



## 2. The Responsibilities and Liabilities of the Landlord/Letting Agent

### 2.1 Landlords' Responsibilities for Repair and Maintenance

In addition to any repair responsibilities explicitly set out in the tenancy agreement, common law and statute will imply terms to the agreement between landlord and tenant. These terms form part of the contract, even though they have not been specifically agreed between the two parties.

Specific obligations to repair are set out in detail in the sections below. As a general rule the building itself and the immediate surroundings should be able to withstand normal weather conditions, and normal use by tenants and their visitors.

The property should be in a reasonable state of repair both internally and externally and fit for human habitation at the start of the tenancy. There should be no dampness, either in the form of rising or penetrating damp, from the outside. Condensation may be as a result of the tenant's behaviour but it may also have implications for the landlord if the ventilation is inadequate or some structural problem is causing it. An investigation of the cause will be needed to be able to decide responsibility.

Statutory and common law requires that there should be no unacceptable level of risk to the health or safety of the occupiers or their visitors.

Remember that if the tenant or visitors have an accident or suffer injury due to the poor condition of the property (for example a fall caused by a broken handrail or respiratory diseases caused by damp conditions), the landlord may be liable to them for damages for personal injury.

### 2.2 Implied Terms in Tenancy Agreements

Implied terms are those that are considered to be part of a legal lease, tenancy agreement and/or licence even though they are not actually written down in that document. Implied terms can arise from common law and/or statute.

Note: any attempts to evade statutory or common law rights and responsibilities by way of any standard term in the tenancy agreement, may result in the relevant term being found void under the Unfair Terms in Consumer Contracts Regulations 1999. Examples might include a clause requiring rent to be paid without set-off (as this would be an attempt to exclude the tenant's common law right to set off against the rent any debt owed to the tenant by the landlord) or a clause term requiring the tenant to be responsible for repairs to the gas appliances (as this is the landlord's statutory responsibility).

### 2.3 Common Law Implied Terms

#### 2.3.1 The Right of a Tenant to Quiet Enjoyment of a Rented Property without Intrusion or Disturbance by a Landlord

The main terms implied by common law are detailed below:

This right is implied into all tenancies which entitles the tenant to live in the property without disturbance from the landlord or people acting on the landlord's behalf. Generally a landlord does not have the right to turn up unannounced to check on a property or tenant. It must be agreed mutually beforehand, where the landlord wishes to enter for a specific purpose, such as repairing a window. It has been held that breach of the repairing covenants can also be considered to be breach of the covenant of quiet enjoyment. A right of quiet enjoyment is often written into the tenancy agreement because then the landlord can limit or widen the scope of the implied obligation, or even make the covenant for quiet enjoyment conditional on the tenant complying with their own obligations. Where there is a covenant for quiet enjoyment written into the tenancy agreement, the tenant will be entitled to have the landlord comply with that covenant.

<b>2.3.2 Tenant must use the Property in a Tenant-like Manner</b>	This has been defined in case law as 'to do the little jobs about the place which a reasonable tenant would do' such as unblocking sinks when blocked by the tenant's waste, keeping toilets and drains clear, regular cleaning including windows, putting refuse out for collection and gardening if applicable.
<b>2.3.3 The Tenant shall not permit Waste</b>	The tenant has the responsibility to ensure the property is not damaged deliberately and is kept clean and free from rubbish during the course of the tenancy.
<b>2.3.4 Fair Wear and Tear</b>	The tenant should leave the property in the same condition as when they took possession, fair wear and tear excepted.
<b>2.3.5 The Tenant must not use the Rent to pay for Repairs, except in very Limited Circumstances</b>	Repairs must be reported to the landlord/agent. Using rent for any other reason could result in eviction from the property.
<b>2.4 Statutory Implied Terms</b>	
<b>2.4.1 Landlord and Tenant Act 1985</b>	<p>Section 11 of the Landlord and Tenant Act 1985 implies a term into tenancy agreements for less than seven years that the landlord shall keep in repair:</p> <ul style="list-style-type: none"> <li>• the structure and exterior of the dwelling</li> <li>• the installations for the supply of water, gas, electricity and sanitation</li> <li>• the installations for the supply of space heating and water heating and</li> <li>• the communal areas and installations associated with the dwelling (section 11 as amended by section 116 of the Housing Act 1988), where these are controlled by the landlord.</li> </ul> <p>The Act also provides that the standard of repair necessary will vary depending on the 'age, character, and prospective life of the property and its location'.</p>
<b>2.4.2 Access to Property</b>	<p>Section 11 – sub-section (6) implies a term into the tenancy agreement that landlords with section 11 repairing responsibilities (or people authorised by them) have the right to access the property for the purpose of viewing its condition and state of repair. Access can only be at reasonable times of the day and after giving the tenant not less than 24 hours' notice in writing. This section does not extend to actually carrying out the repairs. The right to enter for the repair would be an implied term, as the law says the landlord must do the repair, it is implied he or she has the right to enter to do it. However, the right to enter to do repairs (subject to notice being given) is generally included in tenancy agreements and if the tenant refuses to allow the landlord access to carry out the repairs, the tenant will not be in a position to complain about the property or to claim for damages for disrepair or for personal injury caused by the disrepair.</p> <p>Indeed if the tenant's failure to allow the landlord access to do the works results in further deterioration or damage to the property, the tenant may be liable to the landlord (entitling the landlord, for example, to deduct the additional costs incurred from the damage deposit).</p> <p>Note that although section 11(6) gives the landlord the right to enter the</p>

property (after having given notice), this does not mean that the landlord is entitled to enter the property at that time, irrespective of whether the tenant asks the landlord not to. However, if the particular appointment time is inconvenient, the tenant will be expected to consent to an appointment at another time.

If the tenant refuses to allow the landlord access at all, the tenant will be in breach of their tenancy agreement, because the right of access is an implied term of the agreement). In some circumstances (for example if the property is clearly in disrepair) this may entitle the landlord to apply for an order for possession.

Generally, landlords should be wary about entering the property when the tenant is not there. Where a tenant has given permission, but has advised they will not be at the property themselves, it is recommended that landlords/agents are best accompanied by a witness.

### **2.4.3 Breach of Repair Obligations**

The landlord will be able to pass on the cost of works or repairs to the tenant if work is needed because of the tenant's breach of their obligations under the tenancy.

Action can be taken by the tenant in the County Court for breaches of the landlord's repairing obligation. This is a civil action and tenants can claim compensation for damage and inconvenience resulting from the breach.

The landlord should receive notice of this in advance of any claim being brought, as tenants are now obliged to comply with the 'Pre-action Protocol for Housing Disrepair'. This protocol provides that tenants must inform their landlord in writing (an 'early notification letter' followed by a 'letter of claim') of all relevant matters before issuing legal proceedings. The protocol gives full details of the information to be provided and specimen letters. If the tenant does not comply with the protocol, the landlord can ask the court to stay the claim until the provisions of the protocol have been complied with. A copy of the protocol can be downloaded from HM Courts Service website at [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk).

Section 17 of the Landlord and Tenant Act 1985 requires specific performance (saying the landlord will have to do the repair) where there has been a breach, i.e. the payment of compensation may not be sufficient remedy.

This means that the County Court can make an order requiring the landlord to fulfil the express or implied repairing terms of the tenancy agreement. The County Court can make an injunction requiring the landlord to do repair work which may or may not be within the terms of the contract. If the landlord fails to carry out the works required by the court order, the landlord, or his agent, can in very extreme situations be committed to prison for contempt. The County Court can alternatively direct that the repairs be undertaken by, or on behalf of, the tenant at the landlord's expense.

Damages (compensation) can still be claimed even if the works have been carried out by the time the case reaches court.

In practice it is rare for these extreme measures to be used. However, it is important to be aware that these penalties exist, and every care should be made to respond promptly to repairing obligations when they arise. It is, after all, protecting any financial investment. If the property is properly

insured some work may be covered by the insurance policy.

#### **2.4.4 Defective Premises Act 1972**

Section 4 of the Defective Premises Act 1972 places a duty of care on the landlord in relation to any person who might be affected by a defect, 'to take such care as is reasonable in all the circumstances to see that they are reasonably safe from personal injury or from damage to their property caused by a relevant defect'.

This is civil redress. A defect is relevant if the landlord knew about it or should have known about it - the fact that a defect has not been reported or there has been a failure to inspect (e.g. rotten floorboards or joists) does not remove liability. It is for this reason that it is important that landlords (or their agents) carry out regular checks on the property.

In this case the premises include the whole of the letting - i.e. including gardens, patios, walls, etc - and can be applied to the communal areas of estates or multi-occupancy buildings, including lifts, rubbish chutes, stairs and corridors. Section 4 provides tenants or other affected persons with the right to seek compensation for personal injury or damage to property.

#### **2.4.5 Occupiers' Duty of Care**

Section 2 of the Occupiers' Liability Act 1957 provides that the occupier of a property has a duty of care to all visitors who come onto their premises. This applies to landlords where they are the legal occupier of some parts of their rented stock, e.g. shared-use areas such as lifts, staircases and entrance lobbies – in some cases even grounds and car parks.

The duty means taking such care as would be reasonable in all circumstances to see that the visitor is reasonably safe in using the premises for its purpose. The landlord is liable for any injury caused to a visitor as a result of defects in the part of the building occupied by the landlord.

#### **2.5 Housing Health and Safety Rating System**

##### ***The Law and Landlords' Obligations***

The Housing Act 2004 places a statutory duty on local authorities to identify hazards and to assess tenants' risks to health and safety. Local authorities are required to use a system called the Housing, Health and Safety Rating System (HHSRS) to identify and assess risks. Section 3(1) of the Act states:

'A local housing authority must keep the housing conditions in their area under review with a view to identifying any action that may need to be taken by them under any of the provisions mentioned in sub-section (2).'

Depending on the seriousness of risk, local authorities assess hazards as either category 1 or category 2 hazards. Section 5 describes the duty on the local authority to take enforcement action where a category 1 hazard exists.

In practice, how local authorities discharge their duty under section 3(1) varies. In some cases local authorities are proactive in carrying out an assessment of the private rented sector stock in their areas but others are now only able to offer a reactive service, responding to requests for assistance from both tenants and landlords.

Although not a general legal obligation, it is useful for landlords to be able to identify and risk-assess health and safety hazards at their properties and take remedial action where necessary. Most local authorities are keen to

work with landlord groups in their area to make sure landlords are aware of the local authority's responsibilities, powers and duties under the Act and a prudent landlord will be proactive in seeking to ensure that their properties are of a standard that does not attract the interest of the local housing authority.

### 2.5.1 Hazards

The HHSRS lists 29 hazards that landlords need to be aware of.

#### ***Physiological:***

- damp and mould growth
- excess cold
- excess heat
- asbestos and manufactured mineral fibre
- biocides (e.g. damp and timber treatment products)
- carbon monoxide and fuel combustion products
- lead
- radiation
- uncombusted fuel gas
- volatile organic compounds.

#### ***Psychological:***

- crowding and space
- entry by intruders
- lighting
- noise

#### ***Infection:***

- domestic hygiene, pests and refuse
- food safety
- personal hygiene, sanitation and drainage
- water supply for domestic purpose

#### ***Accidents:***

- falls associated with baths
- falling on level surfaces
- falling associated with stairs and steps
- falling between levels
- electrical hazards
- fire
- flames and hot surfaces
- collision and entrapment
- explosions
- position and operability of amenities
- structural collapse and failing elements

### 2.5.2 Risk Assessment

The HHSRS is a technical system and is best used by persons with a technical health and safety or building construction background.

The HHSRS is available at:

**[www.communities.gov.uk/documents/housing/pdf/142631.pdf](http://www.communities.gov.uk/documents/housing/pdf/142631.pdf)**.

There are a number of landlord guides to the HHSRS available through the internet that provide an understanding of HHSRS without going into its full details.

One such guide provided by the Government, is entitled *Housing Health and Safety Rating System – Guidance for Landlords and Property-related Professionals* available at [www.communities.gov.uk/publications/housing/housinghealth](http://www.communities.gov.uk/publications/housing/housinghealth)

In practice it is very challenging for landlords to acquire the skills necessary to use the HHSRS to accurately risk-assess hazards as category 1 or 2.

To help landlords to identify potential category 1 hazards and prioritise them for action a simple guide to risk-assessing hazards is provided below:

The risk from a hazard is a combination of:

- the likelihood of a hazard, over a 12-month period, causing harm sufficient to require some medical attention and
- the potential seriousness of harm from that hazard, should harm occur.

A risk assessment of a hazard that indicates high likelihood of harm, and high potential seriousness of that harm, means that the hazard may potentially be high risk and therefore in need of remedial action to reduce the risk to a more acceptable level.

**Step 1** Familiarise yourself with the 29 HHSRS hazards, especially the most commonly occurring.

**Step 2** Ask yourself whether the likelihood of harm occurring over a 12-month period from an identified hazard is high.

**Step 3** Ask yourself whether the potential seriousness of that harm would be high.

If the answers to steps 2 and 3 are YES, then the hazard is a high-risk hazard.

### **Example**

Assessing the risk of falling down a stair.

If a stair is long, steep, in disrepair, has a loose worn covering, has varying sizes of treads and risers, does not have a handrail or adequate artificial lighting along its length, then the likelihood over a 12-month period of someone falling will be high.

If at the bottom of the stair there is a hard floor surface, a wall mounted radiator with sharp corners and a non-safety glazed door, then the seriousness of a fall is likely to be high.

The combination of high likelihood of an accident and high potential seriousness of harm means that the risk of the hazard of falling down the stair is high, liable to be a category 1 hazard and in need of high priority remedial action.

### **2.5.3 Vulnerable Groups**

Young and elderly persons are more at risk from the following hazards in particular than young able bodied adults: cold, falls, fire, hot surfaces, dampness, food safety and entry by intruders.

Landlords letting properties to elderly persons or families with young children should be particularly mindful of these hazards when carrying out risk assessments and should provide additional protective means where necessary.

#### **2.5.4 Property Inspection Form**

To assist landlords to identify and risk-assess hazards on site and record any necessary remedial works, a property inspection form is provided in Appendix 3 of this handbook.

Although not a legal requirement it is recommended that an inspection form is completed for each property and a copy kept on file.

In the event that a property is inspected by a housing standards enforcement officer, then providing the officer with a copy of the property inspection form will provide a strong indication that the landlord takes their health and safety responsibilities seriously.

The form provides, room by room, a list of potential defects and deficiencies that can give rise to hazards.

The seriousness of the defects and deficiencies can be scored as:

1. not satisfactory
2. defective
3. seriously defective

Before inspecting a property, landlords need to copy the appropriate number of pages of the inspection form that will be needed.

For example if the property has two bathrooms then two copies of the page covering bathrooms need to be printed off. It is a good idea to carry spares.

There is a Summary of Property Inspection at the end of the form to provide a summary of any hazards identified as needing remedial action.

The remedial action can be prioritised as low, medium or high.

The final page of the form is to complete as an action plan with timescales.

#### **2.5.5 HHSRS Enforcement**

Local authorities have statutory duties and powers to take enforcement action to deal with properties containing hazards identified under the HHSRS. Under the HHSRS local authorities have a duty to take appropriate enforcement action in relation to category 1 hazards, and discretion to act in relation to category 2 hazards.

If a hazard presents a severe threat to health or safety it is known as a category 1 hazard.

If a local housing authority considers that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard.

Less severe threats to health and safety are known as category 2 hazards and a local authority may take appropriate enforcement action to reduce the hazard to an acceptable level. The circumstances in which local authorities will take action over category 2 hazards will vary and will depend on the individual local authority's enforcement policy.

Although statutory action is mandatory for category 1 hazards and discretionary for category 2 hazards, the choice of what course of action is appropriate is also a matter for the local authority and it will depend on the individual local authority's enforcement policy.

The authority must, however, take into account the statutory enforcement guidance and the options available include:

- serving an improvement notice requiring remedial works
- making a prohibition order, which closes the whole or part of a dwelling or restricts the number of permitted occupants
- suspending the above types of notice for a period of time
- taking emergency action itself
- serving a hazard awareness notice, which merely advises that a hazard exists, but does not demand works are carried out
- demolition
- designating a clearance area.

Additional information can be obtained from the CLG, in particular the two guidance documents:

- *Housing Health and Safety Rating System: - Guidance for Landlords and Property Related Professionals*
- *Housing Health and Safety Rating System: - Operating Guidance*

## **2.6 Decent Homes Standard** *(applicable to England only)*

The decent homes standard was a measure of general housing conditions introduced by the Government in 2000. Although private landlords were not directly required to take any action to bring their properties up to this standard, the Government set targets for local authorities. However, from April 2008, all other sets of indicators, including Best Value Performance Indicators and Performance Assessment Framework Indicators, have been abolished.

## **2.7 Gas Safety**

It is vital that landlords clearly understand their responsibilities and obligations in relation to gas supply and appliances and the duties and responsibilities placed on them by the gas safety regulations.

Obligations between landlords and agents need to be specific in relation to the gas safety regulations and neither party can seek to evade or exclude themselves from those obligations. Any clause in the tenancy agreement which attempts to evade the regulations will be invalid. A breach of the regulations is a criminal offence, enforced by the Health & Safety Executive.

### **2.7.1 Gas Safety (Installation and Use) Regulations 1998**

The Gas Safety (Installation and Use) Regulations 1998 make it mandatory that gas appliances are maintained in a safe condition at all times.

Landlords are required by the regulations to ensure that all gas appliances are adequately maintained and that an annual safety check is carried out by a registered tradesperson.

From March 2009 the Gas Safe Register has replaced CORGI gas registration in Great Britain and is now the official industry stamp for gas safety. For further information visit [www.gassaferegister.co.uk](http://www.gassaferegister.co.uk).

All gas installers should carry identification cards which will state the type of work they are authorised to carry out. For further information about registered gas installers and to locate a service that is local, see the Gas Safe Register website at [www.gassaferegister.co.uk](http://www.gassaferegister.co.uk). Once the inspection

has been carried out, the installer will provide a gas safety record. A gas safety record must be provided to tenants of properties which contain gas appliances when they first move in, and annually thereafter. Failure to do this is a criminal offence.

Any necessary repair or remedial work identified should be carried out straightaway by the landlord who cannot place responsibility for this onto the tenant. If the need for any work is caused by the tenant's behaviour, then the tenant can be charged for the cost of the repair work afterwards. For further information about responsibilities and obligations, contact the Health & Safety Executive (HSE) for advice. Additional information and details of the local HSE office can be obtained from the HSE website at [www.hse.gov.uk](http://www.hse.gov.uk).

It is very important that the gas regulations are complied with and all necessary repairs carried out as soon as possible. Defective gas appliances are very dangerous and some tenants have died as a result. Culpable landlords could be subject to legal action.

***A landlord must:***

- have gas appliances provided by them checked for safety by a registered gas installer within 12 months of their installation and then ensure further checks at least once every 12 months after that
- ensure a gas safety check has been carried out on each appliance and flue every 12 months, except where the appliance was installed less than 12 months ago. Gas pipe work should also be inspected to ensure it is not leaking. The registered gas installer must take action to leave the appliance safe, if it fails a safety check. This could be remedial action, disconnection and/or a warning notice attached
- give a copy of the gas safety record to any new tenant when they move in or to an existing tenant(s) within 28 days of the check
- keep a record of the gas safety check made for each appliance for two years
- ensure that gas appliances, fittings, and flues are maintained in a safe condition.

**2.7.2 Exceptions to the Regulations**

The regulations do not apply to gas appliances which are owned by the tenant.

The regulations do not apply to leases for terms of more than seven unless the landlord has a break clause which entitles the landlord to end the lease during the first seven years.

The regulations allow a defence for some specified regulations where a person can show that they took all reasonable steps to prevent the contravention of the regulations.

Portable or mobile gas appliances supplied from a cylinder must be included in maintenance and the annual check; however they are excluded

from other parts of the regulations.

### 2.7.3 Room-sealed Appliances

#### *The regulations require that:*

- a gas appliance installed in a bathroom or a shower room must be a room-sealed appliance (i.e. sealed from the room in which it is located and obtaining the air for combustion from the open air outside the building, discharging the products of combustion direct into the open air)
- a gas fire, other gas space-heater or a gas water-heater of 14 kilowatt heat output or less in a room used or intended to be used as sleeping accommodation must either:
  - be a room-sealed appliance or
  - incorporate a safety control designed to shut down the appliance before there is a build-up of a dangerous quantity of the products of combustion in the room concerned.

### 2.7.4 Indications that an Appliance is Faulty or Dangerous

#### *Danger signs to look for are:*

- stains, soot or discolouring around a gas appliance indicating that the flue or chimney is blocked, in which case carbon monoxide can build up in the room
- a yellow or orange flame on a gas fire or water heater
- The most effective indication of a combustion problem would be the activation of a properly installed carbon monoxide detector.

### 2.7.5 Tenants' Duties

Tenants also have responsibilities imposed upon them by the Gas Safety (Installation and Use) Regulations 1998.

They must report any defect that they become aware of and must not use an appliance that is not safe. Tenants should be informed of this in writing and a clause explaining their duties should be included in their tenancy agreement: this would include reporting any defect and not using an appliance that is not safe.

## 2.8 Electrical Safety and Electrical Goods

Again, landlords should have a clear understanding of their responsibilities in relation to electrical installations and appliances and the duties and responsibilities placed on a landlord by the following regulations:

- Landlord and Tenant Act 1985
- Consumer Protection Act 1987
- Electrical Equipment (Safety) Regulations 1994
- Building Regulations 2000

### 2.8.1 Landlords' Duties and Responsibilities

Legislation places obligations on landlords to ensure that all electrical appliances supplied by the landlord are safe at the date of supply.

Landlords need to ensure that the electrical installation and all electrical appliances are 'safe' with little risk of injury or death to humans, or risk of damage to property. This includes all mains voltage household electric goods supplied by the landlord such as cookers, kettles, toasters, electric blankets, washing machines etc. Any equipment supplied must also be marked with the appropriate CE marking (Conformité Européene /

Declaration of Conformity).

In order to meet these obligations either supply new appliances or get any appliances provided checked by a qualified electrician before the property is let to new tenants. All paperwork regarding the items (i.e. receipts, warranties, records of inspection) should be kept for a minimum period of six years.

One way of helping to achieve safety is to undertake a regular formal inspection of the installation and appliances on an annual basis. The Electrical Safety Council advises that as a minimum, landlords should:

- check the condition of wiring, and check for badly fitted plugs, cracks and chips in casings, charring, burn marks or any other obvious fault or damage
- check that the correct type and rating of fuses are installed
- ensure all supplied appliances are checked by a competent person at suitable periods and that any unsafe items are removed from the property. Record details of all electrical appliances, including their condition and fuse rating
- ensure that instruction booklets are available at the property for all appliances and that any necessary safety warnings are given to tenants
- avoid purchasing second-hand electrical appliances for rented properties that may not be safe and
- maintain records of all checks carried out.

Although there is no statutory requirement to have annual safety checks on electrical installations as there is with gas, the Institution of Electrical Engineers recommends a formal periodic inspection and test being carried out on the installation at least once every 10 years or on a change of tenancy.

There is, however, a statutory requirement that all HMOs (both licensable and not licensable) must have their mains installation inspected every five years.

It may also be appropriate that where any risk is found to be enhanced, for example where an installation is old or where damage is regularly found, a more frequent inspection regime will be necessary.

Periodic inspection and testing and any necessary remedial work must only be undertaken by someone competent to do such work. On completion, a periodic inspection report, which indicates the installation is satisfactory (or why it is not), should be issued by the person carrying out the work and this should be acted upon and retained by the landlord.

## 2.8.2 Building Regulations Part P

The regulations relating to electrical installations fall into two categories: existing installations and new work.

### ***New Work***

The design, installation, inspection and testing of electrical installations is

controlled under Part P of the Building Regulations which applies to houses and flats and includes gardens and outbuildings such as sheds, garages and greenhouses.

All work that involves adding a new circuit or is to be carried out in bathrooms and kitchens will need to be either carried out by an installer registered with a Government-approved competent person scheme or alternatively notified to building control before the work takes place. Generally, small jobs such as the provision of a socket outlet or a light switch on an existing circuit will not be notified to the local authority building control.

More details can be found in *Approved Document P* published by the CLG and in their guidance leaflet *Rules for Electrical Safety in the Home*. On completion of any new electrical installation work an Electrical Installation Certificate or Minor Works Form should be issued by the electrician or installer carrying out the work and this should be retained by the landlord.

### 2.8.3 Further Guidance

Building regulations are enforced by local authority building control officers and they can be consulted for further information about compliance with these regulations.

For further guidance about electrical safety and the competency of electricians and installers to carry out new work or undertake the formal periodic inspection and test of an existing installation, refer to the information provided on the Electrical Safety Council's website: [www.esc.org.uk](http://www.esc.org.uk).

## 2.9 Safety of Furniture

If furnished accommodation is being provided it is important to understand the need to provide safe furniture and furnishings, particularly in relation to fire safety.

### 2.9.1 The Furniture and Furnishings (Fire) (Safety) Regulations 1988

Since 1 January 1997 persons who hire out furniture in the course of a business (and this includes furniture provided with rented accommodation) are required to comply with the Furniture and Furnishings (Fire) (Safety) Regulations 1988 which set safety standards for fire and flame-retarding requirements for upholstered furniture manufactured after 1950 or where the tenancy commenced after March 1993. The regulations relate to:

- furniture meeting a cigarette resistance test
- cover fabric, whether for use in permanent or loose covers, meeting a match resistance test and
- filling materials for all furniture meeting ignitability tests.

Tenancies that commenced prior to 1993 are exempt, but all additional or replacement furniture added after 1993 must comply with fire resistance requirements. A new tenant after 1993 means that all relevant furniture must comply.

#### ***The regulations require that:***

All new furniture (except mattresses, bed bases, pillows, scatter cushions, seat pads and loose and stretch covers for furniture) must carry a display label at the point of sale. This is the retailer's responsibility.

All new furniture (except mattresses and bed bases) and loose and stretch covers are required to carry a permanent label providing information about their fire-retardant properties. Such a label will indicate compliance,

although lack of one in second-hand furniture would not necessarily imply non-compliance as the label might have been removed.

Generally, if second-hand furniture has not been bought from a reputable dealer and is not labelled, then it should be assumed that the furniture will fail to meet the regulations.

The regulations apply to any of the following that contain upholstery:

- furniture
- beds, headboards of beds, mattresses
- sofas, sofa beds, futons and other convertibles
- scatter cushions and seat pads
- pillows and
- loose and stretch covers for furniture.

The regulations do not apply to:

- sleeping bags
- bedclothes (including duvets)
- loose covers for mattresses
- pillowcases
- curtains
- carpets.

The regulations relate only to items provided by the landlord and do not apply to items provided by the tenants for which the landlord is not responsible.

The publication *A Guide to the Furniture and Furnishings (Fire) (Safety) Regulations* is available from the Department for Business Enterprise & Regulatory Reform (BERR) website: [www.berr.gov.uk/files/file24685.pdf](http://www.berr.gov.uk/files/file24685.pdf)

## **2.10 Houses in Multiple Occupation (HMO)**

Special requirements apply to types of properties known as Houses in Multiple Occupation (HMOs) which place special responsibilities on landlords and agents.

### **2.10.1 Definition of an HMO**

An HMO is defined in sections 254-259 of the Housing Act 2004. In simple terms, an HMO is a building, or part of a building, such as a flat, that:

- is occupied by more than one household and where the occupants share, lack, or must leave their front door to use an amenity such as a bathroom, toilet or cooking facilities
- is occupied by more than one household in a converted building where not all the flats are self-contained. 'Self-contained' means that all amenities such as kitchen, bathroom and WC are behind the entrance door to the flat
- is a converted block of self-contained flats, but does not meet the requirements of the Building Regulations 1991, and less than two thirds of flats are owner-occupied.

The households must occupy the building as their only or main residence (remembering that tenants can have more than one main residence) and rent must be payable in respect of at least one of the household's occupation of the property.

Generally a household is a family (including co-habiting and same-sex couples or other relationship, such as fostering, carers and domestic staff). The definition of a family also includes parent, grandparent, child, stepchild, grandchild, brother, sister, uncle, aunt, nephew, niece, cousin and 'a relationship of the half-blood shall be treated as a relationship of the whole blood'.

Each unrelated tenant sharing a property will be considered a single household.

Properties which are shared by two individuals are exempt from the HMO definition as are those with a resident landlord with no more than two lodgers.

A self-contained unit is one which has a kitchen (or cooking area), bathroom and toilet for the exclusive use of the household living in the unit. If the occupiers need to leave the unit to gain access to any one of these amenities then the unit is not self-contained.

## **2.11 Duties on the Manager of an HMO**

The Management of Houses in Multiple Occupation (England) Regulations 2006 and 2007 place specific duties on the manager of an HMO. Failure to comply with the regulations is a criminal offence, leading to fines of up to £5,000 on conviction. This section highlights some of the key duties in the regulations:

### ***Duty to provide information to occupiers***

- the name, address and telephone number of the manager must be provided to each household in the HMO and the same information must be displayed in a prominent position in the common parts of the HMO.

### ***Duty to take safety measures***

- means of escape from fire must be kept free of obstruction and kept in good order and repair
- fire-fighting equipment, emergency lighting and alarms must be kept in good working order
- all reasonable steps must be taken to protect occupiers from injury with regard to the design of the HMO, its structural condition and the total number of occupiers. In particular, any unsafe roof or balcony must be made safe or all reasonable measures taken to prevent access to them. Safeguards must be provided to protect occupiers with windows with sills at or near floor level

### ***Duty to maintain the water supply and drainage***

- these must be maintained in proper working order - namely in good repair and clean condition. Specifically, storage tanks must be effectively covered to prevent contamination of water, and pipes should be protected from frost damage.

### ***Duty to supply and maintain gas and electricity***

- these should not be unreasonably interrupted by the landlord

or manager

- all fixed electrical installations must be inspected and tested by a qualified engineer at least once every five years and a periodic inspection report obtained
- the latest gas safety record and electrical safety test results must be provided to the council within seven days of the council making a written request for them.

***Duty to maintain common parts, fixtures, fittings and appliances***

- all common parts must be kept clean, safe, in good decorative repair and working order and free from obstruction
- in particular, handrails and banisters must be provided and kept in good order, any stair coverings securely fixed, windows and other means of ventilation kept in good repair and adequate light fittings available at all times for every occupier to use
- gardens, yards, outbuildings, boundary walls/fences, gates, etc., which are part of the HMO should be safe, maintained in good repair, kept clean and present no danger to occupiers/visitors
- any part of the HMO which is not in use (including areas giving access to it) should be kept reasonably clean and free from refuse and litter.

***Duty to maintain living accommodation***

- the internal structure, fixtures and fittings, including windows and other means of ventilation, of each room should be kept clean, in good repair and in working order. Each room and all supplied furniture should be in a clean condition at the beginning of the tenant's occupation.

***Duty to provide waste disposal facilities***

- no litter should be allowed to accumulate, except for that stored in bins provided in adequate numbers for the requirements of the occupiers. Arrangements need to be made for regular disposal of litter and refuse having regard to the council's collection service.

**2.11.1 Duties of Occupiers of HMOs**

The regulations also place a number of duties upon the occupiers (the tenants) of an HMO.

These duties include:

- not obstructing the manager in the performance of their duties
- allowing the manager access to the accommodation at all reasonable times for the purpose of carrying out their duties
- providing information to the manager which would be reasonably expected to enable them to carry out their duties
- acting reasonably to avoid causing damage to anything the

- manager is under a duty to supply, maintain or repair
- storing and disposing of litter and refuse as directed
- complying with reasonable instructions of the manager with regard to any fire escape, fire prevention measures and fire equipment.

If an occupier breaches their duties under the regulations it is likely to put their tenancy at risk, and the landlord/manager may be able to take legal action against the tenant. Tenants can also be prosecuted by the local authority with a maximum fine of £5,000. The regulations impose duties on both landlords/managers and tenants, and both can be prosecuted and fined for breaching them.

### 2.11.2 Duty to carry out a Fire Risk Assessment

The Regulatory Reform (Fire Safety) Order 2005 (known as the FSO) introduced duties in relation to fire safety in the common areas of HMOs, flats and maisonettes. The duty is placed on the responsible person, who is required to carry out a fire risk assessment and take specific action to minimise the risk of fire in the common parts. 'Responsible person' means 'the person who has control of the premises in connection with the carrying on of a trade, business or other undertaking'. In practice this will usually be the landlord, but in the case of absentee landlords where the 'carrying on of the business' is undertaken by a managing agent it may be the managing agent.

Where a house is let as a shared house on a single tenancy then there are no 'common parts' and so a risk assessment is not required under the regulations.

These provisions are enforced by fire and rescue authorities and there is therefore a dual enforcement regime in place in multi-occupancy premises. In order to avoid duplication and the potential for conflict, a Fire Safety Protocol has been established as a framework for joint working arrangements between the fire and rescue authorities and local authorities.

### 2.11.3 LGA (formerly LACORS) National Fire Safety Guidance

In July 2008 the Local Authorities Co-ordinator of Regulatory Services (LACORS) issued national fire safety guidance for landlords and local authorities in England. As Welsh statutory fire safety requirements are very similar, the guidance may also be relevant in Wales.

Compliance with the guidance will satisfy landlords' legal requirements under the Fire Safety Order, and is available at: [www.lacors.gov.uk/lacors/NewsArticleDetails.aspx?id=19844](http://www.lacors.gov.uk/lacors/NewsArticleDetails.aspx?id=19844) (See two thirds down the page 'To download a PDF version...')

The guidance explains the general principles of fire safety and how to carry out and record a fire safety risk assessment.

Part D of the guidance provides very useful illustrations of the fire precautions that may be suitable for the most common property types. The illustrations are based on properties being of normal fire risk and the guidance explains the factors that determine normal risk.

In addition to HMOs the guidance includes fire safety advice for singly occupied properties. The Housing Act 2004 requires such properties to be fire safe.

## 2.12 Licensing of Private Rented Properties

The Housing Act 2004 introduced licensing of private rented premises. It is compulsory to license larger, higher-risk dwellings, but local authorities are

also able to license other types of rented premises, including other lower-risk HMOs and individual houses and flats, if they can establish that other avenues for tackling problems in these properties have been exhausted.

### 2.12.1 Purpose of Licensing

Licensing is intended to make sure that:

1. a landlord is a fit and proper person (or employs a manager who is)
2. each premises is suitable for occupation and
3. the standard of management is adequate.

This is to ensure tenants are protected and that the risk of anti-social behaviour is reduced. High-risk premises can be identified through licensing and targeted for improvement by a local authority under the Housing Health and Safety Rating System (HHSRS).

The landlord of a licensable dwelling must apply to the local authority for a licence. The local authority can clarify whether a property is licensable. If the landlord refuses to apply for a licence (or cannot satisfy the 'fit and proper' person criterion) and does not use a managing agent, the local authority must manage the property instead.

More information about mandatory HMO licensing can be found below and on the CLG website at [www.communities.gov.uk](http://www.communities.gov.uk).

### 2.12.2 Mandatory Licensing of HMOs

Mandatory licensing applies if the HMO or any part of it:

- comprises three storeys or more
- is occupied by five or more persons and
- is occupied by persons from two or more households.

### 2.12.3 Additional Licensing of HMOs

The Housing Act 2004 gives local authorities the discretion to establish additional HMO licensing schemes, to cover smaller types of HMO where management problems have been identified.

Before setting up such a scheme, the local authority must follow the legal process which includes:

- identifying the problems arising from that type of HMO
- considering whether any other course of action to deal with the problems is available
- ensuring the scheme is consistent with their local housing strategy
- consulting with those likely to be affected including tenants, landlords, landlord organisations etc.

A scheme does not come into effect until three months after it is made and a scheme may last for up to five years.

### 2.12.4 Selective Licensing of Other Residential Accommodation

Part 3 of the Housing Act 2004 gives local authorities the discretion to introduce selective licensing schemes to cover all privately rented property, but not HMOs which are covered by Mandatory and Additional Licensing, in designated areas which suffer, or are likely to suffer from, low housing demand and also those which suffer from significant and persistent anti-social behaviour. The use of this discretionary power is subject to local consultation.

Before setting up such a scheme, the local authority must follow the legal

process which includes:

- identifying the problems arising from that type of HMO
- considering whether any other course of action to deal with the problems is available
- ensuring the scheme is consistent with their local housing strategy
- consulting with those likely to be affected including tenants, landlords, landlord organisations etc.

A scheme does not come into effect until three months after it is made and may last up to five years.

### 2.12.5 Applying for a Licence

Anyone who owns or manages a licensable premises, whether under the mandatory scheme or an additional or selective scheme, has to apply to the local authority for a licence.

The local authority must give a licence if it is satisfied that the:

- HMO is reasonably suitable for occupation by the number of people allowed under the licence
- the proposed licence holder or the proposed manager (if there is one) is a fit and proper person
- the proposed licence holder is the most appropriate person to hold the licence
- the proposed management arrangements are satisfactory
- the person involved in the management of an HMO is competent and the financial structures for the management are suitable.

### 2.12.6 Fit and Proper Person Test

In determining whether the licence applicant is a 'fit and proper person' the local authority will take into account a number of factors, including:

- any unspent convictions relating to violence, sexual offences, drugs and fraud
- whether the person has breached any housing or landlord and tenant law
- whether they have been found guilty of unlawful discrimination.

### 2.12.7 Licence Conditions

A licence will last for up to five years and the local authority normally charges a fee to cover the cost of issuing the licence. In some local authorities discounts are given if the landlord or property is accredited or if an application is made with a plan.

The licence will specify the maximum number of people who may live in the property. The following conditions must apply to every licence:

- a valid current gas safety record, which is renewed annually, must be provided (for properties that have gas)
- proof that all electrical appliances and furniture are kept in a safe condition
- proof that all smoke alarms and emergency lights are correctly positioned and installed
- each occupier must have a written statement of the terms on which they occupy the property. This may be, but does not have to be, a tenancy agreement.

For a selective licence there is a requirement for references from prospective occupiers.

The local authority may also apply other conditions of their own which may include any of the following:

- restrictions or prohibitions on the use of parts of the property by occupants
- action necessary to deal with the anti-social behaviour of occupants or visitors
- ensuring the condition of the property and its contents, such as furniture and all facilities and amenities (e.g. bathroom and toilets) are in good working order and ensuring that specified works or repairs are carried out within certain time limits
- for an HMO, a requirement that the responsible person attends an approved training course in relation to any approved code of practice.

#### **2.12.8 Renewing a Licence**

Many licences, first issued for five years, are now coming up for renewal. There has been no change in primary legislation so a property that is currently licensed will need its licence renewed in order to operate legally. If there has been no significant change in the property, many local authorities are now asking landlords to renew their initial licence rather than reapply as if an entirely new licence was required. Contact the local authority or check on their website which is the easiest way of renewing the licence. It is important that a renewal is requested before the initial licence runs out.

#### **2.12.9 Properties where a Licence may be refused**

If the property is not suitable for the number of occupants, is not properly managed or the landlord or manager is not a fit and proper person, a licence will not be granted. If a property cannot be granted a licence the council must make an Interim Management Order (IMO), which will allow the local authority to manage the property (either directly or indirectly through a nominated partner).

The IMO can last for a year until suitable permanent management arrangements can be made. If the IMO expires and there has been no improvement, then the council can issue a Final Management Order (FMO). This can last up to five years and can be renewed.

#### **2.12.10 Temporary Exemption from Licensing**

If the landlord or person in control of the property intends to stop operating as a licensable property or legally reduce the numbers of occupants and can provide evidence of this, then they can apply for a Temporary Exemption Notice (TEN).

This lasts for a maximum of three months and ensures that a property in the process of being converted from a licensable property does not need to be licensed. If the situation is not resolved, then the landlord can apply for a second Temporary Exemption Notice for a further three months.

When this expires the property must be licensed, become subject to an IMO, or cease to be a licensable property. TENs also apply where the licence holder dies. The property will be treated as if it is subject to an exemption notice for three months, during which time the estate can either apply for a new licence or cease to run the property as a licensable property. If it takes longer than the initial three months the estate can apply for one further

exemption notice.

### **2.12.11 Right of Appeal Against a Local Authority's Decision**

A landlord can appeal to the Residential Property Tribunal Service (RPTS), normally within 28 days, if the local authority refuses a licence, grants a licence with conditions or revokes or varies a licence.

More information about the work of the RPTS and the jurisdiction of residential property tribunals under the Housing Act 2004 can be obtained from [www.justice.gov.uk/tribunals/residential-property](http://www.justice.gov.uk/tribunals/residential-property)

### **2.12.12 Offences**

It is a criminal offence if the landlord or the person in control of the property fails to apply for a licence for a licensable property or allows a property to be occupied by more people than are permitted under the licence. A fine of up to £20,000 may be imposed. In addition, breaking any of the licence conditions can result in fines of up to £5,000. Note also, that no section 21 notice [see section 5.5.7 for more information about section 21 notices] may be given in relation to a shorthold tenancy of a part of a licensable HMO so long as it remains unlicensed. This means that where a licence is compulsory, unlicensed HMO landlords will be unable to evict their tenants by the notice-only section 21 procedure.

### **2.12.13 Rent Repayment Orders**

The local authority may apply to the RPTS for a 'rent repayment order' allowing it to reclaim any housing benefit that has been paid during the time the property was without a licence up to a maximum of 12 months.

A tenant living in a property may also make an application to claim back any rent they have paid during the unlicensed period, up to a maximum of 12 months, if the landlord has been convicted of operating a licensable HMO without a licence, or has been required by a rent repayment order to make a payment to the local authority in respect of housing benefit on the property.

For more information about HMO licensing go to: [www.communities.gov.uk/housing/rentingandletting/privaterenting/housesmultiple/](http://www.communities.gov.uk/housing/rentingandletting/privaterenting/housesmultiple/)

For more information about selective licensing go to: [www.communities.gov.uk/housing/rentingandletting/privaterenting/selectivelicensing/](http://www.communities.gov.uk/housing/rentingandletting/privaterenting/selectivelicensing/)

## **2.13 Planning Control**

Planning approval is essentially about controlling the use of land and is required to alter, extend or change the use of existing properties, or to make changes to a listed building or to a property in a conservation area. Planning approval is needed when a previously singly occupied property is converted into bedsit units or flats.

Approval is not normally required for a property let as a shared HMO for up to six tenants on a group contract, living together as a single household and where no significant changes have been made to the property. For a group of seven or more the presumption should be made that approval may be needed and the advice of the local planning authority should be obtained.

In around 25 towns (mainly associated with large numbers of students) local authorities have obtained what are known as Article 4 powers, which means that planning permission is required for any new HMOs. HMOs that existed before these powers came into effect retain their use whilst being used as HMOs.

In each locality there will be a separate planning policy or guidance pertinent to a designated area of control. In this case, the guidance of

the planning authority should be sought before undertaking any work to convert a house to an HMO as permission for this may not be forthcoming. If an existing HMO is being purchased, the purchasers should ask for confirmation from the seller (normally in the form of a letter from the relevant planning authority) that the house has been previously used as an HMO.

These are comparatively new and evolving powers and there is still much confusion and uncertainty about the policies being followed. What happens if a house changes occupancy levels? Is existing HMO usage based on current or previous occupancy?) What happens if a house is let to a single household and then reverts back to an HMO?

### **2.13.1 Obtaining Planning Approval**

To obtain planning approval, an application with detailed drawings and payment of a fee is made to the local planning authority. The authority will consider the application, may consult with local residents and will then issue a decision with the reasons for that decision. The approval may have conditions attached.

An applicant aggrieved by the decision can appeal against it to the Planning Inspector or may negotiate with the planning authority and amend and re-submit the application.

Enforcement action can be taken against unapproved developments requiring the reinstatement of the property back to its original condition.

The interactive site given below provides an illustration of works that require Planning and Building Regulations approval. [www.planningportal.gov.uk/uploads/hhg/houseguide.html](http://www.planningportal.gov.uk/uploads/hhg/houseguide.html)

### **2.13.2 Certificate of Lawful Use**

Unapproved conversions of singly occupied houses to HMOs and flats are outside the time limits for enforcement action by planning authorities if established use can be proved for 10 years in the case of bedsit properties, and four years for buildings in flats.

After the above time periods an application can be made to the planning authority for a Certificate of Lawful Use (CLU). This means that the use of the property is lawful despite the use not having planning approval.

## **2.14 Building Regulations Approval**

New 'building work' must comply with Building Regulations and includes:

- installation of a service, e.g. washing or sanitary facilities
- material alterations to the structure
- conversions to flats
- some major repairs.

### **2.14.1 Obtaining Building Regulations Approval**

There are two optional procedures available to carry out works with Building Regulations approval for which a fee is payable.

#### **1. Full Plans Application**

This is the normal procedure for most works, whereby the local authority's Building Control Service approves plans and details of the proposed works as being compliant before works commence. The application can be approved with or without conditions, or refused or have amendments

requested.

A Commencement Notice is given to the Building Control Inspector when works start. At pre-determined critical stages the contractor notifies the inspector that certain works are being carried out so that those works can be inspected to check compliance before being covered over.

A Completion Certificate is issued by the inspector at the end of work stating that the works have been carried out in compliance with Building Regulations.

## ***2. Building Notice Procedure***

This procedure is suitable for small-scale works that need to progress quickly and where pre-approval of plans is not essential.

The contractor gives a Building Notice to the Building Control Service that works are about to start and which will then be inspected as they progress. The contractor will be advised if any works are not likely to be Building Regulations compliant so corrective action can be taken.

An alternative to using a local authority building control service is to use a private sector approved inspector's building control service. The procedures are similar with the exception of some additional administration to keep the local authority, as the statutory enforcement authority, informed of progress.

'Unapproved' building works are liable to enforcement action if discovered within 12 months of completion.

Further information is available from:

**[www.direct.gov.uk/en/HomeAndCommunity/Planning/  
BuildingRegulations/DG\\_10014170](http://www.direct.gov.uk/en/HomeAndCommunity/Planning/BuildingRegulations/DG_10014170)**