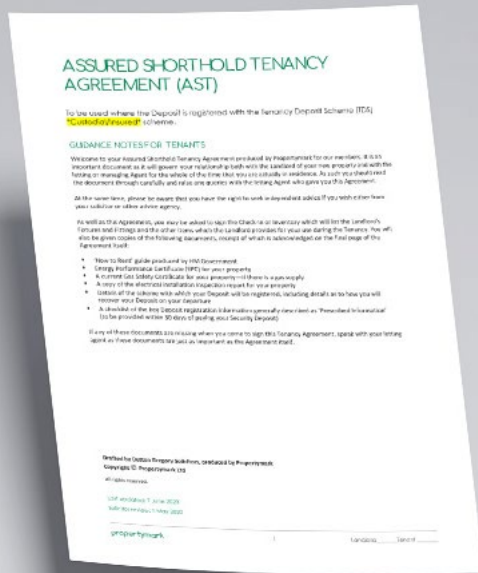


AST Guide

APPLIES TO PROPERTYMARK'S ASSURED
SHORTHOLD TENANCY AGREEMENTS



ENGLAND ONLY



ENG

ASSURED SHORTHOLD TENANCY AGREEMENT (AST)

ARLA Propertymark members can
download the AST from our website:
propertymark.co.uk/resource/asts.html

Common law, Non-Housing Act tenancy
propertymark.co.uk/resource/common-law-tenancy-agreement-non-housing-act-tenancy.html



ENG

SCOTLAND AND WALES



SCO

PRIVATE RESIDENTIAL TENANCY (PRT)

Since 1 December 2017 the PRT has been in
place for all new tenancies granted in Scotland,
replacing the previously used assured and short
assured tenancy agreements: [propertymark.co.uk/
resource/private-residential-tenancy.html](https://propertymark.co.uk/resource/private-residential-tenancy.html)



WAL

RENTING HOMES (WALES) ACT OCCUPATION CONTRACTS

ARLA Propertymark members that live or work
in Wales can download Propertymark's Model
Occupation Contracts (approved by Rent Smart
Wales from our website: [propertymark.co.uk/
resource/renting-homes-wales-act-occupation-
contracts.html](https://propertymark.co.uk/resource/renting-homes-wales-act-occupation-contracts.html)

Your legal questions answered

ENGLAND ONLY

THE FOLLOWING ARE ANSWERS TO QUESTIONS POSED BY PROPERTYMARK MEMBERS SINCE THE RELEASE OF OUR AST AND ANSWERED BY OUR LEGAL EXPERTS. WE STRONGLY ADVISE ADHERING TO THE GUIDANCE WHEN USING OUR ASTS.

THROUGHOUT

Q. Can we remove where it says 'without the landlord's written consent, such consent not to be unreasonably withheld'?

No, if a clause does not have that additional wording then the clause becomes unfair and unenforceable under The Unfair Contract Terms Act 1977, The Unfair Terms and Consumer Contracts Regulations 1999, Part 2 of the Consumer Rights Act 2015, The Consumer Protection from Unfair Trading Regulations 2008 and the subsequent specific guidance for letting agents issued June 2014.

Q. Where it states that 'the tenant will indemnify the landlord', is this allowed under the Tenant Fees Act?

Yes, Propertymark has specifically used the word indemnify as a result of the Damages Provisions under the Tenant Fees Act. Therefore, agents can charge onto the tenant either immediately or if the tenant refuses to pay through the courts to recover the costs.

For example, under clauses 8.3.3, 8.12.4, 8.23.1 the landlord has incurred a cost as a result of the tenant breaching their agreement. Therefore under the Damages Provisions of the Tenant Fees Act, the agent can bill the tenant in order to put the landlord back in the position they would have been had the tenant not breached the condition of the tenancy agreement.

Q. Where are the Default Fees?

The Default Fees under the Tenant Fees Act (i.e. rent arrears and lost keys and other security devices) are covered within the agreement. Rent arrears fall under clause **8.1.2** and lost keys fall within the four clauses under **8.12**.

SUMMARY OF AGREEMENT

Q. Can I remove 'thereafter from month-to-month' from the expiry date?

No, this is because 'thereafter from month-to-month' creates a contractual periodic tenancy rather than a statutory periodic tenancy in the event the tenancy isn't renewed at the end of the fixed term.

This is beneficial because of the Leeds City Council vs Broadley 2016 case where there was a question over statutory periodic tenancies and who was liable for the Council Tax. The Judge held that because a month-to-month statutory periodic tenancy is effectively a new tenancy every month, the landlord becomes liable for Council Tax under that tenancy. This is because Council Tax is the landlord's responsibility when the tenancy is for less than six months. To avoid the same problem we have made it clear that the tenancy drops onto a contractual periodic tenancy where the Council Tax rules don't apply because it is a continuation of an existing tenancy and therefore longer than six months.

Q. Why is there no option for a break clause in the agreement?

Whilst you are perfectly entitled to have a break clause, if you have one allowing a tenant to give two months' notice at any point (e.g. after the first six months) you can't charge either a Change of Sharer Fee or Surrender of Tenancy Fee. This is because the tenant would be lawfully activating a break clause and therefore fees are not chargeable (i.e. they have not broken the tenancy agreement). That is why we don't include one in the Propertymark tenancy agreement.

Q. Can we enter the landlord's name with our office address?

Yes, put 'c/o' before address which must not be a PO box address.

CLAUSE 7.1 DEPOSIT

Q. If it is a joint Tenancy and they both paid the deposit between them, do we insert both tenants' names and addresses or will just one suffice?

We recommend operating a lead tenant model where one person operates on behalf of all other tenants. Enter one person's name and address so you will only need to liaise with one person rather than everyone who would otherwise be listed.

CLAUSE 7.2.1 (INSURED SCHEMES)

Q. The landlord holds the deposit, can I change where it says 'Agent as Stakeholder'?

It is bad practice to allow the landlord to protect the deposit where the agent has taken the deposit. Agents will still be liable to the penalties under the Housing Act 2004 (return of the deposit and three times the deposit) if they've taken the deposit but the landlord does not subsequently protect it. If the agent never touches the deposit, (i.e. it goes straight from tenant to landlord) then they won't be liable under the Housing Act 2004. However, if there's deductions to be made at the end of the tenancy and the landlord requires the agent's involvement at that point, the situation will become complicated.

CLAUSE 7.5

Q. Can I reorder the deposit clauses under 7.5?

No, this is because some deposit schemes operate based on the order deductions are set out under this deduction clause. Therefore, we have positioned them so that firstly agents can take their fees owed (that the tenant has not paid), then the rent and then damage (that includes any indemnifications within the agreement). We have set it out to the most beneficial method for the agent to be able to recover fees.

CLAUSE 8.1 RENT

Q. Can I add: 'If you receive any Housing Benefit payments then you are to make a request to the department making the Housing Benefit payments that all such payments be made direct to the managing agent. If this is initially refused, then you are to make the same request each time that the managing agent asks you to do so.'

No, you can't require that under Universal Credit. You may have been able to under Local Housing Allowance but under Universal Credit you can only get direct payment to the landlord under an Alternative Payment Arrangement (APA). The fact that the landlord wants it is not an APA reason.

CLAUSE 8.5.1 ASSIGNMENT, NOVATION AND SURRENDER

Q. Where is the Surrender of Tenancy clause?

The surrender of tenancy clause is contained within clause 8.5.1 but it makes it clear not to assign, underlet, part with or share the possession of the premises—'part with' would be the Surrender of Tenancy.

CLAUSE 8.10 ANIMALS AND PETS

Q. Can I insist on a de-flea treatment or some form of pest control at the end of the tenancy?

No, you can not insist on any form of pest control as a requirement if the tenant must pay for it. That will be classed as a Prohibited Payment under the Tenant Fees Act, it is also an unfair term under Part 2 of the Consumer Rights Act 2015. All you can say is that the property must be returned in the same condition it was at the beginning of the tenancy.

CLAUSE 8.19.2 COSTS AND CHARGES

Q. Is this a permitted charge and do we need to disclose a sum on our charges sheet?

Under the Damages Provisions of the Tenant Fees Act, landlords can recover their costs incurred in the tenant defaulting on the tenancy agreement. Therefore, if the landlord or agent has incurred a charge as a result of dishonouring the cheque then it can be charged. However, landlords and agents must be able to prove and evidence their loss, they cannot add it as an additional charge whenever rent is not paid.

CLAUSE 10.2.1 RENT REVIEW

Q. The previous AST allowed for a rent increase between 3% and 7.5%, why has this changed?

This clause was amended in light of the guidance under the Tenant Fees Act to allow both an increase and decrease in the rent.

CLAUSE 10.6 COUNCIL TAX

Q. Why does the council tax clause not specify it is for the period of the tenancy agreement?

It is not necessary because Clause 2 specifies the duration of the tenancy. Therefore, all subordinate provisions within the standard terms and conditions, e.g. clause 10.6.1, are bound to that headline agreement unless expressly stated otherwise.

CLAUSE 10.9.4 NOTICES

Q. Can this clause be amended to automatically create a new fixed term tenancy?

In the Propertymark AST, the tenancy will drop onto a contractual periodic tenancy if it is not renewed. We recommend that if agents want to renew, they renew the tenancy for a new fixed term.

CLAUSE 10.9.4 NOTICES

Q. Can this clause be amended to automatically create a new fixed term tenancy?

In the Propertymark AST, the tenancy will drop onto a contractual periodic tenancy if it is not renewed. We recommend that if agents want to renew, they renew the tenancy for a new fixed term.

Q. Can I amend the clause so that the tenant has to give two months' notice?

No, that would be futile because statute overrides contract. You can put two months' notice into a tenancy agreement, but the tenant only needs to give one month's notice in statute. Therefore, it does not matter what you put in the AST—statute trumps the contract.

CLAUSE 10.11 DOCUMENTATION

Q. It is not possible to issue all the documents listed in the guidance notes prior to signing the agreement.

The clause is offered this way in order to protect agents under the Deregulation Act.

PERMITTED OCCUPIERS

Q. Should I list children as Permitted Occupiers?

There is nothing in law to say that agents can't but do remember that a child under the age of 18 cannot enter into legal relations. Therefore, even if you make them a Permitted Occupier it's completely unenforceable.

SIGNED BY

Q. Do we need a witness signature?

No, it is best practice but not legally required. A staff member can act as a witness provided they've not signed as the agent or you can delete the witness section if you prefer. However, for a Deed of Guarantee you will need a witness signature.

HAVE A QUESTION?

If you have a question about the Propertymark AST agreement not already answered within this AST Guide, please email us at:
policy@propertymark.co.uk