

Factsheet 2

Buying retirement housing

November 2016

About this factsheet

This factsheet provides information if you are considering buying retirement housing. This is specialist housing for older people, which could be either 'age exclusive' or offer some level of support or care.

General information about housing for older people and how to choose a suitable option can be found in factsheet 64, *Specialist housing for older people*.

The information in this factsheet is applicable in England and Wales. If you are in Scotland or Northern Ireland, please contact Age Scotland or Age NI for their version of this factsheet. Contact details can be found at the back of this factsheet.

Contact details for any of the organisations mentioned in this factsheet can be found in the Useful organisations section.

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1 Recent developments

- The Law Commission has published a draft code of practice to regulate the charging of 'event fees'. Sometimes called 'transfer' or 'exit' fees, these may be charged when a property is sold or sub-let or when a new occupant moves in. The aim of the code is to protect leaseholders from unfair or hidden fees. If approved by Government, it can be taken into account in court proceedings, but it will not apply retrospectively. Once it comes into force, it will apply to new leases and to existing leases that are re-sold.

2 Introduction

Retirement housing is intended for older people and residents must usually be over 55 or 60 years of age. Most retirement housing is sold on a leasehold basis. A lease is a tenancy granted for a long period of time, usually 99 or 125 years. A leaseholder pays a large amount upfront and then a small amount of 'ground rent' to the freeholder (the landlord) each year. This may be as low as £50 but can be £300 or more.

The lease is sold when the property changes hands, so it reduces in length unless extended. Most leaseholders have the right to extend their lease after two years of ownership, but they have to pay a premium. If a lease is not extended and runs out, the leaseholder may be able to stay in the property on the same terms or the landlord may propose to grant a new rolling tenancy. If the landlord wants possession of the property at the end of the lease, they need a court order to evict the leaseholder and can only do so on certain grounds.

Leaseholder rights are different to those of a freeholder. As a leaseholder, you have a landlord who retains some control over your property and how you use it. This may make life easier for you, but may be a big adjustment if you are used to living in a freehold property and making your own decisions. It is possible to purchase freehold retirement properties, see section 14.

Contact the Leasehold Advisory Service (LEASE) for more information on leaseholder rights. They can give free advice on specific cases by telephone, letter, email or face-to-face, and they have a range of advice guides available on their website.

Retirement properties can be offered on a shared ownership basis, which involves buying a 25 to 75 per cent leasehold interest in a property and paying rent on the remaining part. It is important to seek advice before purchasing on a shared ownership basis, as your rights and responsibilities are different to if you owned a full leasehold interest. There is a specific shared ownership scheme for older people, see section 15.

Facilities and services in retirement housing vary between schemes and you should check what is available before you buy. See factsheet 64, *Specialist housing for older people*, for more information.

3 Scheme management

Most retirement housing schemes are managed by the landlord or by a third party appointed to manage the scheme on their behalf. In some circumstances, residents can manage a scheme themselves or ask the First-tier Tribunal (Property Chamber) to appoint a different management organisation, see section 13 for more information. We refer to all of these as the '*management organisation*' for the rest of this factsheet. We refer to the First-tier Tribunal (Property Chamber) as '*the Tribunal*'.

Managing a scheme means providing services and maintaining the building in accordance with the terms of the lease, the law and relevant codes of practice. The type of services a management organisation is responsible for include:

- provision of a scheme manager service
- upkeep and cleaning of communal areas, such as corridors, lifts, communal lounge, external grounds
- repairs and maintenance to the structure, exterior and communal areas
- insurance of buildings.

You are usually expected to pay a service charge to cover the cost of these items. The management organisation is likely to be responsible for the regular billing and collection of service charges.

If you are thinking about buying a retirement property, you need to find out who the management organisation are, how experienced they are at managing leasehold retirement housing and how often their representatives hold meetings with residents.

Check whether they are members of a recognised trade body, such as the Association of Retirement Housing Managers (ARHM). ARHM aims to promote and maintain high standards of management in retirement housing. All management organisations registered with the ARHM are bound by their Code of Practice.

You may want to consider if there is a residents' association that works with the management organisation to ensure that residents' views and needs are considered and addressed. For more information on forming a residents' association, see the ARHM website.

4 Services and service charges

A service charge is paid by leaseholders to meet the cost of the services provided by the management organisation. The services provided vary and are set out in the lease. The management organisation is not obliged to provide services not set out in the lease. The cost of providing services cannot be recovered from the leaseholder unless the lease says so.

The services provided usually include:

- **cleaning and general upkeep** of communal areas and grounds.
- **repairs and maintenance** – make sure you are clear about the respective responsibilities of the management organisation and residents. These may differ if the property is a flat or a house/bungalow. You are normally responsible for maintenance and repairs to the inside of your property and for arranging contents insurance.
- **a scheme manager**
- **emergency alarm** provision and upkeep
- **management fees** – the management organisation may charge a fee for staff time and overheads related to scheme administration.

In addition, you may have to contribute to a reserve fund (also called a 'sinking' or 'contingency' fund) as part of your service charge. All schemes should have a reserve fund to cover the cost of long-term repairs, renewals and redecorations, but some may defer your contribution until your property is sold (see section 11). If this is the case, ask how major repairs are paid for as they arise. Check if there are separate arrangements for redecorations.

You have rights regarding service charges that are 'variable' – i.e. not fixed as part of your rent. You have a legal right to request a summary of the service charge account from your landlord that should detail the costs incurred over the last accounting period, show how these costs relate to the charges you are being asked to pay and indicate if any costs relate to works for which an improvement grant has been paid or will be paid. In this context, 'landlord' means '*any person who has a right to enforce payment of a service charge*', so it would be a good idea to approach your management organisation in the first instance.

If you obtain a summary, you then have six months to ask to inspect the full accounts, receipts and other documents and make copies of these. You should be given a summary of your rights and obligations with each demand for payment of service charges.

By law, costs can only be recovered from leaseholders '*to the extent that they are reasonably incurred*' and '*if the services or works are of a reasonable standard*'. You have a right to challenge the level of a charge at Tribunal if you believe you are being asked to pay an unreasonable amount. You can ask the Tribunal to determine whether you are liable to pay a charge, for example if your landlord is asking you to pay for a service when this is not set out in your lease. You can do this whether or not the charge has already been paid.

You must be consulted before your landlord carries out works to your property above a certain value or enters into a long-term contract under which you have to pay more than a certain amount each year.

For more information, see the advice guide *Service charges and other issues*, on the LEASE website. There is also a specific guide on leasehold retirement housing, *Leasehold retirement housing – your rights and remedies*.

5 Scheme manager or warden service

Most retirement schemes have a scheme manager, also known as a warden, house manager or estate manager. They are distinct from the management organisation responsible for providing services specified in the lease, although they may assist in the provision of these services.

A scheme manager's specific duties vary between schemes, sometimes considerably. In the past, most managers lived on site and provided individual support for residents, but in many schemes the role has now been re-focused towards administration and housing management. It may be more common for a scheme manager to be present during normal office hours or visit a scheme regularly. Residents may be increasingly reliant on an emergency alarm system to obtain help and assistance.

Information about a scheme manager's role and duties, hours of service and details of relief or emergency cover during periods of absence should be included in an information pack, which must be provided prior to sale in some cases (see sections 8, 9 and 10).

The scheme manager service and related overheads can account for a substantial percentage of the service charge, as this will include the manager's salary and, if they live on-site, the cost of maintaining their accommodation. It may include their rent if the lease allows it. When looking at schemes, think carefully about the manager's duties and whether you are willing to pay for this service.

Some schemes may not have a scheme manager. This may mean a lower service charge, but you need to consider whether a scheme without a manager is right for you and what you would do if your needs change in future.

6 Financial help with service charges

If you purchase retirement housing, your local authority may help you to cover the cost of support services you receive, e.g. individual support provided by the scheme manager and the emergency alarm system.

In some areas in **England**, this help may be available under the 'Supporting People' programme, but it is becoming more difficult to obtain. Check your local authority website to see whether it is available.

In **Wales**, there is a national 'Supporting People' programme, so it is available in all local authority areas and operates in a standard way. Ask your council to assess your circumstances and tell you whether you are entitled to help. The Welsh Government has a factsheet and guidance on this programme which can be found at: www.gov.wales/topics/housing-and-regeneration/services-and-support/supporting-people

You may be eligible for Pension Credit, which includes help towards certain eligible service charges. See factsheet 48, *Pension Credit*, for more information.

7 Other charges

If you take out a mortgage to purchase the property, you have to keep up with your mortgage repayments. If you purchase via a shared ownership scheme, you are charged rent on the percentage of the property you do not own unless you 'staircase' up to full ownership.

Unless you are a freeholder, you may have to pay 'ground rent' to your landlord. The amount is determined by the terms of your lease, but is usually between £50 and £300 a year, although it can be more. Any increases in ground rent are restricted by the terms of your lease.

On top of these charges, you have to pay Council Tax, water rates and energy bills. Some charges for water and fuel may be part of your service charge if they are for communal areas. This includes water to a communal laundry or fuel bills for lighting and heating the corridors or communal lounge.

You have to pay a TV licence fee if you are under 75 and watch or record programmes on television as they are broadcasted or watch BBC programmes on your laptop. In some schemes you may receive a concession on your TV licence – check to see whether this is the case.

Make sure you have a realistic budget for all charges you have to pay. Factor in additional costs like telephone bills, internet bills and contents insurance. Can you keep up with these payments in the long term and will you have a good quality of life once all charges are paid? What help could you get towards these costs or to supplement your income?

If you are on a low income you may be able to get help with your Council Tax payments. For more information, in **England** see factsheet 21, *Council Tax*. In **Wales**, see Age Cymru's factsheet 21w *Council Tax in Wales: information about the tax and help you might get towards your bill*.

If you want to carry out any alterations or improvements to your home, you may have to get consent from your landlord and they may charge an administration fee for providing this consent. Like service charges, administration fees must be reasonable to be recoverable and can be challenged at Tribunal.

8 Protection for residents

There are two main codes of practice that exist to protect residents' rights in retirement housing. One is for properties built by a company registered with the National House Building Council (NHBC). See section 9 for more information.

The other is if the management organisation is a member of the Association of Retirement Housing Managers (ARHM). See section 10 for more information.

9 NHBC Sheltered Housing Code of Practice

NHBC set standards for the house-building industry. Builders and developers registered with NHBC must comply with its *Sheltered Housing Code of Practice* when building housing for older people. The Code requires legal agreements to be made between a registered builder or developer, a scheme's management organisation and the purchaser. These agreements give the purchaser the benefit of the rights set out in the Code.

A purchaser must receive a '*Purchaser's Information Pack*' with important information about the scheme. The management organisation must have a formal complaints procedure, must formally recognise a residents' association with more than 51 per cent of the scheme's leaseholders as its members and can only charge a '*transfer*' or '*exit*' fee in certain circumstances.

Homes built by NHBC-registered builders and developers may come with a warranty, the *NHBC Buildmark*. It applies to newly-built, converted or renovated homes and protects you if certain structural problems occur in the 10-year period after exchanging contracts. If the property is sold during that 10-year period, the remaining cover transfers to the new purchaser.

If you are buying a retirement property, check to see whether the builder or developer is registered with NHBC, whether you will be protected by the Buildmark warranty and for how long.

The Code applies to housing purpose built for older people after 1 April 1990 and set out in a scheme of self-contained properties with a package of estate management services provided. It is not available in hard copy, but it can be downloaded from the EAC FirstStop Advice website at www.housingcare.org/downloads/kbase/3316.pdf

9.1 The Purchaser's Information Pack

The NHBC Code states that a Purchaser's Information Pack must be given to the '*First Purchaser*' (the person to whom the lease is first granted) when they reserve the property and '*in good time so...[they] can properly consider the information...it contains before exchanging contracts*'.

If the property is sold again, the landlord or management organisation must ensure that an up-to-date copy of the Pack is given to the new owner. This should be provided prior to the sale if possible. It is a good idea to request a copy at an early stage.

Although the Pack contains important information, the most significant document you will receive is the lease, as this is legally binding. Make sure your solicitor or independent adviser explains the terms of the lease to you.

The main points included in the Pack are listed below:

9.1.1 The landlord and the management organisation

The name and address of both the landlord (generally the freeholder) and the management organisation; details of the management organisation's nearest regional office and information on its history and the number of sheltered homes it currently manages; details of the relationship between the landlord and the management organisation and in particular whether the management organisation is a party to the lease.

9.1.2 The purchaser's legal rights

A summary of the purchaser's rights under leasehold law, including:

- The right to be consulted before major repair works are carried out.
- The right to form a residents' association and the process by which an association can gain formal '*recognition*' and additional consultation rights.
- The right to inspect the service charge account and challenge unreasonable service charges.
- The right to information about the landlord and the management organisation, including information about the duties of the management organisation.

- The right to comment on the management organisation's performance and on the suitability of a new management organisation the landlord is proposing to appoint; the right to have these views taken into account by the landlord.
- The right to challenge a landlord who fails to provide services, for example by asking the court to order the landlord to carry out repair work or to appoint another management organisation.

The Pack must summarise the main provisions of the lease, including details of services provided, the ground rent, any charges on re-sale, any charges for the management services, the communal facilities and any restrictions attached to the property, for example restrictions on the age of occupiers or the keeping of pets.

9.1.3 Complaints

Details of the management organisation's complaints and grievance procedure, including a timetable for action on complaints.

9.1.4 Services and insurance

A full explanation of all the services and facilities provided by the management organisation including:

- the alarm call system
- how repair responsibilities are divided between the landlord, the management organisation and the resident
- the procedure for reporting repairs (both emergency and non-emergency repairs)
- details of the insurance for buildings and contents insurance for common parts such as the residents' lounge.

9.1.5 Charges and service charges

Full details of all payments, fees or charges you may have to pay to the landlord or management organisation, including:

- an estimate of the payments, fees and charges for the current accounting year
- how all the services will be charged for and how charges will be divided between dwellings
- how often payments, fees and charges will be collected
- the process for reviewing the level of payments, fees and charges – how often this takes place and what consultation with residents will be involved
- the reserve fund - how it will be funded and what it will cover

9.1.6 Re-selling

There must be information about your rights on re-sale, including details of any restrictions. Occasionally re-selling is restricted to purchasers over 55 or 60, but, more importantly, occupation of the property is almost always age restricted and you need to inform purchasers of this. There must be details of any charge the landlord or management organisation makes upon re-sale, including any requirement to make a contribution to the scheme's sinking fund.

10 ARHM Private Retirement Housing Code of Practice

Management organisations that are members of ARHM are bound by its *Private Retirement Housing Code of Practice*. This is principally aimed at leasehold retirement housing, but in most cases applies to the management of freehold bungalows and houses as well.

The Code covers good practice in providing services, including the scheme manager service, and in setting and collecting service charges. It states that the management organisation should consult residents to a greater degree than the law requires, invite all leaseholders to a meeting at least once a year, visit schemes at least quarterly and encourage the setting up of residents' associations.

A management organisation should provide all purchasers with a Leaseholder's Handbook. This may be called a Purchaser's Information Pack, Owner's Handbook, Resident's Handbook, or other similar name. All potential purchasers must be made aware of the Leaseholder's Handbook and a copy must be provided in advance of completion if requested.

The Handbook should be sufficient to meet the requirements of the Purchaser's Information Pack as set out in the NHBC Sheltered Housing Code (see section 9), but the management organisation can produce a generic version for all their schemes explaining that each scheme may vary in detail. If this is the case, ask the management organisation to give specific written information about the scheme you are interested in.

The ARHM Code of Practice was approved by the Government. This means that, although not all aspects are legally binding, its provisions can be considered by a court or Tribunal if action is taken against a management organisation, for example for poor management.

There is a separate ARHM Code of Practice for **England** and an ARHM Code of Practice for **Wales**. They are very similar. You can access both versions from the ARHM website.

11 Transfer fees

Some leases require the leaseholder to pay a fee to the landlord or management organisation in certain circumstances. These fees are known by a variety of names, including 'transfer', 'event', 'exit' or 'departure' fees. They are most commonly triggered when a property is sold or sub-let, but may be payable if there is a change of occupancy, for example if a new partner, relative or carer moves in.

It is not always stated in a lease how a fee will be calculated, allowing it to be determined entirely at the discretion of the landlord. It can be up to 30 per cent of the re-sale price or market value of the property.

Both the NHBC and the ARHM Code of Practice contain provisions about transfer fees. The NHBC Code states that no share in the equity or equity growth of a property can be claimed by the landlord or management organisation unless the lease provides:

- for a fixed deduction on re-sale to contribute to the scheme's reserve fund (a 'contingency' fee)
- for a fixed deduction on re-sale as part of a 'bona fide' scheme to finance the provision of care to residents or keep their service charges low (a 'deferred payment' fee)
- for a defined share of the equity to be retained on re-sale where the property was originally sold at a discount.

The ARHM Code states that management organisations should '*include a clear and prominent explanation of the terms of any event fees in any pre-sale information they provide*'. If it is not possible to provide this information direct to the purchaser, it should be provided to the seller's solicitor with '*prominent instructions*' to pass it to the purchaser as soon as possible. Similar information should be given in the Leaseholder's Handbook. Management organisations should make it clear if a fee is payable simply as a consequence of moving out or as a way to keep service charges lower for residents.

Although the Codes offer some protection against unfair or hidden fees, the lease ultimately dictates whether a fee is payable and how it is calculated. It may not be possible for you to see a copy of a property's lease until you have made an offer. Given this, it is vital that you receive detailed pre-sales literature (including the Purchaser's Information Pack or the Leaseholder's Handbook) and ask for a written explanation of any transfer fee terms in the lease. Ask a solicitor or independent adviser to explain the terms and to give you a worked example of how much you would have to pay if your property reaches a certain value.

Note

The Law Commission, an independent body that keeps the law under review and makes recommendations to Parliament, has published a draft code of practice to regulate the charging of transfer fees. The aim of the code is to protect leaseholders from unfair or hidden fees. If approved by Government, it can be taken into account in court proceedings, but it will not apply retrospectively. Once it comes into force, it will apply to new leases and to existing leases that are re-sold.

12 Terminating leases

As a leaseholder you have many basic statutory rights. Additional rights depend on the terms of your lease. You should obtain independent legal advice on your rights and responsibilities before you sign the lease.

An important part of the lease relates to the landlord's ability to terminate it early. This is known as '*forfeiture*'. If a property is occupied, the landlord cannot forfeit the lease without first obtaining a court order. There are a number of significant restrictions on the landlord's ability to do this and it is also possible for the leaseholder to seek '*relief*' from forfeiture after an order has been granted.

Most long leases contain a clause allowing the landlord to forfeit the lease if the tenant does not meet their obligations, such as their obligation to pay ground rent or service charges. It may also be possible for a landlord to terminate a lease if the leaseholder is causing severe nuisance to other residents.

Before purchasing a retirement property, you should check the landlord's forfeiture policies and ask them to confirm in writing what action they would take if your needs changed substantially, for example if you developed a long-term health condition like dementia.

If you live in a retirement property and require care and support at home, your management organisation may help arrange this. You may be eligible for help from social services or NHS services, but you may have to organise and/or pay for a package of services from a private provider. See factsheet 6, *Finding help at home*, and factsheet 20, *NHS continuing healthcare and NHS-funded nursing care*. For more information on forfeiture, contact LEASE.

13 The right to manage

Leaseholders whose leases were originally granted for a term of more than 21 years ('qualifying' leaseholders) can form a company and take over responsibility for the management of their building. This only applies to leaseholders of flats and not houses or bungalows.

Leaseholders do not have to prove any fault on the part of the landlord or management organisation, nor do they need the landlord or management organisation's consent. However, the building must comply with certain requirements and the company formed by the leaseholders must include at least half of the qualifying leaseholders in the building. The right is exercised by the company serving a formal notice on the landlord and any management organisation that is party to the lease.

It is possible for leaseholders to ask the Tribunal to appoint an alternative management organisation if the management of the property by the landlord is considered unsatisfactory. This right is not available where the landlord is a registered provider of social housing such as a local authority or housing association. For more information about the circumstances in which the Tribunal will make an order, contact LEASE.

14 Freehold properties

There may be an opportunity to buy freehold bungalows or houses on retirement schemes. As services are provided to these properties in a similar way to leasehold schemes, you need to sign a deed of covenant to accept management services from a specific provider.

As a freeholder, you do not have the protection of leasehold legislation, but you should have the protection of the ARHM Code if your management organisation is a member. Your property may be covered by the NHBC Sheltered Housing Code of Practice if it was built by a registered builder/developer.

Freehold houses should not be confused with blocks of flats where the leaseholders have exercised the collective right to buy the freehold of the block. These occupiers are not freehold owners, but leaseholders who are also members of a freehold company. You should seek independent legal advice if considering this option.

15 Shared ownership schemes

Shared ownership is a scheme allowing you to purchase a share in a property and pay rent on the remainder. You are able to purchase additional shares in the property until you 'staircase' to full ownership.

There is a specific scheme called *Older People's Shared Ownership*, which operates along slightly different lines. Under this scheme, your maximum equity share is limited to 75 per cent, but once you reach this level you do not have to pay rent on the remainder. This may benefit you if you are on a low income, but you cannot pass on a full leasehold interest as part of your estate.

You may come across leasehold schemes for the elderly, which work in a similar way to Older People's Shared Ownership, and life interest plans, which offer you the opportunity to purchase the right to live in a retirement property for the rest of your life. Contact EAC FirstStop Advice for more information.

Seek independent legal and financial advice if you are considering one of these schemes, as they may have potential drawbacks. You may find it difficult to move if property prices go up and you only own a small share. You may also find it difficult to staircase up, as you purchase additional shares based on the value of the property at the time, not its original value.

Even if you only own a small percentage of a property, you are likely to have to pay service charges in full. If you cannot cover the rent payments owed in relation to the percentage of the property you do not own, it is possible for the landlord to evict you in the same way as a tenant and you could lose your equity stake in the property.

Useful organisations

Association of Retirement Housing Managers (ARHM)

www.arhm.org

Telephone 020 7463 0660

ARHM are a trade association representing organisations managing retirement housing. Its Code of Practice applies primarily to leasehold retirement housing.

Citizens Advice

England or Wales go to www.citizensadvice.org.uk

In England telephone 0344 411 1444

In Wales telephone 0344 477 2020

National network of advice centres offering free, confidential, independent advice, face to face or by telephone.

EAC FirstStop Advice

www.firststopcareadvice.org.uk/

Telephone Advice line 0800 377 7070

Free advice on housing options for people in later life.

Leasehold Advisory Service (LEASE)

www.lease-advice.org/

Telephone 020 7832 2500 (England)

Telephone 02920 782 222 (Wales)

LEASE provide free initial advice to members of the public on residential long leasehold and park homes law. They can help if your enquiry is about a flat or leasehold house with a lease longer than 21 years.

Initial advice is defined as the provision of outline, summary, legal advice – as much as can be fitted into a 15 minute time-slot –together with the recommendation as to where more detailed information can be found.

LEASE produce a series of advice guides on leasehold law, which can be viewed on their website. They have an interactive tool to help you locate the most relevant guides for you and recommend that you use this before contacting them for specific advice so that you get the most out of your time with them.

National House Building Council (NHBC)

www.nhbc.co.uk

Tel: 0800 035 6422

NHBC are a standard-setting body for the construction industry and provider of warranty and insurance for new homes. They produce a Code of Practice which applies to retirement housing built by registered builders or developers after 1 April 1990.

Shelter

www.shelter.org.uk

Telephone 0808 800 4444 (free call)

A national charity providing telephone advice to people with housing problems on tenancy rights, homelessness, repairs and housing benefit.

Shelter Cymru

www.sheltercymru.org.uk

Telephone 0345 075 5005

Welsh Government

www.wales.gov.uk

Telephone 0300 060 3300 or 0300 060 4400 (Welsh)

The devolved government for Wales.

Age UK

Age UK provides advice and information for people in later life through our Age UK Advice line, publications and online. Call Age UK Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

Age UK Advice

www.ageuk.org.uk

0800 169 65 65

Lines are open seven days a week from 8.00am to 7.00pm

In Wales contact

Age Cymru

www.agecymru.org.uk

0800 022 3444

In Northern Ireland, contact

Age NI

www.ageni.org

0808 808 7575

In Scotland, contact Age Scotland by calling

Silver Line Scotland

www.agescotland.org.uk

0800 470 8090

(This is a partnership between The Silver Line and Age Scotland)

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The evidence sources used to create this factsheet are available on request. Contact resources@ageuk.org.uk

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Every effort has been made to ensure that the information contained in this factsheet is correct. However, things do change, so it is always a good idea to seek expert advice on your personal situation.

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