



Setting Standards for
Retirement Communities



Housing LIN

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Key legal and regulatory areas applicable to land acquisition, development and operation of *retirement communities*

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A technical brief from the
Associated Retirement Community Operators (ARCO)
and the Housing Learning and Improvement Network (Housing LIN)

In association with:



towers & hamlin

Introduction

This Technical Brief is designed to provide an initial starting point for retirement community operators in understanding the main areas of law which apply to the land acquisition, development and operation of those communities. In the absence of a specific legal framework for housing-with-care, it intends to inform operators of the legal obligations they will need to consider when building and operating retirement communities to a high standard.

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Content is divided into 13 key topic areas, as follows:

- Planning
- Land Acquisition
- Construction & Development
- Property Sales
- Property Letting
- Leasehold and Tenancy Management
- Health & Safety
- Operating a mixed use scheme
- Operational Matters
- Employment & Pensions
- Delivering Care & Support
- Mental Capacity
- Tax

Disclaimer

The authors have taken all reasonable precautions to ensure that information contained in this document is accurate but stress that the content is not intended to be legally comprehensive and is accurate only at the date of publication. It does not attempt to cover every possible area of law which might apply. **The authors recommend that no action be taken on matters covered in this document without taking full legal advice.**

How to use this guide

Note that while we have divided the information below into sections for ease of reference, some areas covered in one section may also have relevance to other sections.

For example, property law aspects noted in the land acquisition section will also have relevance in property sales, and the law discussed in the mixed use developments section may also have relevance to some land acquisitions.

As such this note should be considered as a whole rather than by reference to particular sections.

1 | Planning

Relevant law/consultation/policy	Short summary	Link (for further information)
Town and Country Planning Act 1990	The core legislation dealing with planning in England & Wales. Covers a wide range of planning and planning related matters.	http://www.legislation.gov.uk/ukpga/1990/8/contents
National Planning Policy Framework (NPPF)	<p>The National Planning Policy Framework sets out government's planning policies for England and how these are expected to be applied. The National Planning Policy Framework is a key part of the government's reforms to make the planning system less complex and more accessible. It vastly simplifies the number of policy pages about planning.</p> <p>The framework acts as guidance for local planning authorities and decision-takers, both in drawing up plans and making decisions about planning applications.</p>	https://www.gov.uk/government/publications/national-planning-policy-framework--2
National Planning Practice Guidance (NPPG)	Complements the National Planning Policy Framework and provides advice on how to deliver its policies. Also covers matters such as planning (Section 106) obligations which are likely to be relevant to retirement community development.	http://planningguidance.planningportal.gov.uk/blog/guidance/
Town and Country Planning (Use Classes) Order 1987	Classes of planning use and changes to them requiring planning permission. For retirement community operators the discussion is usually around whether a particular development is within class C2 or class C3.	https://www.planningportal.gov.uk/permission/commonprojects/changeofuse/
Housing LIN planning portal	For information on planning homes and communities for older people and access to useful toolkits, guidance, strategies and examples of practice.	http://www.housinglin.org.uk/Topics/browse/Planning/

2 | Land acquisition

Relevant law/consultation/policy	Short summary	Link (for further information)
Instructing solicitors	We would always advise that you instruct solicitors and take legal advice when you buy land. Solicitors will investigate title to the land and make sure that you can use it for the intended purpose and advise on any liabilities or limitations to which it is subject.	http://solicitors.lawsociety.org.uk/ http://www.legal500.com/c/london/real-estate/overview http://www.chambersandpartners.com/guide/uk/1/11 http://www.trowers.com/
Law of Property Act 1925	Sets out the core of land law in England and Wales and covers a wide range of subjects, including legal estates and equitable interests, covenants, requirements for transfers of land and powers of mortgagees.	http://www.legislation.gov.uk/ukpga/Geo5/15-16/20/contents
Law of Property (Miscellaneous Provisions) Act 1989	Sets out rules relating to execution of various legal property documents.	
Law of Property (Miscellaneous Provisions) Act 1994	Introduces the implied covenants of full title guarantee and limited title guarantee when buying and selling land.	
Land Registration Act 2002 and Land Registration Rules 2003	The Land Registry keeps and maintains the Land Register which evidences ownership of land and property in England and Wales. The Act and the Rules govern how the Land Registry operates.	http://www.landregistry.gov.uk/
Charities Act 2011	Charities must comply with the provisions of the Charities Act 2011 in relation to holding land. Covers when charities need to get Charity Commission consent and specific wording to be included in legal documents.	http://www.legislation.gov.uk/ukpga/2011/25/contents
Charity Commission Guidance (Acquiring land (CC33))	Covers points charity trustees need to consider when acquiring land.	http://www.charitycommission.gov.uk/detailed-guidance/land-and-property/acquiring-land-cc33/
Local Government Act 1972 (s123) Housing Act 1985 (esp s32)	When buying land from a local authority, considerations should include for which purpose the land is held and under which power the local authority is disposing. Housing land is governed differently to non-housing land. Sales by local authorities at less than market value or for consideration other than money may need consent from the Secretary of State may need to be obtained. There are a range of general consents available.	http://www.legislation.gov.uk/ukpga/1972/70/contents http://www.legislation.gov.uk/ukpga/1985/68/contents
Further issues regarding buying NHS land	For information on the disposal of NHS Estate	http://www.housinglin.org.uk/Topics/browse/HealthandHousing/NHSestate/

3 | Construction & Development

Relevant law/consultation/policy	Short summary	Link (for further information)
EU procurement regulations	Designed to open up borders between EU Member States and to ensure that procurement exercises are run fairly, transparently and without discrimination on the basis of location. Requires public authorities and certain other contracting authorities to procure goods and services in particular ways. Can apply to certain development agreements/arrangements.	https://www.gov.uk/government/publications/policy-and-standards-framework-the-legal-framework
Housing Grants Construction and Regeneration Act 1996 (also known as the "Construction Act")	Sets out rights relating to payments and adjudications in contracts for "construction operations".	http://www.legislation.gov.uk/ukpga/1996/53/contents
Limitation Act 1980	Limitation periods for bringing claims. Special rules for claims in negligence for latent damage.	http://www.legislation.gov.uk/ukpga/1980/58
Late Payment of Commercial Debts (Interest) Act 1988	Adds an implied term in business to business contracts, giving at least 8% a year interest, plus a fixed sum and reasonable costs of recovering the debt.	https://www.gov.uk/late-commercial-payments-interest-debt-recovery/charging-interest-commercial-debt
Defective Premises Act 1972	Requires professional consultants, contractors and property developers working on a dwelling to work in a professional or workmanlike manner, to use proper materials and see that the completed dwelling is fit for habitation.	http://www.legislation.gov.uk/ukpga/1972/35
Bribery Act 2010	Relates to offence of bribing another person. Wide application, punishable by a fine or custodial sentence.	http://www.legislation.gov.uk/ukpga/2010/23/contents
Building Act 1984 and the Building Regulations 2010 (as amended)	Covers procedure and technical aspects of building work.	https://www.gov.uk/government/policies/providing-effective-building-regulations-so-that-new-and-altered-buildings-are-safe-accessible-and-efficient
Construction (Design and Management) Regulations 2007	Health and safety legislation which covers property construction and engineering projects. Breach may lead to criminal offences. New Regulations (CDM 2015) will be published in January 2015 and expected to "go live" in April 2015.	http://www.legislation.gov.uk/uksi/2007/320/contents/made
Party Walls Act 1996	Sets out a framework for neighbours who share a boundary to carry out building works.	http://www.legislation.gov.uk/ukpga/1996/40/contents
Access to Neighbouring Land Act 1992	Provides owners with rights of access over adjoining land to carry out works in certain circumstances	http://www.legislation.gov.uk/ukpga/1992/23/contents
Code for Sustainable Homes	Sets out the national standards for the design and construction of new buildings.	https://www.gov.uk/government/policies/improving-the-energy-efficiency-of-buildings-and-using-planning-to-protect-the-environment/supporting-pages/code-for-sustainable-homes

3 | Construction & Development (continued)

Relevant law/consultation/policy	Short summary	Link (for further information)
BREEAM	Building Research Establishment Environmental Assessment Method – independent measurement of environmental performance of a building.	http://www.breeam.org/
Highways Act 1980 Water Industry Act 1991	<p>Provisions relating to the adoption of newly constructed highways and drainage services and the carrying out of works to existing highways are contained in these Acts. The most common provisions encountered are:</p> <p>Section 38 of the Highways Act 1980. A local highways authority can enter into a legal agreement under which a new highway constructed to a specified standard is adopted into public maintenance.</p> <p>Section 278 of the Highways Act 1980. A local highways authority can enter into a legal agreement under which a developer pays for or carries out works to an existing highway.</p> <p>Section 116 of the Highways Act 1980 contains a procedure for applications to stop up an existing highway which is “unnecessary”. There is also a stopping up procedure linked to development under Section 247 of the Town and Country Planning Act.</p> <p>Section 104 of the Water Industries Act. A regional water and sewerage company can enter into a legal agreement under which new sewers constructed to a specified standard are adopted into public maintenance.</p> <p>Sections 215-218 of the Highways Act 1980 contain the Advance Highways Code provisions under which a highway authority secures advance payment for the cost of highway works fronting new buildings as security for those works. It is a criminal offence to commence building works until the payment is made.</p>	<p>http://www.legislation.gov.uk/ukpga/1980/66</p> <p>http://www.legislation.gov.uk/ukpga/1991/56/contents</p> <p>https://www.gov.uk/government/publications/stopping-up-and-diversion-of-highways</p>

3 | Construction & Development (continued)

Relevant law/consultation/policy	Short summary	Link (for further information)
Insuring the risk of latent defects	Insurance may be available to cover the risk of physical damage is caused by inherent defects in the structural parts of new buildings. Generally, it does not cover refurbishment works. Current insurers include NHBC and LABC (although it may be available through other insurers). Funders' requirements vary.	http://www.nhbc.co.uk/new/ http://www.labc.co.uk/ http://www.cml.org.uk/cml/handbook/
The Housing LIN 'Design Hub'	For information on designing and developing extra care housing, visit the Housing LIN's dedicated webpages.	http://www.housinglin.org.uk/Topics/browse/Design_building/

4 | Property sales

Relevant law/consultation/policy	Short summary	Link (for further information)
Instructing solicitors	We would always advise that you instruct solicitors and take legal advice when you sell land.	http://solicitors.lawsociety.org.uk/ http://www.legal500.com/c/london/real-estate/overview http://www.chambersandpartners.com/guide/uk/1/11 http://www.trowers.com/
The Consumer Protection from Unfair Trading Regulations 2008	<p>Prohibits engaging in unfair commercial practices when dealing with consumers. Includes a list of practices which are always unfair and therefore must not be engaged in (at Schedule 1). A commercial practice will be unfair if it contravenes the requirements of professional diligence and it materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product. There are also tests for commercial unfairness linked to misleading acts or omissions and aggressive business practices.</p> <p>Note that the Regulations have been amended in October 2014 by the Consumer Protection (Amendment) Regulations 2014 to add a private right of redress for consumers who have been victims of misleading or aggressive practices (rather than by the Competition and Markets Authority or Trading Standards or in Northern Ireland the Department of Enterprise, Trade and Investment). This is not directly applicable to property sales but does cover non-social housing lettings.</p>	http://www.legislation.gov.uk/ukxi/2008/1277/introduction/made https://www.gov.uk/government/consultations/protecting-consumers-from-misleading-and-aggressive-selling
Guidance on 2008 Regulations	There is general guidance on the 2008 regulations and guidance in application of it in relation to property sales. These were issued by the OFT which has now been abolished, the general guidance has been adopted by the Competition and Markets Authority, the property sales guidance has not yet been. The CMA has also issued its own guidance on its approach to use of consumer powers.	http://www.oft.gov.uk/shared_of/business_leaflets/cpregs/oft1008.pdf https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284446/oft979.pdf http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_of/estate-agents/OFT1364.pdf https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/288624/CMA7_Consumer_Protection_guidance.pdf

4 | Property sales (continued)

Relevant law/consultation/policy	Short summary	Link (for further information)
Energy Performance Certificates	An EPC is needed whenever a property is sold or rented and must be available to supply to potential buyers or tenants before marketing commences.	https://www.gov.uk/buy-sell-your-home/energy-performance-certificates
Estate Agency The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to belong to a Scheme etc) (England) Order 2014	Those involved in letting agency or property management works are required to belong to an approved redress scheme. DCLG currently approves three schemes; the Property Ombudsman, Ombudsman Services and the Property Redress Scheme.	http://www.legislation.gov.uk/uksi/2014/2359/contents/made https://www.gov.uk/government/publications/lettings-agents-and-property-managers-redress-schemes
The Property Ombudsman	The role of The Property Ombudsman (TPO) is to resolve conflict between members of the public and estate agents who are members of the TPO scheme or are registered as part of the redress scheme.	http://www.tpos.co.uk/
The Ombudsman Services: Property	The role of Ombudsman Services is to resolve complaints made against estate agents or chartered surveyors, managing and letting agents and valuers who are part of the scheme.	http://www.ombudsman-services.org/property.html
The Property Redress Scheme	The role of the scheme is to resolve complaints against property agents who have joined this scheme.	https://www.theprs.co.uk/
Housing and Regeneration Act 2008 s172	A Registered Provider of Social Housing (an RP) or a Registered Social Landlord (an RSL) may need to get consent from the Regulator before selling property. General Consents may be relied on if the transaction falls within various categories. Without appropriate consent, a transaction is void.	http://www.homesandcommunities.co.uk/ourwork/consent-disposals http://wales.gov.uk/about/foi/publications-catalogue/circular/housingcirculars/rsl2909/?lang=en
Housing Act 1988 s133	The regime in England is under section 172 of the Housing and Regeneration Act 2008 and consent is required for the disposal of a Social Housing Dwelling. For some land owned by RPs and acquired from Local Authorities consent is needed instead under Section 133 of the Housing Act 1988.	
Housing Act 1996 s9	The regime in Wales is under section 9 of the Housing Act 1996. Consent is required for the disposal of land.	

4 | Property sales (continued)

Relevant law/consultation/policy	Short summary	Link (for further information)
Charities Act 2011	Charities must comply with the provisions of the 2011 Act when disposing of land. In some cases, they may need to get consent from the Charity Commission.	http://www.legislation.gov.uk/ukpga/2011/25/contents
Charity Commission guidance (Sales leases transfers or mortgages: what trustees need to know about disposing of charity land (CC28))	Covers the requirements for managing property sales in the best interests of the charity and for the best price reasonably obtainable in the circumstances.	http://www.charitycommission.gov.uk/detailed-guidance/land-and-property/sales-leases-transfers-or-mortgages-what-trustees-need-to-know-about-disposing-of-charity-land-cc28/
Council of Mortgage Lenders' Handbook	Sets out instructions for residential conveyancers when acting for a lender. Covers information on when property is and is not acceptable as security	http://www.cml.org.uk/cml/handbook
Exit fees	The Law Commission has begun work on "Transfer of Title and Change of Occupancy Fees in Leaseholds", following criticisms made about (mainly) retirement housing developments and the "exit fees" payable. The project will look at whether reforms need to be made to the existing system. While the original OFT investigation into exit fees was focused on the retirement housing (and not the housing with care) sector, the outcome of this review will nevertheless be important to retirement community operators.	http://lawcommission.justice.gov.uk/areas/2928.htm http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.oft.gov.uk/shared_ofc/consumer-enforcement/retirement-homes/oft1476.pdf
Shared ownership requirements HCA Capital Funding Guide	Sets out standard requirements for HCA funded shared ownership. Includes fundamental clauses and model leases	http://www.homesandcommunities.co.uk/cfg?page_id=5546&page=79
Regulation of Consumer Credit related activities	FCA authorisation required to carry out regulated activities. by RP loans in connection with the borrower's home secured on the land may be excluded from the regime	http://www.fca.org.uk/firms/firm-types/consumer-credit

5 | Property lettings

See 'Property sales' section much of which also applies to property lettings.

Relevant law/consultation/policy	Short summary	Link (for further information)
Housing Act 2004 s213	Deposits taken by a landlord under assured tenants must be paid into one of the rent deposit schemes. Failure to do so can result in loss of ability to recover possession by notice and financial penalties. RPs are exempt from these requirements.	https://www.gov.uk/tenancy-deposit-protection
TPO Code of Practice for Letting Agents	The Property Ombudsman can resolve conflict between members of the public and letting agents who are members of the TPO scheme. The member agents follow the Code of Practice.	http://www.tpos.co.uk/code_of_practice_rents.htm
Consumer Protection law guidance for letting professionals – Helping you comply with your obligations	Published by the Competition and Markets Authority. Covers a wide range of consumer protection laws and other laws lettings professionals comply with consumer protection laws, and laws about dealing with other businesses, in the context of letting privately owned residential property.	https://www.gov.uk/government/publications/consumer-protection-law-for-lettings-professionals
HCA's Regulatory Framework for RPs	RPs must comply with the standards set out in the Regulatory Framework, including the Rent Standard. It sets out the level of rent and the annual allowable increases for properties owned by an RP.	http://www.homesandcommunities.co.uk/ourwork/regulatory-framework
Housing Act 2004, Part 1	Housing Health and Safety Rating System (HHSRS). A risk based system designed to protect residential tenants from health and safety dangers in rented property. Enforceable by local authorities.	https://www.gov.uk/government/publications/housing-health-and-safety-rating-system-guidance-for-landlords-and-property-related-professionals
Housing LIN marketing resources	For information to assist providers and developers promote and market extra care housing, visit the Housing LIN's dedicated webpages.	http://www.housinglin.org.uk/Topics/browse/HousingExtraCare/MarketingECH/

6 | Leasehold and Tenancy Management

Relevant law/consultation/policy	Short summary	Link (for further information)
Landlord and Tenant Act 1985 ss 18-20	Statutory protection for residential tenants in relation to variable service charges. Landlords are subject to reasonable requirements, consultation requirements, obligations relating to service charge demands and service charge information. Failure to comply with the legislation can result in very limited recovery of service charges by landlords.	http://www.lease-advice.org/
Landlord and Tenant Act 1985 s11	Implies into short-term residential tenancies obligations to repair the structure and exterior of the dwelling (including drains, external pipes, gutters and external windows); the installations in the dwelling for the supply of water, gas, electricity, sanitation, space and water heating. The cost of such repairs cannot be included in service charges.	http://www.lease-advice.org/
Landlord and Tenant Act 1987	Creates a right of first refusal in favour of "qualifying tenants" where a landlord of premises comprising a number of flats wishes to make a disposal affecting the whole or part of the premises.	http://www.lease-advice.org/
Leasehold Reform, Housing and Urban Development Act 1993	Gives "qualifying tenants" the right to acquire the freehold interest in a building or part of a building, subject to tests relating to the nature of the landlord, the tenants and the building, and the use of the building.	http://www.lease-advice.org/
Housing Act 1988 s13	Sets out statutory rent review provisions for assured periodic tenancies. Requires notices in prescribed form to be served in order to increase rent in relevant tenancies.	http://www.legislation.gov.uk/ukpga/1988/50/contents https://www.gov.uk/assured-tenancy-forms#form-4b
Defective Premises Act 1972 s 4	Landlord can be held liable for disrepair even though there is no express obligation to repair	http://www.legislation.gov.uk/ukpga/1972/35/contents
Human Rights Act 1998	Potentially provides tenants with a defence against eviction even when they have no right under domestic law to remain. Article 8 protects a person's right to a private and family life. Public sector landlords are bound by the Act and cannot interfere with this, if it would be disproportionate, however the courts have given landlords a wide discretion.	http://www.legislation.gov.uk/ukpga/1998/42/contents
The Leasehold Reform Housing and Urban Development Act 1993 (as amended by the Commonhold and Leasehold Reform Act 2002)	Gives eligible leaseholders rights to require the sale of the freehold of the building or part of the building (together with intermediate leasehold interests).	http://www.lease-advice.org/publications/documents/document.asp?item=11

6 | Leasehold and Tenancy Management (continued)

Relevant law/consultation/policy	Short summary	Link (for further information)
The Commonhold and Leasehold Reform Act 2002	Allows leaseholders to require the transfer of landlord management functions to a resident owned "right to manage" company.	http://www.lease-advice.org/publications/documents/document.asp?item=21
Leasehold Reform Housing and Urban Development Act 1993	Gives an eligible leaseholder the right to extend the term of their lease by the grant of a new lease for a term of 90 years, plus the unexpired current lease term, at a peppercorn rent, subject to payment of a premium.	http://www.lease-advice.org/publications/documents/document.asp?item=8
Equality Act 2010	May provide a defence to a tenant, if they can show that they have been treated unfavourably by a landlord because of a protected characteristic. This regime has not yet been extended judicially to the private sector.	http://www.legislation.gov.uk/ukpga/2010/15/contents
Housing Ombudsman	Deals with complaints between landlords and tenants where the landlord is a member – RPs and Local Authorities must be members, some private landlords are voluntary members. Complaints cannot be referred direct initially but must go through landlord's complaints process and then be referred to a "designated person" (an MP/ local councillor/tenant panel) who can refer the complaint to the Housing Ombudsman	http://www.housing-ombudsman.org.uk/

7 | Health and Safety

Relevant law/consultation/policy	Short summary	Link (for further information)
Gas Safety (Installation and Use)	Sets out the maintenance requirement for gas supply at properties rented out	http://www.legislation.gov.uk/uksi/1998/2451/contents/made
Regulations 1998, regulation 36 Regulatory Reform (Fire Safety) Order 2005	Sets out requirements for fire safety in, for example, sheltered housing and common parts of shared residential accommodation.	http://www.legislation.gov.uk/uksi/2005/1541/contents/made
Housing LIN Technical Brief on Fire Safety in Extra Care Housing	The Housing LIN has published a technical brief on fire safety and extra care housing	http://www.housinglin.org.uk/_library/Resources/Housing/Support_materials/Technical_briefs/Technical_Brief_05_Fire_Safety.pdf

8 | Operating and mixed use scheme

Relevant law/consultation/policy	Short summary	Link (for further information)
Landlord and Tenant Act 1954	Gives tenant occupying premises for business a statutory right to renew tenancy at end of term. Landlord and tenant can agree to “contract out” of this right.	
Landlord and Tenant (Covenants) Act 1995	Introduces the concept of the authorised guarantee agreement whereby outgoing tenants are asked to guarantee their assignee’s performance of the lease until next lawful assignment	http://www.legislation.gov.uk/ukpga/1995/30/contents
Landlord and Tenant Act 1988	Deals with landlord’s duties to grant consent to assign, underlet, charge or part with possession of leased properties.	http://www.legislation.gov.uk/ukpga/1988/26/contents
Electronic Communications Code (Schedule 2 to the Telecommunications Act 1984 as amended by the Communications Act 2003)	The Code gives statutory rights to certain telecommunications operators, which includes a distinct form of security of tenure – this makes it difficult for a land owner to remove an operator/ its apparatus from land without the operator’s agreement.	http://www.legislation.gov.uk/ukpga/1984/12/schedule/2 http://stakeholders.ofcom.org.uk/telecoms/policy/electronic-comm-code/
The Housing LIN/ARCO Mixed Tenure in Extra Care Housing Technical Brief (2014)	A useful brief on developing and managing mixed tenure extra care housing schemes.	http://www.housinglin.org.uk/_library/Resources/Housing/Support_materials/Technical_briefs/HLIN_TechBrief_3_MixedTenure.pdf

9 | Operational matters

Relevant law/consultation/policy	Short summary	Link (for further information)
<p>In addition to the matters set out above:</p> <p>Consumer Rights</p> <p>Current law:</p> <ul style="list-style-type: none"> • Supply of Goods (Implied Terms) Act 1973 • Sale of Goods Act 1979 • Supply of Goods and Services Act 1982 • Sale and Supply of Goods Act 1994 • Sale and Supply of Goods to Consumers Regulations 2002 • Unfair Contract Terms Act 1977 • Unfair Terms in Consumer Contracts Regulations 1999 • Unfair Terms in Consumer Contracts (Amendment) Regulations 2001 • Competition Act 1998 • Enterprise Act 2002 <p>Consumer Rights Bill</p> <p>Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013</p>	<p>Offer protection to consumers allowing for a “cooling off period” in which certain contracts may be cancelled. Contracts covered do not include tenancy agreements but may include those for gas, electricity or for CHP</p>	<p>http://services.parliament.uk/bills/2014-15/consumerrights.html</p> <p>https://www.gov.uk/government/news/cma-consults-on-unfair-contract-terms-guidance</p>
<p>Future law:</p> <p>Consumer Rights Bill</p> <p>New guidance on unfair contract terms</p>	<p>Currently in Parliament. Royal Assent is expected by April 2015</p> <p>CMA has opened consultation on proposed new guidance on unfair contract terms. The consultation closes at the end of March 2015</p>	
<p>Guidance</p>	<p>OFT guidance now adopted by the CMA includes general guidance on the Unfair Terms in Consumer Contracts Regulations 1999 and guidance relating to the application of the Regulations to standard terms in consumer contracts, tenancy agreements, care home contracts.</p>	<p>https://www.gov.uk/government/publications/unfair-contract-terms-guidance--2</p> <p>https://www.gov.uk/government/publications/unfair-standard-terms-in-consumer-contracts</p> <p>https://www.gov.uk/government/publications/unfair-terms-in-tenancy-agreements--2</p> <p>https://www.gov.uk/government/publications/unfair-terms-in-care-home-contracts</p>

10 | Employment & Pensions

Relevant law/consultation/policy	Short summary	Link (for further information)
<p>Transfer of Undertakings (Protection of Employment) Regulations 2006</p> <p>The Collective Redundancies and Transfer of Undertakings (Protection of Employment) Regulations 2014</p>	<p>These provide employment rights to employees whose employer changes as a result of a transfer of an undertaking. Employees will transfer to the new employer on their existing terms and conditions and will be protected from dismissal if the reason for their dismissal is the transfer.</p>	<p>The BIS guidance on the Regulations can be found at:</p> <p>https://www.gov.uk/government/publications/tupe-a-guide-to-the-2006-regulations</p>
<p>Health and Safety at Work, etc Act 1974</p> <p>There are 51 Regulations designed to prevent death, injury and ill-health in the workplace including carrying out risk assessments and reporting major injuries.</p>	<p>These lay down the general principles to be followed by employers governing the health and safety at work of employees.</p> <p>The Health and Safety at Work, etc Act 1974 (HSWA) establishes the Health and Safety Executive (HSE) to secure the health, safety and welfare of persons at work and to protect persons not at work against risks to health and safety arising from work activities.</p> <p>The HSE provides guidance through Approved Codes of Practice and enforces health and safety law in England and Wales.</p> <p>The government has been considering health and safety reforms and existing health and safety legislation is due to be consolidated by April 2015.</p>	<p>Further information on employer duties can be found on the HSE website:</p> <p>http://www.hse.gov.uk/business/index.htm</p>
<p>Pension Schemes Act 1993</p> <p>Pensions Act 1995</p> <p>Pensions Act 2004</p> <p>Pensions Act 2011</p> <p>Welfare Reform and Pensions Act 1999</p> <p>Stakeholder Pensions Scheme Regulations 2000</p> <p>Pensions Act 2007</p> <p>Pensions Act 2008</p> <p>Workplace Pensions Reform Regulations 2010</p> <p>Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010</p> <p>The Equality Act 2010</p>	<p>These make up the legal framework governing pension schemes and cover the following areas:</p> <ul style="list-style-type: none"> • Reforms to the state and private pension system. • Stakeholder pensions. • The introduction of "automatic-enrolment" into workplace pension schemes. • Increasing the state pension age to 66 between 2018 and 2020. <p>The Equality Act 2010 contains provisions which prohibit discrimination in relation to pensions. Occupational pensions are deemed to include a "non-discrimination rule".</p>	<p>For further details on automatic enrolment please see link below:</p> <p>http://www.thepensionsregulator.gov.uk/employers.aspx</p>

10 | Employment & Pensions (continued)

Relevant law/consultation/policy	Short summary	Link (for further information)
<p>Safeguarding Vulnerable Groups Act 2006</p> <p>Department of Health guidance: 'Regulated activity (adults): The definition of "regulated activity" (adults) as defined by the Safeguarding Vulnerable Groups Act 2006 from 10 September 2012'</p>	<p>This provides that those carrying out "regulated activity" will be eligible for an enhanced DBS check with a Barred List check.</p> <p>Whether an activity is "regulated" or not will depend on whether the activities required by the adult fall within the Act.</p>	<p>See below for link to Department of Health guidance:</p> <p>https://www.gov.uk/government/publications/new-disclosure-and-barring-services</p>
<p>Employers' Liability (Compulsory Insurance) Act 1969</p>	<p>Sets out a statutory obligation on employers (subject to some exemptions, including public bodies) to take out employer's liability insurance which is specifically referred to in construction contracts</p>	<p>http://www.legislation.gov.uk/ukpga/1969/57/contents</p>

11 | Delivering Care & Support

Relevant law/consultation/policy	Short summary	Link (for further information)
Care Act 2014, underlying Regulations and statutory guidance	From April 2015 (for non-NHS providers) this Act consolidates the law of adult social care since 1948 into a single statute and introduces a number of new concepts and principles such as the cap on lifetime care costs, the duty of candour, fit and proper person's test for directors of CQC registered bodies, CQC market oversight regime and local authority provider failure regime.	The Guidance can be found at: https://www.gov.uk/government/publications/care-act-2014-statutory-guidance-for-implementation
The Health and Social Care Act 2008, The Care Quality Commission (Registration) Regulations 2009, The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014	<p>These make up the legal framework which underpins CQC regulated care provision.</p> <p>The 2014 Regulations introduce a new set of regulatory standards, most of which are now in force for all CQC registered providers. The duty of candour and fit and proper persons test for directors of CQC registered bodies which will apply to non-NHS bodies from 1 April 2015.</p>	The 2014 Regulations can be found at: http://www.legislation.gov.uk/uksi/2014/2936/pdfs/uksi_20142936_en.pdf
Guidance About Compliance: Essential Standards of Quality and Safety	The Guidance is statutory guidance issued under the 2008 Act. It contains 28 outcomes and related prompts which are intended to create an outcomes-focussed system of guidance which is of practical use to providers. The outcomes and prompts are designed to indicate the way providers should behave in order comply with the Act, the Regulated Activity Regulations and the Registration Regulations.	The Guidance can be found at: http://www.cqc.org.uk/organisations-we-regulate/registered-services/guidance-meeting-standards
Guidance for providers on meeting the fundamental standards and on CQC's enforcement powers	<p>New Fundamental Standards will replace the Essential Standards of Quality and Safety.</p> <p>Includes duty of candour and fit and proper persons test for directors of CQC registered bodies. For non-NHS bodies these will apply from 1 April 2015.</p>	http://www.cqc.org.uk/content/cqc-consults-how-providers-can-meet-new-fundamental-standards-care
CQC regulation and inspection	From 1 October 2014 the CQC will regulate adult social care using a new framework. Inspections will be unannounced. Services will be rated one of outstanding, good, requires improvement or inadequate. Key questions will focus on whether services are safe, effective, caring, responsive and well led with CQC "key lines of enquiry" in respect of each of these.	http://www.cqc.org.uk/content/adult-social-care
Housing LIN Care & Support Technical Brief	A useful brief on funding and delivering care and support in extra care housing.	http://www.housinglin.org.uk/_library/Resources/Housing/Support_materials/Technical_briefs/Technical_Brief_01_0610.pdf

12 | Mental Capacity

Relevant law/consultation/policy	Short summary	Link (for further information)
<p>Mental Capacity Act 2005</p>	<p>Sets the statutory test for capacity. A person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain. Assessment of capacity is based on five key principles:</p> <ul style="list-style-type: none"> • A person must be assumed to have capacity unless it is established that he lacks capacity. • A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success. • A person is not to be treated as unable to make a decision merely because he makes an unwise decision. • An act done, or decision made, under the 2005 Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests. • Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action. 	<p>http://www.justice.gov.uk/protecting-the-vulnerable/mental-capacity-act</p>

12 | Mental Capacity (continued)

Relevant law/consultation/policy	Short summary	Link (for further information)
Deprivation of Liberty Safeguards	<p>Part of the Mental Capacity Act 2005, and addition which came into force in 2009. The DOLS relate to people who are deprived of their liberty (as defined by the European Convention on Human Rights) but are not formally detained under the Mental Health Act 1983. A person may only be deprived of liberty if:</p> <ul style="list-style-type: none"> • It is, or is linked to life-sustaining treatment or an act which the person doing it reasonably believes to be necessary to prevent a serious deterioration someone's condition. • It is to give effect to a decision of the court • It is permitted by Schedule 1A of the 2005 Act – this relates to deprivation of liberty in hospitals or care homes, outside these a Court of Protection order is required. An authorisation process must be followed before depriving someone of liberty in a care home or hospital setting. Note a recent Supreme Court decision which is likely to increase the requirement to seek authorisations. <p>Following a recent case the Law Commission is reviewing the DOLS.</p>	<p>http://www.justice.gov.uk/protecting-the-vulnerable/mental-capacity-act</p> <p>http://www.cqc.org.uk/sites/default/files/media/documents/2014040</p> <p>http://www.cqc.org.uk/sites/default/files/media/documents/20140404__dols_briefing_for_health_and_social_care_providers.pdf</p> <p>http://lawcommission.justice.gov.uk/areas/capacity-and-detention.htm</p>
Housing & Safeguarding Alliance	<p>The Housing LIN hosts the Housing & Safeguarding Alliance on its website (see Links)</p>	<p>http://www.housinglin.org.uk/Topics/browse/HousingOlderPeople/Safeguarding/?parent=9016&child=8914</p>
Housing and Mental Capacity Act	<p>The Housing LIN also has a dedicated webpage on housing and the Mental Capacity Act</p>	<p>http://www.housinglin.org.uk/Topics/browse/HousingandDementia/Legislation/?&msg=0&parent=5148&child=5329</p>

13 | Tax

Relevant law/consultation/policy	Short summary	Link (for further information)
Stamp Duty Land Tax (SDLT)	SDLT is payable on land/property transactions in the UK. Reliefs and exemptions may be available.	http://www.hmrc.gov.uk/manuals/sdlmanual/index.htm https://www.gov.uk/stamp-duty-land-tax-rates
Value Added Tax (VAT)	VAT is charged by UK based business on the supply of most goods and services. The VAT charged can be recovered from HM Revenue & Customs if the cost in question relates to the payer's VATable business. Otherwise, VAT is an additional cost.	https://www.gov.uk/vat-businesses/how-vat-works
Corporation Tax Construction Industry Scheme (CIS)	<p>Corporation Tax is a tax on profits and gains.</p> <p>Under the CIS regime, tax must be deducted from payments to building contractors unless the building contractor is registered for gross payment. There are certain other exclusions from the CIS regime.</p>	https://www.gov.uk/corporation-tax https://www.gov.uk/what-is-the-construction-industry-scheme
Capital Allowances (CAs)	CAs provide corporation tax relief for capital expenditure on qualifying plant and machinery.	https://www.gov.uk/capital-allowances
Community Infrastructure Levy (CIL)	CIL is a tax on development in England and Wales. It is imposed by the relevant local authority if it chooses to do so and is charged by reference to the increase in floor area. There are reliefs from CIL. Also see Section 1 above on planning.	https://www.gov.uk/government/policies/giving-communities-more-power-in-planning-local-development/supporting-pages/community-infrastructure-levy

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About the Housing LIN



Previously responsible for managing the Department of Health's Extra Care Housing Fund, the Housing Learning and Improvement Network (LIN) is the leading 'learning lab' for a growing network of housing, health and social care professionals in England involved in planning, commissioning, designing, funding, building and managing housing, care and support services for older people and vulnerable adults with long term conditions, including dementia.

For further information on this and about the Housing LIN's comprehensive list of online resources on specialist housing for older people, visit:

www.housinglin.org.uk/

Email info@housinglin.org.uk

Twitter @HousingLIN

About Trowers & Hamlins



Trowers & Hamlins has a leading practice in the health and social care advising investors, operators, local authorities, the NHS and developers on buying or selling, establishing, building and managing care services of many kinds. The firm is a market leader in both housing and public sector work and we combine this with our health and social care expertise giving us a broad understanding of all forms of care provision from multiple client viewpoints. Our work covers a large range of care service types as a result of the activities of our clients, but the focus is on residential/nursing and domiciliary care, extra care/retirement living, mental health and addiction services and children's services including special schools. Our team adds value to clients by combining core legal practice areas with an understanding of the legal and regulatory frameworks and the market drivers relevant to the sector

For further information about Trowers & Hamlins please visit:
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About ARCO

The Associated Retirement Community Operators (ARCO) is the main body representing retirement community sector the UK. Retirement communities may also be referred to as retirement villages; extra care housing; housing with care; assisted living; close care apartments; or independent living.

ARCO continually strives to:

- Promote confidence in the sector, ensuring that all members are providing a high quality service to their residents. To this end, all ARCO-registered schemes have to adhere to the standards laid out in the ARCO Charter.
- Raise awareness of the retirement community model amongst older people and stakeholders alike – ensuring that all older people are aware of the variety of housing options available to them; and that policy makers fully understand the ways in which this type of housing provision can meet the lifestyle, health and social care needs of our ageing population.
- Increase the volume and quality of expertise within the sector and share this with members, continually investing in research to better understand and promote the socio-economic value of the housing with care model.

For more information on ARCO, visit:
www.arcouk.org

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Setting Standards for
Retirement Communities