

Welcome to Landmark Chambers'

Property In Quarantine:

The Regulation of the Private Rented Sector in England

Part 1: Regulation of Housing Conditions

The recording may be accessed [here](#).

Your speakers today are...



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Introduction

- A review of the regulation of the private rented sector;
- This part:
 - Housing conditions that affect the private landlord sector;
 - Not specifically about Covid-19, but overlap.
- How the conditions are enforced is the topic of the next webinar.

Part 1 of the Housing Act 2004

Housing Health and Safety Rating System (HHSRS)

- Part 1 of the Housing Act 2004;
- Section 1 explains that the HHSRS is:
 - A system for assessing the condition of residential premises (s1(a));
 - To be used in the enforcement of housing standards (s1(b));
 - Operates by reference to the existence of category 1 and 2 hazards (s1(2));
- Chapter 2 sets out new enforcement measures;
- Chapter 3 sets out emergency measures;
- Chapter 4 governs existing enforcement actions.

Assessing hazards

- HHSRS fundamentally a system for the identification of hazards arising from deficiencies;
- Guiding principle is that residential premises “*should provide a safe and healthy environment for any potential occupier or visitor*”;
- To satisfy this principle, a dwelling “*should be designed, constructed and maintained with non-hazardous materials and should be free from both unnecessary and avoidable hazards*” (§1.13)
- Methodology for conducting assessments subject of detailed statutory guidance;
- Also statutory guidance for enforcement;

Methodology

- See Housing Health and Safety Rating System: Operating Guidance (Feb 2006);
- Assessment of (29) hazards “*based on condition of whole dwelling*” following “*a thorough inspection of the dwelling*” (1.05);
- A prescribed methodology is followed to produce a score that reflects:
 - The likelihood of harm occurring from a deficiency in the next 12 months;
 - The spread of harms which might result from the occurrence;
- Methodology underpinned on statistical evidence;
- Hazards placed into bands (the Hazard Rating).

Occupiers

- HHSRS based on the risk to the potential occupant who is most vulnerable to that hazard;
- Guidance cautions that:

“The HHSRS provides a means of assessing the dwelling. It is, therefore, concerned only with those deficiencies that can be attributable solely or partly to the design, construction and/or maintenance of the dwelling...This assessment is of the dwelling disregarding the current occupiers (if any), and based on the potential effect of any hazards on a member of the relevant vulnerable age group. This is important and means that the assessment will not be affected by a change of occupier, and that an unoccupied dwelling can be assessed.”
- Occupiers are relevant to decision on enforcement (enforcement guidance §4.9-4.10)

Category 1 and 2 hazards

- Category 1 hazards pose a serious and immediate risk to a person's health and safety;
- Other hazards are category 2 hazards.
- Section 3(1) duty on LAs to 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 in Parts 1 to 4 of the HA 2004;
- LA carrying out s3(1) duty must comply with any directions that may be given by the appropriate national authority (s3(3)). 17 May 2018 direction regarding ACM cladding;
- LA power to inspect residential premises for hazards (HA 2004 s4);

Category 1 hazards

- HA 2004 s5(1): “If a local housing authority consider that a category 1 hazard exists on any residential premises, they **must** take the appropriate enforcement action in relation to the hazard.”
- Enforcement options are:
 - An improvement notice (s11); A prohibition order (s20) or emergency prohibition order (s43); A hazard awareness notice (s28); Emergency remedial action (s40); Demolition order under s265 Housing Act 1985; Declaring the area in which the premises are situated to be a slum clearance area (s289(2) Housing Act 1985).
- Must choose one course of action (s5(3)-(4)), the most appropriate.
- Emergency remedial action followed by an improvement notice or a prohibition order is a single course of action.

Category 2 hazards

- Where a category 2 hazard exists, LA **may**:
 - Serve an improvement notice (s12),
 - Make a prohibition order (s21);
 - Serve a hazard awareness notice (s29);
 - make a demolition order (s. 265(3) HA 1985);
 - Make a slum clearance declaration (s289(2ZB) HA1985).
- Again choose one course of action. As with category 1 hazards, may take another where the action taken by them “*so far has not proven satisfactory*”.

Cladding

- See ‘Addendum for the profile for the hazard of fire and in relation to cladding systems on high rise residential buildings’ (November 2018);
- Confirms that:
 - ACM cladding is part of the exterior of the building;
 - High-rise buildings which are over 18 metres tall with Aluminium Composite Materials (ACM) cladding systems represent a fire hazard (§1.02);
 - Advice on the differing fire risks posed by the categories of ACM cladding;
 - Presence of ACM cladding is relevant to (1) the likelihood of harm occurring and (2) the range of harm outcomes.

ACM cladding

- Presence of ACM cladding is not, automatically, a category 1 hazard – holistic, whole building assessment needed;
- *“waking watches to temporarily mitigate risks, these should not be considered in the hazard assessment under the HHSRS” (§6.01);*
- For common parts, at present Fire Safety Order has a more narrow focus than HHSRS: cf. definition of common parts in Housing Act 2004 and Fire Safety Order (areas *“used in common by the occupants of more than one such dwelling”*).

Other standards

- Prevention of Damage by Pests Act 1949;
- Furniture and Furnishings (Fire) (Safety) Regulations 1988;
- Gas Safety (Installation and Use) Regulations 1998;
- Regulatory Reform (Fire Safety) Order 2005;
- Energy Performance of Buildings (England and Wales) Regulations 2012;
- Homes (Fitness for Human Habitation) Act 2018.

Gas safety

- Gas Safety (Installation and Use) Regulations 1998, for tenancies of less than 7 years, by reg. 36 landlords must:
 - Ensure that gas fittings and flues are *“maintained in a safe condition...so as to prevent the risk of injury”* (36(2)). Includes:
 - Ensuring that each appliance and flue is *“checked for safety within 12 months of being installed and at intervals of not more than 12 months since it was last checked for safety”* (36(3)(a));
 - For new leases, ensuring that each appliance and flue *“has been checked for safety within a period of 12 months before the lease commences or has been or is so checked within 12 months after the appliance or flue has been installed, whichever is later”*
 - Retaining a record of the checks (i.e. a gas safety certificate), reg. 36(3)(c).

Gas safety certificates

- Reg.36(6):
 - “...every landlord shall ensure that—
 - (a) a copy of the record made pursuant to the requirements of paragraph (3)(c) above is given to each existing tenant of premises to which the record relates within 28 days of the date of the check; and
 - (b) **a copy of the last record** made in respect of each appliance or flue **is given to any new tenant of premises to which the record relates before that tenant occupies those premises** save that, in respect of a tenant whose right to occupy those premises is for a period not exceeding 28 days, a copy of the record may instead be prominently displayed within those premises.”

Sanctions

- Criminal enforcement but exceptionally rare;
- Real sanctions are in wider regulation:
 - Condition of licence under Pts 2 or 3, HA 2004;
 - Breach of mortgage term / insurance;
 - S.21, HA 1988;
 - Awaiting *Treccarrel* from CA
 - Note new form N5B (accelerated procedure) - new question 17(a).

Covid-19 and gas safety

- How do you do a gas safety check during the Covid-19 pandemic?
 - Will any gas engineer agree to do one?
 - Will the tenants permit entry?
- Compliance with statutory requirements likely to be a term of a buy to let mortgage, as well as a term of insurance.

Energy performance certificates

- Energy Performance of Buildings (England and Wales) Regulations 2012, regulation 6:
- Applies where a building is to be sold or rented;
- The landlord must make available, free of charge, a valid EPC to the prospective tenant at the earliest opportunity;
- *“The [landlord] must ensure that a valid energy performance certificate has been given free of charge to the person who ultimately becomes the buyer or tenant.”* (6(5))
- Does failure to provide EPC before start of tenancy invalidate s21 notice?

Energy efficiency

- Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015:
- Reg 23(2), from 1 April 2020, cannot let a residential property required to have an EPC that is band F or G. Landlords with existing leases must take corrective action immediately;
- Can register exemptions:
 - Requirements works cost more than £3500, and that amount has already been spent (5 years);
 - Wall insulation works would effect structure (5 years);
 - Required consent cannot be obtained (5 years, or until tenancy ends/assigned);
 - Devaluation of more than 5% (5 years);
 - Recently became a landlord (6 months).
- Relationship with the Homes (Fitness for Human Habitation) Act 2018.

Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020

- Forthcoming – 1 June 2020 for new tenancies, 1 April 2021 for existing tenancies;
- Regulation 3(1)(a) duty on landlords to ensure “electrical safety standards” are met;
- ‘Electrical safety standards’ are:
 - *“the standards for electrical installations in the 18th edition of the Wiring Regulations... BS 7671: 2018.”*
- Also requirements for regular testing (reg. 3(1)(b)) and provision of the report to the tenant within 28 days (reg. (3)(b));

Electrical safety

- LA power to serve remedial notices on non-compliant landlords (reg. 4);
- Landlord must take all reasonable steps to comply (reg. 5(1), failing which LA can take the remedial action and recover cost from landlord (regs. 6 and 8);
- Landlord right of appeal (reg. 7 against remedial action, reg. 9 against costs);
- Also a LA to fine non-compliant landlords up to £30,000 (reg. 11). Right of appeal (reg. 12, Schedule 2);
- Reg.13 makes it a condition of licences under the HA 2004 that the landlord must ensure “*every electrical installation in the house is in proper working order and safe for continued use*”.

Q&A

We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the chat section which can be found along the top or bottom of your screen.

Thank you for listening

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