

Appendix 2 District Council Housing Duties

The duty to keep housing conditions under review

A local housing authority must keep the housing conditions in its area under review with a view to identifying any action that may need to be taken under:

Part 1 Housing Act 2004 - the Housing Health and Safety Rating System

Part 2 Housing Act 2004 (houses in multiple occupation licensing)

Part 3 Housing Act 2004 (selective licensing of other accommodation)

Chapters 1 and 2 of Part 4 of the Housing Act 2004 (management orders)

Part 9 of the Housing Act 1985 (Demolition Orders and slum clearance)

Part 7 of the Local Government and Housing Act 1989 (Renewal Areas)

Article 3 of The Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 (financial assistance)

Housing Act Directions

The Secretary of State has the power to issue directions to local authorities under Housing Act 2004 and in their duty to keep housing conditions under review, authorities must comply with them. For example, the government may direct authorities to carry out reviews in respect of particular hazards, consider particular advice in the review and notify the Secretary of State of any actions identified as necessary following the review.

Local authority duties to inspect

Local authority duty to inspect can arise as a result of a review of housing conditions, a complaint or enforcement of standards in a house in multiple occupation (HMO).

Following review of housing conditions

If the local authority considers that as the result of keeping housing conditions under review it would be appropriate for any residential premises to be inspected to determine whether any Category 1 or 2 hazards exist, it must arrange for an inspection to be carried out to identify any hazards.

External areas such as paths, driveways, yards, gardens and outbuildings are included in the definition of residential premises for this purpose.

Following official complaints the local authority must also inspect if it receives an official complaint, which is a complaint:

- made in writing
- by a justice of the peace who has jurisdiction in the area or a local parish or community council within the district
- to the 'proper officer' of the local housing authority, and
- the circumstances complained of indicate that Category 1 or 2 hazards may exist on premises or that an area should be dealt with as a Clearance Area

HMO licensing

A local authority is required to satisfy itself as soon as practicable and not later than five years after an application for a licence for a house in multiple occupation (HMO) has been received that there are no functions that ought to be exercised in respect of hazards. This will not necessarily require a comprehensive hazard inspection but in carrying out its licensing function the local authority may become aware of properties where inspection is necessary.

Other cases

If a local authority considers that an inspection is appropriate for any other reason, it must also arrange an inspection.

The local authority inspection

On carrying out an inspection, the inspector must:

- have regard to any guidance for the time being given under section 9 of the Act in relation to the inspection of residential premises
- inspect any residential premises with a view to preparing an accurate record of their state and condition
- prepare and keep such a record in written or in electronic form

The relevant guidance under section 9 is the Operating Guidance.

The manner in which an inspection should be carried out and the information recorded is set out in Annex B to the Operating Guidance. Recommendations include:

- information should be recorded in a form that is logical and readily understandable, in particular by owners and occupiers
- a full inspection of the building should be made, identifying and recording all deficiencies, whether or not these could contribute to a hazard
- Inspections generally will be restricted to visual and surface inspection
- Where authority for destructive investigations can be obtained, it should be; where a full investigation is not possible, the inspector should indicate what further investigation is required

- Weather conditions should be recorded
- Common parts and their amenities should be thoroughly inspected

Outcome of the local authority inspection

Once the inspection has been completed, the inspector must make an assessment.

The assessment involves determining whether:

- there are any deficiencies
- the deficiencies contribute to one or more hazards and if so, to which hazards
- Inspectors should have regard to the information in Annex D of the Operating Guidance, but also to published research that overtakes that information. One deficiency may contribute to more than one hazard, and more than one deficiency may contribute to one hazard.

For each hazard that is worse than average for that type and age of property, the inspector assesses:

- likelihood of an occurrence in the next 12 months
- the probable spread of harms which could result from such an occurrence

Inspectors need to apply the principles outlined in Chapter 1 of the Operating Guidance, the general statements contained in Chapter 4 and the principles outlined in Annex D. The underlying principle is that 'Any residential premises should provide a safe and healthy environment for any potential occupier or visitor'.

As a minimum, a dwelling should be capable of satisfying the basic and fundamental needs for the everyday life of a household. It should provide shelter, space and facilities for the occupants, and should be suitable for the range of households and individuals who can be expected to occupy a dwelling of that size and type. The dwelling should not contain any deficiencies and consequent hazards that interfere with the household establishing a home or which might endanger the occupants and any potential occupiers.

Assessing hazards under the HHSRS

HHSRS provides statistics and a formula (the HHSRS Formula) for rating a hazard and producing a hazard score.

The inspector does not necessarily need to score every hazard, but should score each hazard that is obviously worse than the average for that age and type of dwelling. Hazards from cold should always be scored. The difficult calculations involved are assisted by the availability of a paper scoring form or computer programmes for desktop or handheld computers. The calculations are set out in the regulations but the footnotes refer to the Operating Guidance, where there are explanations and examples.

To calculate the hazard score and band the assessment of the dwelling will not take account of the current occupants, except in cases concerning overcrowding.

Having identified a hazard, the inspector can assess the likelihood of an occurrence in the next 12 months, taking into account:

- the average likelihood for a building of that age and type (these are provided in Annex D of the Operating Guidance)
- the dwelling characteristics and conditions identified on inspection, which are the responsibility of the landlord, and which may increase or decrease the likelihood.

The inspector should rate the likelihood of an occurrence in the dwelling as a whole, so where a hazard may be present in more than one place, it is the collective likelihood that should be taken into account. The inspector is expected to provide not an exact figure, but to select one of the standard ranges.

Next the inspector assesses the possible harm for the vulnerable group that could result from an occurrence, using Classes 1 to 4. The inspector takes into account:

- the average spread of harm outcomes for a building of that age and type (these are provided in Annex D of the Operating Guidance)
- the dwelling characteristics and conditions identified on inspection, which are the responsibility of the landlord, and which may increase or decrease the severity of the outcomes

The inspector is expected to provide not an exact figure, but to select one of the standard ranges. Where a hazard arises in more than one place in a dwelling, there may be different factors and therefore different calculations for each place, and the final figures need to take these into account.

Hazard band

The inspector can then use tables in the Operating Guidance to obtain a 'hazard score'. This score is then classified in one of ten 'hazard bands', from Band A being the most dangerous and Band J the least. The hazard band is the first factor to be taken into account in determining the appropriate enforcement action. Category 1 hazards are those in Bands A, B, and C, when the local authority is under a duty to take enforcement action, and Category 2 hazards are those in Bands D to J, when enforcement action is discretionary.