Your Rights and Responsibilities
A Personal Guide for Scottish Consumers
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Preface

The Scottish Consumer Council has always supported the view that good information is important to people in order that they can function properly in their daily lives. As one of our broad aims is to promote the provision of such information and advice, we are delighted to have produced this guide book for individual consumers in Scotland. The guide covers not only the rights, but also the responsibilities, of the individual as a child and young person, citizen, consumer, employer, health services user, householder, husband/wife/partner, parent, traveller and worker. Each section gives information and advice in plain, easy to understand language, signposts the way to sources of further advice and gives names and addresses where more detailed information can be obtained.

I firmly believe that this publication will prove to be a valuable source of reference for every household in Scotland.

Deirdre Hutton
Chairman
Scottish Consumer Council
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The Scottish Consumer Council would like to state that every effort has been made to ensure the accuracy of the information contained in this book (January 1994).

When or if in doubt get in touch with the organisations suggested for more information.
In many circumstances children and young people have different rights and responsibilities from adults. Generally speaking, younger children come under the care and control of their parents (see Chapter 8 Parent). As children get older there are various age limits at which they take up adult rights and responsibilities. Children reach the age of majority at 18 years. This is the age at which an individual is considered to be an adult with the full range of an adult’s rights and responsibilities – although older age limits for some rights apply in certain circumstances.

1.1 Crimes and court actions

Children are held to be responsible for their criminal actions at the age of eight years. However, children over the age of eight are prosecuted in court only if the offence is very serious, for example, murder. Most children under the age of 16 who offend are referred to the Reporter to the children’s panel (see Children’s hearings in 8.9 in Chapter 8 Parent). Children aged under eight cannot be prosecuted at all, or referred to a children’s hearing for committing an offence. But they may be referred for other reasons, for example, as being in moral danger or beyond parental control. If a young person aged between 16 and 18 is already subject to a supervision requirement made by a children’s hearing, he or she can remain in the hearing system until the age of 18. In practice, many young people aged over 16 are prosecuted in the adult court system. This is always the case from the age of 18.

A child of any age can be held to be responsible for any deliberate or negligent acts that cause harm or loss to someone else, provided it can be shown that the child understood the likely consequences of his or her actions. In those circumstances a child could be sued for damages (although this is unlikely to happen, as most children do not have enough income or property to be worth suing).

A child under the age of 16 years can sue in court through a parent or guardian. A child can also take action in his or her own name where he or she is not supported by parents or a
guardian, or there is a conflict of interests. If this happens, then a court can appoint someone (called a 'curator ad litem') to make sure that the case is properly conducted and the child's interests are looked after. At the age of 16 a young person can sue in his or her own name.

1.2 Local-authority care

There are circumstances in which a local authority can intervene to supervise a child or take a child into care even if the child or his or her parents do not wish this to happen.

If a local authority is proposing to take on some supervision of a child, then there must be a children’s hearing (see 8.9 in Chapter 8 Parent). A person called the Reporter decides who should go before the children’s panel. The Reporter is independent of the local authority. A child must attend a hearing about himself or herself. If a child does not attend, the panel can issue a warrant that authorises the police or someone else, such as a social worker, to arrest the child and keep him or her in a place of safety until the hearing is held, within certain time limits. However, a child need not attend where the referral is because he or she has been or is believed to be a victim of physical or sexual abuse, or there are other circumstances that make the children's panel think it would be detrimental to the child to be present. Parents must also attend unless the hearing thinks their presence is unreasonable and unnecessary.

A children’s hearing must act in the best interests of the child concerned. The hearing will discuss issues and possible courses of action with the child. The child can be represented and in cases where his or her interests are different from the parents’, the hearing may appoint a 'safeguarder' to look after the child's rights. If the child disagrees with a hearing’s decision, he or she can appeal to the sheriff. At an appeal the child can be legally represented and legal aid is available.

If a hearing issues a supervision requirement involving regular home visits from a social worker, this has to be reviewed within one year. A child or parent can ask for a review within three months from when the requirement was made, or within six months after any subsequent requirement.
1.3 Medical treatment

A child or young person under the age of 16 years can consent to medical treatment (including dental treatment and contraception) provided the doctor or other professional involved believes that the child is able to understand what is involved in the treatment and its possible consequences. Under these circumstances the doctor need not consult the child's parents about the treatment or get their consent.

A child or young person can apply to see his or her medical records. Doctors or other professionals involved must give access to any records held on computer and to all other records made after 1 November 1991 if they are satisfied that the child understands what he or she is applying for. A parent or guardian can also apply to see a child's medical records but only if the child consents or, in cases where the child is unable to understand enough to give consent, where the doctor or other professional is satisfied that giving access would be in the best interests of the child.

See also 5.10 in Chapter 5 Health Services User.

1.4 Everyday transactions

A child or young person under the age of 16 years normally cannot legally enter into a contract. Parents or guardians must act on the child's behalf in any transaction.

However, a child under the age of 16 can enter into a valid contract if it is one commonly entered into by a person of his or her age and circumstances, and the terms are not unreasonable. For example, a child of five years can buy comics and sweets since that is common for a child of that age, while a child of 14 might legitimately buy a computer.

Young people from the age of 16 have full contractual capacity. However, before their twenty-first birthday, they are given some protection by the law. They can ask a court to set aside any contract that was prejudicial to their interests and that a reasonably careful adult would not have undertaken in the circumstances.
As well as these general rules on transactions, there are some specific rules affecting what children can legally do. For example, it is illegal to:

- sell tobacco or cigarettes to a child under the age of 16 years;
- sell a pet to a child under the age of 12 years;
- sell fireworks to a child under the age of 16 years;
- sell alcohol to a young person under the age of 18 years in a pub or off-licence, although young people over the age of 16 years can buy beer, wine or cider to drink with a meal in a restaurant;
- allow anyone under the age of 18 years to have access to premises selling indecent or obscene material;
- take a bet or wager from someone under the age of 18 years.

1.5 Owning property

A child of any age can own property, whether in the form of land, houses, money or shares. If the child is under the age of 16 years then it is up to his or her parents or guardian to decide how any property is to be used, although they must act in the interests of the child.

If a child or young person earns money, either through work or through investments in his or her name, he or she is liable to pay tax on this like an adult. If the child is under 18 years and living at home, then his or her parents or guardian are responsible for ensuring that a tax return is completed.

Children can inherit property from their parents or other people. Children are also entitled to a certain share of a parent’s estate if the parent dies. If the parent leaves a widow or widower then the children are entitled to one third of the dead parent’s moveable estate (ie, anything that is not land or houses). If there is no widow or widower then the children are entitled to a half share. These rights to a certain share cannot be excluded by a will — children cannot be disinherited completely.

Children aged twelve years or over can make a valid will.
1.6 Bank and building society accounts

It is at the discretion of each bank and building society whether to allow a child or young person to open an account. Banks and building societies will usually ask for the consent of a parent before opening an account for a child under the age of 16 years. Only in very rare circumstances would a young person under 18 years be allowed to operate a cheque account with a cheque card or be allowed to have a credit card.

Special rules apply to National Savings Accounts. A parent or someone else, such as a grandparent or other relative, can open a National Savings Account for a child of any age. The child cannot operate the account on his or her own before the age of seven years. Until then money can only be taken out of the account with the consent of a parent and then only in exceptional circumstances when the money is to be used to the benefit of the child. After the age of seven years a child can open and operate any National Savings Account on his or her own.

1.7 Being a citizen

Young people have to be aged 18 years or over before they can vote in local, general or European elections. They can stand as candidates in such elections when they reach the age of 21 years.

At the age of 18 years, a young person can be elected onto a community council. In some areas, the age is 17 years.

A young person aged 17 years or over can ride a motorcycle, apply for a driving licence for a car and hold a pilot’s licence. From the age of 16 years a young person can ride a moped of less than 50 cc and, if in receipt of Invalidity Benefit, drive an invalid car.

From the age of 16 years a young person can get married, with or without parental consent. A girl can legally consent to sexual intercourse from the age of 16 years. It is an offence for a male to have sexual intercourse with a girl under the age of 16 years. While there is no similar offence for a woman who has sexual
intercourse with a boy, sexual intercourse with a male under the age of 17 years could be an offence of 'lewd and indecent practice', depending on the circumstances.

Lesbianism is not regulated by the law. But a lesbian act involving a girl under the age of 17 years could be an offence of 'lewd and indecent practice'. A man can legally consent to homosexual intercourse from the age of 21 years where this is in private. It is proposed to lower the age of consent to 18 years.

1.8 School

Parents or guardians have a duty to ensure that children aged between five years and 16 years are properly educated (see 8.5 in Chapter 8 Parent). If a child plays truant then the parent or guardian could be prosecuted and the child could be referred to a children's hearing.

Children in school must obey any reasonable rules set by the school on matters such as behaviour, dress (although this does not necessarily mean wearing school uniform) or homework. If they disobey such rules, the school can impose a reasonable punishment. Local-authority schools cannot impose corporal punishment; nor can they detain pupils after school hours without a parent's consent. In cases of serious breaches of school rules a head teacher can exclude a child from school. The child's parents or guardians have to be informed of this immediately and they have the right to appeal to an education appeal committee.

1.9 Work

Children under the age of 16 years cannot be employed in certain kinds of jobs such as mining, quarrying, the manufacturing industry, the building industry and transport. In addition, children under the age of 13 years cannot be employed at all in any kind of work.

Children aged between 13 years and 16 years can do some kinds of jobs but on schooldays they can only work outwith school hours. They cannot work for more than two hours on schooldays or on Sundays, or before 7 am or after 7 pm on any day. During school holidays, they can work a total of 25 hours a week if aged under 15 years, and 35 hours a week if aged 15 years or over.
As well as these general rules, local education authorities can make bye-laws about what kind of jobs children in their area can do and under what conditions. For example, most authorities prohibit children from working in kitchens and cinemas or from working when they are not at school because of illness.

For information about the rules in your area contact your local education authority at your regional or islands council.

1.10 After school

Once you have reached the age of 16 years you can:

- stay on at school;
- leave school and try to get a job;
- join a government training scheme (see 1.12);
- start a course at a college of further education or other college or university.

Each college and university decides which students to accept, normally based on applicants' qualifications.

1.11 Grants and bursaries

If you get a place on a course at a college or university you may be able to get a grant or bursary or allowance from a number of different places.

Sponsorship and grants

Many different organisations run schemes offering financial help for students on certain courses. For example, the armed forces (the RAF, the Navy and the Army) will sponsor students on certain courses – paying allowances and offering paid employment during vacations – provided the students chosen agree to serve in the forces for a certain period after they graduate. Some companies operate similar sponsorship schemes.

You can find details of sponsorship schemes in Sponsorship 1995, available from July 1994 from the Careers and Occupational Information Centre. For information on how to order and the price, telephone (0272) 777191.

Grants or bursaries may also be available from colleges or universities themselves, from professional associations or local
organisations such as chambers of commerce or from educational trusts. Eligibility for these funds may depend on where you live and what course you are taking. The Scottish Office Education Department (SOED) has a register of educational endowments. You can apply for a search of the register on your behalf.

For more information about educational trusts, contact: The Scottish Office Education Department, Students Awards Branch, Gyleview House, 3 Redheughs Rigg, Edinburgh EH12 9HH (tel: 031 244 5823).

The guide, *Money to study*, from the Education Grants Advisory Service, provides more information about money for students. It is available from EGAS, 501-505 Kingsland Road, Dalston, London E8 4AU (tel: 071 254 6251) and costs £11.95.

Some colleges and universities also have hardship funds for students with financial problems.

**Student grants**

If you are resident in Scotland then you are entitled to financial help from the Scottish Office Education Department (SOED) for certain courses. Courses for which mandatory grants are available include full-time HNC and HND courses and first-degree courses at universities in Great Britain, Northern Ireland and the Republic of Ireland.

The help available takes the form of payment of your tuition fees, a means-tested grant to cover maintenance for yourself and any dependent family, and help with travel expenses. If you are under the age of 25 years and unmarried, the amount of maintenance grant will be based on your own and your parents' income. If you are married, your parents' income will still be taken into account if you are under 25 years and have been married for less than two years. Your parents' income will not be taken into account if you have supported yourself for more than three years.

If your parents refuse to reveal their income to the SOED, then the SOED will only pay tuition fees but no maintenance grant.
If your parents refuse to pay any assessed parental contribution you can take them to court claiming your right to financial support.

For more information, see *Student grants in Scotland*, available from the SOED or from your college or university.

**Local education authority bursaries**

For courses that are not covered by the SOED scheme, for example, courses at colleges of further education, your local education authority may provide discretionary bursaries. Contact your local education authority at your regional or islands council for more information.

**Student loans**

Students can apply for a student loan. To be eligible you need to be on a designated course and have a bank or building society account. Student loans are not means-tested. You must start repaying your loan from the April after you finish your course, though you can start to repay it sooner if you wish. The interest payable on the loan will be linked to the inflation index. If you do not have a job or are on a low income (which is defined as less than 85% of the national average income) you can defer repayment.

You can get application forms for a student loan from your college or university who will also verify that you are in full-time education.

For more information, contact: The Students Loans Company Limited, 100 Bothwell Street, Glasgow G2 7JD (tel: 0345 3009000).

**1.12 Government training schemes**

If you are under 18 years of age, have left school and do not have a place in further education, the government guarantees you a place on a government training scheme until your eighteenth birthday and in some cases for longer. These schemes give you the chance to work for qualifications under SCOTVEC (the Scottish Vocational Education Council). If you are unemployed, you will be paid an allowance and some of your travel costs.
If you are aged 18 years or over and unemployed, you may be eligible for a place on the Training for Work programme. Preference is given to people who have been unemployed for between six and twelve months and to other groups who suffer disadvantages, such as women returning to the workplace.

These training schemes are organised by local enterprise companies and you can find details of training-scheme vacancies in your area at your local Jobcentre (see under Employment Service in the phone book) or careers office (see under the name of your regional or islands council in the phone book).
If you live in a country, aspects of your life may be affected by the state in several ways. You may owe duties and responsibilities to the state. Being a citizen also gives you certain rights to be involved in and participate in the running of the country.

2.1 Income tax

If you have an income of any kind – whether as wages, salary, pension payments or interest on investments – you may be liable to pay income tax.

Some kinds of income are exempt from tax, for example, child benefit or the first £30,000 of redundancy lump-sum payments. Some income that is spent in a particular way is not taxed, for example, pension contributions. In addition the government sets personal allowances and only income above these allowances are taxable.

For information on tax reliefs and personal allowances contact your local tax office for up-to-date leaflets (see under Inland Revenue in the phone book).

If you work for an employer your tax will be deducted from your wage or salary through the PAYE (pay as you earn) scheme. Your payslip will tell you how much tax has been deducted and will tell you what your tax code is. This code, which consists of letters and numbers, is based on the allowances and reliefs you are eligible for. If you want to find out more about how your code is worked out or if you think it is wrong, you should contact your local tax office.

You have a duty to provide the Inland Revenue with a full statement of your income from whatever source. The Inland Revenue may send you a tax return, which you must complete within 30 days. If you do not make the return within 30 days, you could be liable to a penalty of £300 plus £60 for every day you continue to fail to provide a return. If you fill in the return wrongly, either deliberately or negligently, you will also be liable for a penalty.

If you are not sent a tax return and you have income that is not taxed before you get it, you must notify the Inland Revenue
that you may be liable for tax within twelve months of the end of the tax year (5 April) when you received the income.

The Inland Revenue may send you a tax assessment. If your assessment says that you have paid too much tax, you will get a rebate and perhaps some interest. If the assessment says that you have paid too little tax, you will have to pay the balance and perhaps some interest (though interest amounting to less than £30 is usually waived). If you are employed, the extra tax due can be deducted through the PAYE scheme.

If you think your tax assessment is wrong, you must appeal it within 30 days from the date of the assessment. You can ask for the payment of some or all of the tax to be postponed until your appeal is dealt with.

For more information on how to appeal, see leaflet IR 37, Income tax and CGT – appeals, which you can get from your local tax office as above.

If you fail to pay your tax on time you may be liable to interest on the amount due. The Inland Revenue can take you to court for payment.

If you are unhappy about how you have been treated by the Inland Revenue you can complain to the tax office concerned.

For more information on how to make a complaint, see the leaflet IR 120, You and the Inland Revenue, available from your local tax office.

If you are not satisfied with the way your local tax office has dealt with your complaint, you may complain to the Revenue Adjudicator, an impartial referee appointed by the Inland Revenue to examine complaints. The Adjudicator’s address is: Revenue Adjudicator’s Office, 3rd Floor, Haymarket House, 28 Haymarket, London SW1Y 4SP (tel: 071 930 2292).

2.2 Voting
Most adults have the right to vote in general elections for parliament, local-government elections and European elections.
To be able to vote, you must be:

- 18 years of age or over;
- a citizen of the Commonwealth or the Republic of Ireland. From mid 1994 a citizen of a member state of the European Union can vote in local and European elections;
- resident in the constituency on the qualifying date ie, 10 October in the year before the election;
- on the register of the constituency;
- not subject to legal incapacity (prisoners, other than fine defaulters);
- not suffering from mental impairment.

Members of the House of Lords cannot vote in elections for parliament but they can vote in local and European elections.

British subjects who are resident overseas can also vote if they are registered and have been resident in Britain in the last 20 years.

Electoral registers are compiled annually by Electoral Registration Officers using forms and door-to-door surveys. It is a criminal offence to refuse to give an Electoral Registration Officer the information he or she requires or to give false information. A provisional list of electors is made available for inspection in November of each year. You will find this in local libraries and post offices. If you are not on this list and you think you should be, you have until 16 December to contact the Electoral Registration Officer. If he or she refuses to put your name on the list you can appeal to the sheriff.

2.3 Standing for office

Parliament

There are no rules about the qualifications you need to be an MP. But you cannot become an MP if any of the following applies to you:

- you are not a British subject or an Irish citizen;
- you are under the age of 21 years;
- you are seriously mentally ill;
- you are a member of the clergy, including ministers of the Churches of Scotland, England and Ireland and Roman Catholic priests;
- you are bankrupt or have been discharged from bankruptcy in the last five years;
- you have a particular job, for example, if you are a member of the armed forces, civil servant, judge, or a full-time police officer;
- you are serving a prison sentence of more than one year;
- you have been convicted of certain electoral offences and have been disqualified from being an MP.

To stand in a parliamentary election, whether a general election or a by-election, you must be nominated by at least ten people registered to vote in the constituency. You must also pay a deposit of £500, which will only be returned to you after the election if you get more than 5% of the votes cast.

**Local government**
To be eligible as a local councillor (whether on a regional, district or islands council) you must be:
- over 21 years of age;
- a British subject or Irish citizen;
- a resident of the area of the local authority or a local-authority elector or own or rent property in the area or have your main place of work in the area in the twelve months before nomination.

You cannot be an employee of the local authority that you wish to be elected to. You can be an employee of another authority unless you hold a restricted post (chief officer, depute chief officer, head of the paid service and monitoring officer) or carry out certain politically sensitive activities (public relations and advising committees or politicians) or earn above point 44 on the APT&C services salary scale and are therefore not eligible to stand for election. You will also be disqualified if you have been sequestrated or declared bankrupt or you have been convicted of certain electoral offences.

To stand as a candidate in a local-authority election you need to be nominated by ten electors from the ward you wish to stand for. You do not need to pay a deposit.

**European parliament**
The same rules about who can or cannot be an MP apply to those wishing to become members of the European Parliament.
but with a number of exceptions. For example, peers, clergy-
men and existing members of the UK parliament can stand as
European candidates. So too can nationals of other member
states. Members of national governments and members and
officers of certain European bodies are disqualified.

To stand as a candidate in an election for the European
Parliament you need to pay a deposit of £1,000, which you
will get back if you get more than 5% of the votes cast. You
also need to be nominated by 30 electors from the constituency
you wish to stand for.

2.4 Appointed offices

There are many public bodies whose members are appointed.
Some of these bodies have executive functions, for example,
health boards or Scottish Homes. Some are advisory, for
example, the building standards advisory committee. Others are
tribunals, for example, children’s panels and rent assessment
committees. In some cases membership of a public body is
part-time, in others full-time. In some cases members are paid,
in others they are unpaid.

For a list of public bodies, see Public bodies, available from
HMSO bookshops.

There are nearly 40,000 public appointments of which up to
10,000 are available every year. Sometimes public appoint-
ments are advertised. For example, applications to become a
member of a children’s panel are usually advertised. In some
cases people are chosen for posts on the recommendation of
other bodies such as the Children’s Panel Advisory Committee
or the Independent Tribunal Service. In some cases people are
chosen directly by the ministers of the departments who are
responsible for the organisations concerned. The Scottish
Office and the Scottish Courts Administration are responsible
for approximately 170 different bodies.

The minister will choose from a list of names prepared by civil
servants who may ask organisations and individuals for nomin-
tions or suggestions. They may also consult the Public
Appointments List.
The Public Appointments List is a register of people who may be willing to sit on public bodies. It is drawn up by the Public Appointments Unit. You can get on this list either by nominating yourself or being nominated by others.

If you wish to find out more about appointments to public bodies or you wish to nominate yourself or someone else, contact: Public Appointments Unit, Cabinet Office (OPSS), Horse Guards Road, London SW1P 3AL (tel: 071 270 6210/6217); or Jim Dryden, Public Appointments Unit, The Scottish Office, St Andrew's House, Edinburgh EH1 3DG (tel: 031 244 4999).

If you are appointed to certain public bodies your employer must give you time off work so that you can undertake your public duties. The bodies covered include statutory tribunals, such as children's hearings, social-security appeal tribunals, health boards, school governing bodies and local authorities.

The amount of time off work will depend on what is involved in your public duties and also the likely impact on your employer's business.

For more information, see the booklet, *Time off for public duties* (PL 702), which is available from any office of the Employment Service (see the phone book).

**2.5 The courts**

There are many reasons why you may have to appear in court. You may be prosecuted for a criminal offence. You may wish to enforce your legal rights. You may be called as a juror or a witness. Your rights and responsibilities will depend on your reason for attending court and which court is involved.

**Criminal courts**

There are three different kinds of criminal courts in Scotland.

*The district court*: These are local courts found in every district or islands council area. Usually the judges will be lay justices of the peace. District courts deal with minor criminal offences such as breach of the peace. They have limited powers of sentencing – up to 60 days' imprisonment and fines of £1,000.
Glasgow has full-time professional magistrates. These stipendiary magistrates have the same sentencing powers as sheriffs.

If you receive a summons for a district court, you may not need to attend in person but may be given the option of stating your case by letter.

The sheriff court: There are 49 sheriff courts in Scotland, organised in six sheriffdoms. Sheriff courts deal with the bulk of criminal cases with only the most serious cases, such as murder and rape, exclusively reserved for the High Court. Cases are heard by sheriffs who are professional judges and in some cases there will be a jury. If a case is heard by a sheriff alone his or her powers of sentencing are limited to a fine of £2,000 and up to six months’ imprisonment. If there is a jury, a prison sentence of up to three years can be imposed, or the sheriff can send the convicted person to the High Court if he or she feels his or her sentencing powers are inadequate.

If you receive a summons to attend the sheriff court, you must do so or you run the risk of a warrant being issued for your arrest.

The High Court of Justiciary: This court hears the most serious criminal cases, and can sit anywhere in Scotland. Its judges consist of the Lord Justice General, the Lord Justice Clerk and the other judges of the Court of Session who are called ‘Lords Commissioners of Justiciary’. Trials are heard by one judge with a jury. The Court hears cases in the main towns and cities, usually using the local sheriff court buildings, but it uses a separate building in both Glasgow and Edinburgh.

The High Court can also sit as an appeal court, hearing appeals from all other criminal courts. Appeals are heard by at least three judges.

If you get a summons to attend the High Court, you must do so or you run the risk of having a warrant issued for your arrest.

Civil courts
You can use the civil courts to enforce your legal rights or settle disputes. Or someone may raise an action against you for
the same reasons. Local sheriff courts deal with the bulk of civil cases. The Court of Session, which is based in Edinburgh, deals with the more difficult and important cases. Appeals from decisions of the Court of Session and from sheriff courts will be heard by a division of the Court of Session comprising at least three judges. Their decisions in turn can be appealed to the House of Lords.

In the sheriff court there are a number of different procedures depending on the kind of action and the sums of money involved. For example, if you have a straightforward case involving less than £750 you can use the small claims procedure (although some actions are specifically excluded from this procedure, such as actions of defamation). The small claims procedure is designed to be a do-it-yourself procedure with simple forms and simplified rules. There are also special rules so that even if you lose your case there are limits on the expenses you will have to pay (the normal rule in court actions is that if you lose, you have to pay not only your own expenses but those of the other side as well).

For more information on the small claims procedure, see the booklet, *A guide to small claims procedure in the sheriff court*, available from your local sheriff court.

Other court procedures, such as summary cause and ordinary cause procedure, are more complicated than small claims. Although in theory you can act on your own behalf in any court procedure, in practice it is a good idea to get expert help and advice.

For more information and advice on dealing with court actions you should contact your local citizens advice bureau (see the phone book) or solicitor.

**Jury service**

Serious criminal trials in the sheriff court or High Court are heard by a jury of 15.

Anyone between the ages of 18 and 65 years can be called for jury service. If you receive a citation to attend for jury service,
you must do so or you could face a fine of up to £1,000.

Some people are ineligible for or disqualified from jury service.

- Certain individuals connected with the legal system are ineligible, such as advocates, solicitors, judges, chairmen of tribunals, police officers and members of children’s panels.
- Anyone receiving treatment for a mental illness is disqualified.
- Anyone who has been sentenced to imprisonment of three months or more and who has not had that sentence wiped out by the Rehabilitation of Offenders Act is ineligible.

If you receive a citation for jury service and you think you are ineligible or disqualified you should contact the clerk of court immediately. It is an offence to sit on a jury when ineligible or disqualified.

Some people can ask to be excused from jury duty, for example, doctors, dentists, nurses, MPs, members of the armed forces and the clergy. If you have served on a jury in the last five years, you can ask to be excused. You can also do so if your personal circumstances would make jury duty particularly difficult, for example, if you are disabled and your disability would make it difficult to follow proceedings in court, or if you have special holiday or work commitments (although in such cases you may be asked to appear for duty at another time). If you think you should be excused from jury duty you should contact the clerk of court.

You are not paid for jury duty but you can claim expenses such as travel expenses and loss of earnings subject to a maximum daily amount. The clerk of court will tell you how to claim expenses.

A jury is chosen at random. Slips of paper with the names of jurors are placed in a container and the first 15 names drawn are called to sit in the jury box. Both the prosecution in the case and each defence solicitor can object to up to three jurors without giving any reason. In addition they can object to any juror if there is good reason, for example, if they can show that a particular juror would be biased in some way.
If you are not chosen for a particular jury or you are objected to, you must still stay in the court until told to go.

Before the trial begins, the jury will be asked to take the oath or make an affirmation. During the trial the judge is in charge of the proceedings. It is also his or her role to advise the jury on the law. It is the jury's role to reach a verdict on the basis of the evidence that has been presented. Members of the jury cannot ask questions of witnesses directly but if you have a question you can ask the judge to put a question to you if he or she thinks this is appropriate.

Juries can choose one of three verdicts: guilty, not guilty or not proven. Any of these verdicts can be reached unanimously or by a majority of at least eight.

What is discussed in a jury room is private. You must not discuss a case with anyone else even after the trial has ended.

For more information on jury service, see Information for potential jurors in criminal trials, available from your local sheriff court.

Witnesses
If you receive a citation to be a witness in a criminal trial, you must attend court on the day and at the time specified. If there is some reason why it would be particularly difficult for you to attend, you should contact either the procurator fiscal or the clerk of court immediately and it may be possible to excuse you. If you do not attend when cited and you have not been excused, you could be arrested and prosecuted.

If you are cited as a witness, you have a duty to co-operate with 'both sides', ie. a duty to give a statement to the procurator fiscal's office and to the defence agent.

When you arrive at court you must wait in the correct waiting room until called. You must not sit in the courtroom where the trial is being held until you have given evidence. You have to be prepared to wait all day if necessary even if the trial does not start at the specified time.
When called to give evidence you will be asked to take the oath or to affirm. You must answer questions truthfully. If you do not you risk being prosecuted for perjury. You must stay in the court building even after you have given evidence until you are told you can go – it may be necessary to recall you at some point.

You do not get paid for being a witness but you can claim travel expenses, subsistence and loss of earnings subject to a maximum daily limit.

In a civil case it is up to each side to arrange for their witnesses to be in court and to pay any travel or other expenses.

2.6 Legal aid

If you need the help of a solicitor or an advocate, you may be eligible for legal aid to help pay for this. The amount of legal aid you can get depends on the kind of work your lawyer is doing for you, and your financial circumstances. Not all solicitors undertake legal-aid work. If you want to find a solicitor who does, you should look for the legal-aid logo or contact your local citizens advice bureau (see the phone book) or the Scottish Legal Aid Board, 44 Drumsheugh Gardens, Edinburgh EH3 7SW (tel: 031 226 7061).

There are three kinds of legal aid.

Advice and assistance

This covers advice and legal help other than going to court – for example, general advice, writing letters, help in negotiating settlement of a claim, and help in preparing a written case for a tribunal hearing. You apply for advice and assistance through your solicitor who will ask you for information about your means. He or she will be able to tell you right away whether you are eligible or not.

If you are on Income Support or Family Credit you will automatically get full free advice and assistance, provided your disposable capital does not exceed £1,000. In other cases it will depend on your capital and income, your outgoings and family commitments. You may be eligible for full free advice or assis-
tance, or you may have to pay a contribution to part of the cost. Your solicitor will be able to advise you about the financial eligibility limits, or you can contact the Scottish Legal Aid Board.

There is a fixed limit on the amount of work that a solicitor can be paid for under this scheme although he or she can apply for an extension.

If as a result of the solicitor's help you recover money or property then the solicitor's bill must be paid for out of that money. This rule does not apply to all cases – for instance, the first £2,500 of any capital payment on divorce or one half of any redundancy payment recovered or rent rebates or aliment payments. Nor will it apply if it would cause great hardship or distress.

Civil legal aid
If you need a solicitor to help you take a case to court you may be eligible for civil legal aid. You can get civil legal aid for proceedings in the sheriff court, the Court of Session, the House of Lords, the Lands Valuation Appeal Court, the Lands Tribunal for Scotland, the Scottish Land Court, the Restrictive Practices Court, and the Employment Appeal Tribunal.

You cannot get civil legal aid for small claims cases (where the sum involved is less than £750), actions of defamation, election petitions, simplified actions of divorce or your own bankruptcy. Nor is it available for representation at a tribunal, though you might get help in preparing a tribunal case under advice and assistance.

You will not get legal aid if other help is available to you, for example, from an insurance company. You also have to show that you have a substantial case for going to court and that it is not otherwise unreasonable for you to get legal aid.

You apply for civil legal aid through your solicitor. You will have to supply information about your income, capital, outgoings and family commitments. If you receive Income Support you will automatically qualify for free legal aid. In other cases
you will be eligible for free legal aid if your disposable capital as calculated by the Scottish Legal Aid Board (who decide on your eligibility) is less than £3,000 and your disposable income is less than £2,293 per year. If your capital or income is greater than these figures, you may still be eligible for legal aid but you will have to pay a contribution to part of the cost.

The financial limits for eligibility for legal aid change from time to time. Your solicitor will be able to advise you on these, or you can contact the Scottish Legal Aid Board.

If as a result of any court action you recover money or property or expenses, this must first be paid to the Scottish Legal Aid Board who will deduct an amount to cover your solicitor’s bill before paying over the balance to you. If you lose your case the court may award expenses against you. This means that you have to pay your opponent’s expenses yourself: legal aid does not cover this. However, you can apply to the court to reduce the expenses award to a figure that is reasonable for you to pay.

**Criminal legal aid**

If you have been arrested and taken into custody, every sheriff court and district court has a duty solicitor who can advise you free of charge up to and including your first appearance in court. Thereafter, or in cases where you have not been detained (for example, when you have been sent a summary complaint through the post), your eligibility for legal aid will depend on whether you are going to be tried under summary procedure (which is for less serious cases, such as road-traffic offences and breach of the peace) or solemn procedure (which is for serious cases, such as murder, fraud and assault).

If you are going to be tried under summary procedure, you must apply through your solicitor to the Scottish Legal Aid Board for legal aid. In deciding whether to grant this, the board will take account of whether you can pay for representation without undue hardship and also whether it is in the interests of justice to give you legal aid.

If you are going to be tried under solemn procedure, then you apply to the court for legal aid. Your solicitor will apply for
you, or you should consult the clerk of court. In deciding whether to grant legal aid, the court must be satisfied that you cannot pay for the case yourself without undue hardship to yourself or your dependants.

If you are convicted under summary procedure and the court is considering a custodial sentence and you have not been imprisoned before, you can apply to the court for legal aid. If you have been convicted in any court and you wish to appeal, you have to apply to the board.

There are tight time limits within which applications for legal aid have to be made. If you think you want to apply for legal aid you should discuss this with your solicitor as soon as possible.

For more information on legal aid contact: The Scottish Legal Aid Board, 44 Drumsheugh Gardens, Edinburgh EH3 7SW (tel: 031 226 7061).

2.7 Police
The main functions of the police are the prevention and detection of crime and the maintenance of public order.

There is no general obligation on members of the public to help the police. But if a police officer specifically asks you for help, you must give it unless you are unable or unfit to do so. If you do not, you run the risk of being prosecuted. It is an offence to assault, obstruct or impede a police officer in the course of his or her duties, or to waste the time of the police.

Arrest and detention
A police officer can arrest you if he or she has a warrant for your arrest. The officer can also arrest you without a warrant if he or she has reasonable suspicion that you have committed a crime. A police officer cannot arrest you simply for questioning.

If a police officer has reasonable grounds for suspecting that you have committed a crime or were a witness to a crime, he or she can ask for your name and address but you are under no
obligation to give any other information. If you are suspected of committing an offence, the police officer can detain you until he or she has verified the information you have given but not if you are merely a witness.

If a police officer has reasonable grounds for suspecting that you have committed a crime that could be punishable by imprisonment, he or she can detain you and take you to a police station and keep you there for up to six hours. If you are detained in this way, the police officer can question you, search you and can take fingerprints. You do not have to answer any questions apart from giving your name and address, and the police officer has to tell you this. You have to be told the reason why you have been detained and you have the right to have a solicitor and one other person informed that you have been detained, unless the police believe that this would not be in the interests of the investigation of the offence. If a child under 16 years is detained in this way, his or her parents must be notified and must be given access to the child.

There are no rules about how the police can or cannot question you. But if you are ill-treated, you may be able to make a complaint of assault or claim compensation. If the courts believe that your questioning has been harsh or oppressive, they can decide that any answers you gave cannot be admitted as evidence against you.

If you are driving a car or are in charge of a car, the police can stop you if they believe you have committed a traffic offence or have been involved in an accident or have alcohol in your body. If you are stopped in this way, the police can ask you to take a breath test. It is an offence to refuse to give a breath test. If this test proves to be positive and you are taken to a police station, you may be required to give a second breath test or a blood or urine sample in some cases. A blood sample must be taken by a doctor. It is an offence to refuse to give a blood or urine sample if requested to do so.

**Entering your home**
The police can enter and search your home if a warrant has been issued. If you are there they must show you the warrant,
unless in exceptional circumstances it is not in their possession. If you are not present they must leave a copy of the warrant and leave your home secure.

The police can also enter your home without a warrant:

- to make an arrest;
- to stop someone getting hurt;
- to catch an escaped criminal;
- if they urgently need to do so where the 'interests of justice' require this.

If you have a complaint about how you have been treated by the police, you should complain to the duty officer at the local police station or to the chief constable, or see a solicitor. Your complaint will be investigated internally by the police force but if there is evidence of a criminal offence, the matter will be referred to the procurator fiscal.
An individual who buys or acquires goods or services is given certain protection by the law. In some cases there are controls on the traders who can provide goods and services – for example, anyone offering credit must be licensed. In other cases there is regulation of how traders operate – for example, the Director General of Fair Trading has powers to require traders to stop any course of conduct that is detrimental to the interests of consumers and is unfair. The criminal law is sometimes involved in controlling what traders can and cannot do. For example, a trader selling unsafe goods might be liable to prosecution. In other instances the consumer has rights that he or she can enforce in the civil courts.

Most of the responsibilities in this area are placed on traders rather than on consumers. However, you must always remember that where the law does not give the consumer protection, the consumer must take responsibility for his or her own choices and decisions.

3.1 Shopping
When you buy something from a shop the law provides you with certain protections. Goods for sale must:

- conform to their description. For example, if a coat is described as waterproof it must be waterproof and not allow rain in;
- be fit for their purpose, meaning that they do what they are supposed to. For example, an electric kettle must be able to boil water;
- be of merchantable quality, meaning that they must not have any major faults. However, in deciding whether something is of merchantable quality you have to take account of how it was described and other factors such as its price. You cannot expect very cheap goods or products described as ‘seconds’ to be as good quality as very expensive, top-of-the-range products.

If you buy on the basis of a sample, then the full product that you get must be the same as the sample. For instance, if you order a carpet on the basis of a sample you see in the shop, the
carpet that is eventually delivered must be the same as the sample.

If you have agreed a price, then this is what you will pay, even if there has been an increase in price to the trader between ordering and delivering goods. The one exception to this rule is that you will have to pay for any increase in VAT.

These rights cannot be taken away or excluded by a shopkeeper and if he or she attempts to do so by putting up a notice, this is a criminal offence. But if you are buying from a private individual he or she is only required to ensure that the goods are his or hers to sell and are as described. You have to satisfy yourself that goods are fit for their purpose and of merchantable quality.

If you buy something that does not comply with one or more of these provisions (for example, it turns out to be faulty or it does not do what it is supposed to do), then you are entitled to go back to the shop and ask for a refund or, if you prefer to keep the goods, cash to make up for the loss of value to the goods. You are not entitled to a replacement nor do you have to accept one. However, this might be an acceptable solution to the difficulty if you and the seller agree. You do not have to accept a credit note instead of a refund nor do you have to agree to send things back to the manufacturer – your contract is with the shop. You do not have to accept an offer to repair the goods, although you can agree to a repair if that is what you want.

In some situations you lose the right to ask for a refund. For example, if you do not tell the shop about the problem in a reasonable time. This time period can be very short and applies even if you were not aware of the fault for some time. You may also lose your right to a refund if you accept an offer to repair the goods, even if the repair does not work properly and the fault reappears.

However, you cannot ask for a refund or a replacement just because you have changed your mind about your purchase. Shops do not have to take back goods that have nothing wrong
with them, although many shops will do this as a gesture of goodwill to their customers.

If you used a credit card to pay for something costing more than £100 and less than £30,000, you can also claim any refunds or compensation to which you are entitled from the credit-card company if you cannot get satisfaction from the trader. Credit-card companies are equally liable with traders for any problems that arise.

For more information on your rights when buying goods, see the booklet by the Office of Fair Trading, Dear Shopper in Scotland, available from your local consumer advice centre, citizens advice bureau or the Office of Fair Trading, Field House, 15/25 Bream’s Buildings, London EC4A 1PR (tel: 081 398 3405).

3.2 Services

You buy a service when you pay for someone to do work for you, whether it is having your hair cut by a hairdresser, having double glazing fitted, getting your drains unblocked or having legal work done by a solicitor. The details about what has to be done and how it will be done may be set out in a contract or agreement. If there is not a specific agreement or contract or there is no mention of certain things, the following rules apply.

- The work must be done with reasonable care and skill. This does not mean that the work has to be perfect but that the work is done to a standard that is reasonable to expect from a member of that trade or profession.
- The work must be done in a reasonable time. The time may be set out in any agreement or contract. If it is not, it must be done in a reasonable time.
- The price will usually be agreed in advance. If not, the customer is obliged to pay a reasonable price.

Many trades and professions also have their own rules about how customers should be treated. There may be a code of practice setting out standards, and this may also include a scheme for dealing with customer complaints. For example, the Glass and Glazing Federation has such a code of practice. To find out whether there is a code of practice for a particular
service, contact your local trading-standards department at your regional or islands council.

3.3 Guarantees

A manufacturer's guarantee can give you added rights and protections. It cannot take away any of the rights you have under the general law. So even if there is a guarantee you still have rights against the shopkeeper.

You can sometimes get guarantees for services, for example a guarantee covering the installation of double glazing. These can be useful but it is a good idea to check whether they are backed by insurance. If they are not, then any guarantee will only be useful as long as the company giving it stays in business.

3.4 Dangerous goods

There is a range of regulations setting out safety standards for a number of different goods. There is also a general requirement that applies to almost all goods and means that they should be reasonably safe. If you see something that you think is unsafe you should report this to your local trading-standards department. Trading-standards officers have powers to investigate whether goods are unsafe and to stop their sale. Someone selling or distributing unsafe goods can be subject to a criminal prosecution.

If you are injured by something that you have bought, you may be able to sue either the person who sold it to you or the manufacturer. You would be able to claim compensation from the shop if the injury was as the result of the goods not complying with the basic legal requirements that apply to goods for sale (see 3.1). You would not be able to do so if you were not the person who actually bought the goods, for example, if they were a gift to you.

If the goods did not comply with specific safety regulations then you could sue the shop or the manufacturer. You could also sue if you could show that the goods that caused the injury were faulty as a result of the manufacturer's or shopkeeper's negligence.

If damage or injury was caused by defective goods you could
claim compensation from the manufacturer or supplier without having to show negligence. Goods may be defective and unsafe because of the way they are designed or manufactured or because their instructions or warnings are inadequate. You have to show that the goods caused the damage or injury and that they were defective. The manufacturer or supplier will not be liable if they can show that they could not have detected that the goods were defective because of the state of scientific and technical knowledge when they supplied the goods.

3.5 Doorstep sales

You can enter a contract to buy goods or services in your own home. There is no general rule stopping salespeople knocking at your door offering to sell you something. But it is illegal for someone trying to sell investments other than insurance, unit trusts and pensions to call at your home uninvited. It is also an offence for a salesperson to say that goods are made by disabled people or are sold in aid of disabled people when this is not true. But remember that you do not have to let any salesperson into your home if you do not want to.

If you do agree to buy something in your own home you have a seven-day cooling-off period within which you can decide to cancel the contract. The salesperson has to give you written notice of this cooling-off period. However, you will not have this cooling-off period if the contract was for building work or if you specifically asked the salesperson to visit your home or if the contract was for goods worth less than £35 or for goods intended for immediate consumption and supplied regularly, for example, newspapers or milk deliveries.

If you are buying goods on credit or obtaining credit at home, the rules protecting you are different (see 3.8).

For more information and advice on how to deal with door-to-door salespeople, see the Office of Fair Trading booklet, *How to cope with doorstep salesman*, available from your local consumer advice centre, citizens advice bureau or the Office of Fair Trading, Field House, 15/25 Bream's Buildings, London EC4A 1PR (tel: 081 398 3405).
3.6 Advertisements

Advertisements must not be false or misleading. It is a criminal offence to apply a false or misleading description to goods or services. It is also a separate offence to give a misleading indication about the price of goods. If you see such misleading information you should contact your local trading-standards department.

As well as these legal provisions, the Advertising Standards Authority (ASA), which is run by the advertising industry, has a code of practice that requires advertisements to be legal, decent, truthful and honest. If you see an advertisement that does not meet these standards, contact: The ASA, Brook House, 2-16 Torrington Place, London WC1E 7HN (tel: 071 580 5555).

The Director General of Fair Trading also has powers to take action to stop misleading advertisements when existing provisions are inadequate.

If you have a complaint about advertisements on TV, radio or cable you should contact: The Independent Television Commission, 70 Brompton Road, London SW3 1EY (tel: 071 255 3000).

There are special rules for some advertisements. For example, advertisements for credit have to contain specified information, as do financial advertisements. If you have a complaint about a financial advertisement you should contact the Securities and Investments Board (see 3.10).

3.7 Mail order

You have the same basic rights when you buy goods by mail order as when you buy them in a shop (see 3.1). You may also have additional rights if the trader you are dealing with belongs to a trade association with a code of practice.

Catalogues

If a catalogue company belongs to the Mail Order Traders’ Association, their catalogues will tell you about the association’s code of practice and how to complain. This code requires the
traders to meet set delivery dates, deal with refunds promptly, specify any surcharges and provide adequate servicing facilities.

**Book and record clubs**

If you join a book or record club, check if it belongs to the Direct Marketing Association. Their code of practice requires traders to give clear information about their terms and gives you the right to cancel your membership after twelve months or if prices rise more than expected.

**Magazines and newspapers**

If you are buying something from an advertisement in a magazine or newspaper, check that there is a readers’ protection scheme or a mail-order protection scheme. These schemes provide protection against losing any money if a trader goes out of business. Without this protection, if you send money for goods and the trader goes bankrupt before you get any goods, you will find it very difficult to get your money back.

**Unsolicited goods**

If someone sends you goods you did not ask for, you do not have to pay for them. You do not have to send unsolicited goods back; the sender has to collect them. If you keep them for more than six months they belong to you. If you write to the sender saying that you do not want the goods then they become yours after 30 days.

It is a criminal offence to demand payment for unsolicited goods or services, so if this happens to you, you should contact your local trading-standards department.

For more information on your rights when buying by mail order see, the Office of Fair Trading booklet, *Buying by post*, available from your local consumer advice centre, citizens advice bureau or the Office of Fair Trading, Field House, 15/25 Bream’s Buildings, London EC4A 1PR (tel: 081 398 3405).

**3.8 Credit**

Credit can take many forms — credit cards, bank loans, overdrafts, consumer credit agreements, store cards, hire
purchase (HP), personal loans, etc. There are tight controls on who can offer credit, on what information they must supply and on your rights when you use credit.

Any trader offering credit must be licensed by the Director General of Fair Trading. If you think someone is offering credit without a licence you should contact your local trading-standards department.

Anyone offering credit must quote the total charge for the credit in terms of an Annual Percentage Rate (APR). This allows you to compare credit – the higher the APR, the more expensive the offer. In addition, a trader must give you a detailed quotation of all the terms of the deal on offer if you ask for it, for example, the interest rate, repayment terms, deposit, etc.

If the cost of credit is ‘extortionate’, you could go to court to set a fairer interest rate and order the repayment of interest already paid over and above this fairer rate. However, the court will only do this in exceptional circumstances where the cost of the credit is grossly exorbitant and contrary to the principles of fair dealing.

If you apply for credit and are turned down, you can ask the trader to give you an explanation. If you have been turned down because of information held by a credit reference agency you have the right to ask the agency to send you a copy of your file on payment of a small fee. If there is incorrect information on your file the agency must change this. If they refuse you can ask the Director General of Fair Trading to intervene.

For more information on how to contact credit reference agencies, see the Office of Fair Trading booklet, *No credit*, available from your local consumer advice centre, citizens advice bureau or the Office of Fair Trading.

If you are applying for credit of between £50 and £15,000, you are entitled to the following.

- You should have a written agreement setting out the kind of agreement, the APR, the amount of payments and their timing, and your rights on cancellation and rebates.
• If you signed the contract in your own home, you have a five-day cooling-off period within which you can cancel the agreement and any deposit will be returned. This applies even if you asked the trader to come to your home to discuss credit.

• If you decide to pay off your credit early, you will be entitled to a rebate on the full amount of the interest due (it may not be as much as you think).

• If you default in paying off your credit the company must give you a written notice. They cannot increase the interest rate because you have fallen behind in your payments. You can be taken to court to order repayment of money owed but the company cannot take away what you have bought with the credit unless you have a contract of hire purchase, and even then the company cannot repossess the goods without a court order if a third or more of the total price has been paid.

For more information on credit, see the Office of Fair Trading booklet, CreditWise.

3.9 Debt

If you take on a credit deal, you have an obligation to pay it off on the terms agreed. Similarly, if you order goods and services in advance and they are supplied satisfactorily, you have an obligation to pay for them. If you do not meet your obligations then the company giving credit or supplying the goods and services can take action against you.

If you find you are starting to have problems meeting your commitments, you should contact your creditors as soon as possible to let them know about the problems and what your plans are to continue paying off the debt. If you have more than one debt it might also be a good idea to get some help and advice about how to sort out your finances.

For help and advice with money problems, contact your local citizens advice bureau or money advice centre. Citizens advice bureaux offer money advice within the bureau. Other money advice services are provided by local authorities as part of their
trading standards service or are separate advice agencies that may be listed in the phone book.

If you fail to make repayments or pay off your debt and do not come to some arrangement with your creditor, then he or she can take you to court (although if your debt comes under a credit agreement, the creditor has to give you a written notice that he or she intends to do this; see 3.8 for separate rules on credit defaulting).

If court action is taken against you, you will receive a court summons setting out the case against you. You will also receive a form that allows you to state your case if you dispute that you owe the money. If you do not dispute that you owe the money and the debt is less than £10,000, you can ask the court for time to pay either by instalments or in a lump sum later. (You can still ask the court for time to pay even after a decree has been issued against you.) You will be asked to supply details of your financial position.

If a court decides that you owe the money a decree will be issued. This will require you to pay the money owed and the expenses of the action as a lump sum now or later or by instalments decided by the sheriff. If you do not pay or if you miss the instalments then your creditor can take further action to get the money.

Your creditor can arrange for your wages or salary to be arrested. This means that every payday your employer will deduct a certain amount from your wages or salary to pay to your creditor. This procedure will continue until your debt is paid off.

Your creditor can arrange for any funds you have in a bank or other account to be frozen until you pay the debt or your creditor raises a further action for these funds to be transferred to him or her.

Your creditor can arrange for sheriff officers to point and sell goods owned by you to pay off the debt. If this happens, sheriff officers will give you notice that they intend to come to your
house to take a note of any goods that may be sold, and their value. If you are not there, they have the authority to enter your home even if that means breaking a lock.

Once your goods have been pointed in this way, the sheriff officer will make arrangements for them to be sold. The sale will take place in a public place, such as an auction room, unless you and anyone living with you agrees to have the sale in your home.

You will be liable to meet the expenses of the sale, for example, the cost of taking goods to an auction room. If the goods fetch more than the amount of your debt and the expenses, you will receive the balance. If the goods do not make as much as to cover the amount you owe, you are still liable for the balance.

If you need help or advice about a debt problem you can contact your local citizens advice bureau, consumer advice centre, money advice centre, law centre or solicitor. If someone has raised a court action against you, the sheriff clerk’s office at your local sheriff court will give you advice about how the procedure works.

3.10 Investments and savings

There is a wide range of options open to someone who wishes to save or invest. Your choice will depend on how much you wish to invest, over what time period and the degree of risk you are willing to take. There is also a wide range of people and companies who can offer you advice on how best to save or invest your money. Ultimately it is up to you how to deal with your money or which adviser to choose. You have some protection, depending on your choice of adviser or where you wish to put your money.

Advisers

You can get investment advice from a wide range of sources such as banks, insurance brokers, building societies, solicitors, investment advisers, etc. All of these advisers fall into two categories: firstly, tied agents who only advise on one company’s products; and secondly, independent financial advisers who can advise on a range of products.
Both kinds of financial advisers have to be authorised either by the Securities and Investments Board (SIB) or by a self-regulatory body. To check that an adviser is authorised, contact: The Securities and Investments Board (Central Register), 2-14 Bunhill Row, London EC1 8RA (tel: 071 929 3652).

Most independent financial advisers are regulated by: The Financial Intermediaries, Managers and Brokers Regulatory Association (FIMBRA), Hertsmere House, Hertsmere Road, London E14 4AB (tel: 071 538 8860) or The Investment Management Regulatory Organisation (IMRO), Broadwalk House, 5 Appold Street, London EC2A 2L1. (tel: 071 628 6022).

Tied agents are authorised through the company they are tied to, which in turn is regulated by: The Life Assurance and Unit Trust Regulatory Organisation (LAUTRO), Centre Point, 103 New Oxford Street, London WC1 1QH (tel: 071 379 0444).

There are plans to merge FIMBRA and LAUTRO into a single Personal Investment Authority in 1994.

Professional advisers such as solicitors or accountants are regulated by their professional bodies.

Each regulatory body has detailed rules about how members should conduct their business. In addition, all advisers have to give you the best advice for you and ask for enough information to be able to do this. If they are selling life insurance or unit trusts or pensions, they have to tell you if they are independent financial advisers or tied agents and, if so, which companies they are tied to. Advisers have to tell you how they are paid – whether by fees or commissions. Currently, independent advisers have to tell you how much commission they are getting if you ask and tied agents do not. However, new rules are being brought in that will require all advisers to tell you about any commission.

If you have a complaint about an adviser, you should first take it up with the person concerned. If you are not satisfied with the response, you should contact the relevant regulatory body.
In addition, if an adviser goes bankrupt or commits a fraud and as a result you lose money, you may be able to claim compensation from the Investors' Compensation Scheme run by the SIB or the compensation scheme operated by the regulatory or professional body to which the adviser belongs.

**Banks and building societies**

If you go into a bank or building society and ask for advice about their range of savings accounts, the rules about best advice and full information do not apply.

If you have money in a bank account or a building-society account and the bank or building society goes bankrupt, some of your money may be protected. You will be refunded 90% of the first £20,000 in a building society account (ie. up to £18,000) and 75% of the first £20,000 in a bank account (ie, up to £15,000). Any money above these sums will not be protected. This only applies if a bank is run from this country; it does not apply to foreign-based and -run banks.

If you have any complaints about the services of a bank or building society, you can complain to the relevant ombudsman scheme. Their addresses are: The Banking Ombudsman, 70 Gray’s Inn Road, London WC1X 8NB (tel: 071 404 9944), or The Building Societies Ombudsman, Grosvenor Gardens House, 35-37 Grosvenor Gardens, London SW1X 7AW (tel: 071 931 0044).

**Insurance companies**

If you have a life-insurance policy or an endowment policy and the insurance company goes bankrupt, the Policy Protection Board, set up by the government, will try to get another company to take over your policy. Provided you keep paying the premiums, the Protection Board will ensure that you get at least 90% of any sum guaranteed in the policy.

If you have a complaint about an insurance company, you can complain to: The Insurance Ombudsman Bureau, 31 Southampton Row, London WC1B 5HJ (tel: 071 242 8613) or The Personal Insurance Arbitration Service, 24 Angel Gate, 326 City Road, London EC1V 2RS (tel: 071 837 4483).
4.1 Introduction

This chapter is about your rights and responsibilities as an employer in a private capacity, not as a business. It could include, for example, employment of a nanny, cook, gardener, chauffeur, nurse, companion. This chapter does not cover your use of the services of someone who is self-employed or someone who is provided by an agency that remains the employer.

4.2 Contract of employment

A contract of employment exists when an employee proves his or her acceptance of your terms and conditions of employment by starting work. Both you and your employee are bound by the terms offered and agreed, even if these are not written down.

Within two months of starting work, you must give your employee a written statement of the main terms and conditions of employment. You do not have to provide a written statement for an employee who:

- is normally employed to work for less than eight hours a week;
- has a written contract of employment that already covers the matters in question.

For more information, see the leaflet, *Written statement of main terms and conditions of employment* (P1 700), which is available free of charge from any office of the Employment Service (see the phone book).

4.3 Itemised pay statement

Normally you must provide your employee with a written pay statement, at or before the time of payment. The statement must show the gross pay and take-home pay, with the amounts and reasons for all reductions. You may show fixed deductions as a total sum, provided you provide a written statement of items in the total at least once a year.

You do not have to provide a written statement for an employee who is normally employed to work for less than 16 hours a
week, unless he or she has been employed continuously by you for at least eight hours a week for at least five years.

If either you or your employee wants to refer a question on itemised pay to an industrial tribunal and your employee has left the job, the reference must be made no longer than three months from the end of the employment (see also 10.4 in Chapter 10 Worker).

For more information, see the booklet, *Itemised pay statement* (PL 704), which is available free of charge from any office of the Employment Service (see the phone book).

**4.4 Termination of employment**

You and your employee have a legal right to a minimum period of notice of the termination of his or her job. After one month or more of employment, you must be given at least one week’s notice. You must give your employee one week’s notice after one month’s employment, two weeks after two years, three weeks after three years and so on, up to twelve weeks after twelve years. However, a contract of employment may give either of you rights to longer notice.

Either you or your employee can waive your respective rights to notice or your employee can accept a payment instead of notice. And, either of you can end a contract if the conduct of the other justifies it. Subject to certain conditions, you must continue to pay your employee during the statutory notice period.

If you dismiss an employee who has completed at least two years’ continuous service, he or she is entitled to a written statement of the reasons for dismissal. The employee can ask for this verbally or in writing and you must respond within 14 days.

For more information, including details of those employees to whom the provisions do not apply, see the booklet, *Rights to notice and reasons for dismissal* (PL 707), which is available free of charge from any office of the Employment Service (see the phone book).
4.5 Tax and National Insurance

If you employ someone who is aged over 16 and pay him or her at or above what is known as the 'lower earnings limit', you must by law operate Pay as You Earn (PAYE) on his or her pay. The lower earnings limit is £56 per week (from 6 April 1993). Usually you must also account for National Insurance contributions (NIC) and in certain circumstances you also have to pay Statutory Sick Pay (see 4.6) and Statutory Maternity Pay (see 4.7).

When you first take on an employee whom you intend to pay at or above the lower earnings limit you must tell the PAYE tax office. They will set up a PAYE scheme and send you a 'New Employer's Starter Pack'. This contains all the forms and information you will need on PAYE tax and NICs. To contact your PAYE tax office, look under Inland Revenue in the phone book.

Income tax (PAYE)

PAYE is the system used for calculating and collecting income tax and Class 1 NICs from payments made to your employee. As an employer, you have a duty to:

• deduct the right amount of tax from your employee's pay;
• work out the NICs that you and your employee have to pay;
• keep a record of the pay and deductions you make;
• pay the Inland Revenue the amounts due each month;
• send the tax office a return at the end of the tax year showing totals of all payments and deductions.

You use your employee's tax code, which is sent to you by the tax office, along with the tax tables, to work out how much tax to deduct and refund during the tax year. The tax year runs from 6 April in one year to 5 April in the next. The tax office will send you all the forms and tables you need to make the calculations.

PAYE applies to all employees, including pensioners and casuals, whom you are paying at or above the lower earnings limit. If someone working for you claims to be self-employed, consider the question by looking at the terms on which you
engaged him or her. Leaflet IR 56/NI 39, *Employed or self-employed?*, which you can get from your tax office, will help you.

If you pay an employee expenses or provide him or her with a benefit, for example, a car, you may have to send details to the tax office at the end of the year.

For more information, see the booklets, *Employer's basic guide to PAYE* (P8), and *Employer's further guide to PAYE* (P7), which are included in the New Employer's Starter Pack.

**National Insurance**

If you pay your employee at or above the lower earnings limit (£56 a week from 6 April 1993), you both have to pay Class 1 NICs. NICs are due on the total amount and not just on the earnings over the lower limit. There is also an 'upper earnings limit' for employee's contributions (£420 a week from 6 April 1993). There is, however, no upper earnings limit on your share. Employees aged under 16, women aged over 60 and men aged over 65 do not have to pay NICs. NICs are collected and paid with income tax as part of the PAYE system.

As an employer, you may be liable to pay Class 1A NICs on:

- a car provided by you for your employee (or for members of his or her family or household) because of their employment, if the car is available for private use;
- fuel provided for private use in the car.

This applies to employees who are paid at a rate of £8,500 or more a year (including taxable expenses and benefits).

For more information, including details of the current lower earnings limit, telephone the Social Security Advice Line for Employers on (0800) 393 539, free of charge.

**4.6 Sick pay**

You are obliged to pay a minimum level of sick pay to most employees, aged 16 or over, who have been sick for four or more days in a row. This is called Statutory Sick Pay (SSP) and you pay it as if it were normal pay. Employees who are not
eligible for SSP can claim Sickness Benefit from the Benefits Agency.

You can claim back 80% of it each month from your NICs and, if necessary, tax payments. If you qualify as a ‘small employer’, you can recover 100% of SSP paid to individual employees after they have been receiving it for six weeks. This is called Small Employers’ Relief. You are treated as a small employer if you paid gross National Insurance contributions at or below a set threshold in the qualifying tax year. The qualifying tax year is the last complete tax year before the day(s) for which you are claiming 100% SSP. For example, for any days from 6 April 1993 to 5 April 1994 the qualifying tax year was 1992/93 and the threshold was £16,000.

For more information, telephone the Social Security Advice Line for Employers on (0800) 393 539, free of charge, and ask for the booklet, Quick guide to National Insurance contributions, cars and fuel, Statutory Sick Pay and Statutory Maternity Pay for employers (NI 268).

4.7 Maternity
You should read 10.1.8 in Chapter 10 Worker, which describes a woman’s maternity rights.

Statutory Maternity Pay
Statutory Maternity Pay (SMP) is normally paid by you to an employee who is away from work to have a baby. You pay it as if it were normal pay. You can get back any SMP you have paid from your normal National Insurance contributions (NICs) and, if necessary, tax payments. You can also get back an additional amount as compensation for the NICs you have paid on SMP.

To get SMP from you, a woman must:

- have been continuously employed by you for at least 26 weeks continuing into the 15th week before the week her baby is due. The 15th week is known as the qualifying week (QW);
- have average weekly earnings of not less than the lower earnings limit for the payment of NICs (£56 a week from 6 April 1993) which applies in the QW;
still be pregnant at the 11th week before her baby is due or have been confined by that time;
• have stopped working for you.

If your employee satisfies all these conditions, she qualifies for SMP even if she does not intend to return to work for you after her baby is born.

For more information, telephone the Social Security Advice Line for Employers on (0800) 393 539, free of charge, and ask for the booklet, *Quick guide to National Insurance contributions, cars and fuel, Statutory Sick Pay and Statutory Maternity Pay for employers* (NI 268).

4.8 Anti-discrimination legislation

You should read 10.3 in Chapter 10 Worker, which describes the protection given to employees by the Sex Discrimination Act and the Race Relations Act.

If you intend to employ someone in your household, you may discriminate against them because of their sex only where the person’s sex is a genuine occupational qualification for the job. For example, this may be where the job needs to be held by a person of a particular sex because it is likely to involve physical or social contact with a person living in your home, or the knowledge of intimate details of such a person’s life. You cannot discriminate against them because they are married or not married.

You are not prohibited from discriminating against an existing or potential employee in your household because of his or her race, colour, nationality (including citizenship) or ethnic or national origins. However, the Race Relations Act makes it unlawful for you to victimise an employee because that person has asserted his or her rights under the Act.

4.9 Au pairs

An au pair is a young single woman or man without dependants who comes here to learn English and lives as part of an English-speaking family. An au pair is not a domestic servant but may help in the house for up to five hours a day for pocket
money. Suitable tasks would be taking care of children and light housework. You may also expect babysitting for up to two nights a week. She or he should have one day each week completely free and be free to attend language classes and religious services. Pocket money should be up to £35 per week and she or he should have her or his own room.

Before the au pair arrives, you should provide as much information as possible about your home and what she or he will be expected to do. A person seeking entry as an au pair will need to show proof that a suitable au pair placement has been arranged. You should provide a letter setting out these arrangements that can be shown to the immigration officer on arrival.

The immigration rules require that:

- an au pair is single and aged at least 17 and no older than 27 when she or he first becomes an au pair;
- an au pair is a national of the European Union or one of the following countries:
  Andorra
  Austria
  Bosnia-Herzegovina
  Croatia
  Cyprus
  Czech Republic
  Faroe Islands
  Finland
  Greenland
  Hungary
  Iceland
  Liechtenstein
  Macedonia
  Malta
  Monaco
  Norway
  San Marino
  Slovak Republic
  Slovenia
  Sweden
  Switzerland
  Turkey
• the longest a person can stay here as an au pair is two years. A person who has been here before as an au pair can return as an au pair only if the total period is not more than two years;
• a person who has entered the UK in some other capacity, for example, as a visitor, will not be allowed to remain as an au pair;
• an au pair is not allowed to take a job in this country – the household duties that are part of the au pair arrangement are not regarded as employment;
• an au pair who is a national of a country that is not in the Commonwealth (ie. not Cyprus or Malta) or the European Union and who is admitted for longer than six months will normally have to register with the police. This will be shown in her or his passport. The passport, two passport-size photographs and a fee (£36 from April 1990) must be taken to the police station.

European Union (EU) nationals
Nationals of EU countries are allowed to take jobs here. EU nationals who wish to work here for longer than three months may apply to the Home Office for a residence permit to confirm their status. They are given residence permits as workers.

For more information, contact a citizens advice bureau (see the phone book) or the Home Office, Immigration and Nationality Department, Lunar House, 40 Wellesley Road, Croydon CR9 2BY (tel: 081 760 1666 for recorded information, or 081 686 0688 for more detailed enquiries).
5.1 The Patient's Charter

The standards of service you are entitled to expect from the national health service (NHS) in Scotland are set out in *The Patient's Charter for Scotland*. Each local health board sets out its specific commitments in its own version of the Charter. You can get a copy of *The Patient's Charter for Scotland* and your health board's own version from your health board or local health council (see 5.13).

5.2 Your rights

You have a right to:

- access to the NHS, whatever your income;
- information about general medical practitioners (GPs) and dentists in your area and the services they offer;
- be registered with a GP;
- receive NHS treatment if you are on an NHS dentist’s list;
- be referred by a GP for treatment anywhere in the UK;
- accept or refuse treatment including examinations, tests and diagnostic procedures;
- decide whether to participate in medical research or student training;
- see your health records and see medical reports about you made for insurance or employment purposes;
- equal treatment regardless of race, gender, age or disability;
- make a complaint about health services including those provided by NHS trusts.

5.3 Your entitlements

You are entitled to:

- be treated as a person, not a case;
- an explanation of what is wrong with you, the implications and the treatment options;
- ask for a second opinion;
- be treated within a reasonable time – with some exceptions, everyone awaiting in-patient or day-case treatment is guaranteed admission within 18 months;
- know how long you will have to wait for an out-patient appointment;
- know how long you will have to wait to be seen at an out-patient clinic.
5.4 Confidentiality

Information about your health and welfare is confidential and should only be disclosed to those who need that information to provide you with effective treatment and care. This information should not be passed to anyone else without your agreement, except in certain circumstances.

Everyone employed by or contracted to the Scottish health service is bound by a Code of practice on the confidentiality of personal health information. For information about when and why your personal health information may be passed on within the health service, contact your local health council or health board (see 5.13).

5.5 Access to your health records

You have a right to see and get a copy of:

- your health records stored on a computer;
- your health records stored in manual (written) files made after 1 November 1991;
- a medical report prepared by your doctor for an insurer or employer before it is sent and for six months afterwards.

Your rights apply within the NHS and private health care. To see your records you should apply in writing to your doctor or dentist. To see records held by a hospital, or if you are not on a doctor’s list, write to the Data Protection Officer at your local health board or NHS trust (see 5.13). You may be charged a fee to see your records.

You may be refused access to information on your record that:

- could identify someone else, if that person objects to being identified;
- could cause serious harm to your or another person’s physical or mental health;
- is about adoption records or reports, or a record of the special educational needs of a child or young person;
- was supplied by a Reporter to a children’s panel;
- would help to prevent or detect crime;
- is confidential because it was provided in the context of a lawyer-client relationship;
• is about any actions the holder intends to take against you;
• the holder has a legal obligation not to disclose.

You can ask for any information about you that you think is wrong to be removed or corrected. If the record holder agrees, your record must be corrected. If the holder disagrees, a note of your views must be added to the record. In either case, you must be given a copy of the amended information free of charge.

If you feel that the record holder has not given you proper access or has not corrected your record, you can complain. Ask your local health council for help (see 5.13).

5.6 Your responsibilities

You should:

• always arrive on time for an appointment;
• always let the doctor, dentist or receptionist know if you cannot come to an appointment. You may forfeit your entitlement to treatment within a guaranteed time if you fail to attend an appointment without giving prior warning;
• inform your doctor, dentist and any clinic or hospital where you have received treatment when you change your address;
• consider carrying an organ donor card.

5.7 General medical practitioner services

Finding a GP

You have a right to be on a GP’s list. You can get information about GPs in your area from public libraries and from your health board and local health council (see 5.13).

You can get a practice information leaflet from surgeries near where you live. This tells you about the doctors, the services they offer and other practical details.

Ask at the surgery for the doctor you would like to be registered with and, unless they refuse, you will be added to the doctor’s list. If no GP will accept you, contact your health board who will allocate you to a GP. You will be offered a
health check, normally within 28 days of joining the list. You do not have to take up this offer.

**Seeing your GP**

You can see a doctor at the surgery for a consultation, an examination or treatment. You can ask to see a particular doctor but you may have to wait longer for an appointment.

GPs can give advice and information on general health and social-work services. They can also refer you to hospital doctors and specialists for further examination and treatment and can arrange for you to stay in hospital.

If you are aged 75 or over, you are entitled to be offered a health check every year; you do not have to take up this offer. If you are between the ages of 16 and 74 inclusive and have not been seen by a general practitioner for three years you are entitled on request to a health check by your GP.

If you want a GP to visit you at home, you should contact the surgery and explain what is wrong. The doctor is responsible for deciding whether to visit or not.

If you are away from home, you can ask a GP to take you on as a temporary resident if you are resident in the district for more than 24 hours but not more than three months. Such a request will not mean the removal of your name from the patient list of your GP at home.

**Changing your GP**

You can change your GP by going to the surgery of the doctor whose list you wish to join and asking to be added to the list. Unless the doctor refuses to accept you, you will be added to the list. You do not have to tell your current GP about this. If you cannot find a new GP, contact your health board who will allocate you to one.

**Contraception and maternity services**

You have to register separately for contraception services and maternity care. You can choose any GP (often your own) who provides these services or you can go to a family-planning or well-woman clinic for free contraception services.
Community nursing services
Nurses in the community provide care to patients in their own homes or at local health centres and clinics. You may need the help of the district nurse after discharge from hospital or to help you deal with chronic illness or disability.

5.8 Hospital services
Normally you cannot just walk into a hospital for treatment – you need to be sent by a GP or clinic. The GP or clinic staff will write to the hospital to arrange this. However:

- in an emergency you can go straight to an accident and emergency department for treatment;
- you can just turn up to special clinics for the treatment of sexually transmitted diseases.

Out-patient departments and clinics
Your GP may need to refer you to a hospital out-patient department or clinic, where in most cases you should be seen by a consultant at your first visit. The doctor will have details of your case.

The doctor may want to examine you, suggest diagnostic tests or offer treatment. You may be asked to come back for another appointment or to see another doctor. The doctor may decide that you need to be admitted to hospital and will send your GP information about this.

Going into hospital
Before being admitted to hospital you should be given a booklet giving general information about the hospital, how to get there, what to bring with you, visiting times and how to arrange for things like a special diet or an interpreter.

Ambulance transport will be provided if the doctor thinks it is needed. Otherwise, you may be able to get help with travel costs. Ask your GP or local health council about this (see 5.12).

When you go into hospital you will be asked for information about yourself. This should include asking you what you wish to be called and about any medicines you are taking.
Leaving hospital
Whatever kind of hospital you are in, you should not be discharged until you are considered fit enough and adequate help has been arranged for you at home. This should be discussed with hospital staff who can arrange community services and back-up for you after you leave hospital. In your own interests, you should always provide the hospital with full details of your home circumstances.

You have the right to leave hospital at any time unless you have a notifiable infectious disease (like food poisoning) or you have been detained under the Mental Health (Scotland) Act 1984. If you decide to leave hospital against a doctor's advice, you may be asked to sign a note recording your decision to leave. This does not necessarily relieve the hospital of legal liability.

Mental health
If you need to go into a psychiatric hospital, you and your GP can make arrangements about this together. You should be given an information booklet about how to get to the hospital, what to expect, what to bring with you, visiting times and other details.

If you are a voluntary patient, you have the same rights as you would have in any other hospital. However, if you are admitted to a psychiatric hospital compulsorily, then, on the written recommendation of a doctor you may be detained for up to 72 hours. Where practicable, the doctor has to get a mental health officer (from the social-work department) or your nearest relative to agree to this. You should be given an information booklet about your rights. After that, the consultant who has assumed responsibility for your case may arrange for you to be kept in for up to a further 28 days.

Your nearest relative or a mental health officer can apply for you to be admitted for a longer period. Detention for a longer period requires an application to a sheriff for approval. The application must be made by your nearest relative or a mental health officer and must have medical support. If you have been detained compulsorily, you are not free to leave hospital when
you wish, but you have the right to have your case reviewed. The Mental Welfare Commission can help you with this (see 5.13).

For further information, see the booklet, *How it works for people with a mental illness and their families*, published by the Mental Welfare Commission.

**Long-term care**
You or your doctor may feel that it best for you to go into long-term care, in a hospital or nursing home. It should be possible to visit the hospital or nursing home to have a look around. You should be sent an information booklet on the facilities available, what to bring with you, visiting times and other details.

**5.9 Dental services**

**Finding a dentist**
You can get information about dentists in your area from your health board and local health council (see 5.13). Ask to see the local dental list. This will give you basic information about dentists who offer NHS treatment and the services they offer. You can also look in the *Yellow Pages* directory under Dental Surgeons.

You can get a practice information leaflet from surgeries. This gives additional information about the running of the practice. Check that the practice will treat you under the NHS. If it does, and you want to see one of the dentists, you will be asked to sign a form. This form is your application to go on the dentist’s list as a ‘continuing-care patient’. By accepting you, the dentist enters a contract with you for two years to provide you with all necessary treatment to ‘secure and maintain your oral health’ under the NHS. The contract can be renewed for a further two years if both you and your dentist agree. The arrangements for children are different — see 5.10.

If you cannot find a dentist to treat you under the NHS, your health board should be able to help ensure that you get NHS dental treatment. But they have no power to make a dentist accept you.
Seeing your dentist
Once you have registered for continuing care you can get all the care and treatment you need to keep your mouth healthy under the NHS.

At your first check-up, your dentist will give you a treatment plan. Your dentist will also give you a treatment plan for any subsequent treatment if you ask for this. This should tell you whether treatment is suggested, what the treatment is and how much it is likely to cost. It should also explain your NHS entitlements in detail and suggest a date for the next check-up. The plan also allows your dentist to describe treatments (mainly cosmetic) that are not available under the NHS, and you may choose to have these privately. You may also choose to have some treatment privately as an alternative to NHS treatment.

If you decide not to register with a dentist but find that you need treatment, you can ask a dentist to see you as an ‘occasional’ NHS patient. If the dentist agrees, the type of treatment you can receive will be limited and you will not be entitled to emergency cover, nor for free repairs and replacements.

If you want a second opinion, your dentist may refer you to another dentist who gives NHS treatment or to a dental hospital. Alternatively, you can go to a private dentist and pay the fee.

Emergency treatment
If you register for continuing care, your dentist has a duty to provide emergency cover. If you are in severe pain you should be able to ring the practice (or be put in touch with another practice) for advice. You should get any emergency care within 24 hours of ringing for help.

If you are not registered for continuing care and you need emergency treatment, contact your health board (see 5.13). If you are away from home, contact the local health board (in Scotland), family health services authority (in England and Wales) or area board (in Northern Ireland). Look under Health in the phone book.
Repairs and replacements
Under the continuing-care contract you can expect your dentist to repair or replace, free of charge, any filling, crown or similar restoration provided under the NHS that fails within twelve months of the original treatment if you are still with the same practice. This would not apply if the original work was temporary, or if it was provided against your dentist’s advice, or is necessary because of an accident, or a different treatment is needed because a satisfactory replacement is not possible.

Most repairs to dentures are free under the NHS, and you will not be charged if dentures need adjusting in the first few weeks after fitting.

Home visits
If you are housebound and cannot find a dentist to accept you as a patient, contact your health board. If you are registered with a dentist and cannot get to the surgery, the dentist must visit you at home provided you are within five miles of the surgery and may, at his or her own discretion, be willing to visit you if you live further away. There is no extra charge.

Changing your dentist
You can change your dentist at any time. You can ask for a care and treatment summary to take with you, although you can be charged for this.

Your dentist can decide to stop treating you. You should be given three months’ notice and any outstanding treatment should be completed unless there is a good reason for not doing so, such as persistent failure to keep appointments or failing to pay a bill.

Costs
Unless you are entitled to free treatment or financial assistance from the Department of Social Security you will have to pay 80% of the total cost of your treatment up to a limit of £250 (from April 1993). If you want more information on costs, contact your health board.

For information on costs for children, see 5.10 and for information on help with costs, see 5.12.
The community dental service
This service examines the teeth of school children to find out if they need treatment. If they do, they are normally referred to their family dentist. The service also offers treatment to patients whose needs cannot be met by the general dental service, for example, elderly people, people with disabilities and others requiring specialised dental care not otherwise available, or those who cannot find NHS treatment in the general dental service.

Private treatment
If a dentist takes you on as a registered NHS patient, all necessary treatment can be provided under the NHS. Cosmetic treatment or work that is not strictly necessary for your dental health may not be available under the NHS and you will have to pay for the work at private rates.

You may be offered the option of having some necessary work done privately. You should be told why and you can decide whether or not to accept the offer. If you accept, it will be written into your treatment plan.

Your dentist must not give you information about private treatment that might give the wrong impression about the quality or availability of NHS treatment.

5.10 Children and young people

Medical care
Children and young people can reasonably expect their medical care to be treated in confidence. The older they are, the more reasonable this expectation is.

Young people aged 16 or over can give their own consent to examination and treatment. For those aged under 16, this will depend on whether the doctor believes that they can understand enough about the treatment and its effects to decide for themselves.

Doctors can also give contraceptive advice or treatment to children aged under 16, without involving their parents, if they believe that they understand the issues involved.
Parents should register their children aged under 16 with a GP. Health visitors are responsible for looking after children aged under five but GPs can arrange for regular check-ups for under fives at the surgery or at a child health clinic.

If your child is admitted to hospital, you can ask for a pre-admission visit for you and your child to the ward. You can ask to stay overnight if he or she has to stay in hospital and you can visit at any time.

Dental care
NHS dental care is free for children and young people under 18 years of age, or under 19 if in full-time education. Care is provided under a system called 'capitation' and parents should register their children with a dentist in a similar way as for adults. A child's first registration as a capitation patient runs until the end of the following year and then needs to be renewed each successive year. Young people aged 16 and over may sign for themselves.

Young children can receive some necessary preventive treatment under the NHS that used only to be available privately. Your dentist can give you details.

5.11 Complaints

GP, dental, pharmaceutical and ophthalmic services
If you have a complaint about a GP, a dentist, a pharmacist, an ophthalmic medical practitioner or an optician, you should first try to discuss it with the person concerned. If this is unsuccessful, you should write to your health board giving full details of your complaint. Your local health council (see 5.13) or citizens advice bureau (see the phone book) can help you with this. You should not delay as there is a time limit of 13 weeks.

The health board will decide what action to take. You may be asked to attend a hearing. If you are not satisfied with the decision, you have the right to appeal against it. You must do this within four weeks. Again, your local health council can give you help and advice about this.
Hospital services
If you have a complaint about your stay in hospital or a visit to a clinic, you should first try to discuss it with the senior doctor or nurse on the ward or clinic. If this is unsuccessful, ask to see a copy of the complaints procedure. This will tell you how to complain and to whom you should address your complaint. Write to this person without delay, giving full details of your complaint. If you are not satisfied with the response, or if your complaint is serious, write to the health board or to the chief executive of the hospital if it is an NHS trust. Your local health council (see 5.13) can give you help and advice on this.

The health service ombudsman
If you have made a complaint to a health board or NHS trust (both are NHS authorities) and you are not satisfied with the response, you can ask the health service ombudsman to look into your complaint. You must do this within one year of the date on which that matter first came to your notice. The ombudsman can investigate complaints:

- that an NHS authority has not provided a service that it has a duty to provide;
- about a failure in a service provided by an NHS authority;
- about maladministration connected with action taken by or on behalf of an NHS authority.

You need to show that the failure in service or maladministration has caused you injustice or hardship. You will also need to show that you have already put your complaint in writing to the NHS authority concerned, and that it has had a reasonable chance to reply.

Matters outwith the ombudsman's jurisdiction include those concerning clinical judgement and complaints about GPs, dentists, pharmacists and opticians.

For more information about the role of the ombudsman, contact the Health Service Commissioner for Scotland, Second Floor, 11 Melville Crescent, Edinburgh EH3 7LU (tel: 031 225 7465).
5.12 Help with NHS costs

NHS dental treatment, prescriptions, vouchers for glasses, wigs and fabric supports
The following groups are entitled to help with costs for the above:

• all pensioners (women over 60, men over 65) automatically get free NHS prescriptions;
• people (and their partners) on Family Credit or Income Support, and all children under 16 get free dental treatment, wigs and fabric supports, prescriptions, and vouchers for glasses automatically;
• young people under 19 and still in full-time education get free prescriptions, dental treatment, wigs and fabric supports, and vouchers for glasses. Those not in full-time education get free dental treatment until they are 18;
• expectant mothers get free dental treatment (if they were pregnant at the start of the treatment) and free prescriptions. Women who have had a baby in the last year get free dental treatment and free prescriptions;
• war or MOD disablement pensioners get free prescriptions, free wigs and fabric supports for the disability for which they receive their pension, help with the cost of glasses and dental charges for the disablement that entitles them to their pension, and may get help with other NHS charges.

Even if you do not have an automatic right, you may be able to get some of these benefits free, or at reduced cost, if your income is low. If you want to claim on low-income grounds, get form AG1 from a Benefits Agency office (see under Benefits Agency or Social Security in the phone book), hospital, dentist, optician or family doctor.

For more information, see leaflet AB11, Help with NHS costs, which you can get from the Benefits Agency, a family doctor or post office. Information on help with NHS costs is also available in six other languages: Bengali, Chinese, Gujarati, Hindi, Punjabi and Urdu. Ask the Benefits Agency for leaflet FL11 in the language you want.
Sight tests
You will get a free NHS sight test if you:

• are under 16;
• are a full-time student under 19;
• are getting Income Support or Family Credit (or your partner is);
• have a certificate AG2 (full exemption from NHS charges) from the Health Benefits Unit;
• need complex lenses as defined for the NHS voucher scheme for glasses;
• are registered blind or partially sighted;
• are a diagnosed diabetic or glaucoma patient; are aged 40 or over and are the brother/sister/parent/child of a diagnosed glaucoma patient;
• are a patient of the Hospital Eye Service.

Travel costs to hospital
If you get Family Credit, Income Support or are on low income, you can get travel costs to and from hospital for NHS treatment, either as an in-patient or an out-patient. This is a means-tested benefit, except for some war disablement pensioners and for many people in the Highlands and Islands. If you live in the Highlands and Islands and are not in receipt of Family Credit, Income Support or have not been assessed as someone on low income, you have to pay a contribution to your travel costs (£6 per journey in October 1993). For more information, ask at the hospital where you are being treated.

5.13 Help and information
You can get comprehensive information about health services and the NHS from the NHS Helpline by telephoning (0800) 22 44 88, free of charge.

You can also get information about NHS services or help when things go wrong or communication breaks down from the following organisations:

Health boards
Your local health board (listed in the phone book under Health Services, or the name of the board, for example, Grampian or Forth Valley) publishes a directory of GP services and has
information about hospitals and other health services in your area. Health boards also deal with complaints.

Local health councils (LHC)
Your local health council (listed in the phone book under Health Councils, Health Services, or the name of the council, for example, Argyll & Clyde or Lothian) is your official consumer representative in the NHS. LHCs can give you information about local services and advice and information about making a suggestion or complaint.

Action for Victims of Medical Accidents
If you believe that a mistake has been made or an accident happened while you were being treated, you may be able to claim compensation for this. You can contact Action for Victims of Medical Accidents, Bank Chambers, 1 London Road, Forthill, London SE23 3TP (tel: 081 291 2793; 24-hour answering machine).

They can offer advice, information and, if necessary, details of lawyers who can help and advise you.

Mental Welfare Commission
If you think that you or someone else who has a mental-health problem or mental disability is being ill-treated, exploited or is not receiving proper care or benefits, contact the Mental Welfare Commission, 25 Drumsheugh Gardens, Edinburgh EH3 7RB (tel: 031 225 7034).

The Commission is independent from the government and from the medical, legal and social-work professions.
If you own or rent a home you will have a number of rights and responsibilities. Generally speaking you will have the right to live in your home and use it as you see fit. But that right is subject to responsibilities that you owe to a range of different people – to your feu superior, to your landlord, to your neighbours and to the local council.

6.1 Buying a property

A verbal agreement about the sale of a house cannot be enforced. An agreement will only be binding when there is a formal written offer and a formal written acceptance of that offer (the written offer and acceptance are known as ‘missives’). Once missives have been agreed, both the buyer and the seller have to keep to their terms – these will usually include the price to be paid, the date of entry and exact details of what is included in the sale, for example, curtains, carpets, extent of garden ground, etc.

If you are buying a house, it is your responsibility to ensure that the house is the one that you want to buy, that you know about any flaws or problems, that you can afford the price before you put in an offer and that if you need mortgage finance it will be available.

As buying a house is an expensive and important process, you should consider getting a professional survey (although if you need a mortgage the lender will insist that you get at least a valuation survey before they agree to lend to you). There are different kinds of surveys available that include varying degrees of detail. For more information on surveys, ask your solicitor or contact: The Royal Institute of Chartered Surveyors, 9 Manor Place, Edinburgh EH3 7DT (tel: 031 225 7078).

The seller does not have to reveal any problems or defects, although he or she must not tell lies if you ask a direct question, and any information he or she does give must be truthful. If the property you want to buy is being sold through an estate agent or solicitor, you should not be given any information that is wrong or misleading. It is a criminal offence for a
professional involved in selling a house, for example, an estate agent or a solicitor, to make false or misleading statements. If you think this has happened with property you are buying, you should contact your local trading-standards department at your regional or islands council. But even if someone is found guilty of making false or misleading statements, this will not automatically entitle you to compensation.

Buying or selling a house involves the formal transfer of ownership. This can only be done by a formal deed that is subsequently registered. This process, which is known as conveyancing, is often a technical and complicated process and you will need the services of a solicitor to do the conveyancing for you.

If you want more information about how to find a solicitor and about the conveyancing process generally, contact: The Law Society of Scotland, 26 Drumsheugh Gardens, Edinburgh EH3 7IR (tel: 031 226 7411).

6.2 Flats

If you are buying a flat, you should pay particular attention to the rules about who is responsible for the upkeep of any common or shared areas such as the roof, the stairway or the garden. Usually these questions will be dealt with in the title deeds of the flat. If you are buying a flat you should make sure that your solicitor gives you a copy of the rules or a copy of your title deeds. You can also inspect your title deeds or get a copy of them from the Registers of Scotland. For more information on how to do this, contact: Customers Liaison Officer, Registers of Scotland, Meadowbank House, 153 London Road, Edinburgh EH8 7AU (tel: 031 659 6111).

The title deeds may specify that decisions about repairs and maintenance of common parts must be agreed unanimously by all the owners or by majority, or there may be provision for a residents association with responsibility for authorising repairs. Even in such cases, if emergency repairs are needed you can still authorise them yourself and get the money back from your neighbours.
If you have problems getting the other flatowners to agree to have work done or to pay for work you may be able to get help from your local building-control department. They have powers to order certain repairs to be done and, if they are not done, to carry out the work themselves and bill the owners. You can contact your local building-control department at your local district or islands council, or regional council if you live in Borders, Dumfries and Galloway or Highland regions.

Some title deeds specify that repairs and maintenance will be carried out by a factor. The factor, who acts as the agent of all the owners, will carry out repairs and maintenance and in some cases arrange a common insurance policy (see 6.6) and then bill each owner for their share. The exact duties of a factor may be set out in the title deeds or there may be a written agreement with the owners.

On the very rare occasions when title deeds do not specify who is responsible for common parts, then the law spells out some general rules about who is responsible for what. For example, the owners of the top-floor flats are responsible for the upkeep of the roof, all owners are responsible for a share of the upkeep of stairs leading to their property, and ground-floor owners are responsible for the ground on which the building stands, including the foundations.

For more information about the rights and responsibilities of flatowners and advice about how best to manage your property, see Under one roof, by the Scottish Consumer Council, HMSO, 1984.

6.3 Mortgages

If you take out a mortgage when you buy your home you will have certain responsibilities to your lender. Most lenders have written standard conditions and you are entitled to ask for a copy of them.

You must keep up any repayments on your mortgage. If you find you are having problems making repayments, you should contact your lender immediately. Most lenders will try to come to some arrangement to help you keep paying at least some of
your debt. If you continue to default in making repayments and you do not come to some arrangement with your lender, you run the risk that eventually the lender may repossess your home. The lender must get a court order to do so.

You cannot legally sell your property or give ownership of it to someone else without first redeeming your mortgage.

There will usually be restrictions on how you can use the property – for example, that it must be used only as a home, and that you must not let it out without first getting your lender’s permission.

6.4 Tenants
If you rent your home, your rights and responsibilities as a tenant will depend on who your landlord is – whether it is a public body, such as a district council, or a housing association, or a private person or company. They will also depend on the kind of lease you have and any detailed provisions in your lease.

All tenants have certain obligations:

- to pay any rent on time;
- to take reasonable care of the property or any of the landlord’s furniture or other belongings;
- to give the landlord reasonable access to the property and allow him or her to do any necessary repairs.

All landlords have certain responsibilities:

- to keep the property wind- and water-tight and in a habitable condition, and to maintain the structure and exterior of the property;
- to maintain basins, sinks and baths, water, electricity and gas supplies, and water-heating and space-heating installations.

In addition, landlords must not:

- charge ‘key money’ for a lease; this is a criminal offence. However, a landlord can ask for rent to be paid in advance
and for a deposit to cover damage to the property, but this must be returned at the end of a lease;

- harass or unlawfully evict a tenant. If a landlord or anyone else does this, it is a criminal offence. Harassment can take the form of physical or verbal threats or persistent disconnection of gas, electricity or water supplies. If you are being harassed you should contact the police;

- overcharge tenants for the cost of electricity. There are detailed rules about the maximum price at which a landlord can resell electricity to a tenant. For more information on this, contact your local office of the Office of Electricity Regulation (OFFER) at the following addresses: Scottish Power Customers, 48 St Vincent Street, Glasgow G2 5TS (tel: 041 248 5588), or Hydro-Electric Customers, 24 Marshall Place, Perth PH2 8AG (tel: 0738 36669).

As well as these general responsibilities, which apply to all tenants and all landlords, other rights and duties will depend on who the landlord is and on the nature of the lease.

**Public-sector tenants**

Tenants of public-sector bodies, such as islands and district councils, Scottish Homes and new town development corporations, will usually have their rights and responsibilities listed in their tenancy agreements.

They are also given certain rights by law. These include:

- the right to a written lease;

- the right to security of tenure. Tenants can only be evicted in certain circumstances, such as non-payment of rent or breach of an obligation in their lease, or anti-social behaviour;

- when the tenant dies the tenancy can be taken up by the widow or widower or by another member of the family who lived with the tenant;

- the right to sub-let part of the property, unless the landlord has reasonable objections;

- the right to make alterations and improvements, unless the landlord reasonably objects;
• the right to buy their home. Most public-sector tenants have the right to buy their homes at a discount price depending on the length of their tenancy. They also have the right to obtain a loan to help pay for the purchase of their home in certain circumstances.

Private tenants
If your landlord is a private individual, a housing association or company, your rights and responsibilities depend on the kind of tenancy you have as defined by law, and on any specific provisions in individual leases. The main kinds of tenancies are as follows.

Regulated tenancies: If your tenancy started before 2 January 1989 it is probably a regulated tenancy. This means that you have the right to apply to the rent officer for a fair rent to be set and that you have security of tenure (ie, you cannot be evicted except in certain specified circumstances). You do not have the right to a written lease but that does not affect your legal rights.

To contact the rent officer, see under Rent Registration Service in the phone book. For more information on regulated tenancies, see the booklet Regulated tenancies in Scotland – your rents, rights and responsibilities, available from rent officers, citizens advice bureaux and Shelter's Housing Aid Centres.

Short assured tenancies: You will know if you have a short assured tenancy if you were given a special notice (form AT5) before you signed a lease or moved in. With this tenancy you have the right to a written lease and you can apply to a rent assessment committee for a lower rent. You do not have security of tenure beyond the term of your lease, although the landlord must give you two months' written notice of when he or she wants you to leave.

Assured tenancies: If you started your tenancy after 2 January 1989 and you do not have a short assured tenancy, you probably have an assured tenancy. Tenants of housing associations have assured tenancies. You will be entitled to a written statement of the terms of your tenancy and you will have security
of tenure except in certain circumstances. You do not have the right to ask a rent officer or rent assessment committee to set a fair rent except when a rent review is due.

For more information on short assured tenancies and assured tenancies, see the booklet *Assured tenancies in Scotland – your rights and responsibilities*, available from rent officers, citizens advice bureaux and Shelter’s Housing Aid Centres.

*Resident landlord:* If you rent a room or part of a home in which the owner also lives, your rights are limited. If your tenancy began after 2 January 1989 you cannot ask for a fair rent to be set and you do not have security of tenure, although the landlord does have to give you written notice of when he or she wants you to leave.

For more information on living with a resident landlord, see the booklet *Renting from a resident landlord*, available from rent officers, citizens advice bureaux and Shelter’s Housing Aid Centres.

### 6.5 Electricity and gas

If you move into a house that is already connected to an electricity or gas main, you have the right to be supplied by the electricity or gas company. However, they can refuse to do so if you have a history of unpaid bills or if they think the installations are not safe.

If you are a new occupier, you should arrange to have the meters read as soon as you obtain vacant possession. If you do not do this, you may find yourself being charged with the costs of gas or electricity ‘consumed’ by the outgoing occupier.

If you have an electricity or gas supply, you have the following responsibilities:

- not to tamper with the meter or any pipes or lines or fittings associated with the supply;
- not to divert the supply to avoid payment;
- to comply with any gas safety requirements and to use only qualified and competent engineers to service gas equipment;
• to pay any bills. If you do not, you run the risk of disconnection;
• to allow utility company employees to come into your home to read the meter, inspect fittings or disconnect the supply. Gas and electricity meter readers normally need permission to enter your home. But if you refuse permission, they can get a warrant to enter, by force if necessary. If they do use force, they must leave your home in a secure condition and you can claim compensation if they cause any damage.

For more information about your rights and responsibilities concerning the supply of gas or electricity, contact your local office of the Office of Electricity Regulation (OFFER) at the addresses given in section 6.4, or the Office of Gas Supply (OFGAS), Stockley House, 131 Wilton Road, London SW1C 1LQ (tel: 071 828 0898).

6.6 Insurance
There is no rule saying that you have to insure your home but if you have a mortgage on your property then the bank or building society will insist that you have full buildings insurance (i.e., insurance covering the structure of the building). They will require the insurance to cover the reinstatement value (i.e., the full cost of rebuilding) of the property, not just the present value of the house. If you do not do this, and make a claim, the insurance company is liable to offer a reduced payment.

If you live in a flat or share ground or property with other people, then your insurance should cover your share of any common parts. However, you could find there are problems if the other owners do not have proper insurance cover.

Some title deeds for flats state that there must be a common insurance policy for the whole building and ground – although a common policy like this may only provide limited cover. This could mean you have to pay for double insurance cover if your bank or building society insists on separate cover. Most banks and building societies would accept a common insurance policy provided it had adequate cover, although they may charge a fee for this. If there is a common insurance policy for
your property, you should contact your bank or building society about this.

It is up to you whether you insure the contents of your home.

When applying for insurance you must answer any questions truthfully and fully. You are also obliged to provide any information that a reasonable insurer would consider to be relevant to the policy, whether or not you are asked a direct question about it in the proposal form. If you do not, your policy could be held invalid and the insurance company could refuse to pay out on a claim. You must also inform the insurer of any changes that might affect the insurance cover.

You should make sure that you are insured for the full value of your property and contents and that the amount of your cover is regularly updated. If you are not fully covered then the insurance company might not pay out on the full value of a claim.

6.7 Television

If you use a television set in your home, you must have a licence whether you are a homeowner or a tenant. A licence will cover more than one set in the same house. If you are blind, you can get a small discount on the licence fee.

TV licence inspectors cannot enter your home without your permission. However, if they suspect that you are using a television without a licence they can obtain a warrant to enter your house if accompanied by a police officer.

6.8 Council tax

Local councils are able to charge a council tax and a council water charge on every dwelling in their area. You will be responsible for the council tax bill on a property if you are one of the following:

- a resident who owns the property;
- a resident who is a tenant;
- the owner of a house or flat that is not anyone's main residence (for example, a holiday home), unless you have leased it to someone for six months or more.
Joint owners or joint tenants and husbands and wives or men and women who live together as husband and wife will both be jointly liable for the council tax on a property.

The amount of tax you pay depends on the valuation band in which the regional assessor placed your property. Every property has been assigned to one of eight broad valuation bands depending on its open-market value at 1 April 1991. The range of values and their corresponding bands are:

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<td>£212,001 and over</td>
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The higher the band the more tax you will pay.

Normally, after the assessor has allocated a property to a band, he or she can only place it in a higher band if it has been improved or extended, and subsequently sold. A property can be placed in a lower band at any time if there has been a material reduction in its value caused by way of partial demolition. You can also apply to have a property moved to a lower band within six months of moving in as a new owner or tenant.

You may be able to get a reduction in the amount of tax you pay in the following circumstances:

- if you live on your own you will get 25% off your bill (you will also benefit from this reduction if the only other people who stay with you are full-time students, live-in care workers or are severely mentally impaired);
- if your property has been specially adapted for someone who is substantially disabled, then it may be moved down a band, provided the local authority is satisfied that the alterations are essential or of major importance to the well-being of the person with the disability;
• if your home is occupied only by full-time students, then it is exempt from the tax;
• if you are on a low income or receiving benefits, you may be eligible for a rebate. If you receive Income Support, you will normally receive a 100% rebate and so will not have to pay any council tax;
• if the property is a second home, you will get a 50% discount.

You will usually receive your council-tax bill in March or April of each year. This will set out the valuation band your home is in, any discounts and the amount due. If you are not happy about any aspect of your bill, for example, if you think you have not received a discount to which you are entitled, or if you think your home should be moved to an alternative band, then you should contact your regional or islands council. If you are not happy with their response you can appeal to a valuation appeal committee.

For more information on all aspects of the council tax – valuations, discounts, rebates and appeals, and for leaflets covering these topics – contact: Council Tax Enquiries, The Scottish Office, Room 6/118, New St Andrew’s House, Edinburgh EH1 3TB (tel: 031 556 8400).

6.9 Neighbours
There are many circumstances where you have responsibilities towards your neighbours. For example, if you live in a flat or share part of a building or garden, you and your neighbours will have reciprocal rights and responsibilities over the upkeep of the property (see 6.2).

If you want to make changes to your property, in many cases you will have to notify your neighbours (see 6.10). The council that considers your application for planning permission will take account of any objections or representations from your neighbours.

You have a general obligation in law not deliberately to damage your neighbour’s property or to fail to take reasonable care to stop or avoid damage to your neighbour’s property. If a
neighbour’s property is damaged as a result of your actions, you could be sued for damages.

Also, if you are making undue noise or causing pollution that is interfering with your neighbour’s enjoyment of his or her property, then the local council has powers to stop you and to prosecute you if you fail to stop.

For more information on your rights and responsibilities towards your neighbours, see the booklet *Neighbour problems*, available from citizens advice bureaux.

6.10 Changing or improving your property
The general rule is that you can change or improve your property as you see fit. But for some alterations you may need to get permission from your feu superior or from your local council.

**Feu superior**
If you are planning to alter your house, you may have to check whether there are any conditions about this in your title deeds. Some title deeds restrict the changes that can made to property. For example, they can prohibit the use of the premises for business or they can specify how the exterior of the house shall look. This can be as detailed as specifying that the paintwork shall be a certain colour, or the size and type of any garden hedge or fence.

If you want to do something to your property that is prohibited by the title deeds, you must get the permission of the feu superior. You will be able to identify your feu superior from your title deeds but it may not be easy to track down a present address. If you have problems finding a feu superior, you may have to contact a solicitor for help.

If a feu superior refuses to give permission for what you want to do or if he or she cannot be traced, you can go to the Lands Tribunal for Scotland to ask for a restrictive condition in your title deeds to be set aside. The tribunal can set aside a condition in title deeds if it is unreasonable or inappropriate or unduly burdensome or if it prevents some reasonable use of the land.
For more information on the powers of the Lands Tribunal for Scotland and on how to make an application, contact: The Clerk to the Lands Tribunal for Scotland, 1 Grosvenor Crescent, Edinburgh EH12 5ER (tel: 031 225 7996).

If you are a tenant and you want to make changes to your property, you will have to look at what your lease allows you to do or ask for your landlord's permission.

Planning permission and building control
If you are planning major changes to your property, you may need to get planning permission and building control consent from your local district or islands council, or regional council if you live in Borders, Dumfries and Galloway or Highland regions.

You need planning permission for some changes but not for others. For example:

- loft conversions and dormer windows usually do not require planning permission;
- small extensions do not require planning permission, provided certain requirements are fulfilled;
- garages and outhouses do not require planning permission, provided certain requirements are fulfilled;
- most porches to the front of the building do require planning permission as they are usually nearer to the road than the original part of the house;
- hedges and low fences and walls usually do not require planning permission;
- TV aerials do not require planning permission;
- one satellite dish, less than 90 cm wide, on a house does not normally require planning permission, provided it is below the roofline, and is not conspicuous.

However, you do need permission, even for those changes that do not normally require it, if your house is a listed building or is in a conservation area or in other circumstances if conditions have been imposed, restricting the types of changes allowed. If you are in any doubt about whether you need planning permission, contact the planning department at your local district or islands council, or regional council if you live in
YOUR RIGHTS AND RESPONSIBILITIES

Borders, Dumfries and Galloway or Highland regions. They will also advise you on how to make an application for planning permission if this is needed.

If you do apply for planning permission, you will be required to notify your neighbours to inform them about your application, how they will be affected and how they can make representations to the council.

Planning applications should be dealt with within eight weeks. If you do not get a decision in that period and you have not agreed an extension with the authority, you can appeal to the Secretary of State. If the council refuses your application or the application is granted subject to conditions, you also have the right to appeal to the Secretary of State.

If you go ahead with changes to your property without any necessary planning permission, the council can:

- require you to apply for retrospective planning permission;
- issue an 'enforcement notice' requiring you to remedy any breach of the planning regulations. For example, this could mean requiring you to demolish an extension;
- issue a 'stop notice' requiring you to halt any work until an 'enforcement notice' comes into effect.

You can appeal against an enforcement notice to the Secretary of State. If you do not comply with an enforcement notice, you can be prosecuted and fined.

As well as planning permission, you may need building-control approval. This takes the form of a warrant from the local building-control department certifying that building work complies with the building regulations. For example, you need to have building-control approval for new buildings, internal and external alterations to existing buildings and new or altered drainage systems.

You do not need approval for minor work such as general repairs, the installation of fitted wardrobes or electric heaters, and the installation of gas appliances by British Gas or by approved fitters.
It is an offence to start work without any necessary building-control approval.

For more information about building-control approval and about how to make an application, contact the building-control department in your local district or islands council, or regional council if you live in Borders, Dumfries and Galloway or Highland regions.

6.11 Animals

The general rule is that you can own and keep any animal that you want. However, if it is defined as a dangerous wild animal, then you must get a licence from your local district or islands council. Dangerous wild animals include lions, tigers, rattlesnakes, wolves, foxes, alligators, baboons and chimpanzees.

You may be liable to pay compensation if an animal you own causes injury or damage. You will be liable if you failed to exercise reasonable supervision of the animal. You will also be liable in other circumstances if the animal was a kind that is likely to cause injury or damage, for example, if it was a dangerous wild animal or a dog directly attacking someone.

You must look after any animal you own. It is a criminal offence to be cruel to animals or cause them unnecessary suffering. It is also an offence to abandon an animal in circumstances that are likely to cause it unnecessary suffering.

If you own a dog you must:

- not allow it to foul on a footpath, a pedestrian area, a children’s play area or a park where the council has posted a notice;
- not allow your dog out unattended. Unattended dogs are classified as strays and are liable to be picked up by the police or a local-authority dog warden;
- make sure that your dog wears a collar with your name and address on it. This will allow you to be contacted if your dog gets lost or is picked up as a stray;
- not use a guard dog unless a handler is present or the dog is securely restrained.
If a stray dog is seized by the police or a local-authority dog warden and the owner is known, he or she will be sent a written notice. If the dog is not claimed within seven days, it may be sold or destroyed.

If you find a stray animal, you must look after it and report it to the police or owner. If the owner does not claim the animal within two months, the police may offer it to you or sell it or otherwise dispose of it.
7.1 Marriage

You and your partner have special rights and protection in a legally valid marriage. If you are simply living together (see 7.2), you have some of these rights and some protection.

You have a duty to live together, behave reasonably towards each other and support each other. You each have a right to be alimed (maintained) by your partner and to have sexual relations to the exclusion of anyone else.

You may marry in Scotland, no matter where you live, if:

- you are both at least 16 years of age;
- you are not related to each other in a way that would prevent your marriage (see Degrees of relationship in 7.1);
- you are not already married;
- you are not of the same sex;
- you are capable of understanding the nature of the marriage ceremony and enter it voluntarily;
- your marriage would be valid in any foreign country in which either of you is domiciled.

You can be married by a religious or a civil ceremony.

- A religious marriage, whether Christian or non-Christian, may be carried out only by a minister, clergyman, pastor, priest or other person entitled to do so. Your local district registrar has a list of persons (celebrants) authorised to conduct marriages (see under Registration of Births, Deaths and Marriages in the phone book).
- A civil marriage may be carried out only by a registrar or assistant registrar authorised to do so.

You and your prospective partner must each complete a 'marriage notice' – an official form available from any district registrar’s office. You must deliver them, by hand or post, to the registrar for the district in which you intend to marry, with:

- the appropriate fee (£10 at 1 April 1993 but reviewed annually);
- your birth certificate;
• if you have been divorced or have had a previous marriage annulled, a copy of the divorce or nullity decree – a divorce granted outwith Scotland must be final or absolute;
• if you are widowed, a copy of your former spouse’s death certificate;
• if you and your prospective spouse are related in any of the ways listed in paragraph 2b of the list Degrees of relationship, the death certificate of the person mentioned in note (b);

If you live in England or Wales you can send a ‘superintendent registrar’s certificate’, issued in the district in which you live, as an alternative to the marriage notice. You can only do this when you intend to marry:

• a person residing in Scotland; or
• a person residing in England or Wales who has a parent residing in Scotland.

You should send the certificate to the Scottish registrar as quickly as possible. The person you are marrying should give notice in Scotland in the usual way.

If you are not permanently resident in the United Kingdom, you must produce a ‘certificate of no impediment’, issued by the relevant authority in your own country, stating that you are free to marry. If you cannot produce a certificate, you must state the reason. However, if you have lived in the United Kingdom for at least two years, you will not need a certificate.

You must get a certified translation of any documents that are not in English.

You must allow enough time for the district registrar to check that you are free to marry. Normally you should send in your notices four weeks before the marriage but if either of you has been married before, you should send them in six weeks beforehand. The minimum period is 15 days before the marriage, but if you leave things this late you may have to postpone the date. Only in exceptional circumstances will the
Registrar General authorise a marriage to take place if you have not given 15 days' notice.

You will each have to sign a declaration that the information given is correct. As a safeguard against bigamous marriage, a subsequent check is made centrally.

If you and your prospective spouse are related in any of the ways noted in paragraph 2a of the list Degrees of relationship and meet the requirements in the footnote to that paragraph, you will each have to sign a separate declaration form. This is available from any district registrar. Alternatively, you can produce an extract decree of declarator from the Court of Session that the necessary conditions have been fulfilled.

When the registrar is satisfied that there is no legal impediment to the marriage, a 'marriage schedule' will be prepared. You will be advised when it is ready and then one of you must personally visit the registrar. This is necessary, in a civil marriage, to finalise arrangements with the registrar or, in a religious marriage, to collect the schedule. The schedule cannot be issued more than seven days before the marriage.

At the ceremony:

- the registrar or celebrant must have the marriage schedule, properly completed;
- you and your partner in the marriage must be present;
- two people, aged 16 or over, must be present as witnesses.

Also, in a civil ceremony, you must have paid the fee for the solemnisation of the marriage (£30 per couple at 1 April 1993 but reviewed annually). The cost of a religious marriage will vary with the body concerned.

Immediately after the ceremony, you, your spouse, the person performing the ceremony and the two witnesses must sign the marriage schedule. After a religious marriage, the schedule must be returned to the registrar within three days so that the marriage can be registered.

For up to one month after the marriage has been registered,
you can obtain copies of the marriage certificate from the registrar for £7. If you want extra copies later, they will cost £10 (both rates at 1 April 1994 but reviewed annually). If more than a year has passed, you can apply to the registrar’s office or to the General Register Office for Scotland, New Register House, Edinburgh EH1 3YT (tel: 031 334 0380).

Degrees of relationship

1 A man cannot marry his: mother (or adoptive mother or former adoptive mother), daughter (or adopted daughter or former adopted daughter), grandmother, grand-daughter, sister, half-sister, aunt, niece, great-grandmother, great-granddaughter.

A woman cannot marry her: father (or adoptive father or former adoptive father), son (or adopted son or former adopted son), grandfather, grandson, brother, half-brother, uncle, nephew, great-grandfather, great-grandson.

2a Except in the circumstances in note (a) below:
A man cannot marry his: former wife’s daughter or granddaughter, or father’s or grandfather’s former wife.

A woman cannot marry her: former husband’s son or grandson, or mother’s or grandmother’s former husband.

2b Except in the circumstances in note (b) below:
A man cannot marry his: former wife’s mother, or son’s former wife.

A woman cannot marry her: former husband’s father, or daughter’s former husband.

Notes: (a) Parties related within the degrees listed at 2a above must be 21 years of age or over at the time of the marriage and the younger party must not, before his or her 18th birthday, have lived in the same household as the other party and have been treated by that person as a child of the family.
(b) Parties related within the degrees listed at 2b above must be 21 years of age or over at the time of the marriage and the family members involved in creating the in-law relationship must both be dead. For example, in the case of a man marrying his daughter-in-law, both his son and his son’s mother (usually but not always his wife) would have to be dead.

For more information, contact your local registrar or the General Register Office for a copy of the leaflet RM1, *Marriage in Scotland*.

### 7.2 Cohabitation

If you live with someone and are not legally married to them, your rights and responsibilities may be different from those of a single person or a spouse in a marriage.

Taxation and property are covered later in this chapter.

Your entitlement to social security benefits will be affected by whether you are considered to be living together as husband and wife.

If you are considered to be living together as if you are married, you cannot get:

- One Parent Benefit
- Widow’s benefits
- War Widow’s Pension
- Child’s Special Allowance

Also, the following benefits are affected. When they are worked out there is no difference between a man and a woman who live together as if they were married and a man and woman who are actually married. All couples are treated the same.

- Income Support
- Family Credit
- Social Fund payments
If it is necessary to establish the nature of your relationship, and it is not clear from the application you make for benefits, an adjudication officer from the Benefits Agency will decide whether you are living together as if you are married. If you disagree with the decision, you have a right of appeal to an independent tribunal. You will be told about this when they write and tell you the decision.

To find out more about how living together affects social security benefits, you can ask at your local Benefits Agency office (see under Benefits Agency or Social Security in the phone book) for the Social Security information sheet INF3, Living together as husband and wife. You can also make free telephone calls for general advice on social security – telephone (0800) 666 555.

Common-law marriage
You can become married without going through a civil or religious ceremony if you live with a partner as husband and wife, and friends and neighbours believe you are married. One of you can ask the Court of Session for a declaration that you are legally married by 'cohabitation with habit and repute'.

You must have lived together for a period (this could be as little as a year) and you can only count the time that you have been free to marry – that is, since you have been single or divorced and over 16.

You can still ask the Court for a declaration if your partner has died. Your children can apply if both of you die.

If you are a woman, you can also seek a declaration if your claim for widow's benefits has been refused because the Benefits Agency decides that you and your partner had not lived together as husband and wife before he died.

Before 1940, you could also become married by:

• exchanging consent to be married; or
• one party promising to marry the other and, once the promise was accepted, for sexual intercourse to take place because of it.
These have been abolished but marriages that took place in these ways before 1940 are still valid. In cases of doubt you can ask the Court of Session to declare that there is a valid marriage.

7.3 Property

Married
You have a right to live in a matrimonial home that is owned or rented by your spouse, unless evicted by a court order.

If you buy a property and put it in your spouse’s name, you are assumed to have given it to your spouse. By putting it in your joint names, you are assumed to have given your spouse half.

You can prevent the sale or mortgage of your matrimonial home even if it is in your spouse’s name. For example, you can register an inhibition which effectively stops any attempted sale by your spouse. However, where the home is in your spouse’s name, you have no automatic right to a share of the proceeds if it is eventually sold – even if you helped in the purchase of the house by paying the deposit, mortgage instalments or household bills.

You can obtain mortgage relief only once on a joint mortgage. If you obtain a loan to buy your home, tax relief is available on the interest paid. If the total amount of the loan is over £30,000 the relief is normally restricted.

If you and your spouse own two homes, you may be liable to capital gains tax on any profit from the sale of the second home.

You may give a property to your spouse without being liable to capital gains tax.

You may give property to your spouse during your life, at death or under a court order on divorce, without being liable to inheritance tax.

Unmarried
You can apply to a court for the right to live, for a limited time, in a home that is owned or rented by your partner.
If you buy a property and put it in your partner's name, you are assumed to have given it to your partner. By putting it in your joint names, you are assumed to have given your partner half.

Where the home is in your partner's name, you have no automatic right to a share of the proceeds if it is eventually sold - even if you helped in the purchase of the house by paying the deposit, mortgage instalments or household bills.

You and your partner can each own a home and dispose of it without being liable to capital gains tax. However, if you give an asset to your partner you may be liable to capital gains tax. Contact your tax office for advice.

7.4 Taxation
You get at least one allowance - the Personal allowance - whether you are male, female, married or single. This can be set against any income - from work, savings and investments. If you are aged 65 or over and your income is below a certain limit, you get a higher level of Personal allowance. This allowance is higher still if you are aged 75 or over.

Living together - married
As a married couple you are treated as two separate individuals for income tax purposes.

- You are each taxed on your own income.
- You can claim your own tax allowance.
- You pay your own tax either through pay-as-you-earn (PAYE) or directly to the collector of taxes, depending on the type of income.
- You can each separately receive repayments of any over payments of tax.

Where couples are married, an additional Married Couple's allowance is available. In the year either of you reaches 65, you may qualify for a higher Married Couple's allowance. When one of you reaches 75, you may get the highest Married Couple's allowance.

You can decide which of you gets the basic Married Couple's
allowance or you can split it equally between you but you must
tell the tax office (except in the year of marriage) what you
want to happen before the beginning of the tax year on 6
April.

In addition, you can transfer any of the (total) Married
Couple’s allowance that you cannot use (because your income
is less than your share of the allowance) to your spouse. You
can also transfer surplus Blind Person’s allowance if you are
getting it.

A married man may claim the Additional Personal allowance if
he has a child living with him and his wife is totally incapacitat-
ed through illness or disablement.

You may employ your spouse and deduct the salary as a
business expense but you must be able to prove that it is
reasonable for the duties performed.

You may be entitled to tax relief at the basic rate on all or part
of the interest you pay for a home loan. From 6 April 1994
however, tax relief will be restricted to the lower rate, ie. 20%.
There is a limit to the amount of loan on which you can have
relief – £30,000 in the tax year 1992-93. You can choose to
share the tax relief up to the limit in any way you wish.

You may also be entitled to the following tax reliefs. These
reliefs can only be given to the person who qualifies for them.
You cannot transfer them to one another.

- income tax losses, for example, from a business
- interest paid on loans to buy machinery for use in a partner-
ship or employment
- payments under the Business Expansion Scheme

If you hold any of the following in joint names, you are treated
as if you own it in equal shares. Each of you is taxed on half the
income unless you tell the tax office otherwise. You will only
have to pay tax on your half if you are liable to tax.

- bank or building society accounts
- shares
• property that you rent out
• any other property that provides income

Capital gains tax may be charged on any gains you make when you sell an asset, for example, shares, land. You are each entitled to your own annual exempt amount (that is, the amount of gains that you can make without having to pay capital gains tax). You cannot set your losses against your spouse's gains. You will not be assessed for capital gains tax on any asset you transfer to your spouse when you are living together. Any gain or loss will be deferred until the asset is disposed of by the spouse who receives it.

You may leave anything to your spouse in your will, free from inheritance tax.

Separation and divorce
Your tax may be affected if you are living apart from your husband or wife and intend this arrangement to be permanent. If you get divorced, the amount of some of your tax allowances will be affected.

You must tell the tax office that you have separated and, if you want to claim tax relief for maintenance payments, what financial arrangements you have made. The tax office will want to see any court orders or written agreements about your separation or divorce. If there is nothing in writing, they may ask you for other evidence of your arrangements. They will also need to know if you become reconciled or change your financial arrangements or remarry.

In the year of separation each of you will continue to receive the amount of Married Couple's allowance you were receiving at the time you separated.

If you have a child living with you after the separation, you can also claim the Additional Personal allowance – but not if you already receive the full Married Couple’s allowance. If you are getting only half the Married Couple’s allowance, you can claim the Additional Personal allowance to make it up to the full amount of the Married Couple’s allowance.
You can get tax relief on maintenance payments you make if all of the following conditions are met:

- you are making payments under a United Kingdom court order or a written agreement that is subject to the jurisdiction of United Kingdom courts. From the tax year 1992/93, relief is available for payments under court orders of member states of the European Union;
- the payments are made to your divorced or separated spouse;
- he or she has not remarried;
- the payments are for his or her maintenance, or for the maintenance by that person of a child under the age of 21 of whom you are both the parents, or whom you have treated as a child of the family.

You do not pay tax on maintenance payments made to you. If you remarry and continue to receive payments, for example, for your children, neither you nor your new spouse will pay tax on them. However, your former spouse can no longer claim tax relief on them.

**Widows and widowers**
Your allowances do not suddenly stop when one of you dies.

If you are a widow, and you receive any of the Married Couple's allowance in the year of your husband's death, as much as possible of that allowance must be transferred back and set against your late husband's income. You can then claim the Widow's Bereavement allowance. The Personal allowance is available for the whole year. Widow's Bereavement allowance is an extra allowance that is normally due for the year of death and the following year. Where the widow remarries in the year of death, it is due for that year only.

If you are a widower, you will receive both the Personal allowance and all the Married Couple's allowance, less any part that your wife used against her income. In the following year, you will receive the Personal allowance unless you remarry in that year and elect to take the Married Couple's allowance.
For more information, see the leaflets IR.80, *Income tax and married couples*, and IR.93, *Separation, divorce and maintenance payments*, which are available from your local tax enquiry centre or tax office (see under Inland Revenue in the phone book).

**Living together – unmarried**

Your incomes, earned and unearned, are assessed and taxed separately. You each receive a single person’s allowance that can be set against your own income. You receive only one allowance if you and your partner have only one income.

If you have a child living with you, you can claim one Additional Personal allowance.

You may employ your partner and deduct the salary as a business expense. While you must be able to show that the expense is reasonable for the duties performed, the Inland Revenue is more likely to accept this as genuine than if you are married.

You may be liable for capital gains tax on any asset you transfer to your partner.

**7.5 Separation**

You and your spouse may decide to separate and live apart if your marriage breaks down. You do not necessarily have to move to separate houses. For example, you may be considered to be living apart if you live in different parts of the house, do not take meals together or share family life.

Following a separation, either spouse can apply to the sheriff court for maintenance to be paid by the other spouse – this is called aliment. However, this can only be done if the spouse claiming aliment has a good reason for living apart. Aliment can also be claimed for children of the marriage living with one spouse. However, in ‘new’ cases arising since 5 April 1993, aliment for children is determined solely by the Child Support Agency. A ‘new’ case is one where there is no existing maintenance agreement prior to this date. A court can be asked to decide any dispute about the custody of children (see 7.7).
You can make your own arrangements about finance, property and the care of your children. You should consider having a formal separation agreement drawn up by a solicitor. This provides some certainty about the arrangements and provides certain tax advantages that are not available to couples who make a purely verbal agreement.

A separation agreement is a legally binding contract for as long as you both wish to continue the separation. If you or your spouse breaks the terms of the agreement, the courts can be asked to enforce them.

A separation agreement cannot prevent either you or your spouse from seeking a judicial separation or divorce (see 7.6).

If you have religious or other objections to divorce but wish to have the separation legally acknowledged, you can apply for a judicial separation. Unlike divorce, judicial separation does not end the marriage.

You can apply for judicial separation on the grounds of adultery, desertion, unreasonable behaviour, or separation for two or five years.

Under a judicial separation, the court can order one spouse to pay alimony to the other. The court cannot order the payment of any lump sum or the transfer of property. It does have the power to transfer a lease of the family home from one spouse to the other.

An order of judicial separation continues indefinitely, unless you divorce or one of you dies.

7.6 Divorce

You can get a divorce only if your marriage has irretrievably broken down. If you want your marriage ended, you must satisfy a court on one or more of the following points:

- your spouse has committed adultery;
- your spouse has deserted you for two years;
- you have lived apart for at least two years, and your spouse consents to a divorce;
• you have lived apart for five years; (You do not need your spouse's consent but the divorce can be opposed on the grounds that it would cause considerable financial hardship. In that case, you could get a divorce if you made provision to compensate your spouse.)
• your spouse has behaved unreasonably. (When the case is unopposed, the court may accept your view of what is unreasonable behaviour. When it is opposed, the judge will decide.)

The period of living apart can include periods of attempted reconciliation totalling not more than six months. This time must be added to the time you have lived apart.

You cannot start divorce proceedings unless one of you is permanently resident in Scotland or has been living here throughout the twelve months immediately before the proceedings started. In the case of adultery or unreasonable behaviour, you can start proceedings any time. In the case of separation or desertion, you must wait until the two or five year period has expired.

You must apply for a divorce to your local sheriff court or to the Court of Session in Edinburgh. There are two different procedures available. These are the simplified do-it-yourself divorce, or a divorce action.

**Do-it-yourself divorce**
You can use this procedure if all of the following conditions are met:

• you have lived apart for at least two years and your spouse gives written consent to the divorce, or you have lived apart for at least five years;
• there are no children of your marriage under the age of 16. This includes adopted children or children accepted into the family;
• neither you nor your spouse applies to the court for a lump sum or periodic allowance;
• neither you nor your spouse is incapable of managing your affairs because of mental disorder;
no other court proceedings to end your marriage have started elsewhere.

To use this procedure, you should write to the sheriff clerk at your local sheriff court (see under Courts, Sheriff Clerk’s Offices in the phone book), or to the Court of Session, Divorce Section (SP), Parliament House, Edinburgh EH1 1RQ (tel: 031 225 2595 ext 316).

You should tell them whether you wish to apply on the grounds of two or five years’ separation as the application forms are different. You can also ask them to send you the leaflet SP1, *Do it yourself divorce*.

The application form contains detailed instructions on how to fill it in and the documents you need to include when you send in the completed form. If you have any difficulty, you can get advice from a citizens advice bureau, your local sheriff court or the Court of Session.

You may be able to get advice and assistance from a solicitor under legal aid. For further information, ask for the *Guide to legal aid in Scotland* at your local citizens advice bureau or contact the Scottish Legal Aid Board, 44 Drumsheugh Gardens, Edinburgh EH3 7SW (tel: 031 226 7061).

If you apply for a divorce on the ground of two years’ separation, you must get your spouse’s written consent. He or she does this by completing and signing part of the form.

You also have to complete and swear an affidavit (a declaration in writing) before a justice of the peace or a notary public. This is included in the form. You may have to pay a fee if you go to a notary public. The service is free from a justice of the peace. Ask your local citizens advice bureau for a list of justices of the peace.

You should send the completed form to the sheriff court or Court of Session with your marriage certificate and the court fee of £55. You may not have to pay the fee if you are receiving Income Support or Family Credit or advice and assistance.
When the court receives your application, it will be registered and a copy sent to your spouse by recorded delivery. If there are any valid objections, you cannot continue with this procedure. If there are no objections and your application is successful, you will be sent a copy of the divorce decree. This is a court order that ends your marriage.

**Divorce action**
You use this procedure if you are unable to use the do-it-yourself procedure. You have to get advice from a solicitor before starting a divorce action. Your local citizens advice bureau has a list of solicitors who can help. Legal aid may be available to help meet your costs. For further information, ask for the *Guide to legal aid in Scotland* at your local citizens advice bureau or contact the Scottish Legal Aid Board, 44 Drumsheugh Gardens, Edinburgh EH3 7SW (tel: 031 226 7061).

You must satisfy the court that your marriage has irretrievably broken down and that you have made satisfactory arrangements for any of your children aged under 16.

If your spouse does not oppose the action, then usually neither of you will have to go to the court.

If your spouse opposes the action, or disputes arrangements made for your children or finances, he or she may instruct a solicitor to defend the action. A judge hears the case in open court and you and possibly your spouse may each be represented by your solicitor or advocate. You will both have to give evidence and may call witnesses.

If the judge is satisfied that your marriage has broken down irretrievably, a decree of divorce is granted. The judge may also make orders for custody of and access to your children and financial settlements.

The unsuccessful party can appeal against a sheriff court decree within 14 days and against a Court of Session decree within 21 days. Either of you can appeal against orders for financial settlements within the same time limits. An 'extract decree' – the
document confirming the divorce – cannot be issued before this period has elapsed.

7.7 Custody and access

You and your spouse have equal rights to the custody of your legitimate or adopted children aged under 16. These continue if you separate. Only the mother has a right of custody of an illegitimate child but the father can ask a court to give him custody.

If you and your spouse or partner separate you can agree that one of you should care for your children and the other should have regular access. You can agree that joint custody continues, or that one of you seeks sole custody and the other access.

You must apply to a court for sole custody. You can make the application on its own or you can include it in proceedings for divorce or separation. If you agree with your spouse or partner, you can put the arrangement in a written statement and place this before the judge for approval. If you cannot agree, the judge will decide.

If your children are living with your spouse or partner and you cannot agree about arrangements for access, you can apply to the sheriff court or Court of Session for an access order.

The courts will be more concerned with your children’s rights to have contact with both parents than with your rights. Usually, the courts refuse access only where they feel it would cause real harm.

Your access arrangements, whether by agreement or under a court order, can cover regular visits and stays, as well as longer periods – for example, during school holidays.

7.8 Death

Things to do first
When a death occurs at home, the first things you should do are:
• contact your family doctor, immediately if the body or organs are to be donated for transplant or medical research;
• contact the police if the death was violent, accidental or if there were unusual circumstances or if the cause of death is not known for certain. If you call the police, do not touch anything;
• if appropriate, contact your relevant minister of religion.

When a death occurs in hospital, the charge nurse or the police (if the death was accidental) will tell you. You will be expected to go to the hospital to:

• identify the body, if your spouse/partner was not a patient of the hospital;
• obtain a death certificate and, if necessary, give permission for a post-mortem;
• take away any personal possessions;
• tell the charge nurse without delay if the body or any organs are to be donated for transplant or medical research.

You should also:

• contact an undertaker who will arrange for the laying out of the body;
• find out if there is a will, and if so, where it is and who is responsible for dealing with it.

You have lawful possession of the body after death. However, in cases that are being investigated, the procurator fiscal has lawful possession. You can over-ride your spouse/partner's wishes on the disposal of the body.

**Getting a death certificate**

If the death occurred at home the family doctor will issue a certificate of the cause of death, provided there are no unusual circumstances. This will be needed when registering the death.

If the death occurred in hospital, the hospital will issue the certificate. There may be a post-mortem, provided you agree.

You must get a cremation certificate if the body is to be cremated. The doctor will arrange for the signature of the second doctor required to complete the certificate. Doctors charge a fee for issuing a cremation certificate.
Sometimes, if the cause of death is not clear, the doctor or hospital will report the death to the procurator fiscal.

**How to register a death**
The death must be registered within eight days by the registrar of births, marriages and deaths. You can get the address of the local registrar from the undertaker, the hospital or doctor or the phone book (see under Registration of Births, Marriages and Deaths). Although a burial can take place before the registration, a cremation can only take place after the death has been registered.

The death can be registered by any relative, any person present at the death, the executor or other legal representative, the occupier of the premises where the death occurred or any other person with the information required for registration.

You can register it either in the registration district where the death occurred or, if the deceased was resident in Scotland immediately before his or her death, in that district.

You should take with you:

- the medical certificate of cause of death;
- any pension book or documents relating to a state pension or social security benefit that your partner was receiving;
- your partner’s NHS medical card, if available;
- your partner’s birth certificate and your marriage certificate, if available.

The registrar will give you:

- a certificate of registration of death (free of charge). Take this to the undertaker;
- a certificate of registration of death (form BD8, also free of charge), if required for National Insurance purposes. Take this to the Benefits Agency if you wish to claim benefits;
- any extra certificates that you require for pension, savings bank or certain other purposes. There is a charge for these (£7 at 1 April 1994 but reviewed annually).
If the death occurs abroad, you should:

- register the death according to local regulations in the country and get a certificate of death;
- register the death with the British consul so that a record of the death will be kept in Scotland. You can get a copy later from the General Register Office for Scotland, New Register House, Edinburgh EH1 3YT (tel: 031 334 0380).

You should return:

- any order books, payable orders or giro cheques to the Benefits Agency;
- the passport to the Passport Agency – you can get the address from a post office;
- the driving licence to DVLC, Swansea SA6 7GL (tel: 0792 772151);
- the registration document of a car, for the change of ownership to be recorded;
- any season tickets and membership cards and claim any refund due;
- library books and tickets.

Enclose a note of explanation with the date of death with each of these documents.

You should tell:

- the social work department, if your partner was receiving any services from them or had an appliance or aid issued by them;
- any hospital your partner had been attending;
- your partner's employer and trade union;
- your partner's bank.

Help when someone dies
If you or your partner are getting Income Support, Family Credit, Disability Working Allowance, Council Tax Benefit or Housing Benefit and you have to arrange a funeral, you may be able to get a payment from the Social Fund to help with the cost. For further information about the Social Fund, including Funeral Payments, see leaflet SB 16, A guide to the Social Fund, which you can get from the Benefits Agency.
If you are a woman and your husband dies, you may be entitled to a Widow's Payment and either a Widowed Mother's Allowance or Widow's Pension. See leaflet NP 45, *A guide to widows' benefits*, which you can get from the Benefits Agency.

For further information you can get a leaflet, *What to do after a death in Scotland*, from a citizens advice bureau.

### 7.9 Wills

A will is a written statement of what you want to happen to your possessions after your death, who you want to appoint as executor to settle your affairs and, if necessary, who you want to be the guardian of your children. You can include your wishes about your funeral and your burial or cremation, although your family can over-ride these.

Your possessions at the time of your death make up your estate. This includes land or buildings, moveable property, money, investments, etc. and any debts and money owed to you, including money in the bank and insurance money.

Whatever your will says, your surviving spouse or children can, if they wish, claim 'legal rights' to a proportion of your property excluding house and land. You can get a leaflet, *Rights of succession*, that explains this from a citizens advice bureau.

The person you appoint to deal with the administration of your estate is your executor. Your executor has to ensure that your estate is dealt with in terms of the law and your will.

Your will should name:

- your executors, and set out their general rights and duties, including the paying of all debts;
- your beneficiaries – the persons who are to inherit all or part of your estate.

You can also include:

- legacies and bequests – gifts of property or money to go to certain individuals or organisations, such as a charity;
trusts — property or money held by your executors or trustees, usually for a number of years, for the benefit of specific beneficiaries.

The residue is all of your estate after all other matters, including legacies, bequests, trusts and all expenses, have been dealt with. It is usual for the residue to be divided among the main beneficiaries.

You can have your will made by a solicitor. If you do not already have one, then ask a relative or friend to recommend one, or look up the Yellow Pages directory. Alternatively, you can ask at your local citizens advice bureau or write to or phone the Law Society of Scotland, 26 Drumsheugh Gardens, Edinburgh EH3 7YR (tel: 031 226 7411).

The Law Society of Scotland will send you a helpful brochure, A will is for life, and provide you with the names and addresses of solicitors in your area.

It is not necessary to go to a solicitor to make your will. You can make a valid will on your own, provided it is all in your own handwriting and is signed and dated. This is known as a holograph will. After your death, your handwriting must be formally identified. If you make any mistakes, for example, by failing to make your wishes clear or not saying who is to get the residue, it may be necessary to apply to a court to decide who gets what.

You can also complete a will form that you can purchase from some stationers. Care should be taken when using such a form which may not be appropriate to your circumstances. The form must be intended for use in Scotland or it may not meet the legal requirements.

**Intestacy**

If you do not make a valid will there are special rules on how your estate must be distributed after your death. These rules are laid down in the Succession (Scotland) Act 1964 and are adjusted from time to time to allow for inflation. For further information, contact your local sheriff court.
A parent has certain rights and responsibilities concerning the upbringing of his or her children. If the mother and father of a child are married, then these rights and responsibilities are exercised by them both jointly, although each can act on his or her own as well. If the mother and father are not married, then the mother alone has full parental rights and duties. An unmarried father has no automatic rights in relation to his child, even if he is named on the birth certificate as the father of the child. He can only acquire parental rights or be made to carry out parental duties if he subsequently marries the mother of his child or if there is a court order. However, he does have a duty to support his child financially – as do all parents, regardless of their marital status.

Parents who have adopted a child have full parental rights, as do fathers of children conceived by artificial insemination by donor. Step-parents do not have any automatic parental rights, although they can acquire these rights if they adopt their step-children.

Most parental rights and duties last until a child is at least 16 and in some circumstances until a child reaches 18 or even 25.

Parental rights and duties can be taken away or changed by court order. This can also happen if a child is taken into care by a local authority (see 8.9)

8.1 Pregnancy

If you are pregnant, there are no legal rules requiring you to look after yourself or your unborn child. But if a baby is born with injuries or disabilities caused during pregnancy it may be possible to sue the person responsible even if that person is the baby’s mother or father (for example, if a mother drinks excessively during her pregnancy and the baby is born with deformities as a result).

You do not have to attend antenatal classes or receive any medical treatment during your pregnancy if you do not want to. But it is probably best for your baby and for you if you do receive antenatal care and this is available for all pregnant
women through the NHS. The law also guarantees your right to paid time off work to attend antenatal appointments (see 10.1.8 in Chapter 10 Worker).

If you want antenatal care you should contact your GP or the community midwife at your local maternity hospital as soon as you think you are pregnant. Not all GPs offer antenatal care. If yours does not, you can get a list of local doctors who do from your health board (listed in the phone book under Health Services, or the name of the board, for example, Grampian or Forth Valley) or local health council (listed in the phone book under Health Councils, Health Services, or the name of the council, for example, Argyll & Clyde or Lothian).

You can decide where you want to give birth, whether at home or in hospital. But it is a criminal offence for someone who is not a registered doctor or midwife to assist at a birth. Your GP may not wish to be responsible for a home birth and you cannot force him or her to do so. However, you are entitled to have a community midwife in attendance at a home-birth. If you are interested in giving birth at home you should contact your local community midwife at the local maternity hospital. There are also private registered midwives whom you can pay to help you at the birth. You can find out more about independent midwives by contacting: The Association of Independent Midwives, Nightingale Cottage, Shamblehurst Lane, Botley, Hampshire SO3 2BY (tel: 0703 694429).

8.2 Childbirth

When you are giving birth you do not have to accept any treatment, for instance pain relief or an episiotomy, which you do not want. Equally, you cannot demand any particular treatment, such as an epidural anaesthetic, although most medical staff would treat such requests sympathetically.

For more information on births, contact: The National Childbirth Trust, Stockbridge Health Centre, India Place, Edinburgh EH3 6EH (tel: 031 225 9191).

Once your baby is born, a midwife responsible for your care must visit you and the child for at least ten days after the deliv-
ery. You do not have to be available for these visits but if the midwife is concerned about the welfare of the baby she might contact the social-work department.

You will also receive regular visits from a health visitor until your child reaches school age. The health visitor’s job is to check on the health and development of the child and to help and advise the parents on matters such as vaccinations. You do not have to be available for these visits.

8.3 Registering the birth

The mother or father of a child must register the birth within 21 days. This includes a baby who was stillborn, ie, a baby who was dead when delivered but was of more than 24 weeks’ gestation. To register a birth you have to go to the local registry office in the area where the child was born or where the mother normally lives if that is different (see under Registration of Births, Deaths and Marriages in the phone book). If the parents cannot get to the registry office, then a close relative can register for them, or any person who was present at the birth or who has the care of the child.

The parent must give the registrar details of the time and place of birth, the name and sex of the child, the name and address of the mother and of the father and the date and place of their wedding if they are married. If the parents are not married, the father’s name can only be registered and put on the birth certificate if the mother specifically asks for this and the father acknowledges himself as the father.

You have the right to choose your child’s name. The registrar cannot refuse to register a name you have chosen. You can also change the child’s name up to the age of two years and ask the Registrar General to record this change. Between the ages of two years and 16 years the Registrar General will still record a change of name but only if you can show that the child has used the new name for at least two years or you have advertised your intention of changing the name in a local newspaper. You can contact the Registrar General at New Register House, Edinburgh EH1 3YT (tel: 031 334 0380).
Once you have registered the child, you will be given a short form of the birth certificate free. You can also get a fuller version by paying a fee.

8.4 Supporting your child

Parents must financially support their child at least up to the age of 18 years, or 25 years if he or she is still in full-time education or training. This duty extends to any adult who accepts a child (not biologically his or her own) as part of the family. Usually the child will be supported by living with its parents. This duty to provide financial support still applies even if the child is in local-authority care.

If a child’s parents are living apart and the child lives with one parent, then the other parent must still make a contribution towards the child’s upkeep. If the parents lived apart before April 1993, then the amount of this contribution may have been agreed voluntarily between the parents or may have been fixed by court order. From April 1993 the amount to be paid in child support will be fixed by a government agency called the Child Support Agency.

The amount of child support maintenance will be calculated by the Agency in accordance with a set formula which takes account of:

- the cost of maintaining a child;
- the incomes of both parents after making allowance for tax, National Insurance and essential expenses such as rent or mortgage costs;
- any other children the parent may have.

If you disagree with how the Agency has calculated the amount you have to pay, you have the right to appeal to a Child Support Appeal Tribunal.

The Agency will review its assessment each year or at the request of either parent if their circumstances have changed. But if you request a review, you will have to pay for it unless you are receiving benefit.

If you are the parent who looks after the child and you receive
benefits such as Income Support, Family Credit or Disability Working Allowance, then the Child Support Agency will ask you to apply for a child maintenance assessment, even if you have an existing court order or voluntary agreement. You will have to provide the Agency with information about the other parent so that he or she can be contacted. The Agency may allow you not to provide this information if you can show that this will lead to undue distress for you or any of the children living with you.

If you do not receive the benefits mentioned and you do not have an existing voluntary agreement or court order and you want an assessment, you can apply to the Agency. If you already have an existing agreement or court order you cannot apply to the Agency to review this for you until April 1996.

Once an assessment has been made it can be paid direct to the parent looking after the child or to the Agency who will then pass it on. The Agency has powers to enforce payment, including the power to make deductions from wages or salaries.

For more information, contact: The Child Support Agency, PO Box 55, Brierly Hill, West Midlands DY5 1YL (tel: 0345 133 133).

8.5 Educating your child

You have a duty to provide a suitable education if your child is of school age, which normally means between five and 16 years old. Usually this is done by sending your child to a local-authority school or an independent school. You can also educate your child at home if the local authority gives permission and approves the course of study you are providing as suitable for your child. If you are interested in educating your child at home, contact: Education Otherwise, PO Box 120, Leamington Spa, Warwickshire CV32 7ER (tel: 0926 886 828).

You do not have to send your child to the local school. You can ask for a choice of schools for your child. The local education authority has to pay attention to your wishes but it can refuse your choice in some circumstances, for example, where
the school of your choice might be unable to take your child without employing another teacher.

If your child goes to a local-authority school you have certain responsibilities. These include ensuring that the child obeys school rules, and that he or she is properly dressed (although this does not necessarily mean wearing the school uniform), making proper arrangements for his or her safety and supervision outside school hours, and arranging for any medical or psychological examinations that the school asks for.

You also have certain rights. You have the right to receive written information about the school, to be consulted about school closures or other changes, and to be represented on the school board. You have the right to withdraw your child from religious instruction if you wish. You can also have your child taught in Gaelic if you live in a Gaelic-speaking area.

If your child has special educational needs (for example, if he or she has learning difficulties or a disability which prevents their being educated with their own age group), the local authority has a duty to assess what these needs are and how best to cater for them.

For more information about parents' rights and responsibilities in educating their child, see *The law of the school: a parent's guide to education law in Scotland*, by the Scottish Consumer Council, HMSO, 1987.

Once a child is no longer of school age (usually 16 years or more: the precise date when a child can leave school depends on his or her birthday), parents have no obligation to send him or her to school or any further education. But if a child over 16 is in full-time education or training, a parent still has a duty to provide financial support.

**8.6 Looking after your child**

You have a duty to look after your child to ensure that he or she is not neglected or subjected to assault, ill-treatment or unnecessary suffering or injury to health. If you fail to do so you are committing a criminal offence.
Safety
It is a criminal offence to allow a child under the age of seven to be in a room with an open fire without taking reasonable precautions and if as a result the child is killed or suffers serious injury.

You are committing an offence if you allow a child under the age of 14 years to sit in the front seat of a car without appropriate safety restraints. It is also an offence to allow children under the age of 14 years to be unrestrained in the back seats of cars if there are safety restraints available.

Health
You have the right to decide on what medical treatment your child should have and to give consent to any treatment. So, for example, you can refuse to have your child vaccinated if you so wish. However, a child under the age of 16 years can refuse or give consent to medical treatment if he or she understands the treatment and its consequences.

If a child's parents are unavailable in an emergency, doctors can give immediate treatment without consent. Similarly, if a child's life is in danger, doctors are entitled to do what is necessary to save the child's life even if parents refuse consent. Usually if doctors believe that a child who is seriously ill needs certain treatment and parents refuse consent for it, the doctors will ask the local authority social-work department to consider taking the child into care so that the authority can give consent.

Parents run the risk of being prosecuted for neglect if they fail to provide necessary medical care for their child.

8.7 Bringing up your child
As a parent, you have a right to custody of your child. This means you have the right to have the child live with you and to control his or her day-to-day upbringing. For example, you have the right:

- to decide on your child's religious upbringing and on his or
her education. However, a child can choose his or her own religion as long as it is not harmful to him or her:

- to choose your child's name;
- to discipline your child, provided that any discipline does not amount to assault, ill-treatment or neglect. It is not illegal to use corporal punishment to discipline your child but any force used must not be excessive and must be reasonable given the age, sex and health of the child and the nature of the act for which he or she is being punished;
- to choose your child's nationality where the law gives you such a choice;
- to take your child out of the country, provided there is no court order prohibiting this;
- to look after your child's financial affairs. If you mismanage your child's money or property through gross negligence, you could find yourself liable to pay damages once the child becomes able to look after his or her own affairs. Children are liable to pay income tax if they have sufficient income and in such cases you are responsible for completing any income tax returns;
- to take court action on behalf of your child, for example, if your child has been injured in an accident caused as the result of someone's negligence.

8.8 Someone else looking after your child

8.8.1 In your own home

Babysitters and nannies
There are no specific rules about who you can or cannot use as a babysitter in your own home. But if the person you use is unsuitable or unable to look after your child properly, you could be found guilty of neglecting the child. There is no minimum age for babysitters but if you use someone who is under 16, you must bear in mind that he or she is still a child and you might find yourself legally responsible for them as well (for example, if there was an accident and the babysitter was injured).

There are no rules or regulations about who you can or cannot employ as a nanny to look after your children in your own home. There is no compulsory vetting or registration scheme
for nannies. But it would be sensible to make careful enquiries about any applicant's background and to ask for and to follow up references. You should also remember your rights and responsibilities as an employer (see Chapter 4 Employer (in a private capacity)).

8.8.2 Outside your home

Childminders

Childminders are people who are paid to look after children under the age of eight for periods of more than two hours a day in domestic premises, usually the childminder's own home. You are not classified as a childminder if you look after children for less than two hours a day (for example, if you look after children for an hour or so after school) or if the children you look after are over eight years of age. Nor are you classified as a childminder if you are the parent, relative, foster parent or guardian of the child you are looking after.

Childminders have to be registered with their local regional or islands council. Before registering a childminder, the council will check to see that she or he (and anyone else who is likely to be involved in looking after the children, or who lives in the childminder's house) is a fit person to look after children. For example, they will check up on whether the childminder has a criminal record. The council will also inspect the house where the children are to be looked after to ensure that it is safe, and they can ask for changes to be made to the property to comply with safety standards.

The council can limit the number of children who can be cared for by a childminder at any one time – most councils impose a limit of three children under the age of five years, including any of the minder's own children. The council can also impose other conditions affecting the welfare of the children. For example, most councils prohibit the use of physical punishment and require insurance to cover any injury or damage caused to children due to negligence on the part of the minder. Councils are required to carry out annual inspections of childminders and can do spot checks at any time.

If you want to find a childminder for your child then contact
your local regional or islands council who will provide you with a list of registered childminders in your area.

You can get more information about childminders from: The National Childminding Association, 25-27 Elmbank Street, Glasgow G2 4PB (tel: 041 248 4208).

You can get more information about the law concerning babysitters and childminders in *Babysitters, childminders and unattended children*, which is available from: The Scottish Child Law Centre, Lion Chambers, 170 Hope Street, Glasgow G2 2TU (tel: 041 331 2244).

**Nurseries**

Private nurseries that look after children under the age of eight have to be registered by the local regional or islands council. Nurseries run by the local council itself, such as school nurseries, do not have to be registered.

Before registering a nursery, the council will check that the person applying for registration and anyone who will be looking after the children is a fit person to do so. They will also inspect the premises to be used and may require changes to be made in the interests of the safety and welfare of the children.

The council can also impose conditions about the running of the nursery, such as the number and ages of children that can be looked after and the number of staff required to look after the children. The council will carry out an annual inspection.

Creches that look after children for more than two hours a day also have to be registered by the local regional or islands council.

To find out more about nurseries in your area, contact your local regional or islands council.

**Playgroups**

Playgroups provide an opportunity for over-threes to learn to play together in an informal but organised setting. Usually playgroups are organised by parents themselves with the help of
the Scottish Pre-School Playgroup Association (SPPA); for example, the SPPA helps arrange insurance for playgroups. Often groups will employ playleaders but they will also involve parents in the day-to-day running of the playgroup.

Like private nurseries, if playgroups have children for more than two hours a day the premises and anyone who is to be left in charge of the children must be registered with the local regional or islands council. The council will check that both the premises and the people who are in charge of the children are suitable and will carry out annual inspections.

You can get information about playgroups in your area from your local regional or islands council or from: The Scottish Pre-School Playgroup Association, 16 Sandyford Place, Glasgow G3 8EP (tel: 041 221 4148).

As well as playgroups, you may find a range of different groups for young children in your area, such as mother-and-toddler groups. If the parent stays with the child at such a group, then there are no rules and regulations about safety of premises or suitability of staff, such as apply when children are left in the care of others. But it is wise to make your own check on the safety of premises and on whether the organisers or owners of the premises are covered by insurance for any accidents or damage.

8.9 When parents’ rights are taken away

Parents’ rights continue only when they do not conflict with the child’s best interests and are not against the welfare of the child. Parents’ rights can be taken away by court order, by adoption, by a decision of the local authority to take a child into care or by the decision of a children’s hearing.

Court order

A court may make an order giving custody of a child to one parent alone (for example, when parents divorce) or to someone other than a parent (for example, to a relative if a child’s parents are dead or not available). As well as making custody orders, a court can issue orders for access. An access order allows someone who does not have custody of a child to
have reasonable contact with the child. Sometimes the order will specify exactly when and in what circumstances such contact is to take place.

A court can grant an unmarried father parental rights, which can include custody and access.

It is possible to ask a court to change a custody or access order if circumstances change.

Even if there is a court order giving custody of a child to one parent, the parent who does not have custody still has a duty to support the child financially.

**Adoption**

When a child is adopted, all parental rights and duties are taken away from the natural parent of the child and given to the adoptive parent.

A child can only be adopted if both parents agree to the adoption or if a court orders that their agreement can be dispensed with. This can only happen in certain limited circumstances. If the child being adopted is twelve years old or over, he or she will also be asked to consent to the adoption order.

**Local-authority care**

Regional and islands councils have duties and powers to take children into care and in some cases to take over the rights and duties of parents.

Sometimes a child may be in a council’s care at the request of his or her parents, for example, if both parents have died or a parent is unable to look after the child. For the first six months that a child is in care voluntarily, the parents can demand that the child is returned to them at any time. After six months, the parents must give 28 days’ notice that they want the child back, although the council can agree to return the child before the 28 days are over.

In serious and urgent cases where a local authority is concerned about the welfare of a child, it can remove him or her from the
parental home immediately and take the child to a place of safety. A local authority can only remove a child in this way if it has obtained a warrant from a sheriff or a justice of the peace. If a child is taken away in this way, the Reporter to the local children’s panel must be informed immediately. The Reporter can decide that the child should be returned to his or her parents or, if there are reasons for referral to a children’s hearing, the Reporter must arrange for a hearing to be held on the first day (this excludes Sunday and, in some areas, Saturday) after the place of safety warrant has been taken out. If that cannot be done, the hearing must be held within seven days. A parent or child has the right to appeal against an emergency warrant. The appeal will be heard in court within three days of lodging it. Parents also have the right to appeal against any decision by a children’s hearing.

If a child is in local-authority care, the local authority can exercise most parental rights; for example, it can decide where the child shall live and go to school. But a child in care must still be brought up in his or her existing religion and the parent must still support the child financially.

In some cases a local authority can assume full parental rights over a child. This is possible, for example, when the parents are dead and there is no guardian, or the child has been in care for three years or more or the parents are unfit to care for the child. If a local authority passes a resolution to assume parental rights over a child it must inform the parents, who have a right to object, and their case will be heard by a sheriff. Even where full parental rights are taken by a local authority, a parent must still provide financial support and can still refuse to consent to adoption of the child.

**Children’s hearings**

A children’s hearing is a tribunal of lay people that deals with children who may be in trouble for various reasons. The main reasons for referral to a children’s hearing are:

- the child is beyond parental control or there is a lack of parental control that may cause him or her unnecessary suffering or may seriously affect his or her health or development;
• the child has been the victim of certain criminal offences, such as sexual abuse;
• the child has persistently played truant from school;
• the child has committed an offence;
• the child has abused solvents.

If your child is referred to a children’s hearing and you or your child do not accept the reasons given for the referral, the matter may be referred to the sheriff for a hearing on the facts.

You are legally obliged to attend a children’s hearing about your child unless the hearing thinks your presence is unreasonable or unnecessary.

The hearing itself will consist of a chairman and two other members. Also present will be the Reporter (the official who administers the hearings but does not take part in any decision-making), the parents, usually the child and any social worker, teacher or care worker who might be helpful. Hearings are informal. The parents or the child may take a representative with them.

A children’s hearing can decide that no action is needed, or that the child should be placed under the supervision of a social worker while still staying at home, or that the child should be taken into the care of the local authority.

If you disagree with a decision of a children’s hearing you can appeal to the sheriff.

If you want to find out more about children’s hearings contact: The Social Work Services Group, Room 306, 43 Jeffrey Street, Edinburgh EH1 1DN (tel: 031 244 5490).

8.10 What parents are not responsible for

Parents are not liable for damage or injury caused by their children unless the parents have not adequately supervised the children and this lack of supervision contributed to the damage being caused.
9.1 Roads

Road-traffic law lays down a comprehensive set of rules for all road users. The rules apply to motorists, motorcyclists and moped riders, pedestrians, cyclists and horse riders. The Highway Code is designed to ensure that these rules are more easily understood and is essential reading. It is available from bookshops for 99p.

Sections 9.1.1 to 9.1.6 below deal with some important aspects of law that affect road safety. The words ‘must’ or ‘must not’ refer to requirements of the law.

9.1.1 Motorist

You must have a thorough knowledge of the Highway Code, the motoring laws and your responsibilities as a driver. A failure to observe a provision of the Highway Code may be taken into account in any court action against you. You can also rely on the Highway Code in your own defence.

Before you take a motor vehicle on the public roads it must be:

- registered;
- currently licensed;
- covered by a valid test certificate (MOT), if it needs one.

You must:

- be licensed to drive;
- have valid insurance covering your use of the vehicle.

Registration

The registration document shows the registered keeper (not necessarily the legal owner) of a vehicle.

If you buy a brand-new vehicle, the dealer will usually register it for you, using form V55. Make sure that your name, address and postcode are correctly entered.

If you buy a used vehicle make sure you get the registration document from the seller. Complete the back of the document and send it to the Driver & Vehicle Licensing Centre (DVLC).
Vehicle excise licence (tax disc)
The owners or operators of all road vehicles (unless exempt) must pay the vehicle excise duty and display the required disc on the vehicle. A disc must not be transferred from one vehicle to another.

If you are the registered keeper, you will normally receive a computer-produced reminder form (V11) through the post shortly before the vehicle excise licence (tax disc) expires. Most licence-issuing post offices can deal with your application, accept payment and give you a vehicle excise licence. Take your certificate of insurance and, where appropriate, MOT certificate with you.

If you do not have form V11 or if there has been a break in licensing of a month or more, you should use form V10 which is available at any post office. As well as your insurance and MOT certificates, you should take your registration document or, if you do not have one, a completed form V62 which is available at any post office. You can also apply at your nearest Vehicle Registration Office (see under Transport, Department of, in the phone book). Do not send the completed application to the DVLC.

MOT certificate
If your vehicle is more than three years old, you must have a current MOT test certificate. You cannot renew your vehicle excise licence without this.

The purpose of the test is to give your vehicle a thorough annual check to ensure that its key safety and environmental systems and components meet the required minimum legal standards. The test must be carried out every year by a vehicle testing station appointed by the Vehicle Inspectorate.

You have the right to appeal if you consider that your vehicle has been incorrectly failed. Details are available from vehicle testing stations.
Driving licence
For the category of vehicle you intend to drive you must have:

- a valid provisional driving licence and comply with the provisional licence conditions; or
- a valid full driving licence; or allowable in certain circumstances
- a valid International Driving Permit (IDP); or
- a full driving licence issued outside the UK for up to twelve months only.

You can get a provisional licence application form (form D1) from your nearest post office. Send the completed form with the fee to DVLC, Swansea SA99 1DA.

When you pass your driving test, you can apply for your first full licence by signing the back of your provisional licence and sending it with your test certificate to DVLA, Swansea SA99 1AB.

If your licence is stolen or lost, you can obtain a duplicate by sending a completed form D1 with the fee to DVLC, Swansea SA99 1AB.

If you are a new resident, you may drive in the UK for up to twelve months. If your licence was issued by another European Union member state or designated country, you may apply to the Driver and Vehicle Licensing Agency (DVLA) for a full UK licence within five years of becoming resident.

If you are a new resident and do not pass the test in the first year, you must apply for a provisional licence and comply with the relevant conditions until after you have passed the test.

Explanatory leaflet D100, which is available from post offices, provides further details about driving licences in general.

Insurance
The current legal requirement for drivers is:

- unlimited insurance against your liability for death or bodily injury to third parties:
• at least £250,000 insurance against liability for damage to a third party's property.

A policy must be issued by an 'authorised insurer', that is one who is a member of the Motor Insurers' Bureau. The policy is not valid unless an insurance certificate has been delivered to you.

Liability for road accidents depends on the common-law principle of establishing in the civil courts that the accident resulted from the negligence of the person allegedly responsible. Without proof of negligence, the victim is not legally entitled to compensation.

An insurer's legal obligation is to meet a court judgement against their policyholder obtained by a third party. This obligation applies even where the policyholder does not invoke the insurance or has breached certain policy conditions.

An insurer is not legally obliged to meet a judgement obtained by a third party if:

• the policy was cancelled by mutual consent before the accident; or
• they obtain a declaration stating that the policy was obtained by failure to disclose a material fact or by misrepresentation of a fact.

In these circumstances the driver is classed as uninsured, and the victim is compensated under the Motor Insurers' Bureau arrangements.

**Your vehicle**
The condition of your vehicle, any trailer it is pulling, its load and the number of passengers and the way that they are carried must not be dangerous to yourself or others.

Your vehicle must be kept in good condition and working order. This includes the brakes, steering, lights, windscreens and windows, exhaust, seat belts and fittings, speedometer and horn.
Tyres must have a continuous tread depth of at least 1.6 mm on cars, light vans and light trailers across the centre three-quarters of the width. They must also be properly inflated and free from cuts and other defects.

Headlights must be properly adjusted to avoid dazzling oncoming traffic.

Windscreens and windows must be free from obstruction to vision and must be kept clean.

**Seat belts**
You and your passengers must wear a seat belt in the front and (if fitted) the rear of the vehicle, unless you are exempt. Exemptions include the holders of medical exemption certificates, people making local deliveries in a vehicle designed or adapted for that purpose and children in the rear of taxis with partitions.

It is the driver's legal responsibility to ensure that children under 14 years comply with the law.

See also 8.6 in Chapter 8 Parent.

**Fitness to drive**
You must report to the Driver and Vehicle Licensing Agency any health condition that is likely to affect your driving. Write to the Drivers Medical Branch, DVLA, Swansea SA99 1TU.

Your eyesight must always be up to the standard required for the driving test when you drive. That is, you must be able to read a vehicle number plate from 20.5 metres (67 ft). If you need glasses to do this, you must wear them when driving.

You must not:

- drive under the influence of drink or drugs;
- drive with a breath alcohol level higher than 35 μg/100 ml (equivalent to a blood alcohol level of 80 μg/100 ml).
On the road
You must comply with:

- maximum speed limits or any special speed limits for your vehicle;
- amber and red ‘stop’ signals, traffic signs giving orders, double white lines and yellow road markings;
- the directions of a police officer or traffic warden controlling traffic.

You must not:

- drive dangerously;
- drive without due care and attention or without reasonable consideration for other road users;
- drive on a footway, footpath, bridle-way or cycle track at any time, or a bus or cycle lane during its hours of operation.

Pedestrian crossings
Pedestrians have precedence on the carriageway within the limits of a Zebra crossing, and on a Pelican crossing when the signal to cross is lit up. You must give way to pedestrians on a Zebra crossing or when an amber light is flashing on a Pelican crossing.

The carriageway on the approach to a Zebra or Pelican crossing is normally marked by zigzag lines. In this area you must not:

- overtake the moving vehicle nearest the crossing;
- overtake the leading vehicle that has stopped to give way to a pedestrian.

You must stop when signalled to do so by a school crossing patrol exhibiting a ‘STOP – CHILDREN’ sign.

Driving at night or in reduced visibility
You must:

- ensure your front and rear side lights and rear registration plate lights are lit at night;
- use headlights at night on all unlit roads and roads where the street lights are more than 185 metres (600 ft) apart;
• use headlights when visibility is seriously reduced.

You must not:
• use headlights in a way that would dazzle or discomfort other road users;
• use front or rear fog lights unless visibility is seriously reduced;
• sound your horn between 11.30 pm and 7 am in a built-up area.

Waiting and parking
There are a number of places that the law specifically forbids you to let your vehicle stand. In addition, you must not park on the road so that your vehicle or trailer is likely to cause danger to other road users or be an unnecessary obstruction.

Providing information to the police
You must stop your vehicle when required to do so by a uniformed police officer. The officer may require you to produce documents including your driving licence, insurance certificate and MOT certificate. If you are not carrying them with you, you may produce them within seven days at a police station of your choice.

Accidents
If you are involved in an accident that causes damage or injury to any other person, or other vehicle, or any animal not in your vehicle, or roadside property, you must:
• stop;
• give your own and the vehicle owner’s name and address and the registration number of the vehicle to anyone having reasonable grounds for requiring them;
• if you do not give your name and address at the time of the accident, report the accident to the police as soon as reasonably practical, and in any case within 24 hours.

If any other person is injured and you do not produce your insurance certificate at the time of the accident to the police or to anyone with reasonable grounds to request it, you must also:
• report the accident to the police as soon as possible, and in any case within 24 hours;
• produce your insurance certificate to the police either when reporting the accident or within seven days at any police station of your choice.

9.1.2 Motorcyclist and moped rider

Most of the requirements of the law relating to drivers of motor vehicles also apply to motorcyclists and moped riders. In addition, you must:

• wear an approved safety helmet on all journeys;
• ensure that your exhaust system and silencer are of an approved type;
• carry no more than one passenger on a motorcycle.

If you are learning to ride a motorcycle, scooter or moped you must take basic training with an approved training body before riding on the road, unless you are exempt. You must not carry a pillion passenger, pull a trailer or ride a solo motorcycle with an engine capacity over 125 cc.

Pillion passengers must:

• wear an approved type of safety helmet;
• sit on a proper seat securely fitted behind the driver’s seat and with proper foot rests.

9.1.3 Motorways

Motorways must not be used by pedestrians, holders of provisional ordinary licences, pedal cycles, motorcycles under 50 cc, invalid carriages not exceeding 254 kg unladen weight, certain slow-moving vehicles carrying oversized loads (except with special permission), agricultural vehicles and animals.

You must:

• drive on the carriageways only;
• observe one-way driving on the carriageways;
• observe maximum speed limits or any special speed limit for your vehicle;
• observe flashing red signals when displayed over your lane or at the side of the carriageway;
• keep any animals in the vehicle or (in an emergency) under proper control on the verge.
You must not:

- drive in reverse on the carriageway;
- stop on the carriageway; or on the hard shoulder (except in an emergency); or on the central reservation or verge.

You must not use the right-hand lane of a motorway with three or more lanes (except in prescribed circumstances) if you are driving:

- any vehicle pulling a trailer;
- a goods vehicle with a maximum laden weight over 7.5 tonnes;
- a bus or coach longer than 12 metres.

9.1.4 Pedestrian

You have precedence over other road users when you are on the carriageway within the limits of a Zebra crossing, and on a Pelican crossing when the signal to cross is lit. But you must not loiter on the pedestrian crossing.

You must not:

- walk on motorways or their slip-roads;
- walk on the carriageway when directed not to do so by a police officer or traffic warden controlling traffic;
- hold on to or get on a moving motor vehicle or trailer.

9.1.5 Pedal cyclist

You must obey the same rules as apply to drivers at pedestrian crossings and school crossing patrols (see Pedestrian crossings in 9.1.1). In addition, you must:

- ensure that your brakes are efficient;
- at night, ensure your front and rear lights are lit and that your cycle has an efficient red rear reflector;
- at night, if you are wheeling your cycle or are stationary without lights, keep as close as possible to the nearside edge of the road;
- stop when required to do so by a uniformed police officer or traffic warden.

You must not:

- ride dangerously;
• ride without due care and attention or without reasonable consideration for other road users;
• ride under the influence of drink or drugs;
• ride on a footway or footpath unless there is a right to do so;
• leave your cycle on any road so that it is likely to cause danger to other road users, or where waiting is prohibited;
• carry a passenger on a bicycle not constructed or adapted to carry more than one person;
• hold on to a moving motor vehicle or trailer.

9.1.6 Horse rider

You must not deliberately ride, lead or drive your horse on a footway, footpath or cycle track unless there is a right to do so.

Children under 14 must wear a properly secured approved safety helmet.

9.2 Public transport

9.2.1 Bus/coach

When you travel by bus or coach, your rights and responsibilities are partly covered by the operator’s conditions of carriage. The conditions of carriage are not legally binding and take the form of a contract only if the operator has taken reasonable steps to draw them to your attention.

Your conduct when travelling on public service vehicles, as well as that of drivers, conductors and inspectors, is regulated by law. If you contravene any of the regulations, a driver, inspector, conductor or police constable may demand your name and address and may order your removal from the vehicle.

If you have a complaint about a bus or coach service you should first take it up with the operator. If you are not satisfied with the operator’s response, you can complain to the Traffic Commissioner, Scottish Traffic Area, 83 Princes Street, Edinburgh EH2 2ER (tel: 031 529 8503).

However, this only applies to services registered with the Traffic Commissioner and not to, for example, express coach...
services, contract services or private hire. Where a service is registered, all conditions of the service, timing, routes, etc., must be adhered to. If you have a complaint about a service that is not registered with the Traffic Commissioner and you are not satisfied with the operator’s response, you can complain to your local consumer and trading standards department (see under the entry for your local regional or islands council in the phone book).

Any concern over vehicle safety or maintenance, regardless of the type of service operated, should be reported to the Traffic Commissioner.

9.2.2 Train

When you travel by train, you are bound by the British Railways Board’s conditions of carriage. They cover the conditions for carrying passengers and luggage and set the maximum limits for compensation, and are legally enforceable. To get a copy of the conditions of carriage contact your area manager or write to the Retail Manager, ScotRail, ScotRail House, 58 Port Dundas Road, Glasgow G4 OHG (tel: 041 332 9811).

In addition, British Rail Passenger’s Charter sets out the British Railways Board’s commitment to:

- meeting their performance standards for the punctuality and reliability of train and ticket services;
- helping you plan your journey by providing accurate, prompt and up-to-date details of services, fares and facilities;
- providing seats and reservations including refunds where reservations are not honoured;
- what they will do to keep you informed and look after you if things go wrong;
- what you can do to claim compensation for delays or cancellations after things have gone wrong.

The charter does not create any new legal relationship between you and British Rail, nor does it affect your legal rights. These are set out in the conditions of carriage. You can get a copy of the Passenger’s Charter from ScotRail booking offices.

If you have a complaint about any aspect of the service provided
by ScotRail, contact the relevant ScotRail manager, whose name and address are shown on posters at your local station. Or you can write to ScotRail at the address in your phone book. It is best to put your complaint in writing.

If you are not satisfied with the response from ScotRail you can refer the matter to the Secretary, Rail Users Consultative Committee for Scotland, 249 West George Street, Glasgow G2 4QE (tel: 041 221 7760).

The Rail Users Consultative Committee for Scotland will also consider complaints about the ferry services provide by Caledonian MacBrayne Shipping if you are unable to resolve them with the General Manager.

9.2.3 Taxi/minicab

Taxis are licensed to ply for hire on the street or at taxi ranks and are available on demand. Licences are issued by district and islands councils who also fix the fares. Fares must be metered by a meter that you can see and the driver must not charge you more than the amount shown. You are under no legal obligation to tip the driver.

If you want to travel outwith the driver's area, you should agree a price for the journey in advance. Otherwise, you must pay the fare shown on the meter.

Minicabs are private hire cars that can only pick you up from one address to take you to another. District and islands councils may license them in the same way as taxis but they do not fix the fares.

If you are dissatisfied with a taxi or minicab driver's behaviour or the condition of the vehicle, you can complain to the council.

9.2.4 Aircraft

When you travel by air, you are bound by the conditions of contract printed on the passenger ticket and baggage check.

Many airlines overbook their scheduled flights to counter the number of no-show passengers. Occasionally the airline miscal-
culates and although you have a valid ticket, a confirmed reservation for the flight and check in on time, you may be ‘bumped’ (not allowed on the plane). If this happens to you at an airport in the European Union or the USA, you are legally entitled to denied boarding compensation (DBC). Outside these areas, compensation is at the discretion of the carrier – some pay nothing at all. Compensation should be paid in cash immediately after boarding has been denied. The airline may offer vouchers or other services as an alternative to cash but you do not have to accept these.

If your journey involves an ultimate destination or a stop in a country other than the country of origin, the provisions of a treaty known as the Warsaw Convention may apply to the entire journey. The Convention limits the carrier’s liability for death or personal injury to passengers and for the loss, delay or damage to baggage.

The Air Transport Users Council (AUC) publishes a useful guide, Flight plan: a passenger’s guide to planning and using air travel. It covers choosing your flight, preparations to make before you fly, at the airport, and your rights when things go wrong (including limits of liability for lost or damaged baggage). To get a copy, contact the Council at the address below.

If you have a complaint you should take this up with the Customer Services Manager of the airline concerned. If you are not satisfied with the response you can write to the Air Transport Users Council, Fifth Floor, Kingsway House, 103 Kingsway, London WC2B 6QX (tel: 071 242 3882).

The AUC can investigate complaints about air travel. However, it cannot deal with complaints about accommodation or travel agents.

9.3 Foreign travel

9.3.1 Passport

You do not need a passport to leave Britain. But without one, other countries may not allow you to enter and airlines and shipping companies may refuse to let you travel. You still need

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a passport when travelling to other European Union (EU) countries (other than the Republic of Ireland). You also need a passport to confirm your nationality when entering the UK (except from the Republic of Ireland).

Passport application forms and a leaflet, *Answers to some of the questions people ask us*, published by the UK Passport Agency, are available from main post offices. The leaflet gives general information to help you when you are applying for a passport.

You can get two types of passport – a standard UK passport that is valid throughout the world, and a British Visitor’s Passport that is simpler and cheaper but of limited use. A Visitor’s Passport is intended only for holiday visits to certain countries that recognise it – all the countries in Western Europe (except Spain), Bermuda, Iceland, Malta, Tunisia and Turkey – and is valid for one year.

Both types of passport are issued to British citizens, British Dependent Territories citizens, British Nationals (Overseas), British Overseas citizens and British Subjects. A standard passport is also issued to British Protected Persons. If you need advice about your eligibility for a passport, contact the United Kingdom Passport Agency, Glasgow Passport Office, 3 Northgate, 96 Milton Street, Cowcaddens, Glasgow G4 OBT (tel: 041 332 4441).

Each person aged 16 years or over must apply for a separate passport. Children aged under 16 may be included on a parent’s or relative’s passport but can only travel in the company of the passport holder.

If you are a citizen of another Commonwealth country and you want a passport, you should contact the office of that country’s high commissioner.

If you have the nationality or citizenship of another country, you may lose this when you get a UK passport (dual nationality). Check with the authorities of the other country before applying.
The Passport Agency produces a booklet, *Essential information*, for holders of UK passports who intend to travel abroad. When you apply for a standard passport, a copy of this booklet will be sent to you. If you already have a passport, a current edition of the booklet can be obtained from the Passport Agency at the address above.

If your passport is lost or stolen abroad, report it first to the local police and then to the nearest British consulate. If you cannot return to the UK without it, the consulate will issue you with emergency documents to enable you to get home. Various enquiries will be made, including a check to confirm your entitlement. These may take some time and could cause you some delay. There is also a consular fee for this service.

### 9.3.2 Visas

You may need a visa or other permit to enter certain countries. A travel agent or the embassy, high commission or consulate of the country to which you are intending travel will tell you what the requirements are.

### 9.3.3 Vaccinations

Some countries require vaccination against certain infections. A leaflet, *Health advice for travellers* (T4), gives information about vaccinations and advice about other precautions. You can get a free copy of this leaflet from post offices or by telephoning (0800) 555 777 at any time and free of charge.

### 9.3.4 Health

In countries outwith the EU or countries that do not have reciprocal health-care agreements with the UK, you have to pay the full cost of any medical treatment you receive.

**Medical treatment in the European Union**

Under Union arrangements, most visitors from the UK can get immediate necessary medical treatment free or at reduced cost in any other EU country.

To get medical care in most EU countries you will need form E111. The leaflet, *Health advice for travellers* (see 9.3.3), explains how to apply for form E111, who is covered by the EU regula-
tions and how to get treatment in those countries where form E111 is not needed.

Countries with reciprocal health-care agreements
In a number of other countries, visitors from the UK can receive certain kinds of emergency treatment either free or at reduced costs. The countries and territories that operate these agreements are: Australia, Barbados, Bulgaria, the Czech Republic, Finland, Hungary, Iceland, Malta, New Zealand, Norway, Poland, Romania, the Slovak Republic, Sweden, Russia, Yugoslavia and the following British Dependent Territories: Anguilla, British Virgin Islands, Falkland Islands, Hong Kong, Montserrat, St Helena and the Turks and Caicos Islands.
10.1 Your rights during employment

10.1.1 Entitlement

You must fulfil various qualifying conditions before you can claim a particular right. Entitlement may depend on the number of hours worked, your length of service, and the continuity of your employment. For more information, see the booklet, Individual rights of employees (PL 716). Unless otherwise indicated, this booklet and other booklets referred to in 10.1 to 10.4 are available free of charge from any office of the Employment Service (see the phone book).

Where claiming a right involves an application to an industrial tribunal, you must normally do this within the time limit allowed (see also 10.4).

There are various groups of people who may be excluded from a particular right, for example, certain merchant seamen and share fishermen, Crown servants, members of the police and armed services and people who ordinarily work outside Great Britain. These excluded groups are described in the booklets referred to in 10.1 to 10.4.

10.1.2 Contract of employment

Generally, if you work for an employer for at least a month and normally for at least eight hours a week, you are entitled to a written statement of the main terms of your employment within two months of your starting work. This must include your entitlement to a period of notice and an additional note on disciplinary and grievance procedures.

The requirement for an additional note on disciplinary and grievance procedures does not apply if your employer has fewer than 20 employees. However, you must still be given the name of the person to whom you should go with any grievance. For more information, see the booklet, Written statement of main terms and conditions of employment (PL 700).

10.1.3 Itemised pay statement

Most employees are entitled to a written pay statement, at or
before the time of payment. The statement must show your
gross pay and take-home pay, with the amounts and reasons for
all reductions. Fixed deductions may be shown as a total sum,
provided you get a written statement of items in the total at
least once a year.

If your employer has fewer than 20 employees and you work
for between eight and 16 hours a week, you will need five
years' continuous employment to qualify for this entitlement.

If either you or your employer wants to refer a question on
itemised pay to an industrial tribunal and your employment has
ended, the reference must be made no longer than three
months from the end of your employment (see also 10.4). For
more information, see the booklet, Itemised pay statement (PL
704).

**10.1.4 Trade union membership and activities and non-membership
of a union**

You have the right not to be dismissed, or chosen for redund-
dancy, or to have action short of dismissal taken against you:

- for being a member of an independent trade union or for
  proposing to become a member;
- for not belonging to an independent trade union;
- for refusing to join an independent trade union;
- for taking part or proposing to take part at an appropriate
time in the activities of an independent trade union.

Dismissals that infringe these rights are unfair and if you are
dismissed, you have a right to complain to an industrial tribunal
(see 10.2.3 and 10.4).

For more information, see the booklet, Union membership and
non-membership rights (PL 871). In particular, this booklet
describes your right of complaint to a tribunal and the remedies
that a tribunal can award. It also describes your right not to be
unreasonably excluded from a trade union if working or
seeking to work in a closed shop.
10.1.5 Time off work

Time off for trade union activities
If you are an official of a union, where an employer recognises your union for collective bargaining, you must be allowed reasonable time off with pay to carry out trade union duties or activities, or to undergo relevant training.

You are entitled to reasonable time off for certain union activities if you are a member of a recognised union. Your employer is not obliged to pay you for this time.

The Advisory, Conciliation and Arbitration Service (ACAS) has published a code of practice, Time off for trade union duties and activities, which provides guidance. The code is available from HMSO bookshops and other booksellers.

Time off for safety representatives
If you are a safety representative appointed under the Safety Representatives and Safety Committees Regulations 1977 by a recognised union, you are entitled to time off with pay to carry out your functions and undergo training.

For more information, see the booklet, Safety representatives and safety committees, which contains the regulations and codes of practice. It is available from HMSO bookshops and other booksellers.

Time off for public duties
If you hold one of certain public positions, you are entitled, under certain circumstances, to time off to carry out the duties associated with them. This provision covers such offices as justice of the peace, prison visitor, membership of a local authority, membership of a statutory tribunal, and membership of certain health, education and river authorities. Your employer is not obliged to pay you for time off taken for public duties.

For more information, see the booklet, Time off for public duties (PL 702).
Redundancy and time off to look for work
If you are being made redundant, and have worked continuously for the same employer for at least two years, you are entitled, while under notice, to:

- take reasonable time off with pay within working hours to look for another job; or
- arrange training for future employment.

For more information, see the booklet, _Facing redundancy? – time off for job hunting or to arrange training_ (PL 703).

10.1.6 Guarantee payments
Most employees are entitled to receive a guarantee payment for up to five days in any period of three months. The amount is reviewed every year. To find out the current amount, contact the Employment Service (see the phone book). This is payable for a day on which you would normally be expected to work under your contract of employment, but on which your employer has not provided you with work because of, say, reduced demand or lack of raw materials.

In certain circumstances, your employer may not have to make these payments. For more information, see the booklets, _Guarantee payments_ (PL 724) and _Limits on payments_ (PL 827).

10.1.7 Suspension from work on medical grounds
Some jobs are covered by special health and safety regulations. If you are exposed to ionising radiation, lead and some other hazards during your work, you can be suspended from your normal work on medical grounds. You are usually entitled to receive a normal week’s pay for every week of suspension for up to 26 weeks.

For more information, see the booklet, _Suspension on medical grounds under health and safety regulations_ (PL 705).

10.1.8 Maternity rights

Time off for antenatal care
If you are pregnant and, on the advice of a doctor, midwife or
health visitor, attend a clinic or other place of antenatal care, you have the right:

- not to be unreasonably refused time off work to do so;
- to be paid for the permitted time off.

You have these rights whether you are employed full-time or part-time and whatever your length of service with your employer. Except for the first occasion you request time off, your employer can ask to see a certificate of pregnancy and an appointment card.

Statutory maternity leave
From October 1994, you will have the right to 14 weeks' maternity leave. You have this right whatever your length of service or hours of work. During your leave you are entitled to benefit from your normal terms and conditions of employment except for wages or salary. Should redundancies have to be made, you are entitled to be offered a suitable alternative vacancy where one is available. To take advantage of your right, you must, at least 21 days before you begin your leave, give your employer:

- written notice that you are pregnant and of the expected week of childbirth. This must be confirmed with a medical certificate if requested;
- notice (in writing if requested) of the date you intend to begin your leave. You cannot begin your leave until the beginning of the eleventh week before you expect your baby to be born.

For more information, contact the Employment Service (see the phone book).

Statutory Maternity Pay (SMP)
If you work for an employer and are expecting a baby, you may be able to get this payment from your employer for 18 weeks. You do not have to be intending to return to work to get it.

Your right to SMP does not depend on National Insurance
(NI) contributions. You can get SMP if both the following apply:

- you have been in the same employment without a break for at least 26 weeks including (and ending with) the 15th week before the week your baby is due (called the qualifying week);
- your average weekly earnings were at or above the lower earnings limit when you have to start paying NI contributions (£56 a week from 6 April 1993).

You may also be able to get SMP if, because of your pregnancy, you were fairly dismissed before the qualifying week, or because your baby was born early.

For more information, see the leaflets, Babies and benefits (FB 8), and A guide to maternity benefits (NI 17A), which you can get from the Benefits Agency (see under Social Security or Benefits Agency in the phone book).

**Maternity Allowance**
You may be able to get this allowance if you cannot get SMP, for example, because you are self-employed or have recently changed jobs.

You must have paid enough standard rate Class 1 or Class 2 National Insurance contributions in a qualifying period. Maternity Allowance can be paid for 18 weeks, starting from the eleventh week before your baby is due – later if you are still working. You get a flat rate, with extra money if you support another adult.

If you cannot get SMP or Maternity Allowance, you may be able to get Sickness Benefit. For more information, see the leaflets, Babies and benefits (FB 8), and A guide to maternity benefits (NI 17A), which you can get from the Benefits Agency (see under Social Security or Benefits Agency in the phone book).

**Right to return to work**
As well as your right to statutory maternity leave, you are entitled to return to your former job, or its equivalent, any time within 29 weeks of your baby’s birth, if you fulfil the
qualifying conditions. Should your job no longer exist because of redundancy, you are entitled to be offered a suitable alternative, if one is available. If your employer cannot offer suitable alternative work, you may be entitled to redundancy pay. However, if you unreasonably refuse a suitable offer, you may forfeit your rights to redundancy pay.

To qualify for the right to return to work, you must continue to be employed until the beginning of the eleventh week before your baby is due. You must also, at the beginning of the eleventh week, have been continuously employed, generally by the same employer:

- for at least two years if you work for 16 hours or more a week; or
- for five years if you work for between eight and 16 hours a week.

If you are entitled to return to work and are not permitted to do so, you are regarded as dismissed and you may make a complaint of unfair dismissal to an industrial tribunal (see 10.4). However, if your employer has five or fewer employees and can satisfy an industrial tribunal that it is not practical to take you back, the dismissal will not be considered unfair.

For more information, see the booklet, Employment rights of the expectant mother (PL 710).

If you are dismissed because of your pregnancy, and you have two years’ service, you can claim unfair dismissal. If not, you may be able to make a claim under the Sex Discrimination Act. There is no qualifying period of employment for this. If you are not allowed to work part-time, when you cannot work full-time because of family commitments, this may amount to indirect sex or marriage discrimination. For more information, contact the Equal Opportunities Commission (see 10.3).

10.1.9 Transfer of a business or undertaking

Your employment is protected if the business you are employed by, or part of it, is transferred to a new employer, for example, by sale. If you are employed by the old employer at the time of the transfer, you automatically become an
employee of your new employer as if your contract was originally with your new employer. If either your old or the new employer dismisses you because of the transfer, the dismissal will be considered unfair. However, dismissal on economic, technical or organisational grounds may be considered fair.

Where an independent trade union is recognised by either the old or new employer, the union representatives must be told about the transfer and consulted if either employer intends to do anything that will affect the employees.

For more information, see the booklet, *Employment rights on the transfer of an undertaking* (PL 699).

### 10.2 Your rights at the end of employment

#### 10.2.1 Notice of termination

You and your employer have a legal right to a minimum period of notice of the termination of your job. After one month or more of employment, you must give at least one week’s notice. Your employer must give you one week’s notice after one month’s employment, two weeks after two years, three weeks after three years and so on, up to twelve weeks after twelve years. However, your contract of employment may give you or your employer rights to longer notice.

Either you or your employer can waive your respective rights to notice or you can accept a payment instead of notice. And, either of you can end your contract if the conduct of the other justifies it. You are entitled to be paid during the statutory notice period, although this is subject to certain conditions.

For more information, see the booklet, *Rights to notice and reasons for dismissal* (PL 707).

#### 10.2.2 Written reasons for dismissal

If you are dismissed, and have the necessary qualifying service, you are entitled to a written statement of the reasons for your dismissal. The necessary qualifying service is either:

- two years’ continuous service if you work at least 16 hours a week; or
• five years' continuous service if you work for between eight and 16 hours a week.

You can ask for a written statement verbally or in writing and your employer must respond within 14 days. If your employer refuses to provide the statement, or provides one that you believe to be inadequate or untrue, you can refer the matter to an industrial tribunal (see 10.4).

If the tribunal upholds your complaint the employer must pay you two weeks' wages in compensation and the tribunal may say what it finds are the real reasons for your dismissal.

For more information, see the booklet, *Rights to notice and reasons for dismissal* (PL 707).

10.2.3 Complaint of unfair dismissal

You have the right not to be dismissed unfairly. You can complain to an industrial tribunal if you think you have been unfairly dismissed (see 10.4). You must normally complain within three months of the effective date of termination (usually the date you left the job).

Before a claim for unfair dismissal can be heard by a tribunal, you must show that dismissal took place. Dismissal occurs when:

• your employer terminates your contract, with or without notice;
• a fixed-term contract expires without being renewed. However, you cannot complain if the contract was for one year or more and you have agreed in writing to forgo your right of complaint;
• you resign, with or without notice, because your employer's conduct is in breach of your contract of employment. This is known as 'constructive dismissal'.

You can only complain of unfair dismissal if you meet the qualifying conditions. The qualifying conditions are either:

• two years' continuous employment with the same employer if you work at least 16 hours a week; or
• five years' continuous employment with the same employer if you work for between eight and 16 hours a week.

If you are complaining about suspension on medical grounds in consequence of certain health and safety requirements, the qualifying period is one month. If you are complaining because you have not been allowed to return to your job after a period of maternity absence, the qualifying period is two years or five years, depending on your hours of work, by the beginning of the eleventh week before your expected date of confinement.

You cannot complain if, before the date of termination, you have reached the normal retirement age for your job, or 65 if there is no normal retirement age.

There is no qualifying period of employment or age-limit if you complain that you have been unfairly dismissed because of your trade union membership or activities, or non-membership. There is also no qualifying period of employment or age-limit if you complain that you have been unfairly dismissed because of racial or sex discrimination, or for seeking to exercise, in good faith, a statutory employment right.

For more information, see the booklets, *Unfairly dismissed?* (PL 712), and *Union membership and non-membership rights* (PL 871).

10.2.4 Redundancy

You are entitled to a lump-sum payment, called a 'redundancy payment', if you are dismissed because of redundancy. The amount of the payment depends on your age, length of continuous employment with your employer, and weekly pay. You must be given a written statement showing how the payment was calculated, at or before the time the redundancy payment is made.

If you have not completed two years' continuous employment, generally with the same employer, or you have reached the age of 65, you are not entitled to a redundancy payment. Service under the age of 18 does not count, and the maximum length of service used in calculating payment is 20 years.

For more information, see the booklet, *Redundancy payments* (PL 808).
10.2.5 Insolvency of your employer
If you are dismissed by an employer who is insolvent, you can get payments from the National Insurance Fund of certain debts owed to you by the employer. These debts include:

- arrears of pay for one or more weeks, not exceeding eight weeks in all;
- holiday pay for up to six weeks;
- compensation for the employer’s failure to give you proper notice;
- any basic award for unfair dismissal.

All these debts are subject to a maximum weekly limit. For more information, see the booklets, Limits on payments (PL 827), and Employee’s rights on insolvency of employer (PL 718).

10.3 Anti-discrimination legislation

Sex and race
Under the Sex Discrimination Act 1975, it is generally unlawful for an employer to discriminate against you because of your sex or because you are married. Under the Race Relations Act 1976, it is generally unlawful for an employer to discriminate against you because of your race, colour, nationality (including citizenship) or ethnic or national origins.

Discrimination means less favourable treatment of someone for any of these reasons. It includes indirect discrimination. This is where a requirement or condition is applied to everyone (for example, you must be over 5' 6") which has a disproportionate and detrimental effect on one sex, married people, or one particular racial group and which cannot be justified (for example, it is not necessary for the job that people are over this height). Discrimination also includes the victimisation of someone who, for example, has made a complaint under these acts or under the Equal Pay Act 1970 (see Equal pay).

These acts (together with the Equal Pay Act 1970) cover discrimination by employers in recruitment, in all aspects of their treatment of existing employees (including pay and conditions, training and access to promotion) and when terminating employment. There are limited exceptions. For example,
where an employer can show that a particular job has to be done by a person of one sex or from a particular racial group, job offers may be restricted to members of that sex or racial group. The Race Relations Act excludes discrimination, except victimisation, in employment in a private household.

If you feel that you have been discriminated against because of your sex or race or because you are married, you can complain to an industrial tribunal (see 10.4).

The Equal Opportunities Commission (EOC) and the Commission for Racial Equality (CRE) both have responsibilities in employment matters. They can conduct formal investigations and have issued codes of practice that aim to eliminate discrimination and promote equality of opportunity. They can also provide financial assistance to complainants.

More information is in the two guides *Sex discrimination and Racial discrimination*, available free of charge from any local office of the Employment Service (see the phone book). You can also get them from the EOC and CRE respectively at these addresses: Equal Opportunities Commission, St Andrew House, 141 West Nile Street, Glasgow G1 2RN (tel: 041 332 8018); Commission for Racial Equality, Elliot House, 10-12 Allington Street, London SW1E 5EH (tel: 071 828 7022).

**Equal pay**

Employers must provide equal terms and conditions for men and women employed on 'like work', work rated as equivalent under a joint evaluation study, or work found to be of equal value. Equal pay is not restricted to remuneration alone but includes most terms of a contract of employment. Terms giving special treatment because of pregnancy or childbirth, or reflecting statutory restrictions on the employment of women and most matters relating to death or retirement are not covered.

You can complain to an industrial tribunal under the Equal Pay Act 1970 at any time while you are in the job to which the complaint relates. However, if you have left the job, or if the person you are comparing yourself with has left, you must make your complaint within six months of the date that either
of you left. You can claim arrears of pay for up to two years before your complaint.

For more information, see the guide *Equal pay*, available free of charge from any office of the Employment Service (see the phone book).

**10.4 Industrial tribunals**

The three-month time limit for making complaints or appeals can be extended by the tribunal if it is satisfied that it was not reasonably practical for the time limit to be met.

Under the Sex Discrimination Act, the time limit is three months less one day from the alleged discriminatory act. A late application will be allowed where it is 'just and equitable' to do so.

Normally a tribunal cannot consider disputes about failure to observe the terms of a contract of employment, including failure to provide the correct period of notice. However, you can go to court and a citizens advice bureau (see the phone book) can advise you how to do this. Remedies under all the other provisions in 10.1 to 10.3 lie with industrial tribunals. In some cases where your employer is found not to have complied with one or more of the provisions, the tribunal may order your employer to pay you compensation.

If you want to complain or appeal, you should first go to any Jobcentre or Unemployment Benefit office and get an application form IT1 (Scot) and an explanatory leaflet, *Industrial tribunal procedure* (ITL1).

When the tribunal receives your completed form it will send a copy to the Advisory, Conciliation and Arbitration Service (ACAS). If it is thought possible, ACAS will attempt to get both sides to reach a settlement. You and your employer can also get advice from a conciliation officer without making a formal application. Contact the Advisory, Conciliation and Arbitration Service, Framborough House, 123 Bothwell Street, Glasgow G2 7JR (tel: 041 204 2677).

If conciliation is not possible or if it fails, the tribunal will hear your case. An industrial tribunal normally comprises a chair-
man, who is a lawyer, and two other members representing employers and employees respectively. Tribunals sit in the larger towns and cities. Hearings are informal and both you and your employer should attend. You can claim travelling and other expenses within certain limits, including loss of earnings. It is not necessary to have a lawyer but either party can have one if it wishes. You can be represented by anyone you wish, such as a trade union official, or you can conduct your own case. Legal aid is not available but you may be able to claim a limited amount of free advice under the legal advice and assistance scheme. A leaflet about this scheme is available from offices of the Employment Service and citizens advice bureaux (see the phone book).

10.5 National Insurance

All the leaflets on National Insurance referred to below are available from Contributions Agency offices (see under Contributions Agency or Social Security in the phone book).

Most working people aged between 16 and the state pensionable age (60 for women and 65 for men) must pay contributions into the National Insurance (NI) scheme.

National Insurance benefits

NI contributions help you to qualify for:

- Invalidity Benefit
- Maternity Allowance
- Retirement Pension
- Sickness Benefit
- Unemployment Benefit
- Widows' benefits

You can get these benefits only if you (or, for some benefits, your husband) have already paid or, sometimes, been credited with enough contributions at the right time.

National Insurance numbercard

You should have received your NI numbercard in the post shortly before your 16th birthday. If you have never had one, or have lost it, ask your Contributions Agency office for one.
Your employer will need to know your NI number, or your Contributions Agency office will need it if you are self-employed. Your Benefits Agency office may also ask for your number if you need to claim benefits.

**National Insurance contributions**

There are five classes of NI contributions.

*Class 1 – Employee:* If you work for an employer and your earnings are at or above the 'lower earnings limit' (£56 a week from 6 April 1993), you must pay Class 1 NI contributions. The more you earn, the more you pay up to an 'upper earnings limit'. Your employer takes your contributions out of your pay and has to pay employer's contributions for all employees who earn at least the lower earnings limit. If your employer provides you with a car for private use, he or she also pays Class 1A contributions on the car, and on any fuel provided for private use.

For more information, see the leaflets NP 28, *National Insurance for employees*, and NI 280, *Cars and fuel*.

*Classes 2 & 4 – Self-employed:* If you are self-employed, you usually have to pay Class 2 NI contributions. Ask for application form CF 11 at a Contributions Agency office. You can pay by direct debit through your bank account, the Girobank or some building societies, or you can get a quarterly bill. Class 2 contributions do not count for Unemployment Benefit purposes.

If your profits are more than a set lower limit, you may have to pay Class 4 NI contributions as well. You pay these to the Inland Revenue, along with your income tax. You can be excused from paying contributions if your profits are below, or are expected to be below, a set lower limit. This is called 'small earnings exception'.

Class 2 contributions are paid at a flat rate. Class 4 contributions are a percentage of your profits up to an upper limit.

For more information, see leaflets NI 27A, *National Insurance for people with small earning from self-employment*, NP 18, *Class 2 and
Class 4 National Insurance contributions for self-employed people, and NI 48, National Insurance - unpaid and late paid contributions.

Class 3 - Voluntary contributions: If you are not working or not earning enough to pay Class 1 contributions or do not have to pay Class 2 contributions, you can pay Class 3 (voluntary) contributions. These can help protect your right to Retirement Pension. If you are a married man, they can protect your wife’s rights to widow’s benefits should she need them later. They do not count for Unemployment Benefit or any other NI benefit.

You can pay Class 3 contributions in the same way as Class 2 contributions. Ask for application form CF 11A at a Contributions Agency office. Class 3 contributions are paid at a flat rate.

For more information, see leaflet NI 42, National Insurance voluntary contributions.

National Insurance credits
You will get Class 3 credits automatically for the tax years containing your 16th, 17th and 18th birthdays. A tax year runs from 6 April to 5 April the following year. You will get them if you are in full-time education and whether you are working or not. They count in the same way as for Class 3 contributions paid.

If you are not working, for example, because you are unemployed or off sick, you may be able to get Class 1 credits instead of paying NI contributions. To get unemployment credits, you must be signing on at an Unemployment Benefit office as available for work. You must also be able to show that you are taking reasonable steps to find a job. To get credits, you must be unemployed or sick for the full week. If you get Statutory Sick Pay (see 10.7) or Statutory Maternity Pay (see 10.1.8) you can apply for credits later if you need them.

If you are aged 18 or over and taking a full-time training course (part-time if you have a disability) to help you get a job, you may be able to get Class 1 credits to cover the period of training.
Class 1 credits can help you get NI benefits only if you have paid some contributions as well.

Reduced liability
Some married women and widows still have the right to pay reduced-rate Class 1 contributions when working for an employer, or not to pay Class 2 contributions if self-employed. This is called 'reduced liability'. If you have reduced liability, you cannot get any NI benefits based on your own contributions, nor can you get NI credits.

Working over pensionable age
If you are over pensionable age (60 for women and 65 for men), you no longer have to pay contributions yourself, although your employer will still have to pay contributions for you.

10.6 Health and safety
Health and safety legislation imposes responsibilities on employers, self-employed people and employees in the workplace. It aims to protect you at work and protect the public from work dangers.

The Health and Safety Executive (HSE) is responsible for enforcing health and safety legislation and provides an advisory service for employers and employees.

Local authorities enforce legislation in certain areas of employment. In general, these are 'non-industrial activities'.

Under the Health and Safety at Work Act 1974 your employer has a duty to:

- ensure your health, safety and welfare at work;
- maintain plant and systems so that they are safe and without risk to your health;
- ensure the safety and absence of risks to your health from using, handling, storing and transporting articles and substances;
- provide you with necessary information, instruction and training to ensure your health and safety at work;
• keep your workplace in a safe condition and without risk to your health, including the provision and maintenance of entrances and exits.

Your employer cannot charge you for anything done or provided to meet any specific requirement for your health and safety at work.

Manufacturers and suppliers have a duty to ensure that any plant, machinery, equipment or appliance is designed and constructed to be safe and without risk to your health.

Anyone who erects or installs plant, etc., must ensure that the installation is not unsafe or a risk to your health.

Anyone who manufactures, imports or supplies any substance for use at work must ensure that it is safe and without risk to your health.

It is your duty while at work to:

• take reasonable care to avoid injury to yourself and others who may be affected by your work activities;
• co-operate with your employer and others so that they can meet their responsibilities.

Employers, employees and self-employed people have a duty not to misuse or interfere with anything provided to protect their health, safety and welfare.

Major changes in the law on health and safety at work came into effect in 1993 and 1994 to implement European Union directives and modernise existing UK law. They cover:

• health and safety management
• work equipment safety
• manual handling of goods
• workplace conditions
• personal protective equipment
• display screen equipment
• construction (design and management)
They place duties on your employer to protect you and, in some cases, members of the public. If you are self-employed, you also have a duty under most of the regulations to protect yourself and others. For more information, see the leaflet, *New health and safety at work regulations IND(G)124(L)*.

For information on any aspect of health and safety at work contact the HSE Information Centre, Broad Lane, Sheffield S3 7HQ (tel: 0742 892345, or free leaflet line: 0742 892346).

You can also get advice and literature from your local HSE office (see under Health and Safety in the phone book).

10.7 Sickness

Statutory Sick Pay (SSP)
Most people who work for an employer and are sick for at least four or more days in a row can get SSP from their employer for a maximum of 28 weeks in any spell or series of linked spells of sickness. If you are still sick after getting 28 weeks of SSP or Sickness Benefit, you will normally get Invalidity Benefit automatically. The amount of SSP you get depends on your average weekly earning before your spell of sickness started. PAYE deductions and National Insurance (NI) contributions are deducted from SSP, as are any other deductions that are normally taken out of your wage.

For more information, see leaflets NI 244, *Statutory Sick Pay – check your rights*, and NI 16A, *Invalidity Benefit*.

Sickness Benefit
If you are employed and incapable of work and you cannot get SSP from your employer, or you are self-employed, unemployed or non-employed, you may be able to get Sickness Benefit for up to 28 weeks. You have to have paid enough full-rate Class 1 or Class 2 NI contributions at the right time. Sickness Benefit is tax free.

If you are sick because, while working for an employer, you had an accident at work or contracted an industrial disease and you cannot get SSP, you can usually get Sickness Benefit even if you have not paid enough NI contributions.
If you support another adult, you can get extra Sickness Benefit. You can also get extra benefit for your children if you are over pension age (60 for a woman and 65 for a man).

Your employer will give you a change-over form SSP 1 if you do not get SSP or your SSP ends. Otherwise, fill in form SC1, which you can get from the Benefits Agency, hospital or doctor’s surgery and send it to your Benefits Agency office (see under Benefits Agency or Social Security in the phone book).

For more information, see leaflets NI 16, *Sickness Benefit*, and NI 253, *Ill and unable to work?*

### 10.8 Unemployment Benefit

Unemployment Benefit provides payments for up to a year for people who normally work for an employer but have lost their jobs. If you are still out of work when your Unemployment Benefit runs out, you should apply for Income Support (see 10.9).

Your right to Unemployment Benefit is not affected by your savings, your partner’s savings, or your partner’s earnings. It may be affected by anything you earn.

Unemployment Benefit depends on payments (or credits) of Class 1 National Insurance (NI) contributions and it is taxable. See leaflet IR. 41, which you can get from an Unemployment Benefit office (UBO).

To get Unemployment Benefit, you must be capable of, available for, and actively seeking work. You must have paid at least a set amount of Class 1 NI contributions. Class 1 credits can help you get benefit, but only if you have paid some Class 1 contributions as well. Other classes of contribution do not count.

If you are over pensionable age (60 for women and 65 for men), you do not have to pay NI contributions even if you carry on working. If you carry on working and then become unemployed, you may be able to get Unemployment Benefit at the same rate as your Retirement Pension, if you will be able
to get Retirement Pension on your own (or late husband’s) contributions when you eventually give up work. You cannot get Unemployment Benefit if you are a woman over 65, a man over 70 or over pensionable age and the pension you will get when you retire consists only of Graduated Retirement Pension.

How to claim
If you are 18 or over: On the first day you become unemployed, telephone or call at the nearest UBO and make an appointment to see a new-client adviser. Do not delay if you decide to sign on as unemployed, as claims cannot usually be back-dated. Take your NI number and P45 tax form to your appointment. If you do not have them, do not delay, but let the UBO have them as soon as possible. If getting to the UBO would be extremely difficult, telephone and ask if any special arrangements can be made.

If you are under 18: As soon as you leave full-time education or become unemployed, take your NI number and P45 tax form to your careers office. You can get the address from the phone book, a post office or citizens advice bureau (see the phone book). If you do not have them, do not delay and let the careers office have them as soon as possible.

For more information, get the leaflet NI 12, Unemployment Benefit, from the Benefits Agency or UBO (see the phone book). If you are getting or expecting an occupational pension or personal pension and may be claiming Unemployment Benefit, get leaflet NI 230, Unemployment Benefit and your occupational or personal pension, from the Benefits Agency.

10.9 Income Support
Income Support is a Social Security benefit to help people aged 18 or over whose income is below a certain level and who are not working 16 hours a week or more. It can be paid to top up other benefits (including Unemployment Benefit), or earnings from part-time work, or if you have no money at all coming in.

In some special circumstances, people aged 16-17 may be able to get Income Support. For more information, see the leaflet IS
26. *Income Support if you are 16 or 17*, which you can get from the Benefits Agency (see under Benefits Agency or Social Security in the phone book).

Your right to Income Support does not depend on National Insurance contributions.

In certain circumstances, if you are signing on as unemployed, Income Support may count towards taxable income. See leaflet IR 41, which you can get from an Unemployment Benefit office (see the phone book).

To get Income Support, you must be available for work and show that you are taking reasonable steps to find a job. In some circumstances, you may not have to do this, for example:

- if you are sick or have a disability;
- if you are a lone parent or lone foster parent;
- if you are aged 60 or over;
- if you are getting Invalid Care Allowance for looking after someone;
- if you are pregnant, during the following periods:
  - while you are unable to work because of your pregnancy;
  - eleven weeks before your baby is due;
  - seven weeks after your pregnancy ends.

For more information, get the leaflets IS 20, *A guide to Income Support*, from the Benefits Agency (see under Social Security or Benefits Agency in the phone book) and IS 1, *Income Support*, from the Benefits Agency or post office.

### 10.10 Pensions

For general information on the range of benefits and some services for people in retirement, see the leaflets FB 6, *Retiring?*, and FB 32, *Benefits after retirement: what you could claim as a pensioner*, which you can get from the Benefits Agency (see under Benefits Agency or Social Security in the phone book).

Retirement Pension is a taxable weekly benefit for people who have reached pensionable age (60 for women and 65 for men).
You can get a pension if:

- you have reached pensionable age;
- you meet the National Insurance (NI) contributions conditions.

If you are entitled to a pension you will get it even if you continue to work, and it does not matter how many hours you work each week or how much you earn.

The basic pension rate is the same for men, women who have paid their own NI contributions at the standard rate, and widows (on their husband's NI contributions). Class 1, Class 2 and Class 3 NI contributions count for basic Retirement Pension. Married women who are not entitled to a pension on their own contributions may get a pension on their husband's contributions. There are special rules for people who are divorced or widowed.

If you have paid standard-rate NI contributions as an employee after 4 April 1978, you may also get an additional, earnings-related pension.

If you paid NI contributions as an employee between 1961 and 1975, you may also get a Graduated Pension (sometimes called Graduated Retirement Benefit).

You can earn extra pension, called increments, if you decide to defer claiming your pension when you reach 60 (women) or 65 (men). You can only defer it for five years, and you can only defer it once.

If you have children, support another adult, or are over 80, you get an extra weekly payment.

You will be sent a form, BR 1, about four months before you reach pensionable age. If you have not received the form three months before you reach pensionable age, ask at your Benefits Agency office (see under Benefits Agency or Social Security in the phone book).
For more information, see leaflets NP 46, *A guide to Retirement Pensions*, and NI 92, *Giving up your Retirement Pension to earn extra*. You can get a forecast of your future pension entitlement by filling in form BR 19.
Addresses and telephone numbers for the following useful organisations are given on the pages noted.

ACAS, 143
Action for Victims of Medical Accidents, 62
Advertising Standards Authority, 32
Advisory, Conciliation and Arbitration Service, 143
Air Transport Users Council, 127
ASA, 32
Association of Independent Midwives, 102
AUC, 127
Banking Ombudsman, 39
Building Societies Ombudsman, 39
Careers and Occupational Information Centre, 7
Child Support Agency, 105
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