

30 March 2020

COVID-19 (Coronavirus) and the enforcement of standards in rented properties in Wales

Guidance for local authorities on enforcing standards in rented properties during the COVID-19 outbreak

The purpose of this guidance is to advise local authorities in Wales how to effectively enforce standards in the private rented sector (including housing associations / registered social landlords), to meet their legal duties and support landlords and tenants during the unprecedented challenges posed by the COVID-19 outbreak.

This is not statutory guidance issued under section 9 of the Housing Act 2004. The guidance is intended to provide a recommended approach for local authorities taking into account the COVID-19 outbreak and local authorities are not required to have regard to the guidance under section 9(2) of the Act.

Introduction

On 26 March, the UK Government passed legislation relating to renting during the COVID-19 outbreak. This legislation also covers Wales. More information about this legislation and all the latest government guidance on COVID-19 is at <https://www.gov.uk/government/topical-events/coronavirus-covid-19-uk-government-response>.

As part of our national effort to respond to the COVID-19 outbreak, it's vital local authorities, landlords and tenants work together to keep rented properties safe.

The Government is asking everyone to do all they can to help stop coronavirus spreading and has already [advised the public to take social distancing measures](#).

This means that during this time it may be harder for local authorities to carry out their usual work. Inspecting properties and taking enforcement action may be affected by issues around resources or tenants taking social-distancing measures.

Landlords may also find it harder to comply with their legal obligations for the same reasons.

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1. How should local authorities enforce standards in rented properties?

Local authorities must keep housing conditions under review and have a duty to take appropriate action when they find the most serious 'category 1' hazards. Local authorities also have legal duties and powers under other legislation.

These duties and powers still exist during the COVID-19 outbreak and are important to protect tenants.

We therefore recommend:

- Ensuring local authorities' own enforcement policies are up to date, taking into account the current situation.
- Taking a pragmatic approach to enforcement that ensures tenants are kept safe and landlords are supported.
- Ensuring all work is carried out in line with local authorities' own health and safety policies and procedures.
- Basing all decisions on an assessment of risk.

2. Inspections and investigations

Effective enforcement of standards in rented properties relies on local authority officers visiting rented properties.

Local authorities have powers of entry which would be used in normal circumstances to gain access and carry out inspections. During this period, we advise that local authorities update their enforcement policies and, in particular, their policies on when they should undertake inspections.

Local authorities should ensure their health and safety policies are up to date and cover officers carrying out inspections and visits during this period. These policies should inform the updated enforcement policies.

Your legal duties will remain the same during this time, but if you consider that you may not be able to comply with them, you should take your own legal advice.

A decision at this time to inspect a rented property might be made because:

- There is a duty to inspect because, for example, there is an imminent risk to a tenant's health due to a serious hazard.
- A serious hazard was previously identified and may still exist.
- The local authority has been made aware that a tenant is vulnerable and it is not clear if they are aware of the presence of hazardous conditions.

This list is not exhaustive and should not be treated as conclusive.

However, it might not be possible to inspect a property due to tenants self-isolating or refusing to allow access. Updated enforcement policies should address this possibility and consider what a reasonable response would be. For example:

- A decision may be made to de-prioritise lower-risk hazards.
- An assessment could be made through photographs, video or live broadcasting by the tenant.
- In cases of very serious risk, the effective use of social-distancing to facilitate an inspection should be very carefully considered, taking into account the use of personal protective equipment (PPE), government guidance and the local authority's own health and safety policy.
- In cases of extremely hazardous conditions, alternative accommodation might be considered as an alternative to emergency remedial action.

The suggestions above are not exhaustive, and all decisions should be made on the merits of the individual case and an assessment of risk.

3. Enforcement action

During this unprecedented time local authorities should only take the enforcement action that they determine is necessary. They should update and adapt their enforcement policies as required to meet the changing circumstances caused by Covid19, and latest government advice regarding the outbreak, and ensure a pragmatic, appropriate and risk-based action is taken.

For example:

- Enforcement action which is non-urgent or not legally required may be delayed until restrictions ease.
- Legal notices served under the Housing Act 2004 may, if the notice provides for this, be suspended for a period due to difficulties in completing the works.
- Work in default may be deferred.
- Other forms of enforcement action may be considered for the most serious hazards, e.g. a Prohibition Order covering part of a property may be used instead of Emergency Remedial Action.
- Steps may be taken to isolate or contain rather than remedy hazardous conditions.

The above list is intended only as an example and all decisions should be made on the merits of the individual case, and based on an assessment of risk and the latest government advice around the outbreak.

4. Proactive and reactive work

Local authorities should consider suspending all non-urgent proactive work where there is not a duty to carry this out, for example scheduled targeted action or inspections of licensable properties, and prioritising reactive work, e.g. complaints from tenants.

A triage system may be used to ensure the most serious risks are prioritised and vulnerable tenants are protected.

If you are using proactive action specifically to protect vulnerable tenants, you will need to consider carefully whether you continue with this work. Any decision to continue or suspend proactive action should be made based on an assessment of risk and the most current government advice about the outbreak.

5. Support for landlords and tenants

It is important local authorities work closely with landlords and tenants to ensure standards in rented properties are maintained.

Local authorities should consider contacting landlords through Rent Smart Wales to emphasise the importance of keeping properties free from hazardous conditions, but also reassure them that a pragmatic, risk-based and common-sense approach will be used when enforcement decisions are taken.

Welsh Government is producing separate guidance for tenants and landlords which can be found under the Housing heading [here](#).

6. Gas safety in rented properties

The Gas Safety (Installation and Use) Regulations 1998 require landlords to have annual gas safety check on each appliance and flue carried out by engineer registered with the Gas Safe Register and to keep a record of each safety check. Further advice can be found on the Gas Safe Register's website at <https://www.gassaferegister.co.uk/help-and-advice/covid-19-advice-and-guidance/>.

The Regulations are clear on the issue of compliance. If a landlord can show they have taken all reasonable steps to comply with their duty under the regulations, they are not in breach of the duty, therefore a landlord would not be liable for an offence.

A landlord could show reasonable steps by keeping copies of all communications they have had with their tenants and with gas safety inspectors as they tried to arrange the work, including any replies they have had. Landlords may also want to provide other evidence they have that the installation, appliance or flue is in a good condition while they attempt to arrange works. This could include the servicing record and previous landlord gas safety check record.

7. Q&A

The following is not exhaustive and is not meant to be legal advice.

7.1 Hazards

Q. What about the legal duty local authorities have to take the appropriate enforcement action if they consider that a category 1 hazard exists on any residential premises?

A. Local authorities should:

- Consider carefully what would be appropriate action during the current situation and update enforcement policies accordingly.
- Prioritise resources to ensure vulnerable tenants and imminent risks to health are targeted.

7.2 Property licensing

Q. What about the legal duty local authorities have to ensure that all applications for licences are determined within a reasonable time?

A. For mandatory HMO Licensing and non-mandatory schemes (Selective Licensing and Additional House in Multiple Occupation (HMO) Licensing) which are already in place, local authorities should:

- Contact landlords who are waiting for licences to be determined to explain potential delays.
- Take individual landlords' circumstances into account where licence fee payments may have been delayed due to the current situation.
- Prioritise high-risk licensable properties if this is necessary to protect vulnerable tenants and target imminent risks to health.
- Continue as usual for non-mandatory licensing schemes which are already in place but, as with all enforcement, take a pragmatic and common-sense approach to enforcement action.

Where local authorities are in the process of introducing non-mandatory licensing schemes but these are not yet in force, they should consider:

- Pausing these at an appropriate point, in line with the advice on proactive and reactive work.

7.3 Protection from unlawful eviction and harassment

Q. What about local authorities' power to prosecute landlords for unlawful eviction or harassment?

A. Local authorities should:

- Update all advice and guidance to ensure tenants and landlords are aware of the changes to the eviction timescales arising from the Coronavirus Act 2020.
- Prioritise protecting vulnerable tenants from eviction and harassment.

Local authorities continue to have prevention, relief and main homelessness duties. Where a tenant is at risk of eviction the local authority should work with the landlord to prevent homelessness.

7.4 Scheduled inspections, e.g. gas, electricity

Q. What about the requirement for landlords to ensure certain installations are in place or safe, for example gas, fire alarms, emergency lighting?

A. Local authorities should:

- Consider carefully if landlords can show evidence that they have been unable to carry out inspections or works, despite having taken reasonable steps, before carrying out any enforcement.

Inspectors/maintenance workers can still visit blocks of flats and multi-occupied properties for essential or urgent work such as inspecting and testing fire alarm and emergency lighting systems.