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Consultation Document

Renting Homes (Wales) Act 2016 – Fitness for Human Habitation

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Action required: Responses by 12 January 2018

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview	This consultation is seeking views on the regulations determining a dwelling's fitness for human habitation, and the accompanying guidance.
How to respond	<p>All responses to this consultation must complete the enclosed questionnaire.</p> <p>Responses can be submitted to:</p> <p>E-mail: rentinghomes@gov.wales (please mark the subject of your email 'FFHH consultation')</p> <p>Post: Renting Homes Team Housing Policy Division Ground Floor, West Core Welsh Government Cathays Park Cardiff CF10 3NQ</p>
Further information and related documents	Large print, Braille and alternative language versions of this document are available on request.
Contact details	<p>Renting Homes Team Housing Policy Division Ground Floor, West Core Welsh Government Cathays Park Cardiff CF10 3NQ</p> <p>rentinghomes@wales.gov</p>
Data protection	<p>How the views and information you give us will be used.</p> <p>Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.</p>

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

CONTENTS

Part 1	Introduction and Background	Page 5
Part 2	Draft Regulations	Page 11
Part 3	Draft Guidance	Page 18
	Response Form	Page 40

Part 1: INTRODUCTION AND BACKGROUND

Introduction

Once fully implemented, the Renting Homes (Wales) Act 2016 ('the 2016 Act') will make it simpler and easier to rent a home in Wales, replacing various and complex pieces of existing legislation with one clear legal framework. The new 'occupation contracts' replace current tenancies and will make the rights and obligations of both landlord and contract-holder much clearer. This includes the landlord's duty, set out in section 91 of the 2016 Act, to ensure a dwelling is fit for human habitation (FFHH). Where a landlord rents a dwelling that is unfit, a contract-holder will be able to seek an order from the court requiring the landlord to remedy the problem. Section 94 of the Act requires the Welsh Ministers to make regulations in relation to determining whether a dwelling is FFHH. This consultation sets out and invites comments on the proposed Regulations.

What is Fitness for Human Habitation?

The concept of ensuring a dwelling is FFHH dates back over 100 years as a desire to improve working class housing. The provision was first included in the Housing of the Working Classes Act 1885. Early legislation in this area often tied the fitness standard to the class of person occupying the dwelling in question, or was subject to the limited aspirations of the time. The latest obligation on a landlord to keep a dwelling FFHH is set out in the Landlord and Tenant Act 1985 ('the 1985 Act'). The 1985 Act implies a contractual term on the landlord-tenant relationship, placing an obligation on the landlord to ensure the dwelling is FFHH at the start of, and during, the tenancy. The landlord of a qualifying dwelling is required to ensure that the house is "reasonably suitable for occupation" in respect of the following 9 matters:

- repair,
- stability,
- freedom from damp,
- internal arrangement,
- natural lighting,
- ventilation,
- water supply,
- drainage and sanitary conveniences,
- facilities for preparation and cooking of food and for the disposal of waste water;

Unfortunately, the applicability of the legislation is severely hampered by the rent qualifications applied to it. Only dwellings where the rent does not exceed £80 per annum in London and £52 per annum elsewhere are covered. These rent limits have remained unchanged since 1957 so clearly there can be few, if any, dwellings to which this Act now applies. Whilst FFHH under the 1985 Act is no longer an effective provision, the principle of FFHH being based on a "reasonable standard" is not without merit. The inclusion of a FFHH obligation under the 2016 Act provides a remedy for a contract-holder to address concerns about the quality of their accommodation which fall outside the landlord's repairing obligations (the repairing obligations under the 2016 Act reflect current requirements).

How will the FFHH Regulations work?

The challenge in making every dwelling FFHH is to ensure poor housing conditions are addressed whilst ensuring excessive costs are not placed on those landlords already

providing accommodation of a reasonable quality . If the Regulations are prohibitively expensive for landlords to implement then there is a danger dwellings will be removed from the rental market. This would potentially pose as many problems as poor conditions currently present. However, there is a need to address the poorest of conditions, alongside an ambition to raise standards generally.

Therefore, the Act requires a landlord to ensure their rental dwelling is FFHH at the start of and during the length of the occupation contract. The FFHH Regulations will set out the following:

1. The prescription of matters and circumstances to which regard must be had when determining whether a property is FFHH
2. Specific requirements of the landlord to ensure these matters and circumstances do not arise.

Prescribed matters

The prescribed matters and circumstances under the proposed Regulations will have similar application to the 9 matters under the 1985 Act. However, the 9 matters listed under the 1985 Act have not been updated since they were first introduced in 1957. Instead, it is considered the more detailed approach set out within the Housing Health and Safety Rating System (HHSRS), which identifies 29 matters and circumstances which could give rise to potential hazards, is more representative of modern living standards.

Therefore, the intention is to determine whether a dwelling is FFHH by having regard to the following 29 matters and circumstances.

1. Damp and mould growth
2. Asbestos and manufactured mineral fibres
3. Biocides
4. Carbon monoxide and fuel combustion products
5. Lead
6. Radiation
7. Uncombusted fuel gas
8. Volatile organic compounds
9. Electrical hazards
10. Excess cold
11. Excess heat
12. Crowding and space
13. Entry by intruders
14. Lighting (including natural)
15. Noise
16. Domestic hygiene, pests and refuse
17. Food safety
18. Personal hygiene, sanitation and drainage
19. Water supply for domestic purposes
20. Falls associated with baths etc.
21. Falls on the level
22. Falls associated with stairs and steps
23. Falls between levels
24. Fire
25. Hot surfaces and materials

- 26. Collision and entrapment
- 27. Explosions
- 28. Position and operability of amenities
- 29. Structural collapse and falling elements

Why not simply rely on the HHSRS?

The HHSRS is not in itself a standard but was introduced as a replacement for the old Housing Fitness Standard. However, unlike the fitness obligation under the 1985 Act, the HHSRS can be enforced only by the local authority, and not by a tenant. This has therefore narrowed the rights of tenants.

The HHSRS evaluates the potential health and safety risks of any deficiencies identified in dwellings. In order to establish the level of a hazard (defined as a Category 1 or Category 2 hazard) an inspection is carried out to determine the likelihood of a risk occurring that could cause harm, and the probable severity of the outcomes of such an occurrence. The determination of whether a Category 1 or 2 hazard exists will depend upon a number of detailed factors including the occupier or potential occupier of the dwelling. This determination requires a detailed procedure to be undertaken by a trained assessor such as an Environmental Health Officer.

While the HHSRS is an appropriate mechanism for a local authority to determine whether a dwelling is safe to live in (in order to meet its duty under Housing Act 2004), a different approach has been adopted under Renting Homes. The determination of whether a hazard exists under HHSRS is based upon its impact on the most vulnerable person susceptible to that particular hazard, as opposed to the person actually living in the dwelling. Also, the requirement for the inspection to be carried out by a local authority assessor makes its practical application in respect of every occupation contract almost impossible.

The FFHH obligation under Renting Homes will not require a detailed assessment to be carried out by a local authority. Instead, whether a dwelling is FFHH will ultimately be determined by the courts, in the event of no agreement being reached between the landlord and the contract-holder. However, in the majority of cases it is expected referral to the court will not be necessary as it should be clear to both landlord and contract-holder whether the dwelling is of a reasonable condition to occupy.

Furthermore, a purely risk based approach, such as the HHSRS, would often be unreasonably penalising for landlords who would be required to make alterations which had little or no benefit for the majority of potential occupiers. Ultimately allowing the court to decide whether a dwelling is FFHH will also allow changing perceptions with regard to living standards to be taken into account.

It is, however, important to note that the existing duties under the Housing Act 2004 regarding HHSRS enforcement remain and will not be altered by the FFHH requirement under Renting Homes. A contract-holder will, therefore, still be able to report any concerns to their local authority, for the local authority to act on in accordance with its duties under HHSRS.

Specific requirements imposed on landlords

As stated above, regard must be had to all the 29 matters and circumstances when determining whether the dwelling is FFHH. However, the Regulations will also place specific

requirements on landlords to help prevent certain matters and circumstances arising. Presently, it is proposed there will be three requirements imposed on a landlord which relate to:

- smoke alarms;
- carbon monoxide detectors; and
- electrical safety testing at least every five years.

Where these requirements are not complied with, a dwelling is to be treated as being unfit for human habitation, irrespective of the position regarding the 29 matters and circumstances. For example, to minimise the possibility of fire and its impact, there will be a requirement for a landlord to ensure that smoke alarms are present in the dwelling. Failure to comply with this requirement will result in the dwelling being treated as being unfit for habitation, regardless of any other fire prevention measures undertaken.

These specific requirements will be kept under review to adapt to any issues which may arise.

What about the Welsh Housing Quality Standard (WHQS)

The WHQS applies only to social housing owned by local authorities and housing associations, who will continue to be bound to meet that standard, in addition to the FFHH requirement under Renting Homes. However, as a result of the requirements of WHQS, it is less likely a community landlord's dwelling will be unfit for human habitation. This is because the aim of WHQS, similar to that of FFHH, is the improvement in housing conditions. For example WHQS already requires the installation of smoke alarms. However, there may be some additional requirements arising, such as the installation of carbon monoxide detectors.

What happens if a dwelling is not FFHH?

Where a contract-holder believes their dwelling is not FFHH, the landlord may be in breach of the occupation contract. Whilst the proposed Regulations seek to simplify the approach to assessing conditions within a dwelling, it is recognised there will be some disagreements between landlords and contract-holders which cannot be easily resolved. In such cases, the contract-holder may take court proceedings against the landlord for breach of contract. Such proceedings may result in an order for specific performance in order to remedy the problem and may also result in an order for compensation related to injury, loss or damage caused.

Along with other aspects of the 2016 Act, the landlord's duty to ensure a dwelling is FFHH will be reflected in the Landlord's Code of Practice issued under the Housing (Wales) Act 2014. A landlord who rents a dwelling which is not FFHH, or who fails to rectify an issue causing the dwelling to be unfit, may risk having their landlord licence revoked.

How much will meeting FFHH cost a landlord?

It is very difficult to quantify the cost which may be incurred by a landlord in ensuring a dwelling complies with the FFHH requirement in respect of the 29 matters and circumstances. The costs will vary depending on the current condition of the dwelling, with those dwellings in a particularly poor condition entailing a greater level of improvement and therefore cost. A full impact assessment will be undertaken, following this consultation

phase and published alongside the publication of the final version of the Regulations. This impact assessment will contain an estimate of potential costs. However, assessing how many dwellings will require improvement and to what extent improvement is required will remain difficult to assess fully.

Estimating the potential costs associated with the specific requirements of the landlord, i.e., installing smoke alarms, carbon monoxide detectors and conducting electrical safety testing, is somewhat more straightforward. Although the number of dwellings which do not currently have such detectors or testing is unknown, where a landlord is required to implement all three requirements for the first time a reasonable estimate can be made of the potential costs.

Installation of smoke alarms

The proposed Regulations require the presence of smoke alarms. These cost around £15 and are fairly straight forward to fit. A smoke alarm will be required to be present on each floor of the dwelling used as living accommodation. This will usually mean a cost of £15 to £30 for the average rented dwelling.

Whilst the regulations as drafted only require the presence of battery powered smoke alarms this consultation seeks your opinion on additional requirements for smoke alarms. Battery powered smoke alarms are cost effective, easy to install and effective in the right circumstances. However, there are two main considerations to factor into their use. The battery running out of power or being removed / not replaced would render them ineffective. In addition, there is the inability of low cost battery smoke alarms to be interlinked. Interlinked alarms are connected meaning when one alarm is triggered all the alarms are triggered

There are a number of alarms which can overcome these problems. Sealed unit lithium battery-powered smoke alarms prevent the removal of the battery and have a 10 year lifespan. These smoke alarms can also be interlinked through several different methods and remain comparatively low-cost. Other smoke alarms can also be hard-wired into the electrical supply which removes any concerns around battery life and can also provide interlinking between alarms. Hard-wired alarms will generally be the most expensive option.

Installation of carbon monoxide detectors

A carbon monoxide detector will cost around £15 and is again fairly straight forward to fit. The FFHH regulations require a carbon monoxide detector to be present in any room which has a gas, oil or solid fuel burning appliance. This will usually mean a cost of £15 to £30 for the average rented dwelling.

A landlord who is unable to fit any of these detectors should be able to have them installed fairly cost effectively. Installation of 3 alarms should take no more than an hour at a cost of around £30.

Electrical safety testing

The FFHH regulations require a landlord to hold an electrical installation condition report (EICR) in accordance with British Standard BS7671 obtained from an electrician who is able to undertake such work. This report will be provided following a periodic inspection and test

(PIT) of the electrical installation in the dwelling. The cost for such a test will vary depending upon the size of the dwelling but the following indicate the typical expense:

- One bedroom flat – expect to pay from £120.
- Two bedroom flat – expect to pay around £120 to £150.
- Three bedroom flat – costs are between £180 and £210.
- One to two bedroom house – inspection costs between £150 and £180.
- Three to four bedroom house – expect to pay anything between £200 and £250.

Where the PIT has revealed the need for remedial work to be carried out in order to make the electrical installation of the dwelling safe, a landlord must ensure that this work is undertaken to ensure the dwelling is FFHH. Depending on the requirements of this remedial work the cost to a landlord will vary significantly. For example, some typical costs are:

- Replacement of plug socket outlet £70
- Replacement of circuit radial to electric shower £170
- Replacement of consumer unit £340

A dwelling which has failed the PIT completely may require a full rewire, which will cost in the region of £2,000 to £3,500, depending on the size of the dwelling. Whilst it is recognised this is a significant cost for a landlord, a dwelling which is clearly so unsafe cannot be considered suitable to be rented without such work being undertaken.

Part 2 – REGULATIONS

WELSH STATUTORY INSTRUMENTS

201[] No. (W.)

HOUSING, WALES

The Renting Homes (Fitness for Human Habitation) (Wales) Regulations 201[]

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the matters and circumstances to which regard must be had when determining whether a dwelling is fit for human habitation. These Regulations also impose requirements on landlords for the purpose of preventing those matters and circumstances which may cause a dwelling to be unfit for human habitation from arising and prescribe that if those requirements are not complied with in respect of a dwelling, the dwelling is to be treated as if it were unfit for human habitation.

Regulation 3 and the Schedule prescribe the matters and circumstances to which regard must be had when determining whether a dwelling is fit for human habitation and includes any contravention of a requirement or prohibition imposed under regulation 36 of the Gas Safety (Installation and Use) Regulations 1998 (“the 1998 Regulations”) and sections 21 or 22 of the Health and Safety at Work etc. Act 1974 (“the 1974 Act”). The 1998 Regulations impose requirements on landlords in relation to the safety and maintenance of gas fittings, flues and appliances and the enforcement of those requirements is provided by the 1974 Act.

Regulation 4 imposes a number of requirements on a landlord for the purpose of preventing any matters or circumstances which may cause a dwelling to be unfit for human habitation from arising. This includes requirements to ensure that smoke alarms and carbon monoxide alarms, in proper working order, are present in a dwelling; and to hold an inspection report or electrical installation certificate, where applicable, under the British Standard Requirements for Electrical Installations BS 7671:2008 IET Wiring Regulations 17th Edition (ISBN 978-1-84919-769-4) (“British Standard Requirements”) confirming that the service installation for the supply of electricity in the dwelling is satisfactory. Landlords must also ensure that inspections of the electrical installation are carried out by a qualified person at five yearly intervals, or at a shorter interval in accordance with any recommended timeframe set out in the immediately preceding inspection report or in the electrical installation certificate.

Regulation 5 provides that where a landlord fails to comply with any requirement set out in regulation 4, a dwelling is to be treated as if it were unfit for human habitation.

Regulation 6 makes provision for recognition of codes and standards issued by national standards bodies of other EEA States or approved by those States, where such codes or standards require equivalent levels of performance to the British Standard Requirements.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Housing, Welsh Government, Rhydycar Business Park, Merthyr Tydfil, CF48 1UZ.

201[] No. (W.)

HOUSING, WALES

The Renting Homes (Fitness for Human Habitation) (Wales) Regulations 201[]

Made ***

Laid before the National Assembly for Wales ***

Coming into force in accordance with regulation 1

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 94(1) and (3), and 256(1) of the Renting Homes (Wales) Act 2016(1).

Title and commencement

1. The title of these Regulations is the Renting Homes (Fitness for Human Habitation) (Wales) Regulations 201[] and they come into force on the appointed date.

Interpretation

2. In these Regulations—

“the Act” (“*y Ddeddf*”) means the Renting Homes (Wales) Act 2016;

“the appointed date” (“*y dyddiad penodedig*”) means the day on which section 239 of the Act comes into force;

“British Standard Requirements” (“*Gofynion y Safon Brydeinig*”) means the British Standard Requirements for Electrical Installations BS 7671:2008 IET Wiring Regulations 17th Edition (ISBN 978-1-84919-769-4);

“electrical installation” (“*gosodiad trydan*”) means the service installation for the supply of electricity in a dwelling which is subject to a secure contract, a periodic standard contract or a fixed term standard contract made for a term of less than seven years;

“electrical installation certificate” (“*tystysgrif gosodiad trydan*”) means an Electrical Installation Certificate under the British Standard Requirements(2);

“gas” (“*nwy*”) has the meaning given by section 48(1) of the Gas Act 1986(3);

“gas appliance” (“*cyfarpar nwy*”) means an appliance designed for use by a consumer of gas for heating, lighting, cooking or other purposes for which gas can be used, but it does not include a portable or mobile appliance supplied with gas from a cylinder, or the cylinder, pipes and other fittings used for supplying gas to that appliance; or an appliance which the contract-holder is entitled to remove from the dwelling;

“inspection” (“*arolygiad*”) means periodic inspection and testing carried out in accordance with Chapter 62 of the British Standard Requirements;

“minor electrical installation works certificate” (“*tystysgrif mân waith gosodiad trydan*”) means a Minor Electrical Installation Works Certificate under the British Standard Requirements(4);

(1) 2016 anaw 1. See section 252 for the definition of “prescribed”.

(2) See Appendix 6 to the British Standard Requirements which contains a template report.

(3) 1986 c. 44.

(4) See Appendix 6 to the British Standard Requirements which contains a template report.

“qualified person” (“*person cymwysedig*”) means a person who is able to carry out inspection and electrical work in accordance with the British Standard Requirements;

“report” (“*adroddiad*”) means an Electrical Installation Condition Report under the British Standard Requirements(5).

Prescribed matters and circumstances

3. In determining for the purposes of section 91(1) of the Act whether a dwelling is fit for human habitation, regard must be had to—
- (a) the presence or occurrence, or the likely presence or occurrence, of the matters and circumstances listed in the Schedule; and
 - (b) any contravention by the landlord of any requirement imposed by regulation 36 of the Gas Safety (Installation and Use) Regulations 1998(6), or any requirement or prohibition imposed under any improvement notice or prohibition notice (including any such notice as modified on appeal) under sections 21 or 22 of the Health and Safety at Work etc. Act 1974(7), so far as they relate to the dwelling.

Landlord’s duties for the purpose of preventing any matters or circumstances which may cause a dwelling to be unfit for human habitation from arising

- 4.—(1) For the purpose of preventing any matters or circumstances which may cause a dwelling to be unfit for human habitation from arising, a landlord under a secure contract, a periodic standard contract or a fixed term standard contract made for a term of less than seven years, must—
- (a) ensure that a smoke alarm in proper working order is present on each storey of the dwelling on which there is a room used wholly or partly as living accommodation;
 - (b) ensure that a carbon monoxide alarm in proper working order is present in each room of the dwelling which is used wholly or partly as living accommodation and which contains a gas appliance, an oil-fired combustion appliance or a solid fuel burning combustion appliance;
 - (c) subject to paragraph (3), upon the occupation date of an occupation contract, hold a report of an inspection which does not predate the occupation date by more than five years, or where the report of the preceding inspection recommended an inspection within a period of less than five years prior to the occupation date, the report of that subsequent inspection, confirming that the condition of the electrical installation is satisfactory;
 - (d) make available to the contract-holder on or before the occupation date of an occupation contract, a copy of the report held by the landlord under sub-paragraph (c);
 - (e) subject to paragraph (2), ensure that inspections are carried out by a qualified person at intervals of not more than five years, or at such shorter interval as is recommended in the report of the immediately preceding inspection; and
 - (f) where an inspection under sub-paragraph (e) is carried out during the term of an occupation contract, make available to the contract-holder a copy of the report of that inspection within 14 days of the date of the inspection.
- (2) Where as a result of an inspection carried out during the term of an occupation contract a qualified person concludes that the condition of the electrical installation is unsatisfactory, the landlord must—
- (a) ensure that the recommended remedial work is carried out in accordance with such time period as the qualified person recommends or within 28 days of the date of the inspection, whichever is the earlier;
 - (b) ensure that the remedial work is subsequently inspected; and
 - (c) make available to the contract-holder a copy of the report of that inspection within 14 days of the date of the inspection,
- and if the landlord, following that inspection, is unable to make available a report which indicates that the condition of the electrical installation is satisfactory, the dwelling is to be treated as unfit for human habitation.
- (3) Where a tenancy or licence converts to an occupation contract under section 240 of the Act, the landlord must—

(5) See Appendix 6 to the British Standard Requirements which contains a template report.

(6) S.I. 1998/2451.

(7) 1974 c. 37.

- (a) hold a report which does not predate the first anniversary of the date of conversion of that tenancy or licence by more than five years, or where the preceding report recommended an inspection within a period of less than five years prior to that anniversary date, the report of that subsequent inspection, confirming that the condition of the electrical installation is satisfactory; and
 - (b) make a copy of that report available to the contract-holder within 14 days of the date of conversion of the tenancy or licence or the date of the inspection, whichever is the later.
- (4) The landlord must ensure that each report and certificate is retained for a period of six years from the date of the inspection or work to which it relates.
- (5) References in paragraphs (1) and (3) to a report include reference to an electrical installation certificate which certifies that the electrical installation meets the British Safety Requirements, provided that any subsequent inspection as required under those paragraphs must be carried out within five years of the date of that certificate, or at such shorter interval as is recommended in that certificate.
- (6) References in paragraph (2) to a report provided following any remedial work include reference to a minor electrical installation works certificate or an electrical installation certificate, which taken with any other report, confirms that the electrical installation as a whole, including any remedial works undertaken, is satisfactory.
- (7) For the purposes of this regulation a bathroom, lavatory, hall or landing is to be treated as a room used as living accommodation.

Landlord's failure to comply with duties

5. Where a landlord fails to comply with a duty set out in regulation 4(1), (3) or (4) in respect of a dwelling, the dwelling is to be treated as if it were unfit for human habitation.

Mutual recognition of British Standard Requirements

6. Any requirement in regulation 4 to comply with the British Standard Requirements is satisfied by compliance with—
- (a) a standard or code of practice of a national standards body or equivalent body of any EEA State;
 - (b) any international standard recognised for use as a standard or code of practice by any EEA State; or
 - (c) a technical specification recognised for use as a standard by a public authority of any EEA State, which requires a level of performance equivalent to that required by the British Standard Requirements.

[]

Cabinet Secretary for Communities and Children, one of the Welsh Ministers

SCHEDULE Regulation 3(a)
MATTERS AND CIRCUMSTANCES

1 Damp and mould growth

Exposure to house dust mites, damp, mould or fungal growths.

2 Excess cold

Exposure to low temperatures.

3 Excess heat

Exposure to high temperatures.

4 Asbestos and manufactured mineral fibres

Exposure to asbestos fibres or manufactured mineral fibres.

5 Biocides

Exposure to chemicals used to treat timber and mould growth.

6 Carbon monoxide and fuel combustion products

Exposure to—

- (a) carbon monoxide;
- (b) nitrogen dioxide;
- (c) sulphur dioxide and smoke.

7 Lead

The ingestion of lead.

8 Radiation

Exposure to radiation.

9 Uncombusted fuel gas

Exposure to uncombusted fuel gas.

10 Volatile organic compounds

Exposure to volatile organic compounds.

11 Crowding and space

A lack of adequate space for living and sleeping.

12 Entry by intruders

Difficulties in keeping the dwelling secure against unauthorised entry.

13 Lighting

A lack of adequate lighting.

14 Noise

Exposure to noise.

15 Domestic hygiene, pests and refuse

- (1) Poor design, layout or construction such that the dwelling cannot readily be kept clean.
- (2) Exposure to pests.
- (3) An inadequate provision for the hygienic storage and disposal of household waste.

16 Food safety

An inadequate provision of facilities for the storage, preparation and cooking of food.

17 Personal hygiene, sanitation and drainage

An inadequate provision of—

- (a) facilities for maintaining good personal hygiene;
- (b) sanitation and drainage.

18 Water supply

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

19 Falls associated with baths etc.

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

20 Falling on level surfaces etc.

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

21 Falling on stairs etc.

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

22 Falling between levels

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

23 Electrical hazards

Exposure to electricity.

24 Fire

Exposure to uncontrolled fire and associated smoke.

25 Flames, hot surfaces etc.

Contact with—

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

26 Collision and entrapment

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

27 Explosions

An explosion at the dwelling.

28 Position and operability of amenities etc.

The position, location and operability of amenities, fittings and equipment.

29 Structural collapse and falling elements

The collapse of the whole or part of the dwelling.

Part 3: GUIDANCE

Introduction

Part 4 of the Renting Homes (Wales) Act 2016 (The Act) sets out the obligations placed on a landlord with regard to the condition of a dwelling. These obligations apply to all occupation contracts made for a term of less than seven years. A landlord under an occupation contract is obliged to ensure a dwelling is both in repair and fit for human habitation (FFHH).

Whilst this non-statutory guidance addresses the requirement for a dwelling to be FFHH, it is important landlords also understand their complementary obligations regarding repair. Often, a primary cause of a dwelling being unfit for human habitation is the level of disrepair that exists. Tackling disrepair early and effectively can often prevent a dwelling becoming unfit for human habitation.

Landlord's obligation to keep the dwelling in repair

Section 92 of the Act sets out the landlord's obligation to keep the dwelling in repair. This obligation extends to:

- the structure and exterior of the dwelling (including drains, gutters and external pipes), and
- the service installations in the dwelling, such as those:
 - for the supply of water, gas or electricity,
 - for sanitation, and
 - for space heating or for heating water.

A landlord must keep the dwelling in repair at all times, although there may be instances where a landlord may not have knowledge of the need for a repair. Once the landlord is aware of the need for repairs, they must be carried out in a reasonable time and to a reasonable standard. This includes the obligation to make good any damage resulting from the repairs. The landlord cannot place any obligation on the contract-holder regarding the repairs, for example contributing to the cost, where the repair is not the fault of the contract-holder.

Landlord's obligation to ensure a dwelling is fit for human habitation (FFHH)

Section 91 of the Act places an obligation on a landlord to ensure that, at the start of and during the length of the occupation contract, the dwelling is FFHH. These obligations are set out in The Renting Homes (Fitness for Human Habitation) (Wales) Regulations (the regulations) which set out the 29 matters and circumstances to which regard must be had when determining whether a property is FFHH. In addition, there are specific requirements placed upon a landlord to help ensure certain matters and circumstances do not arise.

The aim of the legislation, both the Act and the FFHH Regulations, and this guidance is one of prevention, to ensure landlords maintain dwellings to prevent them from becoming unfit for human habitation. Prevention of any of the 29 matters or circumstances arising is the approach all landlords should be taking. Not only is this approach more cost effective for

landlords but, more fundamentally, it will avoid contract-holders potentially living in unfit conditions.

This guidance indicates the actions that may be taken by a landlord to help ensure the dwelling is FFHH.

Part 1 of this guidance addresses each of the 29 matters and circumstances listed under the Schedule to the Regulations. It provides some context to the possible issues that could potentially arise from each of these matters and circumstances. Whether a property is FFHH is to be determined by having regard to the 29 matters and circumstances. Whether the dwelling is a fit place to live should, in the vast majority of cases, be clear to both landlord and contract-holder. Ultimately, where a dispute cannot be resolved, whether the dwelling is FFHH will be a matter for the court to determine.

In addition to the points raised in this guidance, a landlord should remain aware of any additional issues which may affect FFHH. A court will consider each particular case on its own merit. A landlord who has concerns about the fitness of a dwelling is advised to seek professional advice before issuing an occupation contract.

The guidance provides examples of actions which a landlord should consider in order to prevent / diagnose / treat the occurrence of a particular matter and circumstance. However such examples are provided as an aid only with regard to a particular matter and circumstance, many of the examples are already a requirement under the repairing obligations of a landlord

Part 2 of this guidance deals with specific requirements placed on the landlord, under regulation xxx of the FFHH Regulations, to ensure certain of the 29 matters and circumstances do not arise. For example, to minimise the possibility of fire and its impact there is a requirement for a landlord to ensure the presence of smoke alarms.

The guidance draws on the guidance for landlords and property professionals issued in relation to the Housing Health and Safety Rating System (HHSRS). The Housing Health and Safety Rating System (Wales) Regulations 2006 (“the HHSRS Regulations”) prescribe the hazards associated with a risk of harm . A local authority will assess the dwelling by reference to these matters and circumstances and classes of harm also specified in the HHSRS Regulations to identify whether a Category 1 or 2 hazard exists. However, whether or not a hazard as set out in Schedule 1 to the HHSRS Regulations exists does not pre-determine whether a dwelling is unfit for human habitation in accordance with the FFHH Regulations. For example while a slight variation of floor surface may be a hazard under the HHSRS it would be highly unlikely on its own, to result in a determination that the dwelling is unfit for human habitation. In the example given above regarding the hazard of falling on a level surface, while a slight variation of floor surface would be unlikely to breach the fitness obligation, a local authority inspection may find it to be a hazard under HHSRS. If an elderly person is living in the dwelling, the local authority is likely to take enforcement action against the landlord.

PART 1

THE 29 MATTERS AND CIRCUMSTANCES

1 DAMP AND MOULD GROWTH

Includes:

- House dust mites
- Mould or fungal growth

Both are caused by dampness and/or high humidity.

Causes of dust mite and mould and fungal growth

Both are related directly to dampness which is caused by:

- Reduced ventilation levels;
- Increased humidity, especially beyond 70 per cent; and
- Warmer indoor temperatures in winter because of dwelling design in renovated houses.

Potential Landlord actions

- Damp proof courses, membranes and detailing around doors and window openings;
- External fabric kept in good repair to avoid rain penetration;
- Frost protection for pipes and tanks;
- Properly installed baths, sinks etc., with
- Properly installed drainage;
- Properly installed and maintained rainwater goods;
- Properly ventilated roof and under floor spaces to ensure timber remains air dry;
- Adequate extraction of moisture laden air during peak times, like cooking and bathing and laundry;
- Continuous low-level background ventilation where necessary;
- Sufficient means of ventilation to cope with moisture from normal domestic activities without the need to open windows that could lead to heat loss, noise and security risks; and
- Appropriate ventilation for dwellings of high occupant density.

Indoor temperatures

If most of the conditions above are met then raising indoor temperatures, taking into account energy efficiency and cost of heating, can significantly reduce dust mite problems. So an efficient heating system appropriate for the fabric (thermal properties) of the building is important.

What about flats and HMOs?

Preventive measures are particularly important here because of the likelihood of occupants having to be more confined to one or two areas; thus making them more vulnerable to any dampness etc., that might be present.

2 EXCESS COLD

This covers the threats to health when temperatures fall below the minimum satisfactory levels for relatively long periods.

Causes

- Main causes appear to be changes in outdoor temperature among other factors;
- Sleeping in cold bedrooms greatly increases health risk;
- Dwellings with low energy efficiency ratings (poor insulation);
- Greatest risk is in properties built before 1850, lowest in more energy efficient dwellings built after 1980;
- Absence of central heating/poor inefficient heating systems; and
- Excessive damp which reduces thermal insulation.

Potential Landlord actions

- Appropriate levels of thermal insulation to minimise heat loss. Level depends on location/exposure/relationship to other dwellings/buildings orientation;
- Appropriate heating system safely and properly installed and maintained and controllable by occupant;
- Appropriate/properly installed/maintained occupant controllable low-level background ventilation without too much heat loss/draughts;
- Means for rapid ventilation at times of high moisture production in kitchens/bathrooms through fans;
- Properly sited/sized permanent openings (e.g. air bricks/open-able windows); and
- Properly fitting butt-jointed floor boarding/doors/windows. Note: there may have to be a 'trade-off' regarding windows because of security/external noise levels etc.

What about flats and HMOs?

Centrally controlled space heating systems should operate in a way that makes sure occupants are not exposed to cold indoor temperatures. Occupants should be allowed to control temperature within their dwelling

3 EXCESS HEAT

This category includes threats from *excessively high indoor air temperatures*.

Causes

- Ventilation conditions;
- Thermal capacity of the dwelling – smaller dwellings are more prone than larger;
- Large areas of south facing glazing; and
- Faulty or sub-standard heating controls.

Potential Landlord actions

- Large areas of south facing glazing could have shuttering or blinds to control heat in summer months;
- Means of cooling during hot summer weather, either by natural ventilation or air conditioning; and

- Controllable heating systems.

What about flats and other HMOs?

Many flats and bedsits can be affected as these are more likely to be dwellings which:

- Are badly insulated;
- Are located directly under an un-insulated roof;
- Have only a south facing direction; and
- Have heating systems not under the control of the occupier.

4 ASBESTOS AND MMF

Includes the presence of and exposure to asbestos fibres and Manufactured Mineral Fibres (MMF, which includes rockwool and glass fibre blankets) in dwellings. (White, blue and brown forms of asbestos fibres are included, that is chrysotile and both forms of amphibole.)

Asbestos

- Part of a wide range of building products found in most traditionally built houses and flats. Generally in locations not likely to be disturbed so airborne fibre levels tend to be low;
- More of a problem in non-traditionally or 'system built' flats built between 1945 and 1980, because of sprayed coatings and partitioning as well as chrysotile materials in positions at risk from damage or disturbance. So, airborne fibre levels are higher; and
- Buildings most affected are high-rise council estates built in the 1950s and 60s.

MMF

Mostly used in loft and cavity wall insulation. Modern products release few, if any, fibres and are not bio-persistent so risk is minimal.

Potential Landlord actions

Asbestos:

- Damaged or likely to be damaged or disturbed asbestos should be assessed for repair, sealing, enclosure or removal by licensed (HSE) contractors;
- Existing asbestos can be managed in situ (covered or protected and the condition monitored) if it is in good condition and unlikely to be damaged/worked on/disturbed;
- Keeping a record of asbestos location in the building; and
- Protecting it from damage by occupants.

MMF:

- Minimal possible exposure to fibres during maintenance/installation/removal.

5 BIOCIDES

These are *chemicals* used to treat *timber* and/or *mould growth* in dwellings.

The potential for harm depends on the chemical in use and people are usually affected by inhalation, skin contact and swallowing.

Potential Landlord actions

Treatment of the dwelling should be undertaken, where possible, whilst uninhabited. Where this is not possible the procedures and safety measures applicable to an individual product must be followed.

6 CARBON MONOXIDE AND FUEL COMBUSTION PRODUCTS (NITROGEN DIOXIDE, SULPHUR DIOXIDE AND SMOKE)

These are all linked to the (partial) combustion of gas, oil, solid fuels for heating and cooking in dwellings

Nitrogen dioxide

- Respiratory damage;
- Aggravated asthma; and
- Increased risks of bacterial and viral infection of the lung

Sulphur dioxide

- Bronchitis and breathlessness as a result of open fires;
- Aggravated asthma.

Causes

All these result from an incomplete or improper combustion of the fuel or blockages or other defects to the flue.

Carbon monoxide in dwellings:

- Incomplete combustion of all fuels containing carbon, gas, oil and solid fuels.

Nitrogen dioxide

- Produced by gas and oil burning appliances.

Sulphur dioxide

- Has a distinct smell and produced mainly by oil and solid fuel burning appliances.

Additional comments

- Open flued appliances can discharge combustion gases back into rooms which contain too powerful extractor fans;
- Flueless appliances including cookers;
- Appliances in disrepair;
- Inadequate ventilation;
- Ventilation in disrepair;
- Flues not properly serviced/cleaned/maintained;
- Flues in disrepair;

- Inappropriate flue outlet sites;
- Extractor fans in dwellings with open flued appliances; and
- Lack of/defects in carbon monoxide detectors.

Potential Landlord actions

Carbon dioxide, nitrogen dioxide, sulphur dioxide

- Proper installation and maintenance of gas/oil/solid fuel burning appliances;
- Adequate air supply for such appliances;
- Proper siting and connection with adequately sized flues;
- Adequate ventilation in rooms with such appliances;
- Regular maintenance of flues;
- Gas heating appliances to be fitted with flues for correctly balanced flow of air inside and out;
- Ventilated lobby between integral garage and living accommodation; and
- Properly sited and maintained carbon monoxide detectors.

See also the requirement for installation of carbon monoxide detectors elsewhere in this guidance.

7 LEAD

There are two main sources around dwellings – *paint* and *water pipes*. Other sources of lead might include *soil*, especially around older buildings with *flaking external paintwork* and areas around *industrial premises* using (or having previously used) lead. There may also be lead traces in soil close to busy roads because of the exhaust fumes from leaded petrol.

Potential Landlord actions

The presence of lead in drinking water may be a result of lead pipes but also lead solder. It is impossible to tell the difference between lead solder and non-leaded solder on pipework joints just by looking at it. The only way it can be done is to carry out a specialised test on the solder. Prevention is best, always use a reputable plumber and check that they are using non-leaded solder on your water system.

If you are concerned about lead pipes or lead solder, you can have your water tested for lead content. Please contact your water company if you have a mains water supply or your local authority if you have a private water supply. Some water companies, for example Dŵr Cymru Welsh Water, offer free lead tests to customers on request.

8 RADIATION

The main source of harmful radiation in dwellings is from radon gas. Radon is colourless and odourless formed by the radioactive decay of the small amounts of uranium that occur naturally in all rocks and soils. It is not possible to detect it, either in the air or the water, without testing and measurement. Radon can be dissolved in water, particularly in private water supplies, but it is airborne radon that poses a more significant threat.

What level of radon is a cause for concern?

Radon is measured in Becquerels per cubic metre of air (Bqm-3). The average level in UK homes is 20 Bqm-3. For levels below 100 Bqm-3, the individual risk remains relatively low and not a cause for concern. However, the risk increases as the radon level increases. Within domestic properties Public Health Wales recommends that radon levels should be reduced where the average is more than an Action Level of 200 Bqm-3. This Action Level refers to the annual average concentration as measured using two detectors (in a bedroom and living room) over three months, to average out short-term fluctuations.

Additional advice is provided at Public Health Wales

<http://www.wales.nhs.uk/sitesplus/888/page/81979>

9 UNCOMBUSTED FUEL GAS

This *hazard* includes the threat of *asphyxiation* resulting from the escape of fuel gas into the atmosphere of a dwelling.

Potential Landlord actions

- There should be appropriate properly designed and installed pressure regulators, meters and pipework.
- The installation should be regularly tested to ensure there are no leaks or other defects, and in particular where there have been any alterations to the dwelling or to the gas installations.
- Appliances should be properly designed and installed. The appliances should be regularly serviced and maintained by a competent person.
- For LPG, which is heavier than air, there should be adequate low level ventilation or means of ensuring any gas escaping can drain safely away. This is particularly important where the floor level is below the adjacent ground level.
- Gas detectors are available which should provide warning to occupants if fuel gas is building up within the dwelling, enabling them to take action and/or to escape. The appropriate siting of such detectors will depend on which gas is being supplied.

10 VOLATILE ORGANIC COMPOUNDS (VOCS)

Are a range of organic *chemicals* that are *gaseous* at room temperature and found in a wide variety of materials in the home. *Formaldehyde* is included in this hazard. People in newly built/refurbished dwellings are most likely to be exposed to VOCs.

Causes

VOCs produce vapours at room temperatures. Sources typically within the control of the landlord include:

- a) Urea formaldehyde foam insulation (UFFI).
- b) Particle board, chipboard, plywood.
- c) Paints, glues, solvents.

Typical levels of VOCs found in UK homes do not present a risk to health. However, exposure to higher levels may be found, for example, during painting for extended periods of time. Emission rates are affected by temperature, relative humidity, ventilation rates and occupant activity. Emission from building materials and treatments normally falls over the first year, although it will be affected by ventilation rates. Furnishings such as carpets and other fabrics will absorb VOCs (or may have been pre-treated) and will release them later.

Potential Landlord actions

Emissions of VOCs from building materials and treatments and from furnishings should be minimised. Low emission materials and products should be used where possible. Dwellings should also be provided with means of ensuring adequate and appropriate ventilation. Landlords should take particular care during alterations or repair to the dwelling which is likely to increase the presence of VOCs. This will be of particular concern where there is an inadequate or damaged ventilation system.

11 CROWDING AND SPACE

This includes all the hazards associated with lack of space and crowding. It takes into account the psychological needs for both social interaction/privacy. It also looks at the effects of crowding on space requirements for household activity.

As a minimum, landlords should ensure the requirements of Part 10 of Housing Act 1985 relating to overcrowding are complied with at all times.

12 ENTRY BY INTRUDERS

This hazard is concerned with keeping a dwelling secure against unauthorised entry and maintaining its safety.

Causes

- Location – where local area has high levels of poverty and crime;
- Poor lighting around dwelling area;
- Doors and windows – poorly constructed/fitted/in disrepair/inadequate locks;
- Lack of viewers to external doors;
- Lack of/broken security chains to external doors;
- No caretaker/entry phone system to block of flats; and
- Lack of/defective burglar alarm systems

Potential Landlord actions

- Design of the estate and area around the dwelling to reduce hiding places, as far as possible (e.g. fences etc.) for burglars and intruders;
- Well-lit and defined pedestrian routes serving the dwelling;
- Is the dwelling made safe against unauthorised entry so as to delay and deter intruders and make the occupants feel safer;
- The operation and suitability of all window locks and dead locks, replacing where required.
- Security lights/indoor grilles; and

- The operation and suitability of spy holes and chains on entrance doors, replacing where appropriate.

A balance has to be struck between the security of the dwelling and the potential to increase other potential risks e.g. locked doors and windows and means of escape in the case of fire.

What about flats and HMOs?

Concierge, caretaker systems and entry-phone controls have been found to reduce crime/fear of crime. Consideration should be given to whole building security as well as that between individual residents of the same building.

13 LIGHTING

Includes threats to physical and mental health associated with inadequate natural/artificial light. It also includes the psychological effect linked with the view through glazing from the dwelling.

Potential Landlord actions

The layout of the dwelling, particularly living rooms and kitchens. There should be sufficient natural light during daylight hours to enable normal domestic tasks to be carried out without eyestrain. Windows should be of adequate size, and of appropriate shape and position to allow for reasonable daylight penetration into rooms. Artificial lighting should be positioned to provide sufficient light to enable domestic and recreational activities to be carried out without eyestrain and without creating glare or shadows. Artificial light is particularly important where domestic tasks require adequate light, for example in the kitchen over worktops, sinks and cookers. Windows should be wide enough to provide for a reasonable view of the immediate surroundings.

14 NOISE

This includes threats to physical and mental health from exposure to noise in the home caused by a lack of sufficient sound insulation. It does not cover unreasonable noisy behaviour of neighbours (domestic or commercial).

Potential Landlord actions

- Double/secondary glazing and lobbies to external doors where there are high outside noise levels (e.g. traffic);
- Possible triple glazing near airports/sources of very high noise levels;
- Insulation of upper floor/ceiling/roof space where aircraft noise is likely;
- Plumbing from WCs/cisterns sited away from separating walls;
- Bathrooms/WCs in flats not sited above living rooms/bedrooms; and
- Better construction/conversions of partitions and party walls especially in flats/maisonettes.

15 DOMESTIC HYGIENE, PESTS AND REFUSE

This is concerned with protection against infection. Includes hazards resulting from:

- Poor design/layout/construction of the dwelling so that it is difficult to be kept clean and hygienic;
- Access into and harbourage within the dwelling for pests; and
- Inadequate and unhygienic provision for storage and disposal of household waste.

Causes

- Inadequately stored/accumulated refuse allowing access to insects/rodents/pests/birds/squirrels/foxes/cats/dogs;
- Service ducts and holes around pipes, e.g. central heating, harbour insects and provide access between dwellings in blocks;
- Access to open drains by rodents;
- Access for rodents by means of ill-fitting doors and windows;
- Uneven and/or cracked internal walls and/or ceilings allowing access for pests;
- Missing/damaged brickwork including airbricks to external walls and other disrepair to external walls and roof;

Potential Landlord actions

- The design/construction and maintenance of building should help it to be kept clean preventing build-up of dirt and dust;
- Personal washing / sanitation / food preparation / cooking / storage areas should be capable of being maintained in a hygienic condition;
- Reduction or eradication of the means of access by pests into buildings.
- Are all internal surfaces easily cleaned and/or pest resistant material used where possible;
- Dwelling exterior free of cracks and unprotected holes, otherwise grilles or other methods to be used for protection;
- Service ducting/roof/floor spaces to be effectively sealed but with suitable access if treatment is needed;
- Drain openings, WC basins to be sealed with an effective water tight seal;
- Drainage inlets for waste and surface water to be sealed;
- Any points in walls penetrated by waste, drain or other pipes or cables to be effectively sealed;
- Holes through roof coverings, eaves and verges to be blocked to deny ingress to rats/mice/squirrels/birds. Necessary holes to be covered by grilles;
- Adequate and closed storage for refuse awaiting collection or disposal outside dwelling;
- Suitable storage for refuse within the dwelling;
- Storage to be accessible to occupants but not be a danger to children; and
- Refuse facilities should not cause hygiene problems.

What about HMOs?

- Should be a clearly defined area for refuse containers – in the open air/away from windows/ventilators, and in shade or shelter;
- Chutes may be used or waste storage containers with free ventilation;
- Communal chutes are recommended with HMOs of more than four-storeys. Should discharge into large containers within a store;
- Stores should be designed to reduce invasion by pests; and
- Should be designed so as not to let air from the store enter any living space.

16 FOOD SAFETY

Includes the threat of infection resulting from inadequate facilities for storage, preparation and cooking of food.

Causes

- Cracks/chips/other damage to internal surfaces of sinks and worktops prevent thorough cleansing and permit pathogenic and food spoiling organisms;
- Damp affected surfaces may degrade and become crumbly/flaky and support growth of micro-organisms;
- Humid conditions can cause food to decay more quickly;
- In HMOs tends to be more confusion over responsibility for kitchen cleanliness; and
- In HMOs higher risk of infection where higher number of people share facilities.

Potential Landlord actions

Generally kitchen facilities should be in a properly designed room or area to cater for safe and hygienic preparation and cooking of food.

Storage

- Suitable storage for food to slow down deterioration and decomposition;
- Facilities should be of adequate size for the number of occupants for hygienic storage of fresh foods;
- There should be facilities for food cupboard/larder, refrigerator and freezer with appropriate sockets;
- Such facilities should have smooth impervious surfaces for easy cleaning and maintaining in hygienic condition;
- Separate shelves for different foods; and
- Facilities should be cool and dry and protected from direct sunlight.

Preparation areas

- There should be adequate sized sink/dual sink free from cracks, chips or other damage plus drainer;
- Hot and cold water;
- Suitable drainage for waste water;
- Suitably sized work tops, securely fixed; smooth impervious surface, easily cleanable; and
- At least four appropriate power sockets associated with the worktop(s) as well as two for general use.

Cooking

- Facilities should be of adequate size for the household with appropriate connections for fuel (gas or electricity);
- Should be capable of being readily cleansed and maintained in hygienic condition.

Design, layout and state of repair

- Kitchen floor should be reasonably smooth and impervious for easy cleaning and maintaining in a hygienic condition;
- Corners and junctions should be sealed and covered to avoid uncleanable junctions;
- Wall surfaces should be smooth, or with impervious finish and easily cleaned, especially those adjacent to cookers/sinks/drainers and worktops;
- Joints between sink/drainer/worktop and adjacent wall should be sealed and water tight;
- Layout/relationship of facilities should ease the stages of preparation, cooking and serving;
- Adequate and appropriate lighting especially over the facilities; and
- Suitable ventilation of whole of kitchen area, especially the cooking area.

What about flats and HMOs?

Much the same provisions as for single dwellings but shared facilities need adequately sized oven/hob/space.

17 PERSONAL HYGIENE, SANITATION AND DRAINAGE

Includes threats of infection/threats to mental health associated with the above, including personal washing and clothes washing facilities.

Causes

Personal hygiene/sanitation

- Any deficiencies within the facilities themselves leading to excessive sharing, such as too few sanitary closets for number of occupants;
- Cracks, chips or other damage to internal surfaces of facilities; and
- Possibly of hands coming into direct contact with WC seat/basin.

Drainage

- Discharge of untreated foul waste onto paths/gardens; and
- Waste water discharged onto paths/gardens.

HMOs

- Increased risk of infection when sharing personal hygiene/sanitation facilities, especially where there is infectious illness in households;
- Higher risk of infection because of higher ratio of people to facilities;
- Possible leaking facilities may be unknown to the users but affect different dwellings in same building.

Potential Landlord actions

Personal hygiene

- Sufficient numbers of properly connected and fitted baths / showers
- Bathroom or shower room to have privacy, heating, lighting and ventilation;

- Sufficient number of suitably connected and sited wash hand basins for occupants;
- Suitably connected, easily cleaned sinks with proper waste drainage for each dwelling; and
- Appropriate facilities for washing and drying clothes with adjacent power sockets and vent outlets.

Sanitation

Provision of

- Properly installed / securely fixed / easily cleansed WC basin with hinged lid / seat of impervious material;
- Connected to a properly working flushing system;
- Connected to proper / adequate drainage system;
- Number of sanitary closets to be related to number of levels in dwelling and the number of persons (irrespective of age);
- Sanitary compartments separate from bathrooms;
- Compartments / bathrooms to be ventilated to external air; and
- Lockable doors from inside to compartments / bathrooms but openable in emergency.

Drainage

- Wastewater to be discharged into properly designed trapped drainage inlets/vertical drains connected to the main sewerage system;
- Properly designed soakaways for private treatment or storage system for foul sewage;
- Systems to be ventilated to prevent siphonage of traps and facilities connected to sewer; and
- Surface water to be discharged into properly designed trapped drainage inlets connected to main drainage system.

What about flats and HMOs?

Consideration should be given to each individual dwelling separately and any shared facilities.

18 WATER SUPPLY

This is limited to the supply after delivery to the dwelling and concerned with water for drinking, cooking, washing, cleaning and sanitation.

Potential Landlord actions

- Water pipework and storage facilities provided and maintained according to requirements of BS8558
- Plumbing systems to meet requirements of Water Supply (Water Fittings) Regulations 1999;
- Stored private drinking water supplies regularly sampled and analysed;
- Tanks covered to prevent ingress of contamination (i.e. birds/insects etc.);
- Appropriate materials used for pipework/storage tanks/fittings; and

- Proper maintenance of water filters and softening systems.

19 FALLS ASSOCIATED WITH BATHS ETC

Includes any fall associated with bath, shower or similar facility, whether that fall is on the same level or from one level to another.

Potential Landlord actions

The placement of bath, shower or similar facility to ensure there is unobstructed ingress and egress and the installation is secure.

20 FALLING ON LEVEL SURFACES ETC

Includes falls on any level surface such as floors, yards and paths. Also trip steps / thresholds / ramps where the change in level is **less** than 300mm.

Potential Landlord actions

Landlords should conduct visual inspections to ensure the risk of trip hazards are minimised, e.g. ripped/torn carpets, loose floorboards and broken paving etc. Adequate lighting will help enable users to identify any obstructions and any trip steps or projecting thresholds.

21 FALLING ON STAIRS ETC

Covers any fall associated with a change in level greater than 300mm and includes falls associated with:

- Internal stairs or ramps within the dwelling;
- External steps or ramps within the immediate area of the dwelling;
- Internal common stairs or ramps within the building containing the dwelling unit and giving access to the dwelling or shared facilities; and
- External steps or ramps within the immediate area of the building which contains the dwelling unit and giving access to that dwelling or shared facilities.

Does not include trip steps/thresholds/ramps where the change in level is less than 300mm. These are considered under falling on level surfaces.

Potential Landlord actions

- Tread dimensions to be between 280mm and 360mm;
- Rise dimensions to be between 100mm – 180mm;
- Pitch (angle of stairs) to be less than 42°;
- Stairs should be checked for above average steepness or shallowness;
- Consistency/uniformity in dimensions of rise and going within a flight (except for obvious change in direction of stair e.g. use of winders);
- Nosing should not project more than 18mm beyond any riser;
- Treads and nosings should provide appropriate friction (carpet etc., if possible);

- Provision of carpet/rug etc., at foot of stairs to help cushion possible impact;
- Openings in stairs or banisters should be less than 100mm;
- Avoidance of alternating treads, particularly those not conforming to current Building Regulations;
- Handrails/banisters must be provided either side of the staircase;
- Handrails to be sited between 900mm and 1000mm measured from the top of the handrail to the pitch line or floor/easy to grasp/extend the full length of the flight;
- Should be designed to prevent climbing;
- Stair width should be a minimum of 900mm-1000mm;
- Provision of adequate landing/floor space leading to the stairs (top and bottom) so user can check start/dimensions of stairs and steps;
- Adequate natural lighting to the top and foot of the flight;
- Adequate artificial light to the top and foot of the flight;
- Adequate and convenient means of controlling the artificial lighting;
- No glare from natural/artificial lighting;
- Avoid doors which open directly onto stairs or the head of the stairs causing obstruction or increasing the likelihood of a fall;
- Avoidance of projections and sharp edges on stairs and glass or radiators at the foot of the stairs;
- All elements of stairs and steps should be kept in good repair; and
- Dwelling should be adequately heated and insulated to avoid impairment of movement and sensation.

22 FALLING BETWEEN LEVELS

Includes falls between two levels within and outside a dwelling or building where the change in level is more than 300mm. Includes falls from out of dwellings, e.g. windows, balconies, accessible roofs and over landing balustrades. Also includes falls from any other change in level not served by stairs or steps (e.g. over the guard rails to galleried rooms/basement wells or to garden retaining walls).

Does *NOT* include falls from stairs/steps/ramps/chairs/tables/ladders.

Potential Landlord actions

Landlords should carry out visual inspections to ensure the likelihood of falling between levels is minimised as far as possible.

23 ELECTRICAL HAZARDS

Include hazards from shock and burns resulting from exposure to electricity but *not* risks associated with fire caused by deficiencies to the electrical installations, e.g. ignition caused by a short circuit.

Potential Landlord actions

- Electrical wiring installation meets the latest requirements of Institute of Engineering and Technology/British Standard (BS 7671) (Often available in local reference libraries);
- Adequate number of appropriately sited electrical socket outlets;

- Appropriately sited fuses and meters;
- Adequately earthed electrical system;
- Installation, i.e. supply, meters, fuses, wiring, sockets, light fittings and switches to be maintained in good repair;
- Electrical installations to avoid close proximity to water including areas of damp; and
- Lightning Protection System to be kept in good repair.

See also Electrical Installation and Condition Report requirements in Part 2 of this guidance.

24 FIRE

Includes threats from accidental (as opposed to arson) uncontrolled fire and any associated smoke.

Causes

Occupiers' reactions on discovering fire can possibly influence escape from fire, but factors in the cause of fire can include:

- Sources of ignition (cooking appliances/space heaters/electrical equipment);
- Solid fuel as main fuel leads to a higher likelihood of fire though with a lower fatality rate than from gas/electric space heaters;
- Electrical distribution equipment in poor condition; and
- Nature of harm influenced by presence/absence of automatic fire detection/alarm systems.

Potential Landlord actions

- Safe siting for cookers, away from flammable materials;
- Properly designed/installed/serviced/maintained space heating;
- Sufficient/appropriately sited electric socket outlets;
- Properly installed/maintained/regularly checked and tested distribution board and wiring;
- Residual Current Devices;
- Fire and smoke permeable resistant materials in design of the building where possible;
- Fire stops to cavities including ventilation and heating systems;
- Design and construction of the building to limit the spread of fire/smoke;
- Properly constructed/fitted internal doors with self closers where appropriate;
- Furniture to comply with current regulations (currently the Furniture and Furnishings (Fire) (Safety) Regulations 1988 as amended) in furnished accommodation;
- Detectors and smoke alarms properly designed, sited, maintained and regularly tested;
- Means of escape from all parts of dwelling/building, e.g. openable door window/protected staircase etc. /depending on height of building.

See also requirement for installation of smoke alarms in Part 2 of this guidance.

25 FLAMES, HOT SURFACES ETC

This is concerned with injuries from:

- i) Burns which are caused by contact with a controlled fire or hot flame or hot objects or hot non-water based liquids;
- ii) Scalds which are caused by contact with water-based liquids and vapours.

It also includes burns and scalds from spills during cooking or preparing hot drinks. It does not include burns from an uncontrolled fire at the dwelling.

Causes include

- Bare hot surfaces of 70°C or more;
- Unguarded open flames – space or water heaters;
- Tap water too hot – above 60°C;
- No heat control taps or heat controlled mixer taps and anti-scald fixtures wrongly set;
- Poor layout of kitchen space, especially where the cooker is in the wrong place; and
- Cooking area/kitchen not far enough from living or sleeping area.

Potential Landlord actions

- Design and layout of the kitchen, including location of the cooker, the design and controls of heating appliances;
- Fires and heaters – there should be protection from any open flame to prevent clothing catching alight;
- Surfaces should be covered if the temperature is more than 70°C;
- Ideally, hot water should be no more than 60°C in kitchens, 41°C for hand basins and 46°C for baths.

What about flats and other multi-occupied buildings?

Risk can be increased where the kitchen is shared and people are using it at the same time. If possible, there should be separate worktop space and separate cooking facilities for each dwelling. Where cooking is done in a bedroom or living room there needs to be enough distance between the kitchen area and the sleeping or living area. There should also be an adequate number of electric sockets in the kitchen area to cut down the risks of scalds.

26 COLLISION AND ENTRAPMENT

Includes threat of trapping body parts such as fingers or limbs in architectural features e.g. doors or windows. Also includes striking (colliding with) features such as glazing, windows, doors, low ceilings or walls.

Potential Landlord actions

Landlords should conduct visual and physical inspections to minimise the likelihood of collision or entrapment occurring.

27 EXPLOSIONS

Includes the threat from debris created by a blast and the partial or total collapse of the building as a result of the explosion.

Potential Landlord actions

Landlords should conduct visual and/or physical inspections to minimise the likelihood wherever possible.

28 POSITION AND OPERABILITY OF AMENITIES ETC

Includes threats of physical strain associated with functional space and other features at the dwelling.

It also includes physical strain which may result from avoidance of other hazards (see Collision and Entrapment and Falls hazards).

Potential Landlord actions

Landlords should conduct visual and physical inspections to minimise the likelihood of strain or injury occurring. For example, the position of light switches when ascending or descending stairs.

29 STRUCTURAL COLLAPSE AND FALLING ELEMENTS

Includes threats of whole dwelling collapse and/or an element or a part of the fabric being displaced or failing because of inadequate fixing, disrepair or adverse weather conditions. Structural failure can be internal, threatening the occupants or within the immediate external area putting members of the public at risk.

Potential Landlord actions

Landlords should conduct visual and physical inspections to minimise the likelihood of injury occurring. This should include exterior inspections with regard to roof tiles or slates etc.

Part 2

Landlord Requirements

As stated earlier in this guidance a landlord must consider all the 29 matters and circumstances listed under Part 1 to which regard is to be had when determining whether the dwelling is FFHH. In addition, the FFHH Regulations place specific requirements on landlords to help prevent certain matters and circumstances arising. Where a landlord fails to comply with these requirements, the dwelling is to be treated as if it were unfit for human habitation. There are three requirements imposed on a landlord:

- Ensuring the presence of smoke alarms in proper working order;
- Ensuring the presence of carbon monoxide detectors in proper working order;
- Ensuring the inspection and testing of the electrical installation

Smoke Alarms

The presence of smoke alarms is intended to reduce the risk of fire and associated smoke and any consequent injury or loss of life. Without a smoke alarm fitted an occupier is at least four times more likely to die. The FFHH Regulations require a smoke alarm, in proper working order, to be present on every storey of a dwelling on which there is a room which is used for living accommodation, including bathrooms, lavatories and halls/landings. Landlords must ensure every smoke alarm is in proper working order. To ensure that this requirement is met opportunity to test smoke alarms should be sought e.g. whilst carrying out a necessary repair in the dwelling.

Depending on the size of the dwelling landlords may consider it appropriate to ensure the presence of more than one smoke alarm to each storey. Landlords may also consider it appropriate to fit an additional heat alarm in the kitchen area. Smoke alarms should be sited where they can be heard by the occupier when asleep, usually a hall and landing area.

The fire service provides guidance on the type of alarms available and their fitting. (see www.fireservice.co.uk/safety/smoke-alarms). In addition, BS 5839-6:2013 (part 6) sets out the requirements for the proper fitting of smoke alarms in domestic properties. A contractor specialising in the fitting of smoke alarms should be able to advise you on this standard.

A landlord must note the manufacturer's recommended life span of a fire alarm, which will depend on the alarm. An alarm which has passed its expiry date may not be fully operational and incapable of detecting smoke. The FFHH Regulations presently make no requirement for a landlord to fit hardwired smoke alarms in a dwelling. However, landlords may wish to consider the fitting of such alarms. Hardwired alarms can be interlinked making them more effective and reliable than battery alarms.

Carbon Monoxide Alarms

Carbon monoxide is a gas, produced when carbon based fuel is burnt without enough oxygen. You cannot see, smell or taste it but it can injure and kill quickly. Not only is it responsible for a considerable number of deaths and poisonings each year; many people are likely to be affected by carbon monoxide without realising it.

Combustion appliances such as boilers, gas and open fires, heaters and stoves fuelled by solid fuel, oil or gas all have the potential to cause CO poisoning if they are poorly installed,

poorly maintained or incorrectly used. Particularly where there is inadequate (or lack of) proper ventilation, flues and chimneys.

The FFHH Regulations require a landlord to ensure that a carbon monoxide alarm is present in any room which has a gas, oil or solid fuel burning appliance installed. Carbon monoxide alarms are essential in providing perhaps the only warning an occupier will have of the presence of carbon monoxide. Carbon monoxide is a 'silent killer' and almost every fatality results from the lack of early warning to its presence.

Additional information on the causes and effects of carbon monoxide can be found at the Public Health Wales website www.wales.nhs.uk/sitesplus/888/page/50368

The placement of carbon monoxide alarms should be considered carefully. Smoke alarms, because heat and smoke rise, are normally placed on the ceiling. This is not necessarily the best place to install carbon monoxide detectors. The concentration of carbon monoxide could reach dangerous levels before reaching ceiling height. As a general guide, carbon monoxide alarms are usually installed lower than smoke alarms. The guidance accompanying carbon monoxide alarms should always be followed carefully, including noting the expiry date of the alarm. Carbon monoxide sensors are usually more fragile than those within smoke alarms and usually need to be replaced more regularly.

The requirement for a landlord to ensure that smoke alarms and carbon monoxide alarms are present under these Regulations does not replace any duties placed on a landlord under existing legislation, including the Management of Houses in Multiple Occupation (Wales) Regulations 2006 and the Gas Safety (Installation and Use) Regulations 1998

Inspection and testing of electrical installation

Although fires in the home are reducing overall, the proportion of domestic fires caused by electricity is steadily increasing.

Anything receiving constant use will deteriorate over time and an electrical installation is no different. The electrical installation within rented accommodation is likely to be subject to greater levels of deterioration because of the changes of occupancy. It should therefore be inspected and tested regularly to ensure it is safe for continued use. This test is known as 'periodic inspection and testing' (PIT).

PIT is carried out on wiring and fixed electrical equipment to check that they are safe, the test will:

- Reveal if any of your electrical circuits or equipment is overloaded.
- Find any potential electric shock risks and fire hazards.
- Identify any defective electrical work.
- Highlight any lack of earthing or bonding.

Periodic inspection and testing must be carried out only by a qualified person*, such as a registered electrician. The electrician must be competent to carry out a PIT in accordance with the UK standard for the safety of electrical installations, BS 7671 – Requirements for Electrical Installations (IET Wiring Regulations).

Once the PIT has been completed you will be issued with an Electrical Installation Condition Report (EICR). This report will inform you of any deterioration, defects, dangerous conditions and any non-compliance with the present-day safety standard that might give rise

to danger. If no such issues are found the EICR will confirm the electrical installation is satisfactory for continued use.

A landlord must ensure a dwelling, which is the subject to an occupation contract, has a current EICR confirming the electrical installation is satisfactory. The current EICR must be made available to the contract-holder on or before the occupation date. A current EICR is one which does not pre date the occupation date by more than five years.

A landlord is required to have the electrical installation of the dwelling tested every five years unless:

- The requirements of the previous EICR indicate a shorter testing interval
- The dwelling has, within the last five years, been inspected in accordance with Building Regulations and been issued with an electrical installation certificate as a result of:
 - it being fully rewired or
 - being a new build.

In the latter case the dwelling will be exempt under the FFHH regulations for a period of up to five years, from the date of issue of the electrical installation certificate.

A dwelling which is subject to an occupation contract which converted from an existing contract on the date of implementation will not be subject to the requirements of PIT for a period of twelve months from the date of conversion. This exemption will no longer apply to the dwelling should the converted contract end.

*Further information on finding a qualified electrician can be found at:

http://www.electricalsafetyfirst.org.uk/find-an-electrician/?gclid=EAlalQobChMliczmi72G1QIViKntCh3VsAN3EAAYASAAEglbJfD_BwE

<http://www.electricalcompetentperson.co.uk/>

Response Form

The closing date for replies is Friday 12 January 2018

Returning this form

Please return this completed form by email to: rentinghomes@gov.wales

If you are sending your response by email, please mark the subject of your email **FFHH consultation**

Or by post to:
Renting Homes Team
Housing Policy Division
Ground Floor, West Core
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Name:

Email:

Telephone:

Address:

Postcode:

Organisation
(if applicable)

Publication of responses

Responses to publications may be made public – on the internet or in a report. Normally the name and address (or part of the address) of its author will be published along with the response, as this helps to show the consultation exercise was carried out properly.

If you would prefer your name and address not be published, please tick here

Q1. Determination of whether a dwelling is FFHH	Please Tick	
Do you agree with our approach to determining whether a dwelling is FFHH, in particular referencing the 29 matters and circumstances set out in the guidance?	Yes	No
If 'no' please briefly explain why.		

Q2. Landlord requirements - carbon monoxide	Please Tick	
Do you agree with the requirement for a landlord to install a carbon monoxide alarm?	Yes	No
If 'no' please briefly explain why.		

Q3. Landlord requirements – smoke alarms	Please Tick	
Do you agree with the requirement for a landlord to install a smoke alarm?	Yes (Go to Q4)	No
If 'no' please briefly explain why, then go to Q6.		

Q4. If 'yes' to question 3	Please Tick	
Should there be any additional requirements on the type of smoke alarm installed?	Yes (Go to Q5)	No
If 'no' please briefly explain why, then go to Q6.		

Q5. If yes to question 4 which type of alarm should be installed?	Please Tick	
Sealed unit lithium battery-powered smoke alarms with 10 year lifespan.	Yes	No
If 'yes' please briefly explain why.		
Interlinked sealed unit lithium battery-powered smoke alarms	Yes	No
If 'yes' please briefly explain why.		
Interlinked hard-wired smoke alarms	Yes	No
If 'yes' please briefly explain why.		

Q6. Landlord requirements for electrical safety testing	Please Tick	
Do you agree with the requirement for a landlord to undertake electrical safety testing?	Yes	No
If 'no' please briefly explain why.		

Q7. Landlord requirements – electrical safety testing	Please Tick	
Do you agree that the maximum period between electrical safety testing should be five years?	Yes	No
If 'no' please briefly explain why.		

Q8. Specific requirements imposed on landlords	Please Tick	
Do you agree that the three specific requirements imposed on landlords (installing a carbon monoxide detector, smoke alarm, and undertaking electrical safety testing) address the most important concerns?	Yes	No
If 'no' please briefly explain why.		

Q9. Draft guidance on fitness for human habitation.	Please Tick	
Do you agree that the draft guidance on fitness for human habitation adequately explains: a. the nature of the 29 matters and circumstances and;	Yes	No
b. the specific requirements placed on landlords by the regulations?	Yes	No
If 'no' please briefly explain why.		

Q10. Do you have any further comments to make on the draft regulations, including any on their cost implications?

Q11. Welsh Language Impact.

While this consultation paper is being made available in Welsh, please can you suggest how the proposed 'Fitness For Human Habitation Guidance' document could be formulated or changed so as to have.

- i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and
- ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.