the inventory to identify any loss, damage or deterioration (beyond normal wear and tear) for which the tenant is responsible. The outcome is one factor to be taken into account in deciding whether the deposit is to be returned to the tenant in full.

Property insurance

29. The insurer of the house should be informed
- when a minister or other church occupant leaves, and the property is to be let, irrespective of how soon a tenant may move in
 - when it is to be left empty for an uncertain length of time
 - when a permanent occupier arrives (the premium may be reduced when an empty house is occupied)
 - in accordance with the policy conditions, if the occupant intends to leave the house unattended for more than the period specified in the policy, often 28 or 30 days.

The tenancy agreement requires the tenant to comply with relevant provisions of the insurance so far as notified to the tenant. A suitable statement should be prepared by the church with the assistance of the insurer. This insurance is for the building and church-owned contents; insurance of the tenant's furniture and possessions is the tenant's responsibility.

Fees and charges

30. Letting agents' charges and any insurance premium under the deposit protection scheme (see paragraph 17) are payable by the local church, and will usually be deducted by the agent from the rent remitted to the church. There will not normally be any legal fees to be borne by the local church in connection with the granting of an AST in the Trust's standard form. On setting up the agreement, the Trust makes the charge to the local church shown in Guidance Note 11 and a further fee is charged by the Trust at the end of the tenancy if a landlord's possession notice is served. Solicitor's fees, court fees and another Trust fee are payable if court action becomes necessary to recover possession.

Information to be supplied to URC Thames North Trust for preparation of residential tenancy agreement

Full names and current addresses of all persons to be named as tenant

Full address of the property to be let

Start date of tenancy

Length of tenancy

Monthly rent

Amount of deposit to be paid by tenant

Name of scheme for protection of tenant's deposit

Monthly rent date (usually date tenancy begins)

Name and contact details of agent

Details of any variation of the standard document requested

Any consents of the landlord required at the start of the tenancy

Statement by the agent confirming for the purposes of section 36 of the Charities Act 1993 that in the agent's opinion the terms shown are the best terms reasonably obtainable for the property.

or

If the rent is below the estimated open market rent, a copy of the agent's advice on the obtainable rent and of the church meeting's decision to accept a concessionary rent.

Is any proposed tenant connected in any way with the church initiating the letting?

Has the insurer been informed that the property is to be let?

Has the insurer applied any conditions which should be notified to the tenant?

Licensing of landlords

Will this tenancy make the property a "house in multiple occupation"?

Does the local authority require or propose to require licensing of such property?

Does the local authority require or propose to require licensing of all landlords in the locality?