

# Housing hazards and landlords duties

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*The 1985 Housing Act had "fitness standards" for rented accommodation. This ensured that tenants could make landlords improve sub-standard housing. On the 1st April 2006 new regulations dealing with sub-standard property came into force.*

Part 1 of the Housing Act 2004 (The Act) describes an evidence-based system for assessing housing conditions. The Act allows for regulations to be made which define health hazards, the method for assessing the seriousness of hazards and the manner and extent of inspections of residential premises.

Those regulations have now been made and are called "The Housing Health and Safety Rating System (England) Regulations 2005".

## Complying with the regulations

The Housing Health and Safety Rating System (HHSRS) is a system for assessing the health and safety risks in dwellings and is a replacement for the "fitness standard" that was contained in the 1985 Housing Act.

To comply with the regulations a "dwelling" (it's structure, out-buildings, gardens, yards, amenity space and means of access) should provide a safe and healthy environment for any occupier, potential occupier or visitor.

## What is a "dwelling"?

A dwelling includes a house, a self contained flat, bed-sit, a room in a hostel or similar residential building or any house in multiple occupation (HMO).

## The assessment?

An assessment of the house etc. decides if there is a hazard present in the dwelling that can cause harm to an occupier or visitor. The assessment should be based on the most vulnerable potential occupant. The regulations give no guidance as to what a "vulnerable" occupant might be. In our opinion it might be a baby or child were there is a possibility of gassing, a multiple chemical sensitivity sufferer when the hazard is chemical exposure or an elderly person when the hazard is hypothermia. Council Environmental Health Officers (EHOs) carrying out the assessment will be able to take account of the vulnerability of the actual occupant during their assessment.

Hazards are scored using a system set out in the regulations according to how serious they are and the effect they are having, or could have, on the occupiers of, or visitors to, a dwelling.

The rating system can also compare the health risks associated with different types of hazards. E.g. Those hazards that are long term (chronic) health risks like dampness, cold, vermin or mould and hazards that have immediate (acute) health effects such as falls and trips.

The aim of the rating system is to identify the hazard and minimise the health risks that come from being exposed to the hazard.

## The Hazards

The regulations identify 29 housing hazards and they are named in Schedule 1 of the regulations and they are:

**Damp and mould growth:** Exposure to house dust mites, damp, mould or fungal growths.

**Excess cold:** Exposure to low temperatures.

**Excess heat:** Exposure to high temperatures.

**Asbestos and MMF:** Exposure to asbestos fibres or manufactured mineral fibres.

**Biocides:** Exposure to chemicals used to treat timber and mould growth.

Carbon monoxide and fuel combustion products: Exposure to (a) carbon monoxide; (b) nitrogen dioxide; (c) sulphur dioxide and smoke.

**Lead:** The ingestion of lead.

**Radiation:** Exposure to radiation.

**Uncombusted fuel gas:** Exposure to uncombusted fuel gas.

**Volatile organic compounds:** Exposure to volatile organic compounds.

**Crowding and space:** A lack of adequate space for living and sleeping.

**Entry by intruders:** Difficulties in keeping the dwelling or Home in Multiple Occupation (HMO) secure against unauthorised entry.

**Lighting:** A lack of adequate lighting.

**Noise:** Exposure to noise.

**Domestic hygiene, pests and refuse:**(a) Poor design, layout or construction such that the dwelling or HMO cannot readily be kept clean. (b) Exposure to pests. (c) An inadequate provision for the hygienic storage and disposal of household waste.

**Food safety:** An inadequate provision of facilities for the storage, preparation and cooking of food.

**Personal hygiene, sanitation and drainage:** An inadequate provision of (a) facilities for maintaining good personal hygiene; (b) sanitation and drainage.

**Water supply:** An inadequate supply of water free from contamination, for drinking and other domestic purposes.

**Falls associated with baths:** Falls associated with toilets, baths, showers or other washing facilities.

**Falling on level surfaces:** Falling on any level surface or falling between surfaces where the change in level is less than 300 millimetres.

**Falling on stairs:**Falling on stairs, steps or ramps where the change in level is 300 millimetres or more.

**Falling between levels:** Falling between levels where the difference in levels is 300 millimetres or more.

**Electrical hazards:** Exposure to electricity.

**Fire:** Exposure to uncontrolled fire and associated smoke.

**Flames, hot surfaces:** Contact with (a)

controlled fire or flames; (b) hot objects, liquid or vapours.

**Collision and entrapment:** Collision with, or entrapment of body parts in, doors, windows or other architectural features.

**Explosions:** An explosion at the dwelling or HMO.

**Position and operability of amenities:** The position, location and operability of amenities, fittings and equipment.

**Structural collapse and falling elements:** The collapse of the whole or part of the dwelling or HMO.

## The Inspection and Risk Assessment.

An EHO will inspect a dwelling and note down all defects found. Once the inspection is completed the officer, in compliance with the method set out in the regulations, scores the hazards present and the likelihood of an incident causing harm to the occupiers. Scores are not a matter of personal judgement, they are set out in a document called "Guidance on operating principles".

If the score for a hazard is in excess of 1000, this is known as a **Category 1 hazard** and there is a legal duty on the Council to take appropriate enforcement action.

For scores less than a 1000, known as **Category 2 hazards**, the Council will have power to take action, but no legal duty to do so.

Tenants have no legal right to force council officers to carry out inspections and risk assessments of the property they live in. It will be difficult for Councils to justify not carrying out an inspection and risk assessment, particularly if the hazard is likely to be a category 1 hazard.

Much of the information about how the rating system works is technical and a computer program is available to council officers carrying out inspections. There is room for human error and misjudgment.

Pressure can put on council officers by using the the Council's complaints system. You can also raise the matter with your local councillors or and Member of Parliament. If after doing this there is no action on the Council's part you may also be able to make a complaint to the Local Government Ombudsman's Office.

## Enforcement Action

When a category 1 risk is revealed by an inspection the council **must** take action. Either

- (a) serving an improvement notice (ordering the landlord to make improvements) or
- (b) making a prohibition order (bans the use of the dwelling or parts of the dwelling) or
- (c) serving a hazard awareness notice or
- (d) taking emergency remedial action (the Council makes the hazard safe and charges the landlord for the work) or
- (e) making an emergency prohibition order or
- (f) making a demolition order under subsection (1) or (2) of section 265 of the Housing Act 1985 (c. 68); or
- (g) declaring the area in which the premises concerned are situated to be a clearance area by virtue of section 289(2) of that Act.

If (d) "emergency remedial action" is taken, then the council can recover the costs of taking that action from the landlord.

If the hazard revealed is a category 2 risk the council **may** take action, either:

- (a) serving an improvement notice,
- (b) making a prohibition order,
- (c) serving a hazard awareness notice,
- (d) making a demolition order, and
- (e) making a slum clearance declaration.

The taking of one of those kinds of enforcement action by the local

authority in relation to a particular category 2 hazard does not prevent them from taking either:

- (a) the same kind of action again, or
- (b) a different kind of enforcement action, in relation to the hazard, when they think that the action taken by them so far has not proved satisfactory.

## Guidance of enforcement action

In February 2006 the office of the Deputy Prime-minister issued operating guidance (as set out by Section 9 of the Housing Act 2004) which anyone carrying out an inspection and assessment must use.

### Further information

The Housing Health and Safety Regulations 2006

<http://www.opsi.gov.uk/SI/si2005/2003208.htm>

The Housing Act 2004

<http://www.opsi.gov.uk/ACTS/acts200420040034.htm>

Housing Health and Safety Rating System – Operating Guidance

<http://www.communities.gov.uk/pub/83/HHSRSOperatingGuidancePDF914Kbid1161843.pdf>

Shelter – If the environmental health team will not help

<http://england.shelter.org.uk/advice/advice-6334.cfm>

Factsheets online [www.lhc.org.uk](http://www.lhc.org.uk) London advice 020 7794 5999

