

Compliance, Safety and the Coronavirus

In the current climate we are investigating your legal obligations in relation to the Coronavirus when conducting your annual gas safety and other compliance checks. As you will be aware the situation is rapidly changing – we will keep you informed of significant updates.

For information we are in discussion with the HSE and hope to provide additional clarification. Once this becomes available, we will distribute this to you. We have collated the current advice from a number of sources below:

1. Regulator of Social Housing

The following notice was issued on 11 March 2020:

<https://www.gov.uk/government/news/rsh-statement-on-coronavirus>

In summary:

- All registered providers should prepare for the potential impact of Coronavirus (COVID-19) on residents, staff, contractors and suppliers.
- Ensure the latest advice and guidance from the Government and Public Health England is followed [gov.uk/coronavirus](https://www.gov.uk/coronavirus)
- The RSH is operating as normal, including all planned and reactive regulatory engagement. This will continue unless Government guidance changes necessitates changes to business operations
- You are expected to communicate in a timely manner with the RSH on material issues that relate to non-compliance or potential non-compliance with the [regulatory standards](#)
- The regulatory approach remains proportionate **and RSH will take account of the circumstances, including those arising from the impact of coronavirus, in considering their response to non-compliance** or potential non-compliance with the standards.”

2. Existing guidance in the Gas Safety (Installation and Use) Regulations 2018 provides some further guidance:

Regulation 39 Exception as to liability:

<http://www.legislation.gov.uk/uksi/1998/2451/regulation/39/made>

“No person shall be guilty of an offence by reason of contravention of regulation 3(2) or (6), 5(1), 7(3), 15, 16(2) or (3), 17(1), 27(5), 30 (insofar as it relates to the installation of a gas fire, other gas space heater or a gas water heater of more than 14 kilowatt gross heat input), 33(1), 35 or 36 of these Regulations in any case in which he can show that he took all reasonable steps to prevent that contravention.”

Guidance note 337

<https://www.hse.gov.uk/pubns/priced/l56.pdf>

This regulation provides certain exceptions as to liability under which a person is not deemed to be guilty of an offence where they can show that they took all reasonable steps to prevent contravention of the provision concerned.

This publication contains guidance in various areas, eg concerning access to premises to discharge landlords' duties under regulation 36.

However, it is for a court to decide whether 'all reasonable steps' have in fact been taken in particular circumstances, and whether a person is guilty of an offence.

3. HSE guidance on access:

"A landlord has to show that they took all reasonable steps to comply with the law. HSE recommends the following best practice in these circumstances and strongly advises that a record be kept of all correspondence with the tenants:

- leave the tenant a notice stating that an attempt was made to complete the gas safety check and provide your contact details.
- write to the tenant explaining that a safety check is a legal requirement and that it is for the tenant's own safety. Give the tenant the opportunity to arrange their own appointment.
- HSE inspectors will look for at least three attempts to complete the gas safety check, including the above suggestions; however, the approach will need to be appropriate to each circumstance. It would ultimately be for a court to decide if the action taken was reasonable depending upon the individual circumstances.
- It is a good idea to include arrangements for access in the tenancy agreement."

4. Infection control

The above does not specifically mention what actions to take where health concerns are raised with regard to infection control at any level. For example, dealing with property of a potentially ill person, risking the spread of infection to other locations. Disinfecting it so workers can access, may not be reasonable or the safest option for the community on a large scale.

As the HSE guidance states: *"it is for a court to decide whether 'all reasonable steps' have in fact been taken in particular circumstances, and whether a person is guilty of an offence."*

It is likely your procedure will already have an element of tenant profiling and vulnerability checks to be carried out prior to taking legal steps for access or making the installation safe (i.e. by removing from use) where access is not granted – this will provide you with a policy to build on.

5. Health and Safety Executive on record keeping

- Keep records of any discussions that take place with tenants who are self-isolating
- Save all email correspondence from the tenants in question
- Advise contractors that they should not be putting themselves in a position of danger even though they have a Duty of Care

6. Public Health England

Contractors or letting agents must not put themselves in situations where they could be in contact with someone who is self-isolating.

7. Gas Safe Register

All reasonable steps must be shown to demonstrate that appointments have been made to carry out the gas safety certificate and that records of any correspondence or communication with the tenant must be kept on record. This applies to ALL situations where access is not possible.

8. Other trade bodies advice

The [Letting Agency Today](#) gives the advice of other bodies.

9. Planning for the Coronavirus

ASCP recommends that you plan for a significant impact of the virus on your organisation and compliance checks. For example – what will you do if a significant number of your workforce is ill at the same time? What will the balance be between conducting annual safety checks and responding to emergency repairs? We suggest you plan for a range of scenario's and differing factors.

An example may be - where 25% of your workforce are not available and there is a national shortage of Gas Safe Registered engineers due to a global virus. In this case open flue appliances or older appliances have a greater potential for risk than newly installed room sealed appliances. Therefore, use resources to concentrate on those types of appliances.

This is just an example and ultimately you would need to satisfy the regulatory bodies and potentially the courts that that you have taken all reasonable under the circumstances.

It should also be noted that there are risks of contracting viruses for tenants and workers of any RSL during times of normal national infection levels and infection control should be part of the workforces training regime.

Each organisation needs to evaluate the risks and determine which ones are more significant i.e. the risk of the annual safety checks/service/LGSR being overdue vs the risk to individuals and the community from infection. The provision of services and repairs will also need to be appropriately prioritised.

There is no one size fits all and each organisation will have individual challenges depending on the type of accommodation provided and the demographic of occupants, policies and procedures already in place.

For now, we recommend preparing risk assessments that detail actions to take on an individual basis for all staff and contractors:

- Where work is required, and infectious diseases are present
- Where infectious diseases are presumed to be present e.g. not confirmed cases but symptoms consistent with infectious disease

- For those tenants instructed to isolate and for voluntary precautionary self-isolation cases

Continuity Planning

This may be a good time to generally review your organisation's continuity plan. There are many lessons we can learn from this pandemic. How would your organisation function in the event of catastrophe? For instance, floods or fire significantly impacting the ability of the organisation to perform at normal levels. The plan should detail what the organisation will do in the event of major incident to prioritise safety of the workforce, residents and the general public. It should note which activities will be suspended or prioritised as well as have robust policies and procedures.

Country Variations

At the time of writing there is either very limited advice or no advice available on the Scottish and Welsh housing regulator sites. However, we will review frequently and keep you updated as and when information becomes available.

ENGLAND

<https://www.nhs.uk/conditions/coronavirus-covid-19/>

<https://www.gov.uk/government/topical-events/coronavirus-covid-19-uk-government-response>

<https://www.gov.uk/government/news/rsh-statement-on-coronavirus>

SCOTLAND

<https://www.nhsinform.scot/coronavirus>

<https://www.gov.scot/coronavirus-covid-19/>

<https://www.housingregulator.gov.scot/about-us/news/housing-regulator-advises-social-landlords-on-coronavirus>

WALES

<https://www.nhsdirect.wales.nhs.uk/Default.aspx>

<https://phw.nhs.wales/topics/latest-information-on-novel-coronavirus-covid-19/>

<https://gov.wales/guidance-social-landlords-about-covid-19>