

COVID 19 ADDENDUM TO POLICIES

Community Connections

6th April 2020



Introduction:

On 26 March the Coronavirus Act 2020 came into force. It relates to a wide range of matters associated with the COVID-19 outbreak. More information about this legislation and all the latest government guidance on COVID-19 is accessible from the following link

<https://www.gov.uk/coronavirus>.

As part of a national effort to respond to the COVID-19 outbreak it is vital that local authorities, landlords and tenants work together to keep rented properties safe.

The Government is asking everyone to do all they can to help stop coronavirus spreading and has published advice on maintaining strict separation from others wherever possible during this unprecedented time.

This means that during this time it may be harder for local authorities to carry out their usual work. Inspecting properties and taking enforcement action may be affected by issues around resources or tenants maintaining strict separation. Landlords may also find it harder to comply with their legal obligations for the same reasons.

There has been guidance produced for local authorities, but it is not statutory guidance issued under section 9 of the Housing Act 2004. The guidance is intended to provide a recommended approach for local authorities, taking into account the COVID-19 outbreak and current public health guidance. Local authorities are not required to have regard to the guidance under section 9(2) of the Act.

Our service area, Community Connections, has carefully considered the guidance produced by national government, and has recognised that during the outbreak of COVID-19 (Coronavirus) there will be some significant challenges that impact on our delivery of service. We have therefore responded by producing this overarching addendum to our policies, so that we can advise the public of; the available guidance, the challenges we anticipate, what likely effect these challenges will have, and some measures that we are putting in place.

The addendum document contains the following sections:

1. Guidance Documents
2. How should local authorities enforce standards in rented properties?
3. Inspections and investigations
4. Enforcement action
5. Proactive and reactive work
6. Support for landlords and tenants
7. Electrical and gas safety in privately rented properties
8. How will these considerations impact our existing policies?

1. Guidance Documents

The Ministry of Housing, Communities & Local Government produced guidance to advise local authorities in England how to effectively enforce standards in rented properties (including housing associations), meet their legal duties and support landlords and tenants during the unprecedented challenges posed by the COVID-19 outbreak.

This guidance was titled; '*COVID-19 (Coronavirus) and the enforcement of standards in rented properties Non-statutory guidance for local authorities on enforcing standards in rented properties during the COVID-19 outbreak. Non-statutory guidance for local authorities on enforcing standards in rented properties during the COVID-19 outbreak*'.

In addition the Ministry of Housing, Communities & Local Government has also produced guidance for landlords and tenants in the private and social rented sectors.

This guidance was titled; *Coronavirus (COVID-19) Guidance for Landlords and Tenants. Non-statutory guidance for landlords and tenants in the private and social rented sectors on:*

1. *Measures relating to notices seeking possession as amended by the Coronavirus Act 2020.*
2. *Court action on possession cases during the Coronavirus (COVID-19) outbreak.*
3. *Property access and health and safety obligations in the context of Coronavirus (COVID-19) restrictions*

Both documents are accessible from the link below.

<https://www.gov.uk/government/publications/covid-19-and-renting-guidance-for-landlords-tenants-and-local-authorities>

2. How should local authorities enforce standards in rented properties?

Local authorities must keep housing conditions under review and have a duty to take appropriate action when they find the most serious 'category 1' hazards. Local authorities also have legal duties and powers under other legislation.

These duties and powers still exist during the COVID-19 outbreak and are important to protect tenants.

We are therefore looking to:

Ensure that Community Connections enforcement policies are reviewed, and an overarching addendum created taking into account the current situation. We will also consider what potential changes, updates or reviews of existing policies are required moving forward.
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Take a pragmatic approach to enforcement that ensures tenants are kept safe and landlords are supported.
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Ensure all work is carried out in line with Plymouth City Council's health and safety policies and procedures.
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Base our decisions on an assessment of risk.
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3. Inspections and investigations

Effective enforcement of standards in rented properties traditionally relies on local authority officers visiting rented properties.

Local authorities have powers of entry which would be used in normal circumstances to gain access and carry out inspections. However, during this period in many cases it may not be possible, or appropriate, to inspect properties. Government guidance has advised that local authorities update their enforcement policies and, in particular, their policies on when they should undertake inspections.

Given the developing situation with Coronavirus COVID19, we are taking practical steps to manage and protect the health of our employees, and the health of our clients. During this time, we will need to take some tough decisions on how and when we will undertake inspections. Many of our team will be required to work from home, and if applicable self-isolate from all unnecessary contact. With this in mind, we are looking to adopt the cancellation of all non-critical inspections. Our officers will continue to review all new complaints that come into the service, but will now prioritise only those that are deemed critical.

Your legal duties will remain the same during this time but if you consider that you may not be able to comply with them you should take your own legal advice.

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

There is a duty to inspect because, for example, there is an imminent risk to a tenant's health due to a serious hazard.

A serious hazard was previously identified and may still exist.

The local authority has been made aware that a tenant is vulnerable and it is not clear if they are aware of the presence of hazardous conditions.

This list is not exhaustive and should not be treated as conclusive.

As advised above, it might not be possible to inspect a property due to tenants self-isolating or refusing to allow access. We have reviewed our enforcement policies and considered what alternatives we could implement. A reasonable response could be.

For example:

A decision may be made to de-prioritise lower-risk hazards.

An assessment could be made through photographs, video or live broadcasting by the tenant.

In cases of very serious risk, the effective use of maintaining strict separation to facilitate an inspection will be very carefully considered, taking into account the use of personal protective equipment (PPE), government guidance and the local authority's own health and safety policy.

In cases of extremely hazardous conditions, we may consider the use of alternative accommodation as opposed to undertaking emergency remedial action.

The suggestions above are not exhaustive and all decisions should be made on the merits of the individual case and an assessment of risk.

4. Enforcement action

During this unprecedented time we will only look to take enforcement action that we determine is necessary, and this will be determined on a case by case basis. We have reviewed our existing policies to meet the changing circumstances caused by COVID-19 and latest government advice regarding the outbreak, and will continue to be mindful to ensure pragmatic, appropriate and risk based action is taken.

For example:

Enforcement action which is non-urgent, or not legally required, may be delayed until restrictions ease.

Legal notices served under the Housing Act 2004 may, if the notice provides for this, be suspended for a period due to difficulties in completing the works.

Work in default may be deferred.

Other forms of enforcement action may be considered for the most serious hazards, e.g. a Prohibition Order covering part of a property may be used instead of Emergency Remedial Action.

Steps may be taken to isolate or contain rather than remedy hazardous conditions.

The above list is intended only as an example and all decisions should be made on the merits of the individual case and based on an assessment of risk and the latest government advice around the outbreak.

5. Proactive and reactive work

Following government guidance we have taken the decision to suspend all non-urgent proactive work where there is not a duty to carry this out, for example scheduled targeted action or inspections of licensable properties, and prioritising reactive work, e.g. complaints from tenants.

A triage system will be used to ensure the most serious risks are prioritised and vulnerable tenants are protected. This will operate on a case by case basis.

Following government guidance, any decision to continue or suspend proactive action will be made based on an assessment of risk and the most current government advice about the outbreak.

6. Support for landlords and tenants

It is important, as a local authority, that we continue to work closely with landlords and tenants to ensure standards in rented properties are maintained.

We will be contacting landlords and using communications to emphasise the importance of keeping properties free from hazardous conditions, but also reassure them that a pragmatic, risk-based and common-sense approach will be used when enforcement decisions are taken.

As confirmed in the 'guidance documents section' above, the government has producing guidance for tenants and landlords. This guidance can be accessed from

<https://www.gov.uk/government/publications/covid-19-and-renting-guidance-for-landlords-tenants-and-local-authorities>.

7. Electrical and gas safety in privately rented properties

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

The Electrical Safety Regulations will require landlords to:

Ensure that the electrical safety standards are met during any period of a tenancy.
Have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at least every five years, or more frequently if the most recent report requires this.
Provide a copy of the report (known as the Electrical Safety Condition Report or EICR) to their tenants, and to the local authority if requested.
If the EICR requires investigative or remedial works, landlords will have to carry this out.

The Gas Safety (Installation and Use) Regulations 1998 require landlords to have annual gas safety check on each appliance and flue carried out by engineer registered with the Gas Safe Register and to keep a record of each safety check. Further advice can be found on the Gas Safe Register's website at <https://www.gassaferegister.co.uk/helpand-advice/covid-19-advice-and-guidance/> .

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

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

8. How will these considerations impact our existing policies?

The following is a list of our existing policies, with a brief summary description of how each one will be affected by these changes:

Policy	Effect
<p>Civil Penalty Policy 2020</p>	<p>This policy remains in place and relatively unaffected by the current situation and guidance (at present). However, the potential impact of COVID-19 (Coronavirus), will be taken into account when considering the timescale that a relevant offence may have occurred, be occurring, or have been preventable.</p> <p>There is a legislative requirement that Civil Penalty action must be initiated by the service of a Notice of Intention within 6 months, from the first date that sufficient evidence was gathered by the local authority, or at any time if the offence is ongoing. http://www.legislation.gov.uk/ukpga/2004/34/schedule/13A</p> <p>During this unprecedented time we will only look to take enforcement action that we determine is necessary, and this will be determined on a case by case basis.</p> <p>The potential impact of COVID-19 (Coronavirus) will be considered when reviewing each individual element of the policy (<i>offence/culpability/track record/harm/removal of financial benefit/multiple offenders/punishment of offender/deterrence of offender/deterrence of others/reductions</i>).</p> <p>It is important that during the representation period of the Notice of Intention, that any details of financial hardship are advised, within the representation, to the local authority. Where financial hardship is demonstrated, we have the capability to agree payment plans on a case by case basis.</p>
<p>Housing Improvement Policy 2018 (Housing Standards Enforcement)</p>	<p>This policy remains in place and it is recognised that there are a number of areas that may be impacted by COVID-19 (Coronavirus) and government guidance.</p> <p>We will continue to adhere to the principles of the policy but wish to make you aware of some potential challenging areas.</p> <p><u>Approach to non-compliance</u> Typically inspections would happen but this is not necessarily feasible in the current climate. We therefore may need to embrace technology and the use of photos, videos or statements to identify non-compliance.</p> <p>Partnership working is also likely to be challenging at this time, and as such our consultations with our partner organisations may be conducted electronically rather than physically.</p> <p><u>Advice, guidance and support</u> We wish to recognise that resourcing levels will be effected by the impact of COVID-19 (Coronavirus), not only in this service, but in all services for the local authority. We need to make tough decisions on how best to utilise the resource we have at any one time. This may also include diversion of resources to other key service areas for the benefit of the city. This means that it may be difficult to respond, or respond as quickly, to requests for advice, guidance and support. Our team will endeavour to do their best, and it would help if queries were restricted to important queries only, and sent by email to communityconnections@plymouth.gov.uk using the most appropriate subject header of 'Housing Improvement' (i.e. for disrepair/hazard issues) and 'HMO licensing' (i.e. for HMO licensing issues).</p>

Voluntary Undertakings

The Council may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. The Council will take any failure to honour voluntary undertakings seriously and enforcement action is likely to result.

Statutory Notices

Following national guidance, a large majority of the workforce is working exclusively from home at this time. If statutory notices need to be served, it is likely that they will be served electronically. You may be contacted to provide appropriate email address details for you, and/or other interested parties so that notices, and copies of notices, can be served.

Works in default / Emergency remedial action

It is likely with the restrictions in place for social distancing, that significant challenges will be experienced when trying to obtain contracted works to be completed. It may be necessary, due to the impact of COVID-19 (Coronavirus), to consider alternative actions of a Prohibition Order, or the use of temporary accommodation. Decisions will be made on a case by case basis.

Civil Penalties

The impact of COVID-19 (Coronavirus), on Civil Penalties is explained in the Civil Penalty Policy effects box at the top of this table.

HMO Licensing

As advised we will not be looking to undertake routine HMO licensing inspections at this time. In addition we recognise that it may not be possible for landlords/licence holders to obtain all mandatory certification to complete a valid application. Therefore, we have taken steps to ensure that, during the period of impact from COVID-19 (Coronavirus), this is not mandatory at the point of application. We will request that where you have been unable to obtain certification, you upload, or provide us with, a record of your attempts to secure the relevant certification. If provided, we will consider the issuing of a licence with an additional condition imposed to ensure that any missing certification is provided within 12 months of the licence being granted. Failure to comply with this condition would constitute an offence and may be punishable by prosecution (unlimited fine), or the imposition of a financial penalty (maximum £30,000 fine).

Interviews

It is unlikely that we will be conducting any face-to-face interviews at this time. However you may be requested to provide interviews by correspondence (i.e. we may send you a set of questions for you to provide responses to).

Health & Safety

We wish to confirm that nothing in this policy shall require Council Officers to put themselves, or others, at excessive risk to their health and safety. National guidance on the impact of COVID-19 (Coronavirus), will influence our decision making for tasks our officers are asked to complete.

Charging for enforcement action

Our policy states that if a statutory notice is served, the Council may charge a fee for the cost of administration. This is in accordance with the policy "Fees and Charges Relating to the Enforcement of Housing Standards" most recently updated in 2011.

However, we are taking the step at present, during the period of impact from COVID-19 (Coronavirus), not to charge, in the majority of cases during this period, for the service of statutory notices. We understand that the current crisis is having an impact on the finances of many people, and businesses. We wish to

	<p>ensure that when formal notices are served that available finances are put towards undertaking improvements and not paying for the service of the notice. This is a step that will be regularly reviewed over the coming weeks/months and may be subject to change at a later point. We may also still consider charging for notices where there has been a clear lack of co-operation.</p> <p><u>Intervention / Enforcement standards</u></p> <p>When the local authority has established that it has a duty to take action (i.e. in respect of Category 1 hazards), or a power to take action (i.e. in respect of Category 2 hazards) the officer/s give consideration to the most appropriate form of action under the Housing Act 2004.</p> <p>The most appropriate course of action can include the service of one of the following formal notices; Improvement Notice (S11/12), Prohibition Order (S20/21), Hazard Awareness Notice (S28/29), Emergency Remedial Action (S40), Demolition Order (S46), or Clearance Area (S47). Given the challenging nature of ensuring works are undertaken within a specific time, it is likely that we will consider the service of Hazard Awareness Notices, Suspended Improvement Notices, or Prohibition Notices as the most appropriate course of action. This will be determined on a case by case basis, and the full range of powers remains available to the local authority.</p> <p>We also serve other statutory notices in relation to other legislation, and the appropriateness of this action will also be considered on a case by case basis.</p>
<p>HMO Licensing Policy 2014</p>	<p>This policy remains in place and relatively unaffected by the current situation and guidance (at present).</p> <p>As advised we will not be looking to undertake routine HMO licensing inspections at this time. In addition we recognise that it may not be possible for landlords/licence holders to obtain all mandatory certification to complete a valid application. Therefore, we have taken steps to ensure that, during the period of impact from COVID-19 (Coronavirus), this is not mandatory at the point of application. We will request that where you have been unable to obtain certification, you upload, or provide us with, a record of your attempts to secure the relevant certification. If provided, we will consider the issuing of a licence with an additional condition imposed to ensure that any missing certification is provided within 12 months of the licence being granted. Failure to comply with this condition would constitute an offence and may be punishable by prosecution (unlimited fine), or the imposition of a financial penalty (maximum £30,000 fine).</p>
<p>Fees and Charges Relating to the Enforcement of Housing Standards. 2011.</p>	<p>This policy remains in place and relatively unaffected by the current situation and guidance (at present).</p> <p>However, we are taking the step at present, during the period of impact from COVID-19 (Coronavirus), not to charge, in the majority of cases during this period, for the service of statutory notices. We understand that the current crisis is having an impact on the finances of many people, and businesses. We wish to ensure that when formal notices are served that available finances are put towards undertaking improvements and not paying for the service of the notice. This is a step that will be regularly reviewed over the coming weeks/months and may be subject to change at a later point. We may also still consider charging for notices where there has been a clear lack of co-operation.</p>

Questions & Answers

The following is not exhaustive and is not meant to be legal advice.

Hazards

Q. What about the legal duty local authorities have to take the appropriate enforcement action if they consider that a category 1 hazard exists on any residential premises?

A. We will:

Consider carefully what would be appropriate action during the current situation and review/update enforcement policies accordingly.

Prioritise resources to ensure vulnerable tenants and imminent risks to health are targeted.

Property licensing

Q. What about the legal duty local authorities have to ensure that all applications for licences are determined within a reasonable time?

In Plymouth we only operate the mandatory House in Multiple Occupation licensing scheme. We will:

Contact landlords who are waiting for licences to be determined to explain potential delays.

Take individual landlords' circumstances into account where licence fee payments may have been delayed due to the current situation.

Prioritise high-risk licensable properties if this is necessary to protect vulnerable tenants and target imminent risks to health.

Continue to take a pragmatic and common-sense approach to enforcement action.

Scheduled inspections, e.g. gas, electricity

Q. What about the requirement for landlords to ensure certain installations are in place or safe, for example gas, fire alarms, emergency lighting?

A. We will:

Consider carefully if landlords can show evidence that they have been unable to carry out inspections or works, despite having taken reasonable steps, before carrying out any enforcement.

Government guidance advises that inspectors/maintenance workers can still visit blocks of flats and multi-occupied properties for essential or urgent work such as inspecting and testing fire alarm and emergency lighting systems.