

Changing an Assured Shorthold agreement to a Contractual Tenancy outside the Housing Act.

Firstly let us very briefly consider when this may be desirable. Basically the Housing Act specifies several occasions when a tenancy cannot be Assured. In most cases this will give rise to a contractual tenancy outside the Housing Act. One of the common occasions will be what is commonly called a "Company let". This is simply a contractual tenancy to a company to accommodate a member(s) of staff. Another occasion might be if the letting is not the only or principal residence of the tenant or the rent is over £100,000 per annum.

The following changes should change the tenancy to a non-Housing Act contractual tenancy (these changes should be applied to The DPS Agent Managed version of the tenancy (after the Let Only changes if used). All the references to paragraph numbers are from the standard The DPS Agent Managed version of the agreement. Further different changes may be made depending on the specific circumstances (for example, the permitted occupier clause will be different if the occupier is an employee as opposed to the actual tenant).

It must be understood and remembered that without the Housing Act to specify many things (for example, landlord's notice requirements) these need to be specified. Most issues from Landlord and Tenant law (e.g. Landlord's repairing obligation under section 11 of the Landlord and Tenant Act 1985) will remain. Thought should therefore be given to the unwritten factors which the Housing Act impose on assured tenancies, and may now need to be specified in the contract because it is outside the Housing Act.

Remember also that fixed term non-Housing Act tenancies have no statutory run on after the fixed term. Our agreements solve this by using the same technique as the assured shorthold of granting, in a single agreement, both a fixed element and a periodic element. We have included a rent increase mechanism as there is no access to the section 13 notice for assured tenancies.

We have used the same type face and size in the following paragraphs so that you can cut and paste changes easily.

Remember that these agreements are outside the Housing Act 2004 requirements for tenancy deposit protection.

Clause	Action	Notes
Heading	Remove "ASSURED SHORTHOLD".	Leaves "Tenancy Agreement" (you can tidy up by bringing up onto the same line)
Sub heading	Remove "an Assured Shorthold" and insert "a Contractual". Delete the rest of this paragraph after the word "Tenancy".	
1.1.1	Since these do not have to follow the tenancy deposit protection rules the landlord information could be simplified to name and address if preferred.	
1.1.2	Post tenancy contact details are not required, but could be left in for simplicity.	If not provided, could simply say "Not given" as they are not legally needed for the contractual tenancy.
1.1.3	If the tenant is not the occupier (e.g. company	If the occupier does not pay for the

	letting - but not Rent to Rent) insert the names of the Permitted Occupiers after the tilde and Add a final sentence “The tenant will notify the Landlord’s Agent of any desired change of permitted occupier and pay for a new tenancy agreement to be drawn up if necessary.”	accommodation then they cannot have a Housing Act tenancy. 1.1.3 Permitted Occupiers: ~ xxxxxx, xxxxxx In addition to the Tenant, Permitted Occupiers are the only people allowed to live in the property but they do not have any rights or obligations as per the Tenant listed in clause 1.1.2 and are only permitted to reside at the Property with the permission of the Tenant. The tenant will notify the Landlord’s Agent of any desired change of permitted occupier and pay for a new tenancy agreement to be drawn up if necessary
1.1.4	Either delete or change to say “For this tenancy there is no relevant person” and removing the remainder Changing the wording avoids the need to renumber.	
1.4	Change paragraph to read “This agreement is intended to create a Contractual Tenancy outside the Housing Act 1988 because ~. These tenancies do not guarantee the Tenant any right to remain in possession after the Fixed Element.”	We would advise that when ever a tenancy is outside the Housing Act you specify why. For example following the wording in the previous column you could add “because the tenant is a limited company” or whatever the reason is. This may help in future in understanding why a certain agreement was used. You could leave the advice about not having any right to remain in the property beyond the fixed term, but if you do so remove the reference to (but not within the first six months).
1.8.2	Delete current text and replace with “The Deposit will be held by the Landlord’s Agent” (or whatever is true!)	
1.8.5	Change to read ‘The Deposit will be refunded within ten days, less any deductions, once the following have been completed:’	
1.8.5.4	Delete for a Company Let	Reference to Housing Benefit could be deleted if it is a company let.
1.8.7	Delete	Delete and renumber the following 2 clauses unless the deposit will be registered and protected in a deposit scheme.
1.8.8	Renumber to 1.8.7 See 1.8.7 above)	
1.8.9	Renumber to 1.8.8 See 1.8.7 above)	Obviously you are not likely to choose lead tenant or relevant person as they apply to tenancy deposit rules. We suggest you replace the text with: The Deposit will be refunded, less any deductions, ~ (“equally to the parties forming the Tenant” or “ to any one of the parties forming the Tenant and this will be considered a full and final refund. It will then be up to the parties forming the Tenant to decide how it will be divided amongst themselves.”)
2.5.2	Change wording to: The Landlord may bring the tenancy to an end at,	

	or at any time after, the expiry of the Fixed Element by giving to the Tenant at least one months' written notice stating that the Landlord requires possession of the Property. A Notice to Quit will suffice to implement this sub-clause. While the tenancy is periodic the one month's written notice must expire the day before a Rent Due Date.	
3.1.3	Delete all and replace with "notice has been served in accordance with clause 2.5.2 above, or"	
3.1.4	Delete all and replace with "the tenant is made bankrupt, whether voluntarily or otherwise, or has a winding up order served on it."	
4.3.9	For a Company Let delete the words "or share"	
4.4.15	This is tilded in the Contractual agreements and should be removed if for instance it is a company let as the company does not reside in the property but may be retained if for instance the rent is over £100,000 p.a. and it is to be the only or principal residence of the tenant.	For a Company Let remove the first sentence and change 'residence status' to 'permitted occupiers' if applicable.
6	Optionally delete all. And renumber following or change to "There is no prescribed information.". Putting this text in means you do not need to renumber all following paragraphs.	Deposits for contractual tenancies are outside the tenancy deposit laws.
7	Optionally delete all. Renumber if necessary.	It is unlikely to be a Housing Benefit claim if you are using a contractual tenancy. This is because the reasons for using a contractual tenancy (most commonly a company as the tenant, not the only or principle residence of the tenant or a rent over £100,000 are unlikely to be Housing Benefit claims.
8 (if used).	Renumber. If you do this edit the reference within para 8.3 to refer to the new numbers.	
Just above the two signatures	Delete the two paragraphs about SI 2007 797 Replace with (for the landlord): The Landlord or the Landlord's Agent sign this agreement to confirm acceptance of the terms within it and, the Landlord confirms that the information provided is accurate to the best of his knowledge and belief; and that the Tenant has had the opportunity to sign this document containing the information provided by the Landlord by way of confirmation that the information is accurate to the best of the Tenant's knowledge and belief. For the tenant put: The Tenant signs this agreement to confirm acceptance of the terms within it and, the Tenant confirms that the information provided is accurate to the best of his knowledge and belief.	
Relevant person signature	This can be removed.	