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Asset Management Compliance Regime in Social Housing in England

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Abstract

The social housing sector in England is made up of different types of Social Housing Provider (SHP) who own and manage houses for rent by people who have a need for social housing. As responsible landlords these organisations have a duty to provide homes that are safe for people to live in. This paper lays out the statutory requirements regarding the five high risk areas that SHPs are required to comply with: fire safety; legionella and water hygiene; asbestos management; gas safety and electrical safety. It also identifies some key questions that a SHP could use to check the level of its own compliance in these areas.

Keywords: fire, safety, asbestos, legionella, gas, electric

Introduction

One of the seven standards set by the regulator of social housing in England is called the Home Standard by which each social landlord that lets a property is required to ensure that these homes are 'safe, decent and kept in a good state of repair' [1]. As well as ensuring that the structure of properties is safe and all the fixtures in properties are in a good state of repair landlords have a statutory duty to ensure safety in relation to high risk areas of asset management. These include key areas around fire safety, legionella and water safety, asbestos management, gas safety, electrical safety and the safety of all mechanical and electrical equipment in buildings such as passenger lifts in blocks of flats. The focus of government is on the regulation of Social Housing Providers (SHPs) as they look at how these organisations are governed, managed and how each organisation reaches its statutory responsibilities regarding property and health & safety compliance. The government regulates the social housing sector through the Homes and Communities Agency (HCA) and monitors the performance of SHPs.

Fire Safety

The legislation in England relating to homes that are occupied by multiple unrelated residents who live independently from each other is the Housing Act 2004. It introduced a risk based assessment system called the Housing Health and Safety Rating System (HHSRS) which 'is the principal tool used to assess and regulate fire safety standards' [2]. The Smoke and Carbon Monoxide (England) Regulations 2015 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on 1 October 2015 and the legislation states that 'private sector landlords are required from 1 October 2015 to have at least one smoke alarm installed on every storey of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire, wood burning stove). After that, the landlord must make sure the alarms are in working order at the start of each new tenancy'[3]. The Regulatory Reform (Fire Safety) Order (2005) provides 'a minimum fire safety standard in all non domestic premises with a few exceptions. If it is a workplace it designates the employer the Responsible Person (RP). If any other person has to some extent control then they could have duties under the Order. If it is not a workplace then any person having control to some extent or the owner and can be designated the Responsible Person. Those persons or a person acting on their behalf, are required to carry out certain fire safety duties which include ensuring the general fire precautions are satisfactory and conducting a fire risk assessment. If more than five persons are employed it has to be a written fire risk assessment' [4].

Employers have legal duties to look after the health and safety of their employees and to ensure that they have a safe place to work. They have to ensure that the work place has been assessed for fire safety and to ensure that there is protection for staff against the risk of fire occurring. Like employers, landlords have legal duties to protect their properties and the safety of the people who live in their properties. Landlords have to get their properties assessed through a Fire Risk Assessment (FRA) to identify any risks and what actions need to be taken to reduce these risks.

Legionella and Water Hygiene

Legionella is a disease which is transmitted through the inhalation by people of contaminated droplets of water spray coming from water systems in buildings. The first recorded outbreak was in America in 1976 in which 29 people died. It is caused by the Legionella bacteria of which there are 50 identified variant species. It is a water based bacteria and is common within the environment. In hot and cold water systems it becomes dangerous when it has the right conditions to multiply in storage tanks, calorifiers, pipework and fittings.

Under the Health and Safety at Work Act (HSWA) 1974 a legal framework was established that set out general duties and responsibilities of an employer for health and safety in the

workplace and in relation to all work activities. The structure of the HSWA allows for the creation of more specific regulations for specific areas and for the development of Approved Codes of Practice (ACOPs) that provide guidance relating to the regulations in specific areas. ACOP L8 applies to the control of Legionella bacteria and sets out a process for the identification of risk through a written assessment and the management of that risk. It identifies that responsibilities for the assessment and management of risk. The ACOP L8 'is supported by the Health & Safety Executive's HSG274, "Legionnaires' disease: Technical guidance" document which provides additional guidance covering the operation and management of the following risk systems, evaporative cooling systems, hot and cold water systems, and other risk systems' [5]. Other important pieces of legislation relating to Legionella include: Corporate Manslaughter and Corporate Homicide Act 2007; Management of Health & Safety at Work Regulations; control of Substances Hazardous to Health Regulations (COSHH); building Regulations; Water Industry Act; Water Supply (Water Fittings) Regulations; water supply (Water Quality) Regulations; Notification of Cooling Towers and Evaporative Regulations. Guidance documents also include: Water Regulations guide (WRAS); BS 8558 – Guide to the design, installation, testing, operation and maintenance of services supplying water for domestic use within buildings and their curtilages; BS8580 – Risk assessment for the Control of Legionella and BS 7592 – Method for Legionella Sampling.

Asbestos Management

Asbestos is 'a naturally occurring mineral substance that can be pulled into a fluffy consistency. Asbestos fibers are soft and flexible yet resistant to heat, electricity and chemical corrosion. Pure asbestos is an effective insulator, and it can also be mixed into cloth, paper, cement, plastic and other materials to make them stronger. These qualities once made asbestos very profitable for business, but unfortunately, they also make asbestos highly toxic' [6]. As a useful material it was widely used in the past in England within different types of buildings including: ceiling tiles; pipe insulation; fire proofing solution; spray coatings; garage roof tiles; cement additive; roofing sheets; flat sheets; gutters; drainpipes; pressure pipes; flues; asbestos insulating board; textured decorative coatings; lagging; bath panels; fire door panels and fuse boxes.

The legislation controlling the management of asbestos is primarily derived from regulations set under the health and safety framework brought in by HSWA 1974. These are The control of Asbestos Regulations 2012 which sets standards for the protection of employees from risks related to exposure from asbestos fibres in the air. Any damaged asbestos containing material can release asbestos fibres which if inhaled can cause lung disease. The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 2013 also puts a duty on employers, the self employed and responsible persons to report accidents in the workplace and occupational diseases of which asbestos is reportable.

Gas Safety

The legislation relating to the control of gas are The Gas Safety (Installation and Use) Regulations 1998. Amendments were brought forward in 2018 and there is an ACOP to provide guidance on these regulations, 'The Gas Safety (Installation and Use) (Amendment) Regulations 2018 came into force on 6 April 2018. This Approved Code of Practice and guidance gives advice on how to meet the requirements of GSIUR and the amending regulations. This guidance is for anyone who may have a duty under the Gas Safety (Installation and Use) Regulations 1998, including those who install, service, maintain or repair gas appliances and other gas fittings. Landlords also have duties under these regulations' [7].

Electrical Safety

The Electricity at Work Regulations (EWR) 1989 were put into law under the framework set up under the HSWA 1974. The purpose of the law is to ensure that precautions are taken to prevent the death or personal injury from electricity in work activities. Other relevant legislation includes: The Management of Health and Safety at Work Regulations 1999 which focuses on employers assessing risks to their employees; Provision and Use of Work Equipment Regulations 1998 (PUWER) which places a duty on employers who provide equipment in the workplace to ensure it is safe to use and safely used; Landlord and Tenant Act 1985 requires that a landlord ensure the structure and fittings in their properties are in good repair; The Defective premises Act 1972 places a duty on landlords to ensure that their rented properties are free from defects that could cause personal injury to a tenant; The Electrical Equipment (Safety) Regulations (ESR) 1994 applies to any electrical equipment to ensure that it is safe; Building Regulations exist to ensure the health and safety of people in and around buildings by setting standards for their construction and Approved document P – Electrical Safety in Dwellings covering electrical work in the home.

Compliance Audit Checklist

To help SHPs identify if their current services comply with the statutory responsibilities that they have a suggested number of questions are presented below which can be employed as part of an audit process [8].

Fire Safety

- Do you have a Fire Safety Policy in place?
- Do you have a valid Fire Risk Assessments in place for every communal area?
- Do you know if your fire risk assessments comply with PAS 79?

- Have all Assessment actions been carried out?
- Is your asset list correct?
- Are your fire risk assessments carried out by a qualified and competent person?
- Do you have clarity on your policy approach to fire safety - stay put, evacuation?
- Have you had a fire in your stock within the last 2 years?

Legionella and Water Hygiene

- Do you have a Legionella / Water Hygiene Policy in place?
- Do you have a valid Risk Assessment and subsequent inspection and monitoring regime in place for every communal scheme you own?
- Do you hold all records in relation to water hygiene for the last 5 years?
- Do you employ an external competent person to manage your approach to Water Hygiene?
- Do you know if your risk assessments are carried out by a suitably qualified and competent person?
- Do you carry out water hygiene checks on every void?

Asbestos

- Do you have an Asbestos Policy in place?
- Do you have an Asbestos Management Plan (AMP) in place?
- Do you carry out a sample survey of your domestic stock?
- Do you have a valid asbestos management survey for every communal scheme you own dated after 6th April 2012?
- Do you have a cyclical programme of re- inspections in place for all communal schemes which require one?
- Do you have an Asbestos Register which is updated on a weekly basis and provides access to robust asbestos data to third parties (contractors, suppliers, tenants, staff, etc.)?
- Do you have separate contractual arrangements for surveying and removal works?
- Do you report on compliance with asbestos to your management team and board?
- Do you know if your survey reports comply with UKAS requirements?

Gas Safety

- Are you 100% compliant with a valid Landlord Gas Safety Record (LGSR) for every property serviced by gas?
- Do you have the last 2 LGSR records for every property and can you fully evidence this?
- Do you have a forward gas servicing programme which will ensure you stay 100% compliant?
- Does your access process start more than 60 days prior to LGSR expiry date?

- Does legal action commence on the first day following the expiry of the LGSR – legal papers issued to tenant on day 1?
- Do you use ‘forced entry’ as part of your ‘no access’ process?
- Do you have a full asset and equipment list for all communal schemes you have?
- Do you have a valid LGSR for all communal boilers and other equipment serviced by gas in these schemes?
- Are these LGSR’s displayed in all communal areas?
- Do you have a Gas Policy in place?

Electrical Safety

- Do you have a valid electrical safety record for every domestic property (within the last 10 years)?
- Are you working towards and/or operating with a 5 year programme for your domestic stock in accordance with best practice guidance?
- Do you have a valid electrical safety record for every communal property dated within the last 5 years)?
- Do you carry out an electrical safety test on every void property prior to re-letting?
- Do you have a cyclical electrical inspection programme in place (and published) that will ensure that you remain compliant?
- Do you have an Electrical Safety Policy in place?
- Do you have the electrical inspection work carried out by your electrical contractors, independently and externally audited on a sample basis?

Conclusion

This paper has identified that legislation that applies to five high risk areas for SHPs in the management of their assets. In order to assess their levels of compliance a number of questions are identified which can be used by an organisation on an audit basis.

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