

# Addendum to Private Sector Housing Enforcement Policy 2018

## Introduction

This addendum has been produced in response to the ongoing COVID19 pandemic and its impact both on the services delivered by the Private Sector Housing Team and its decision making process. The Council's statutory duties remain unchanged during this period and are important in protecting tenants and ensuring safe accommodation is provided in the Borough. The most serious risks will be prioritised and vulnerable tenants protected.

Regard has been had to the [MHCLG COVID-19](#) and the Enforcement of Standards in Rented Properties guidance issued in March 2020 with this addendum covering the following areas:

- Impact on services and an outline of those being treated as non-priority
- Property Inspection
- Enforcement Action
- Complying with Electrical and Gas Safety Regulations in rented properties

This document should be read in conjunction with the Council's existing Private Sector Housing Enforcement Policy 2018 and information and guidance for landlords and tenants on our Landlord Information Zone Coronavirus section of our website: <https://www.nuneatonandbedworth.gov.uk/coronavirus-landlord>

## Impact on Services

The Council has a duty to keep housing conditions under review and to take appropriate action when they find serious risks known as 'category 1' hazards. The Council also has legal duties and powers under other legislation.

These duties and powers still exist during the COVID-19 outbreak and are important to protect tenants. In light of this, the enforcement objectives of the Private Sector Housing Enforcement Policy listed in Section 3 of that document, and until COVID-19 restrictions are lifted, are amended as detailed below:

- Privately rented accommodation, including houses in multiple occupation ("HMO"), and accommodation provided by registered providers of social

housing, are free from category 1 hazards<sup>1</sup> that affect the health and safety of the tenant, licensee or any visitor.

*Impact: This will remain unchanged and the service will ensure serious threats to health and safety can still be addressed.*

- Private rented accommodation and tenancies are managed in accordance with relevant statutory requirements.

*Impact: Whilst this duty will be maintained on landlords, the PSH service will only intervene if the issues relate to protecting tenants from unlawful eviction or severe harassment. It is also vital that where we are able to do so, the Private Sector Housing Team is in place to support landlords in delivering their duties and safeguarding their tenants welfare.*

- Privately rented accommodation meets minimum energy efficiency ratings.

*Impact: Enforcement of the Minimum Energy Efficiency Regulations will be targeted (whilst COVID-19 restrictions remain in place) at those privately rented properties with an F or G energy rating. However regard will be had, in relation to completion of energy efficiency works and enforcement action not taken where a landlord or owner has been unable to complete works due to work arrangement issues, with either a tenant refusing access or contractors being unavailable to safely complete works.*

*Statement of Intent declarations may still be issued by the authority (for all tenures) however their processing maybe delayed. It is expected however the demand for these types of works will be severely impacted during this time.*

- All licensable properties are licensed, with licence conditions being met.

*Impact: The legal obligation to ensure that a valid HMO licence application is submitted still applies and applications can be reasonably expected to continue. Whilst there may be delays with processing an application, this should not delay a landlord or owner from submitting an application which can be done [online](#). Contact with the service is encouraged if there is expected to be reasons why a licence application cannot be submitted. It is expected compliance with HMO Licence Conditions may be affected by access issues or contractor availability.*

- Tenants are protected from unlawful eviction;

*Impact: The protection of tenants' rights and ensuring every tenant has a place to live has been the subject of additional guidance and any action taken by a landlord, agent or owner against the guidance and legislation will be*

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<sup>1</sup> **Hazards assessed to be a Category 1 hazard using the Housing, Health and Safety Rating System ("HHSRS") under the Housing Act 2004 and the Housing Health and Safety Rating System (England) Regulations 2005.**

*treated robustly.* Where a tenant is at risk of eviction the local authority will work with the landlord to prevent homelessness.

- Empty properties are tackled with the aim of addressing security, visual amenity and statutory nuisance issues and also returning them back into occupation.

*Impact: The complaints will be responded to according to risk. Where there would be an unacceptable level of risk to staff or members of the public, responding to these complaints will be deferred. With restricted sales taking place at this moment the usual options available to owners may not be as accessible and this will be taken into account.*

- Lettings and property management businesses are registered with a government-approved redress scheme and comply with relevant legislation and codes of practice.

*Impact: Whilst this should not be impacted by the current situation the Private Sector Housing Service will only respond to these complaints if there is serious risk or detriment to a tenant from failing to comply with these requirements.*

- Mobile Home, Caravan and camp sites are managed in compliance with site licence conditions and relevant statutory requirements.

*Impact: The proactive inspection of mobile home sites, as a non-statutory duty will be deferred until it is safe and the team has resources to resume these inspections. Service requests from mobile home site residents which are deemed to present an imminent risk of harm will still be investigated and the appropriate action taken to ensure the hazard is removed.*

In the delivery of all of the above services, decisions will be based on the following factors (this list is not exhaustive):

- Assessment of risk in line with Nuneaton and Bedworth Borough Council's health and safety policy and risk assessment procedures
- The risk posed to the public or tenant from the hazard/report
- Risk posed to the services (which may include external agencies) responding to the service request
- Impact on other services who themselves maybe delivering a key or statutory function

## **Property Inspections**

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

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

However, it might not be possible to inspect a property due to tenants self-isolating or refusing to allow access. In these circumstances a proportionate response, relative to the risk will be applied which may include:

- A decision may be made to de-prioritise lower-risk hazards.
- An assessment could be made through photographs, video or live broadcasting by the tenant.
- In cases of very serious risk, the effective use of 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.
- Alternative form of inspections may be used including self-certification which can be checked at a later date.
- Tenants may be asked to move themselves to another room whilst inspections that cannot be deferred are taking place and the number of parties attending will be reduced to an absolute minimum.

Again, decisions will be made on the merits of the individual case and an assessment of risk.

### **Enforcement action**

During this unprecedented time we will only take enforcement action that we determine is necessary, as detailed below:

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

\* During widespread COVID 19 restrictions, these would be undertaken at cost with no enforcement charge being made.

## **Complying with Electrical and Gas Safety Regulations in rented properties**

This section of this document is based on [MHCLG Guidance](#).

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

The Electrical Safety Regulations will 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 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. If a landlord can show they have taken all reasonable steps to comply with their duty under the regulations, they are not in breach of the duty. With regards to the Electrical Safety Regulations a landlord would not be in breach of the duty to comply with a remedial notice and with regards to the Gas Safety Regulations a landlord would not be liable for an offence.

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