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

Non-statutory guidance for local authorities on enforcing standards in rented properties during the COVID-19 outbreak
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The purpose of this guidance is to advise local authorities in England how to effectively enforce standards in rented properties (including housing associations), meet their legal duties and support landlords and tenants during the unprecedented challenges posed by the COVID-19 outbreak.

Stock-owning local authorities are of course expected to maintain their homes to the same standard as they enforce against and should have due regard of the guidance in their functions as landlords.
1. Introduction


As part of our national effort to respond to the COVID-19 outbreak it is vital that 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 published a range of advice on staying alert and maintaining social distancing to protect yourself and others during this unprecedented time. You can see the latest Government guidance on coronavirus at https://www.gov.uk/coronavirus.

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

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 current public health guidance. Local authorities are not required to have regard to the guidance under section 9(2) of the Act.
2. 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.

3. Inspections and investigations

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

Routine inspections, repairs and maintenance can now take place in people’s homes providing it is carried out in accordance with guidance for professionals working safely in people’s homes.

Prior to 1 August 2020, it is advised that routine repairs or inspections do not take place in households that are shielding unless it is to remedy a direct risk that affects the safety of the occupants. When considering whether to undertake an inspection or investigation in these cases, it is advised that local authorities base their decision on an assessment of risk.

Local authorities have powers of entry which they can use to gain access to properties and carry out inspections. We advise that local authorities consider resuming routine inspections, in line with their own priorities and enforcement policies, to effectively enforce standards in rented properties.

Any inspections or investigations should be undertaken in accordance with the latest government guidance on working safely in people’s homes. In cases where local restrictions are in place, any relevant local advice should also be followed.
During this period, we continue to advise that local authorities keep their enforcement policies updated to reflect the changing situation. They must also 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 and reflect the latest guidance to help employers, employees and the self-employed understand how to work safely during the coronavirus pandemic.

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 to inspect a rented property should be made on the basis of risk and in line with a local authority’s resource capacity and enforcement policies. An inspection 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, in properties where tenants are self-isolating:

- A decision may be made to temporarily 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 maintaining strict separation 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.
4. Enforcement action

During this unprecedented time local authorities should only take the enforcement action that they determine is necessary in accordance with their own priorities and enforcement policies. They should update and adapt their enforcement policies as required to meet the changing circumstances caused by COVID-19 and latest government advice regarding the outbreak, and ensure pragmatic, appropriate and risk-based action is taken.

For example:

- Low risk, routine enforcement action may be temporarily postponed until restrictions are further eased.
- 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.
- Non urgent 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.

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.

5. Proactive and reactive work

Local authorities should continue using a risk-based approach when deciding to undertake proactive enforcement activity. This decision should be taken in accordance with their own priorities, resource capacity, and the latest public health advice.

When conducting reactive work, local authorities may wish to use a triage system to prioritise the most serious risks and protect vulnerable tenants.

Any pro-active or reactive action to protect vulnerable tenants should be undertaken based on a risk assessment and the most current government advice about the outbreak. Where property inspections or remedial works are required, local authorities should ensure that these are carried out in accordance with the latest guidance on working safely in people’s homes.
6. 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 and using communications and marketing 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.

Government has produced separate guidance for tenants and landlords.

7. Electrical and gas safety in privately rented properties

The new Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 were made on 18 March and apply to all new tenancies from 1 July 2020 and to existing tenancies from 1 April 2021.

The Electrical Safety Regulations require landlords to:

- Ensure that the electrical safety standards are met during any period of a tenancy.
- Have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at least every five years, or more frequently if the most recent report requires this.
- Provide a copy of the report (known as the Electrical Safety Condition Report or EICR) to their tenants, and to the local authority if requested.
- If the EICR requires investigative or remedial works, landlords will have to carry this out.

The Gas Safety (Installation and Use) Regulations 1998 require landlords to have an 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/.

Both regulations are clear on the issue of compliance. With regards to the Electrical Safety Regulations, a landlord would not be in breach of the duty to comply with a remedial notice if the landlord can show they have taken all reasonable steps to comply. With regards to a landlord’s duties under the Gas Safety Regulations, a landlord would not be liable for an offence if the landlord can show they have taken all reasonable steps to prevent the contravention.
A landlord could show reasonable steps by keeping copies of all communications they have had with their tenants and with engineers 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 records.
8. Q&A

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

8.1 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 risks to health are targeted.

8.2 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 House in Multiple Occupation licensing and non-mandatory schemes (selective licensing and additional House in Multiple Occupation 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 selective or additional House in Multiple Occupation licensing schemes, but these are not yet in force, they should consider:

- Pausing the process completely wherever practicable until current restrictions are lifted and / or assessed that it is safe and reasonable to continue.
- Extending relevant parts of the process such as the consultation period or the date of the commencement of the scheme to a more suitable time.
- Avoiding, wherever possible, commencing a scheme unless its administration will not conflict with latest government advice regarding the COVID-19 outbreak.
8.3 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.

8.4 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 routine repairs or maintenance such as inspecting and testing fire alarm and emergency lighting systems. When conducting inspections, you should follow the latest government guidance on working safely in people’s homes.

8.5 Dealing with anti-social behaviour in rented properties

Q. What action should local authorities be taking during the period affected by COVID-19 to deal with instances of anti-social behaviour?

A. Local authorities should continue to:

- Work with landlords and tenants to constructively resolve instances of anti-social behaviour and address the underlying causes.
- Manage licensed HMOs by ensuring ASB conditions are adhered to or take appropriate enforcement action as necessary.
- Use the powers available to them through the Anti-Social Behaviour, Crime and Policing Act 2014 to address instances of anti-social behaviour. These powers are unaffected by the provisions of the Coronavirus Act 2020. You may wish to
read the statutory guidance for frontline practitioners on the use of the Anti-Social Behaviour powers.

- Prioritise cases where the health and wellbeing of tenants and the wider public is at risk.